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# federal register

Friday
September 30, 1994

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# federal register

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# Contents

Federal Register

Vol. 59, No. 189

Friday, September 30, 1994

---

**Separate Parts In This Issue**

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

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## CFR PARTS AFFECTED IN THIS ISSUE

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

Federal Register
Vol. 59, No. 189
Friday, September 30, 1994

# Presidential Documents

Title 3—

The President

**Presidential Determination No. 94–50 of September 19, 1994**

## Determination To Authorize the Furnishing of Emergency Military Assistance to Countries Participating in the Multinational Coalition To Restore Democracy to Haiti Under Section 506(a)(1) of the Foreign Assistance Act

**Memorandum for the Secretary of State [and] the Secretary of Defense**

Pursuant to the authority vested in me by section 506(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(1) (the "Act"), I hereby determine that:

(1) an unforeseen emergency exists, which requires immediate military assistance to countries participating in the multinational coalition to restore democracy to Haiti; and

(2) the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other law except section 506 of the Act.

Therefore, I hereby authorize the furnishing of up to $50,000,000 in defense articles from the stocks of the Department of Defense, defense services of the Department of Defense, and military education and training to the countries participating in the multinational coalition to restore democracy to Haiti.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
*Washington, September 19, 1994.*

[FR Doc. 94–24391
Filed 9–28–94; 2:55 pm]
Billing code 4710–10–M

# Presidential Documents

**Presidential Determination No. 94–51 of September 21, 1994**

## Presidential Determination Under Subsections 402(a) and 409(a) of the Trade Act of 1974, as Amended—Emigration Policies of the Russian Federation

**Memorandum for the Secretary of State**

Pursuant to the authority vested in me by sections 402(a) and 409(a) of the Trade Act of 1974 (19 U.S.C. 2432(a) and 2439(a) (the "Act")), I determine the Russian Federation is not in violation of paragraph (1), (2), or (3) of subsection 402(a) of the Act, or paragraph (1), (2), or (3) of subsection 409(a) of the Act.

You are authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
*Washington, September 21, 1994.*

[FR Doc. 94–24425
Filed 9–28–94; 4:20 pm]
Billing code 4710–10–M

**Editorial note:** For the President's message to Congress transmitting the report on the Russian Federation's emigration policies, see volume 30, p. 1824 of the *Weekly Compilation of Presidential Documents.*

# Rules and Regulations

Federal Register
Vol. 59, No. 189
Friday, September 30, 1994



## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 151

**[Docket No. 94–057–2]**

### Recognized Breeds and Books of Record

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

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** On August 18, 1994, the Animal and Plant Health Inspection Service published a direct final rule. (See 59 FR 42488–42489). The direct final rule notified the public of our intention to amend the "Recognition of Breeds and Books of Record of Purebred Animals" regulations by adding the following to the list of "recognized breeds and books of record": the Belgian Blue and Gelbvieh breeds of cattle, the Trakehner and Morab breeds of horses, the Herd Book of the Gelbvieh, the Trakehner Stud Book, and the Morab Stud Book. We did not receive any written adverse comments or written notice of intent to submit adverse comments in response to the direct final rule.

**EFFECTIVE DATE:** The effective date of the direct final rule is confirmed as October 17, 1994.

**FOR FURTHER INFORMATION CONTACT:** Dr. Andrea Morgan, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 763, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8383.

**Authority:** 19 U.S.C. 1202; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 26th day of September 1994.

**Lonnie J. King,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 94–24230 Filed 9–29–94; 8:45 am]
**BILLING CODE 3410–34–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 93–CE–37–AD; Amendment 39–9032; AD 94–20–04]**

### Airworthiness Directives; Beech Aircraft Corporation 35 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes Airworthiness Directive (AD) 57–18–01 and AD 87–20–02 R1, which currently require several ruddervator checks and modifications on certain Beech Aircraft Corporation (Beech) 35 series airplanes. This action maintains the requirements of each of the superseded AD's and requires rebalancing the ruddervators (off the airplane) anytime the ruddervator is repaired or repainted (even if stripes are added). The required action imposes no new speed restrictions. Several incidents where empennage flutter occurred on the affected airplanes prompted this action. The actions specified by this AD are intended to prevent structural failure of the V-tail, which could result in loss of control of the airplane.

**DATES:** Effective November 28, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 28, 1994.

**ADDRESSES:** Service information that applies to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; facsimile (316) 946–4407.

**SUPPLEMENTARY INFORMATION:** Several incidents involving certain Beech 35 series airplanes where empennage flutter occurred prompted the FAA to re-evaluate current airworthiness directives that relate to the same subject, and apply to the same airplane models. These AD's are:

- AD 57–18–01, Amendment 39–1759, which currently requires repetitively inspecting the fuselage bulkhead for cracks, buckles, or distortion on certain Beech 35 series airplanes, and also requires checking the ruddervator to ensure that the static balance is within acceptable limits. The inspections and checks are accomplished utilizing information in Beech Service Bulletin (SB) No. 35–26, dated May 20, 1953. The Bonanza Maintenance Manual 35–590073 also specifies information for the ruddervator checks; and
- AD 87–20–02 R1, Amendment 39–5944, which currently requires the following on certain Beech 35 series airplanes: (1) installing external stabilizer reinforcements; (2) inspecting the rear fuselage and bulkheads in the area of the empennage for cracks or distortion for those models equipped with an increased stabilizer chord length/overhang, and repairing or replacing any cracked or distorted parts; and (3) checking the ruddervator static balance to ensure that the static balance is within acceptable limits, and correcting if necessary.

After examining all available information related to the incidents above, the FAA published a proposal in the **Federal Register** on October 27, 1993 (58 FR 57760) to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Beech 35 series airplanes . The document proposed to supersede AD 57–18–01 and AD 87–20–02 R1 with a new AD that would maintain the requirements of each of the current AD's, and would require rebalancing the ruddervators (off the airplane) anytime the ruddervator is repaired or repainted (even if stripes are

added). The document does not propose any new speed restrictions.

Interested persons were afforded an opportunity to participate in the making of this amendment. Several comments were received on the proposed rule. These comments reference inadvertent mistakes made by the FAA in drafting the proposed rule and request additional time to comment on the proposed rule.

In order to allow the public additional time to comment on the proposed rule, the FAA reissued this document as a supplemental NPRM that corrected the inadvertent mistakes, and published it in the **Federal Register** on April 6, 1994 (59 FR 16151).

Due consideration has been given to the two comments received on the supplemental NPRM.

The Beech Aircraft Corporation states that reference to Beech Kit No. 35–4016–9 is referenced incorrectly as Beech Kit No. 39–4016–9 in paragraph (g)(3) of the proposed AD. The FAA concurs and has changed the AD accordingly.

The other commenter recommends deleting Figure 2 (Method No. 2) because of the expense and effort required to accomplish the tasks presented. The FAA concurs that Method No. 2 is expensive to accomplish and that the complete weighing procedure is accomplished more accurately using the other two methods. Method No. 2 of the AD has been deleted, thus changing the proposed Method No. 3 to Method No. 2.

After careful review, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed in the supplemental NPRM except for changes referenced above and minor editorial corrections. The FAA has determined that these minor changes and corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 10,200 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 40 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $500 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $27,540,000. This figure is based on the assumption that no affected owner/operator has accomplished the required action, and does not reflect repetitive inspections. The FAA has no way of determining how many repetitive inspections a particular owner/operator may incur.

In addition, AD 57–18–01 and AD 87–20–02 R1, which both are superseded by this action, require the same actions as specified by this AD. With the idea that all affected owners/operators are in compliance with the superseded AD's referenced above, this AD does not impose any initial cost impact over what is already required by AD 57–18–01 and AD 87–20–02 R1.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final 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, 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. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by removing both AD 57–18–01, Amendment 39–1759, and AD 87–20–02 R1, Amendment 39–5944, and by adding a new airworthiness directive to read as follows:

**94–20–04 Beech Aircraft Corporation:** Amendment 39–9032; Docket No. 93–CE–37–AD. Supersedes AD 57–18–01, Amendment 39–1759, and AD 87–20–02 R1, Amendment 39–5944.

*Applicability*

1. Models 35, 35R, A35, B35, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, and P35 airplanes (all serial numbers), certificated in any category;

2. Models S35, V35, V35A, and V35B airplanes (all serial numbers), certificated in any category, that do not have the straight tail conversion modification incorporated in accordance with Supplemental Type Certificate (STC) SA2149CE; and

3. Model Super V airplanes (all serial numbers), certificated in any category.

*Compliance:* Required initially within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished, and thereafter as indicated in the body of this AD.

To prevent structural failure of the V-tail, which could result in loss of control of the airplane, accomplish the following:

**Note 1:** Any of the actions specified by this AD may have already been accomplished in accordance with either AD 57–18–01 and AD 87–20–02 R1, which are superseded by this AD. The intent of this AD is to clarify, update, and incorporate the actions of those AD's into one AD while maintaining the repetitive inspections schedules already established by the superseded AD's.

**Note 2:** The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.
Level 2: (1), (2), (3), etc.
Level 3: (i), (ii), (iii), etc.
Level 4: (A), (B), (C), etc.

Level 2, Level 3, and Level 4 structures are designations of the Level 1 paragraph they immediately follow.

(a) For all airplane models, balance the elevator/rudder (ruddervator) control surfaces in accordance with Section 3 of Beech Shop Manual 35–590096B; and verify that the ruddervators are within the manufacturers specified limits as specified in the applicable shop or maintenance manual.

(1) If any ruddervator is found outside of the specified limits, prior to further flight, obtain manufacturer's modification instructions by contacting the Wichita Aircraft Certification Office (ACO) at the address specified in paragraph (k) of this AD, and modify the ruddervator in accordance with these instructions.

(2) Repeat these requirements any time the ruddervator is repaired or painted (even if stripes are added).

(b) For all airplane models, visually inspect the fuselage bulkheads at Fuselage Station (FS) 256.9 and FS 272 for damage (cracks, distortion, loose rivets, etc.) in accordance with the procedures in the instructions to Beech Kit 35–4017–1 "Kit Information Empennage & Aft Fuselage Inspection ', as specified in Beech SB 2188, dated May 1987. Visually inspect the fuselage skin around the bulkhead for damage (wrinkles or cracks).

Prior to further flight, repair or replace any damaged parts. Repeat this inspection at each 100-hour TIS interval thereafter.

(c) For all Model Super V airplanes, check the static balance of the ruddervator in accordance with Beech Shop Manual 35–590096A, Section 3, pages 12A, 12B, and 13. Repeat this check anytime the ruddervator is removed or repainted. Prior to further flight, make applicable corrections if any of the following is not achieved:

(1) With the root weight removed and a tip weight attached, static balance of 19.80 (plus or minus 1.00) inch-pounds tail heavy; and

(2) With the root weight added to the condition specified in paragraph (c)(1) of this AD, static balance of 7.00 (plus or minus 1.00) inch-pounds tail heavy.

(d) The following placard, airspeed indicator markings, and POH/AFM requirements are retained from AD 87–20–02 R1, and are no longer mandatory when paragraphs (e) and (f) of this AD, as applicable, are accomplished:

(1) For Models 35, 35R, A35, B35, C35, D35, E35, F35, and G35 airplanes:

(i) Fabricate a placard (utilizing letters of at least .10-inch minimum height) with the words "Never exceed speed, Vne, 144 MPH (125 knots) IAS; Maximum structural cruising speed, Vno, 135 MPH (117 knots) IAS; Maneuvering speed, VA, 127 MPH (110 knots) IAS." Install this placard on the airplane instrument panel next to the airspeed indicator within the pilot's clear view.

(ii) Mark the outside surface of the airspeed indicator with lines of approximately 1/16-inch by 3/16-inch as follows:

(A) Red line at 144 MPH (125 knots);

(B) Yellow line at 135 MPH (117 knots); and

(C) A white slippage mark between the airspeed indicator glass and case to visually verify glass has not rotated.

(iii) Place a copy of this AD in the Pilot's Operating Handbook (POH) and FAA-approved Airplane Flight Manual (AFM).

(2) For Models H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B:

(i) Fabricate a placard (utilizing letters of at least .10-inch minimum height) with the words "Never exceed speed, Vne, 197 MPH (171 knots) IAS; Maximum structural cruising speed, Vno, 177 MPH (154 knots) IAS; Maneuvering speed, VA, 132 MPH (115 knots) IAS." Install this placard on the airplane instrument panel next to the airspeed indicator within the pilot's clear view.

(ii) Mark the outside surface of the airspeed indicator with lines of approximately 1/16-inch by 3/16-inch as follows:

(A) Red line at 197 MPH (171 knots);

(B) Yellow line at 177 MPH (154 knots); and

(C) A white slippage mark between the airspeed indicator glass and case to visually verify glass has not rotated.

(iii) Place a copy of this AD in the Pilot's Operating Handbook (POH) and FAA-approved Airplane Flight Manual (AFM).

(3) For all applicable model airplanes, fabricate a placard (utilizing letters of at least .10-inch minimum height) with the words "Normal Category Operation Only" and install this placard on the instrument panel within the pilot's clear view over the existing "Utility Category" placard.

(e) For Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, S35, V35, V35A, and V35B airplanes, accomplish the following:

(1) Visually inspect the empennage, aft fuselage, and ruddervator control system for damage in accordance with the instructions to Beech Kit 35–4017–1 "Kit Information Empennage & Aft Fuselage Inspection", as specified in Beech SB No. 2188, dated May 1987. Prior to further flight, accomplish the following in accordance with these instructions:

(i) Replace or repair any damaged parts; and

(ii) Set the elevator controls, rudder and tab system controls, cable tensions, and rigging.

(2) Remove all external stabilizer reinforcements installed during incorporation of either Supplemental Type Certificate (STC) SA845GL, STC SA846GL, STC SA1650CE, STC SA2286NM, or STC SA2287NM. Seal or fill any residual holes with appropriate size rivets.

(i) The internal stub spar incorporated through SA1649CE and SA1650CE may be retained.

(ii) The external angles incorporated through STC SA1649CE may also be retained by properly trimming the leading edge section to permit installing the stabilizer reinforcement referenced in paragraph (g)(3) of this AD.

(3) Install stabilizer reinforcements in accordance with the instructions to either Beech Kit No. 35–4016–3, 35–4016–5, 35–4016–7, or 35–4016–9, as applicable and specified in Beech SB No. 2188, dated May 1987. Set the elevator nose down trim in accordance with the instructions to either Beech Kit No. 35–4016–3, 35–4016–5, 35–4016–7, or 35–4016–9, as applicable and specified in Beech SB No. 2188, and replace ruddervator tab control cables with larger diameter cables in accordance with the service information.

(f) Ensure correct accuracy of the airplane basic empty weight and balance information by accomplishing either (1) or (2) below. Prior to further flight, correct any discrepancies in accordance with the applicable maintenance manual.

(1) Weight and Balance Information Accuracy Method No. 1:

(i) Review existing weight and balance documentation to assure completeness and accuracy of the documentation from the most recent FAA-approved weighing or from factory delivery to date of compliance with this AD.

(ii) Compare the actual configuration of the airplane to the configuration described in the weight and balance documentation; and

(iii) If equipment additions or deletions are not reflected in the documentation or if modifications affecting the location of the center of gravity (e.g., paint or structural repairs) are not documented, determine the accuracy of the airplane weight and balance data in accordance with Method No. 2; or

(2) Weight and Balance Information Accuracy Method No. 2: Determine the basic empty weight and center of gravity (CG) of the empty airplane using the Weighing Instructions in the Weight and Balance Section of the POH/AFM. Record the results in the airplane records, and use these new values as the basis for computing the weight and CG information as specified in the POH/AFM, Weight and Balances Section.

(g) Upon completion of the requirements of paragraphs (e) and (f) of this AD, remove the placards required by paragraph (d) of this AD (including all sub-paragraphs), as applicable, and observe the original limits.

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

(i) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita ACO, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(l) The inspections and installation required by this AD shall be done in accordance with the instructions to Beech Kit No. 35–4016–3, 35–4016–5, 35–4016–7, or 35–4016–9, and the instructions to Beech Kit 35–4017–1 "Kit Information Empennage & Aft Fuselage Inspection", as applicable and specified in Beech Service Bulletin No. 2188, dated May 1987. 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 Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(m) This amendment (39–9032) supersedes AD 57–18–01, Amendment 39–1759, and AD 87–20–02 R1, Amendment 39–5944.

(f) This amendment (39–9032) becomes effective on November 28, 1994.

Issued in Kansas City, Missouri, on September 16, 1994.

**Henry A. Armstrong,**

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

[FR Doc. 94–23552 Filed 9–29–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–CE–19–AD; Amendment 39–9033; AD 94–20–05]

## Airworthiness Directives; Beech Aircraft Corporation 1900 Series Airplanes

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

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

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to certain Beech Aircraft Corporation (Beech) 1900 series airplanes. This action requires inspecting the hot battery bus fuse assembly for proper wiring, correcting the wiring if incorrect, and modifying the wiring to add a redundant power source for the hot battery bus. This action results from a report of the hot battery bus bar wrongly installed on the lower (load) side of the hot battery bus fuse assembly on one of the affected airplanes. Correct installation is the upper (power) side of the circuit. The actions specified by this AD are intended to protect from overloads to either circuit connected to the hot battery bus from overloads, which, if not protected, could result in loss of certain emergency equipment.

**DATES:** Effective October 14, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 14, 1994.

Comments for inclusion in the Rules Docket must be received on or before December 12, 1994.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 94–CE–19–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Information that relates to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the FAA at the address above; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Harvey E. Nero, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946–4137; facsimile (316) 946–4407.

**SUPPLEMENTARY INFORMATION:** The FAA has received a report that the hot battery bus bar was wrongly installed on the lower (load) side of the hot battery bus fuse assembly on a Beech 1900 series airplane. Correct installation is the upper (power) side of the circuit. With the reported configuration, a single five amp fuse supplies electrical power to all the systems connected to the bus instead of (under the correct wiring configuration) the hot battery bus supplying each essential load independently through a fuse for each load. In normal conditions, an airplane operator would not notice the miswired hot battery bus bar until the single fuse is blown. This condition, if not detected and corrected, could result in the loss of electrical power to all emergency equipment connected to the hot battery bus. This equipment includes the left and right engine fire extinguisher bottles, the left and right fire wall shutoff valves, the cockpit emergency lighting, and the engine fire extinguisher indicator lights.

In addition, these airplanes currently are not equipped with a redundant power source for the emergency equipment receiving power from the hot battery bus. Under the present scenario, an internal battery problem could prevent the use of the emergency equipment because of no backup power sources for this equipment connected to the hot battery bus.

Beech has issued Service Bulletin (SB) No. 2562, dated August 1994, which specifies procedures for (1) inspecting the hot battery bus fuse assembly for proper wiring and correcting the wiring if incorrect, and (2) modifying the wiring to add a redundant power source for the hot battery bus.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken in order to protect either circuit connected to the hot battery bus from overloads, which, if not protected, could result in loss of certain emergency equipment.

Since an unsafe condition has been identified that is likely to exist or develop in other Beech 1900 series airplanes of the same type design, this AD requires the inspection and modification specified in Beech SB No. 2562, dated August 1994.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior 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 immediate flight safety and, thus, was not preceded by notice and opportunity to 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 above. 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 No. 94–CE–19–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 and 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 (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**94–20–05 Beech Aircraft Corporation:** Amendment 39–9033; Docket No. 94–CE–19–AD.

*Applicability:* The following model and serial number airplanes, certificated in any category:

| Model | Serial Nos. |
|---|---|
| 1900 | UA–2 and UA–3. |
| 1900C | UB–1 through UB–74 and UC–1 through UC–174. |
| 1900D | UE–1 through UE–87. |
| C–12J (Military) | UD–1 through UD–6. |

*Compliance:* Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To protect either circuit connected to the hot battery bus from overloads, which, if not protected, could result in loss of certain emergency equipment, accomplish the following:

(a) Visually inspect the hot battery bus fuse assembly to ensure that the hot battery bus bar is mounted on the row of terminals located on top of the hot battery bus fuse assembly in accordance with paragraphs 1 through 3 in the Accomplishment Instructions section of Beech Service Bulletin (SB) No. 2562, dated August 1994. If not mounted correctly, prior to further flight, reinstall the hot battery bus bar and reattach the wire harness in accordance with Beech SB No. 2562.

(b) Modify the wiring to add a redundant power source for the hot battery bus by accomplishing paragraphs 1, 2, and 4 through 12 of the Accomplishment Instructions section of Beech SB No. 2562, dated August 1994.

(c) Special flight permits may be issued in accordance with §§ 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.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(e) The inspection and modification required by this AD shall be done in accordance with the instructions to Beech Service Bulletin No. 2562, dated August 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39–9033) becomes effective on October 14, 1994.

Issued in Kansas City, Missouri, on September 21, 1994.

**Barry D. Clements,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 94–23812 Filed 9–29–94; 8:45 am]

BILLING CODE 4910–13–U

## 14 CFR Part 39

**[Docket No. 92–ANE–33; Amendment 39–9038; AD 93–19–02R1]**

## Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

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

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

**SUMMARY:** This amendment revises an existing airworthiness directive (AD), applicable to Pratt & Whitney (PW) JT9D series turbofan engines, that currently requires eddy current inspection and modification of the diffuser case rear rail, and removal, if necessary, of the diffuser case. This amendment corrects an error in paragraph numbering in the compliance section and allows modification of diffuser cases in accordance with previous revisions of a PW Service Bulletin as an alternative means of compliance. This amendment is prompted by comments received after issuance of AD 93–19–02. The actions specified by this AD are intended to prevent diffuser case rupture and an uncontained engine failure.

**DATES:** Effective on October 17, 1994.

The incorporation by reference of certain publications listed in the regulations was approved by the Director of the Federal Register as of October 18, 1993 (58 FR 51212, October 1, 1993).

Comments for inclusion in the Rules Docket must be received on or before November 29, 1994.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ANE–33, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main Street, East Hartford, CT 06108. 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:** Daniel Kerman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7130, fax (617) 238–7199.

**SUPPLEMENTARY INFORMATION:** On September 16, 1993, the Federal Aviation Administration (FAA) issued AD 93–19–02, Amendment 39–8695 (58 FR 51212, October 1, 1993), as a final rule with request for comments that superseded AD 86–11–04, to define initial inspection requirements that will allow for transition to more stringent repetitive on-wing eddy current inspections of the diffuser case rear rail for cracking. AD 93–19–02 also requires ultrasonic and metallographic inspections of the shell wall, and ultrasonic inspection of the rear rail at the Boss 6 location to determine weld size. In the previous AD, 86–11–04, diffuser cases were allowed to remain in service with weld repairs of up to 4 inches in length. In AD 93–19–02, diffuser cases with weld repairs in the rear rail of greater than or equal to 1.5 inches in axial length at Boss 6 must be replaced. In addition, AD 93–19–02 requires a one-time X-ray inspection of

the rear rail and sides of bosses for weld quality. This inspection is necessary since in the last two failures, weld defects were undetected by the inspections required by AD 86–11–04. Also, diffuser cases with rear rails that have been weld-repaired must incorporate the modifications described in PW SB No. 5805, Revision 6, dated September 15, 1993. Finally, an optional terminating action to the inspections and modifications of AD 93–19–02 is available with the installation of a new, improved diffuser case in accordance with PW SB No. 6105, Revision 2, dated May 14, 1993.

AD 93–19–02 was prompted by reports of 2 additional diffuser case failures. Both failures occurred within significantly shorter time intervals since last inspection than that specified in AD 86–11–04. In an effort to better understand the diffuser case failure mode, a rig test was performed. This test examined crack initiation and growth rates in weld-repaired versus non-weld-repaired diffuser cases. Results of the test established that cracks initiate and propagate more rapidly in weld-repaired diffuser cases. In addition, weld repairs at the Boss 6 location were determined to have even greater potential for rapid crack growth and resultant diffuser case failure. That condition, if not corrected, could result in diffuser case rupture and an uncontained engine failure.

Although AD 93–19–02 was issued as a final rule without prior notice and an opportunity for public comment, the FAA requested comment on the AD. Due consideration has been given to the comments received.

One commenter states that paragraph (c)(3) of AD 93–19–02 refers incorrectly to paragraphs (d) and (f), as those paragraphs are applicable to those diffuser cases that have been weld-repaired. The FAA concurs. Paragraph (c)(3) of this Revision to AD 93–19–02 has been changed to refer to paragraphs (e), (g), (h), (i), (j), (k), and (l). These paragraphs are applicable to those diffuser cases that have not been weld-repaired.

One commenter states that paragraph (o) of AD 93–19–02 requires modifications to the diffuser case in accordance with PW Service Bulletin (SB) No. 5805, Revision 6, dated September 15, 1993. The commenter maintains that modifications performed in accordance with the earlier revisions to this SB should be considered in compliance with this AD. The FAA concurs. All previous revisions of PW SB No. 5805 differ from Revision 6 only in editorial clarifications or corrections of typographical errors and do not impact the intent of the document. Modifications performed to the diffuser case in accordance with the previous revisions of PW SB No. 5805 constitute an acceptable alternate means of compliance to paragraph (o) of this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the revision of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA has reviewed and approved the technical contents of PW SB No. 5805, Revision 6, dated September 15, 1993, that describes procedures for modification of the rear rail by detaching the diffuser case rear rail from the strut boss, thus extending the serviceable life of the diffuser case by reducing crack initiation and propagation rates; PW Alert Service Bulletin (ASB) No. 6076, Revision 1, dated August 20, 1992, that describes ultrasonic and metallographic inspection of the shell wall, and ultrasonic inspection of the rear rail at the Boss 6 location to determine weld size; PW SB No. 6088, dated August 5, 1992, that describes an X-ray inspection of the rear rail and sides of bosses for detection of poor weld quality; PW SB No. 5591, Revision 7, dated August 25, 1992, that describe initial and repetitive on-wing eddy current inspections of the diffuser case rear rail; and PW SB No. 6105, Revision 2, dated May 14, 1993, that describes installation of a new, improved diffuser case.

Additional information regarding weld repair requirements for the diffuser case rear rail is contained in PW JT9D Engine Manual, Part Number 686028, dated September 1, 1993.

Since an unsafe condition has been identified that is likely to exist or develop on other PW JT9D series turbofan engines of this same type design, this AD revises AD 93–19–02 to correct an error in paragraph numbering in the compliance section and allow modification of diffuser cases in accordance with previous revisions of PW SB No. 5805 as an alternative means of compliance to paragraph (o) of this AD. The actions are required to be accomplished in accordance with the service bulletins 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 92–ANE–33." 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. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing Amendment 39–8695 (58 FR 51212, October 1, 1993) and by adding a new airworthiness directive, Amendment 39–9038, to read as follows:

**93–19–02 R1 Pratt & Whitney:** Amendment 39–9038. Docket 92–ANE–33. Revises AD 93–19–02, Amendment 39–8695.

Applicability: Pratt & Whitney (PW) JT9D–3A, –7, –7H, –7A, –7AH, –7F, –7J, –20, and –20J turbofan engines installed on but not limited to Boeing 747 series, Airbus A300 series, and McDonnell Douglas DC–10 series aircraft.

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

To prevent diffuser case rupture and an uncontained engine failure, accomplish the following:

(a) For those diffuser cases that have not been inspected in accordance with PW Alert Service Bulletin (ASB) No. 6076, Revision 1, dated August 20, 1992, initially inspect the diffuser case for cracks in accordance with the intervals and requirements described in paragraphs (d), (f), (g), (i), (j), (k), or (l) of this AD, as applicable.

(b) For those diffuser cases that have not been inspected in accordance with PW ASB No. 6076, Revision 1, dated August 20, 1992, inspect the diffuser case rear rail along the shell wall at Boss 6 for weld repair size in accordance with PW ASB No. 6076, Revision 1, dated August 20, 1992, at the next M flange separation of the high pressure turbine case after the effective date of this AD. Diffuser cases with weld repairs in the rear rail along the shell wall of axial length greater than or equal to 1.5 inches at Boss 6 must not be returned to service. If the weld length is less than 1.5 inches, inspect in accordance with the new criteria, improved technique, intervals, and requirements defined in the Accomplishment Instructions of PW Service Bulletin (SB) No. 5591, Revision 7, dated August 25, 1992.

**Note:** Additional information regarding weld repair requirements for the diffuser case rear rail is contained in PW JT9D Engine Manual, Part Number 686028, dated September 1, 1993.

(c) For those diffuser cases that have been inspected in accordance with PW ASB No. 6076, Revision 1, dated August 20, 1992, accomplish the following:

(1) For diffuser cases that have weld repairs in the rear rail along the shell wall at Boss 6 of axial length greater than or equal to 1.5 inches, remove from service and replace with a serviceable part prior to further flight.

(2) For diffuser cases that have weld repairs in the rear rail along the shell wall at Boss 6 of axial length less than 1.5 inches, initially inspect the diffuser case for cracks in accordance with the intervals and requirements described in paragraphs (d), (f), (g), (i), (j), (k), or (l) of this AD, as applicable.

(3) For diffuser cases that have no weld repairs in the rear rail along the shell wall at Boss 6, initially inspect the diffuser case for cracks in accordance with the intervals and requirements described in paragraphs (e), (g), (h), (i), (j), (k), or (l) of this AD, as applicable.

(d) For those diffuser cases that have been inspected in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, that contained rear rails with no cracks at any boss location at the last ECI, and have a weld repair in the rear rail along the shell wall at Boss 6, perform an initial ECI of the diffuser case rear rail for cracks in accordance with the new criteria and improved technique defined in the Accomplishment Instructions of PW SB No. 5591, Revision 7, dated August 25, 1992, as follows:

(1) For diffuser cases with greater than 275 cycles in service (CIS) since the last ECI performed in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, on the effective date of this AD, perform an ECI in accordance with the new criteria and improved technique defined in the Accomplishment Instructions PW SB No. 5591, Revision 7, dated August 25, 1992, prior to accumulating 500 CIS since the last ECI performed in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, or prior to accumulating 75 CIS after the effective date of this AD, whichever occurs first.

(2) For diffuser cases with less than or equal to 275 CIS since the last ECI performed in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, on the effective date of this AD, perform an ECI in accordance with the new criteria and improved technique defined in the Accomplishment Instructions of PW SB No. 5591, Revision 7, dated August 25, 1992, prior to accumulating 350 CIS since the last ECI performed in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986.

(e) For those diffuser cases that have been inspected in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, that contained rear rails with no cracks at any boss location at the last ECI, and have no weld repairs in the rear rail along the shell wall at Boss 6, perform an ECI of the diffuser case rear rail for cracks in accordance with the new criteria and improved technique defined in the Accomplishment Instructions of PW SB No. 5591, Revision 7, dated August 25, 1992, prior to accumulating 500 CIS since the last ECI performed in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986.

(f) For those diffuser cases that have been inspected in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, that contained rear rails with "A" cracks at Boss 6 at the last ECI, and have a weld repair in the rear rail along the shell wall at Boss 6, perform an ECI of the diffuser case rear rail for cracks in accordance with the new criteria and improved technique defined in the Accomplishment Instructions of PW SB No. 5591, Revision 7, dated August 25, 1992, prior to accumulating 300 CIS since the last ECI performed in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, or prior to accumulating 60 CIS after the effective date of this AD, whichever occurs first.

(g) For those diffuser cases that have been inspected in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, that contained rear rails with "A" cracks at any boss location other than at Boss 6 at the last ECI, with or without weld repairs in the rear rail along the shell wall at Boss 6, perform an ECI of the diffuser case rear rail for cracks in accordance with the new criteria and improved technique defined in the Accomplishment Instructions of PW SB No. 5591, Revision 7, dated August 25, 1992, prior to accumulating 300 CIS since the last ECI performed in accordance with PW SB No. 5591, Revision 4, dated March 16, 1986.

(h) For those diffuser cases that have been inspected in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, that contained rear rails with "A" cracks at Boss 6 at last ECI, and have no weld repairs at Boss 6, perform an ECI of the diffuser case rear rail for cracks in accordance with the new criteria and improved technique defined in the Accomplishment Instructions of PW SB No. 5591, Revision 7, dated August 25, 1992, prior to accumulating 300 CIS since the last ECI performed in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986.

(i) For those diffuser cases that have been inspected in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, and contained rear rails with "B" cracks at Boss 6 at last ECI, with or without weld repairs in the rear rail along the shell wall at Boss 6, remove from service and replace with a serviceable part prior to accumulating 5 CIS after the effective date of this AD.

(j) For those diffuser cases that have been inspected in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, and contained rear rails with "B" cracks at any boss location other than Boss 6 at last ECI, with or without weld repairs in the rear rail

along the shell wall at Boss 6, perform an ECI of the diffuser case rear rail for cracks in accordance with the new criteria and improved technique defined in the Accomplishment Instructions of PW SB No. 5591, Revision 7, dated August 25, 1992, prior to accumulating 75 CIS since the last ECI performed in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986.

(k) For those diffuser cases that have been inspected in accordance PW SB No. 5591, Revision 4, dated March 6, 1986, and contained rear rails with "C" cracks at Boss 6 at last ECI, with or without weld repairs in the rear rail along the shell wall at Boss 6, remove from service and replace with a serviceable part prior to further flight.

(l) For those diffuser cases that have been inspected in accordance with PW SB No. 5591, Revision 4, dated March 6, 1986, and contain rear rails with "C" cracks at any boss location other than Boss 6 at last ECI, with or without weld repairs in the rear rail along the shell wall at Boss 6, remove from service and replace with a serviceable part as follows:

(1) For shell wall cracks of greater than or equal to 2 inches, remove from service and replace with a serviceable part prior to further flight.

(2) For shell wall cracks of less than 2 inches, remove from service and replace with a serviceable part within 5 CIS after the effective date of this AD.

(m) Thereafter, perform repetitive ECI of the diffuser case rear rail for cracks in accordance with the new criteria, improved technique, intervals, requirements, and removal from service criteria defined in the Accomplishment Instructions of PW SB No. 5591, Revision 7, dated August 25, 1992.

(n) For those diffuser cases that have been weld repaired at any boss location, at the next K flange separation of the diffuser case after the effective date of this AD, perform a one-time x-ray inspection of the diffuser case rear rail and sides of all bosses for weld quality in accordance with PW SB No. 6088, dated August 5, 1992, prior to installation of the diffuser case. Remove any weld defects within the inspection zone in accordance with PW SB No. 6088, dated August 5, 1992, prior to installation of the diffuser case.

(o) For those diffuser cases with rear rails that have been weld repaired at any boss location, incorporate the modifications described in PW SB No. 5805, Revision 6, dated September 15, 1993, at the next removal of the diffuser case for repair after the effective date of this AD.

(p) Installation of an improved diffuser case in accordance with PW SB No. 6105, Revision 2, dated May 14, 1993, constitutes terminating action to the inspections and modifications required by this AD.

(q) 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. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

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

(r) Except for diffuser cases that have cracks that require removal prior to further flight, special flight permits may be issued in accordance with §§ 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. For diffuser cases that have cracks that require removal prior to further flight, on aircraft that are eligible for an engine-inoperative ferry, special flight permits may be issued in accordance with §§ 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 with one engine inoperative.

(s) The inspections and modifications shall be done in accordance with the following PW service bulletins:

| Document No. | Pages | Revision | Date |
|---|---|---|---|
| SB No. 5591 | 1–3 | 7 | Aug. 25, 1992. |
| | 4–9 | 6 | Aug. 14, 1992. |
| | 10 | 7 | Aug. 25, 1992. |
| | 11–12 | 6 | Aug. 14, 1992. |
| | 13 | 7 | Aug. 25, 1992. |
| | 14–15 | 6 | Aug. 14, 1992. |
| | 16 | 7 | Aug. 25, 1992. |
| | 17–19 | 6 | Aug. 14, 1992. |
| Total pages: 19 | | | |
| SB No. 5805 | 1–4 | 6 | Sept. 15, 1993. |
| | 5 | Original | Apr. 20, 1988. |
| | 6–72 | 6 | Sept. 15, 1993. |
| Total pages: 72 | | | |
| ASB No. 6076 | 1–5 | 1 | Aug. 20, 1992. |
| | 6–19 | Original | July 31, 1992. |
| Total pages: 19 | | | |
| SB No. 6088 | 1–11 | Original | Aug. 5, 1992. |
| Total pages: 11 | | | |
| SB No. 6105 | 1 | 2 | May 14, 1993. |
| | 2–7 | Original | Jan. 15, 1993. |
| | 8 | 1 | Apr. 14, 1993. |
| | 9 | 2 | May 14, 1993. |
| | 10–15 | Original | Jan. 15, 1993. |
| | 16 | 2 | May 14, 1993. |
| | 17–18 | Original | Jan. 15, 1993. |
| | 19 | 2 | May 14, 1993. |
| | 20–46 | Original | Jan. 15, 1993. |
| | 47 | 1 | Apr. 14, 1993. |
| | 48 | 2 | May 14, 1993. |
| | 49–56 | Original | Jan. 15, 1993. |
| Total pages: 56 | | | |

This incorporation by reference was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of October 18, 1993 (58 FR 51212, October 1, 1993). 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.

(t) This amendment becomes effective on October 17, 1994.

Issued in Burlington, Massachusetts, on September 22, 1994.

**Mark C. Fulmer,**

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

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## Office of the Secretary

## 14 CFR Part 234

[Docket No. 48524; RIN 2137–AB94]

## Amendments to the On-Time Disclosure Rule

**AGENCY:** Research and Special Programs Administration, Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** This rule revises the on-time flight performance reporting requirements by: Eliminating the exclusion of flights delayed or canceled due to mechanical problems; adding the aircraft tail number, and wheels-off and wheels-on times for each flight reported; adding several definitions; clarifying the reporting requirements for a new flight; and deleting references to obsolete organizational offices.

**EFFECTIVE DATE:** January 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Bernard Stankus or Jack Calloway, Office of Airline Statistics, DAI–10, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4387 or 366–4383, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On December 4, 1992, the Research and Special Programs Administration ("RSPA") issued a Notice of Proposed Rulemaking ("NPRM") (57 FR 58755; December 11, 1992) seeking public comments on the proposal to improve the on-time flight performance reporting requirements in 14 CFR Part 234 *Airline Service Quality Performance Reports.* The Department proposed to eliminate the reporting exclusion for flights delayed or canceled due to mechanical problems; to add the aircraft tail number, and wheels-off and wheels-on time for each flight reported; to define "canceled flight," "discontinued flight," "diverted flight," and "extra-section flight"; to clarify the reporting requirement for a new flight; and, to delete references to obsolete offices.

Part 234 requires the largest U.S. air carriers to report their on-time departure and arrival performances for every domestic scheduled-passenger flight operated to or from a reportable airport, with the exception of flights that are delayed 15 minutes or more, or canceled, because of mechanical problems. A flight is considered on-time if the flight departs and arrives less than 15 minutes after its published scheduled times. The Department publishes separate listings for departure and arrival performances. The reporting system developed for the administration of these reporting requirements is called the On-Time Flight Performance System.

The U.S. carriers covered by the Part 234 requirements are those generating at least 1 percent of the U.S. domestic scheduled-passenger revenues on a yearly basis. Currently, there are ten carriers reporting the data. They are Alaska Airlines, Inc. (Alaska), America West Airlines, Inc. (America West), American Airlines, Inc. (American), Continental Air Lines, Inc. (Continental), Delta Air Lines, Inc. (Delta), Northwest Airlines, Inc. (Northwest), Southwest Airlines Co. (Southwest), Trans World Airlines, Inc. (TWA), United Air Lines, Inc. (United) and USAir, Inc. (USAir).

Reportable airports are those airports in the contiguous 48 states generating at least 1 percent of the domestic scheduled-passenger enplanements on an annual basis. There are 29 reportable airports in 1994. In practice, all reporting carriers are voluntarily submitting data for their entire domestic scheduled-passenger operations.

One of the main purposes of the rule is to create a market-based incentive for airlines to improve their service quality and schedule reliability for consumers. The public availability of comparative data on airline service quality creates this market-based carrier incentive.

The addition of wheels-off and wheels-on times, and the identification of aircraft by tail number, will enable the Federal Aviation Administration (FAA) to analyze air traffic operations and create system models for use in reducing enroute and ramp delays. Air traffic delays cost the public and the industry an estimated $8.5 billion in 1990, according to the FAA.

### Public Comments

Comments on the NPRM were received from Alaska, American, Delta, Northwest, Southwest, the Air Transport Association of America (ATA), The Port Authority of New York and New Jersey (Port Authority), and America West which filed comments along with a motion for leave to file late comments.

The ATA is an airline trade association with 17 U.S. carrier members and two Canadian air carrier associate members. Of the ten carriers currently reporting on-time flight performance data, America West is the only non-ATA member. The ATA stated that Alaska, Northwest and Southwest did not join in ATA's comments to the NPRM.

The comments address safety, alternative data sources, the proprietary nature of aircraft tail number data, elimination of the rule in its entirety, the addition of new data items and definition changes. Each of these subjects is addressed under a separate caption.

#### Safety

Northwest, Southwest and America West opposed the elimination of the mechanical exclusion.

Northwest believes the existing rule balances the need for consumer information with safety, and gives carriers an incentive to engage in realistic scheduling. Northwest states it has placed a high priority on improving its on-time performance, and has developed a comprehensive system which includes employee training to assure flights are dispatched on time. However, Northwest also states that it has, and always will place safety ahead of on-time flight performance. Consequently, it has instructed its employees to ignore on-time flight performance when safety is an issue. Northwest believes the proposed change will make on-time flight performance an issue that employees may wrongly consider when making decisions that have major safety implications. Northwest states it does not want its employees to feel pressure to choose between safety and on-time flight performance. Northwest believes the current rule is an unqualified success, and should not be amended to include mechanical delays and mechanical cancellations.

Southwest believes the policy of each air carrier is "safety first." However, Southwest feels a carrier cannot guarantee that an employee's commitment to safety will not be affected by a desire to see the carrier do well in its on-time flight performance. Southwest contends including mechanical delays in the reported flight records will intensify the conflict between safety and on-time performance.

Southwest states the Research and Special Programs Administration (RSPA) did not reveal any need for the proposed change in the treatment of mechanical delays, other than the

Inspector General's (IG) audit report which found minor discrepancies in some nonreported flights. After the IG audit, RSPA issued an accounting and reporting directive on the subject of nonreported mechanical delays and mechanical cancellations. Southwest asserts a follow-up audit has not been conducted, and concludes that there is no evidence that the problem continues to exist.

Southwest further states that in a 1990 internal DOT memorandum, RSPA expressed concern with the IG's suggestion that mechanical delays and mechanical cancellations should be collected with a suppression code to enable DOT to continue excluding those flights from the monthly consumer report. RSPA commented that collecting data on mechanical delays and mechanical cancellations would duplicate FAA's collection and would be counter to DOT's current policy. RSPA also questioned whether the data on mechanical delays and mechanical cancellations could be protected under the Freedom of Information Act (5 U.S.C. 552) (FOIA).

In response to Southwest's contention that the NPRM did not reveal any need for eliminating the mechanical exclusion, other than the IG's recommendation, RSPA notes that the NPRM specifically stated, "The improved modifications in the reporting system would result in improved consumer information . . ." (57 FR 58756).

As asserted by Southwest, the Department did not conduct a follow-up audit on the exclusion of flights impacted by mechanical problems. Southwest, therefore, concludes there is no evidence as to carrier reporting compliance after RSPA issued its accounting and reporting directive to clarify the reporting instructions. However, the Department's decision to propose eliminating the mechanical exclusion rendered a follow-up unnecessary.

Southwest also states that RSPA even had concerns about collecting data on mechanical delays and mechanical cancellations, as the collection would duplicate an existing FAA collection and be counter to Departmental policy. While RSPA did express concerns about the suggestion to collect mechanical delays and mechanical cancellations and suppress that information in the data base, RSPA's concerns were with its ability to withhold the mechanical data from public release. RSPA believed it would be required to release the mechanical data under the FOIA even if a suppression code were used. Also, RSPA questioned whether the reporting of specific mechanical data to RSPA and the FAA was duplicate reporting, which would be counter to the Paperwork Reduction Act (44 U.S.C. Chapter 35). This concern has been addressed because carriers would not, under this rule, report specific mechanical data to the Department. All flights would be reported, with no distinction between flights impacted by mechanical delays and those flights impacted by other delays.

America West requests the present exclusions for mechanical delays and mechanical cancellations be retained. The carrier believes DOT would be ill-advised to make any changes in the existing regulations, unless DOT can assure the change will not cause "one employee at one airline on one occasion to send out an aircraft in order to avoid having a 'late' flight and that an incident or accident occurs."

The Department does not believe reporting mechanical delays and mechanical cancellations would cause an employee to compromise safety to improve an airline's on-time performance. Under the present system, an employee could easily improve its employer's on-time performance by miscategorizing a delayed flight as a mechanical delay. The IG's report did not find a pattern of this type of behavior at any of the reporting carriers. Rather, some flights were reported as delayed flights that should have been excluded as mechanical delays, while other flights that were called mechanical delays were actually delayed for other reasons. In no case was a carrier's monthly on-time performance ranking affected by misclassification of flights. Given the fact employees did not attempt to improve on-time performance by intentionally misclassifying flights, the Department does not believe employees will violate FAA regulations, risk their own jobs, and threaten passenger safety by dispatching unairworthy aircraft to improve on-time performance.

Moreover, the Department believes the elimination of the exclusion for mechanical delays and mechanical cancellations will provide better consumer information since aircraft dispatch reliability will now be a factor in a carrier's on-time performance. For example, two carriers each ground one of their aircraft for a day because of mechanical problems. Carrier A fulfills its schedule using a backup aircraft. All of Carrier A's flights are on-time except for the last flight operated with the backup aircraft. Carrier B does not have a backup aircraft available, so it cancels eight flights that were to be operated with the disabled aircraft. Carrier B fulfills the rest of its schedule in a timely manner. Under the mechanical exclusion provision, Carrier B would have the better on-time flight performance for that day even though it was without a backup aircraft and cancelled eight flights.

The present system, in some circumstances, penalizes the carrier with the more reliable service. Elimination of the mechanical exclusion would end this inequity. If the previous example were based on the new rule, the carrier meeting its schedule with backup equipment would have the better on-time rating. The availability of this additional information would result in a more accurate portrayal of a carrier's flight operation, thereby enabling the consumer to make a more informed flight-selection decision. Furthermore, the elimination of the exclusion should benefit the on-time rankings of carriers with more effective preventive maintenance programs because such carriers would experience fewer mechanical delays and mechanical cancellations.

The Department intends for the airlines to continue to put safety first, and to train their employees accordingly. As Northwest stated, it too always places safety ahead of on-time performance and instructs its employees to do the same when there is a conflict between timeliness and safety. The Department is confident all carriers operate in the same manner as Northwest. The change in the reporting requirements in 14 CFR Part 234 does not affect the requirement under 14 CFR §§ 121.703 and 121.705 that carriers report equipment malfunctions to the FAA. It is important to remember the Department is not establishing a required level of performance that each carrier must meet. Rather, the Department merely discloses to the public the carriers' on-time performance by month. The public will be better informed when each carrier reports its complete schedule.

ATA, American and Delta filed in support of the proposed amendment. They contend the elimination of the exclusion would not compromise safety.

ATA does not believe the elimination of the exclusion will adversely affect reporting air carriers or the travelling public. The inclusion of mechanical-delay and mechanical-cancellation information will give those interested in air carrier flight performance a better picture of flight delay and cancellation activity. The safety of passengers and crew is the most important responsibility of air carriers. ATA states that carriers devote enormous resources and attention to fulfilling that

responsibility. ATA does not believe the elimination of the mechanical-delay and mechanical-cancellation exclusion will induce ATA members to dispatch aircraft that are unairworthy, or have any other adverse effect upon aviation safety.

American believes that carriers would not risk safety for competitive reasons. Reporting all flights would "provide consumers with a more accurate picture of a carrier's overall on-time record, which is the reason for the rule in the first place."

Delta states that it has incurred considerable unnecessary expense to exclude the mechanical delays and mechanical cancellations, and argues that their inclusion will not have a negative effect on the safety of airline operations. Moreover, the existing rule "has the effect of punishing carriers with better dispatch reliability records relative to their competitors."

The Port Authority also believes safety would not be compromised by the inclusion of maintenance-related delays; and, the proposed changes would provide consumers with more useful information to make informed decisions.

**Alternative Data Sources—Wheels-Off/On Times**

While not objecting to the reporting of wheels-off and wheels-on data, ATA does not believe airlines should be required to submit data that the agency itself could compile.

Delta believes the wheels-off, wheels-on and tail number data could provide the FAA with valuable information for improving the air traffic control system. However, Delta also believes carriers are already providing much of this information to the FAA, and questions whether reporting the same data in a different format is cost justified.

The Port Authority believes the additional data items will significantly benefit the study and reduction of air traffic delays. By measuring wheels-off/on times against gate departure/arrival times, an airport operator can better assess the efficiency of its airfield layout and take action to improve traffic flow and reduce ground delays, which the authority estimates account for 70 percent of the total aircraft delay time at its airports.

Alaska believes carrier submission of wheels-off and wheels-on time data is unnecessary and unjustified. The proposed elements should be based on DOT's on-time flight performance needs rather than on FAA's air traffic control needs.

By collecting wheels-off and wheels-on times and tail numbers, the FAA will be able to use the on-time flight performance data base to track flight delays. It is cost efficient to add these data items to an existing data base rather than to create a new one.

The Department agrees with Alaska that wheels-off and wheels-on times are not needed for consumer information purposes, although consumers would benefit directly from reduced aircraft delays.

There is an existing company that is a potential data source for aircraft tail numbers, and wheels-off and wheels-on times. Through its tracking system, the company captures these data elements for all scheduled domestic flights for six of the ten reporting air carriers.

The Department would accept carrier data through any outside company, if the proper arrangements can be made for data transmittal. A carrier must give its permission to the outside company to provide the data to the government without cost to the government.

**Proprietary Data—Aircraft Tail Number**

The collection of tail number data will benefit the FAA directly, by giving the FAA the necessary information to track aircraft throughout the air traffic system. This tracking will enable the FAA to reduce aircraft delays, thereby benefiting the consumer.

ATA opposes collecting aircraft tail number information because it believes: (1) The information is proprietary and very sensitive; (2) there is an appreciable cost burden to the carrier, especially to one carrier that tracks its aircraft by nose numbers rather than tail numbers; and (3) consumers would not derive any benefits from the reporting of tail numbers.

ATA believes that the availability of tail-number data would enable a person to determine the way a carrier deploys its aircraft throughout its route system. Thus, the reporting would reveal basic management decisionmaking. ATA argues that such fundamental business decisions should not be required to be disclosed in monthly reports to the government.

The claim that data are proprietary in nature does not preclude the Department from collecting the data. FOIA provides safeguards from the public disclosure of proprietary information. Moreover, the Department has no plans for routine public release of tail-number data. A carrier objecting to public disclosure of tail-number data may file a motion under the Department's regulation 14 CFR § 302.39 *Objections to public disclosure of information.* Such a motion would be reviewed under the requirements of FOIA.

The adoption of the tail number requirement would not result in an "appreciable" cost to the carriers, since most of them already track their aircraft movements by tail number. While ATA states one of its member carriers tracks its aircraft by nose number instead of tail number, no individual carrier has stated it would have difficulty in supplying data by tail number. A carrier could easily program a bridge for converting its nose number to a tail number for Part 234 reporting purposes. If this is not feasible, the carrier may contact the Office of Airline Statistics (OAS) to make other arrangements for tracking aircraft through the carrier's system. Any air carrier may request a waiver under 14 CFR § 234.12 from the on-time flight performance reporting provisions.

**Eliminate On-Time Flight Performance Reporting**

Alaska stated the Department should initiate a rulemaking to see whether the existing on-time performance requirements should be eliminated, rather than imposing additional reporting requirements. Alaska believes the airline industry's condition is far too dire to permit the continuation of a reporting regulation which Alaska argues has no appreciable influence on consumer choice or industry scheduling conduct. Alaska does not adjust its schedules based on on-time performance ratings. Its scheduling practices are tied to its internal schedule monitoring system that uses departure times, in contrast to the Department's arrival-based reporting requirement.

Alaska believes that collection of additional data—mechanical delays and mechanical cancellations, wheels-off and wheels-on times, and aircraft tail numbers—is unnecessary and unjustified until the current reporting requirements are shown to have improved carrier scheduling conduct.

The Department disagrees with Alaska's position that carrier on-time performance is unaffected by the reporting requirements. In its answer to this rulemaking, Northwest stated it has made changes to its schedule to improve on-time performance. On May 17, 1993, Delta implemented a system-wide communication program to improve its on-time performance. Given the industry's improvement in on-time flight performance since the reporting requirement was instituted in 1987, the Department believes most carriers have made similar changes. Before the reporting regulations were in effect, a Department investigation into

scheduling practices of selected air carriers at four major airports disclosed that 25 to 60 percent of those carriers' scheduled flights were more than 15 minutes late (52 FR 34056; September 9, 1987). Today, more than 80 percent of the reporting carriers' flights are on time. On-time flight disclosure helps to eliminate deceptive scheduling practices by carriers, to the benefit of consumers.

Alaska believes departure times, rather than arrival times, are a better indicator of a carrier's reliability. The Department disagrees. Consumers are more interested in arrival times, because they have meetings to attend or may have somebody meeting them at the destination airport. Consumers also consider elapsed flight time when selecting an air carrier. If arrival times were ignored, schedule times could be shaved to make them more appealing to consumers. If the flights departed on time, the carrier would have a 100 percent on-time record even if every flight arrived a half-hour late. Such information would be very deceptive to the consumer.

**New Data**

American suggested the Department collect aircraft-type data along with the other proposed data elements, as a means of increasing the utility of the data.

The Department agrees with American that aircraft-type data are useful for tracking the number of passengers affected by aircraft delays. However, the Department can convert tail-number information into aircraft-type data using the aircraft inventory data base maintained from the carriers' Schedule B–43 *Inventory of Airframes and Aircraft Engines* and B–7 *Airframe and Aircraft Engine Acquisitions and Retirements*. These schedules provide aircraft type by tail number. Thus, DOT does not need air carriers to supply aircraft-type information with its Part 234 submission.

**Definitions**

Delta suggested minor changes or clarifications to some of the definitions in the proposed rule. Delta recommended RSPA clarify whether days mean calendar days or twenty-four hour periods. Delta also recommended RSPA revise "diverted flight" to read: "A diverted flight means a flight which is not operated from the originating point(s) to each of the destinations set forth in the carrier's published schedule."

The Department agrees with Delta's comments concerning the definitions, and has amended the definitions in the final rule to show "days" mean calendar days; and "diverted flight" means a flight operated from the scheduled origin point to a point other than the scheduled destination point in accordance with the carrier's published schedule. Also, since the ensuing flight segment from the nonscheduled destination airport is not a scheduled departure, that flight segment is not reported under Part 234.

**Technical Directive**

A Technical Directive was issued with the original rule in 1987 (Appendix I-Reporting Directive-Office of Aviation Information Management, RSPA, 52 FR 34073, September 9, 1987), which instructed carriers on the proper reporting format. Since then, the Technical Directive has been updated by other accounting and reporting directives, which were issued by OAS. RSPA will reissue the Technical Directive to the industry concurrently with the publication of this rule in the **Federal Register**. The reissued Technical Directive includes the changes made in this rulemaking and other effective revisions made in previous Accounting and Reporting Directives. The major revision in the Technical Directive is in the ADP area.

**Rulemaking Analyses and Notices**

*Executive Order 12866 and DOT Regulatory Policies and Procedures*

This final rule is considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was subject to review by the Office of Management and Budget.

This rule is considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). The purpose of the rule is to improve consumer information on carrier on-time flight performance while, at the same time, reducing carrier costs for providing such information and providing the FAA with the necessary data to reduce flight delays. These objectives will be achieved by amending 14 CFR Part 234. The savings would be derived from the decrease in air traffic delays, resulting from FAA's more efficient management of air traffic. The FAA estimated a mere 1 percent reduction in delays would produce a cost savings of $85 million to the public and industry. According to a study conducted by FAA's Information Systems Branch, the total cost of air traffic delays for calendar year 1990 was $8.5 billion. More recently, on May 27, 1993, in testimony before the National Commission to Ensure a Strong Competitive Airline Industry, Mr. Joseph M. Del Balzo, the FAA's Acting Administrator, stated the ATA estimates that air traffic delays impose annual costs of $8 billion on the nation's airlines and air travelers.

The industry-wide cost for adding the three data items at issue would be a one-time programming and testing cost of approximately $34,000, ten carriers at $3,400 per carrier. Once the programming is in place, the annual cost to the carriers would be approximately $1,000 per carrier. The economic benefits to the industry, as well as to the consumer, far outweigh the cost of supplying the data. Eliminating the exclusion of flights that are delayed by mechanical problems in the carriers' on-time performance reports should result in a net savings to the air carriers. Delta stated that the mechanical exclusion has caused it to incur unnecessary expenses. While the elimination of the mechanical exclusion will require carriers to report more data to DOT, the carriers will not be required to identify the cause of the delays and to filter out those flights delayed by mechanical problems. The end result will be better consumer information and a cost savings to the reporting air carriers. The NPRM estimated the elimination of the mechanical exclusion should save the airline industry at least $154,000. Although the Department encouraged carriers to comment on this estimate, Delta was the only carrier that did; however, Delta did not quantify costs. A regulatory evaluation has been prepared and placed in the rulemaking docket. In the notice of proposed rulemaking, the Department estimated there was a potential annual savings to the airline industry and to the general public of $85 million.

This rule is consistent with the objectives of the executive order because the rule creates market based incentives for carriers to improve their on-time flight performance by providing consumers with superior information with which to make informed choices.

The amendments to 14 CFR Part 234 enable the Department to readily verify that the carriers are in compliance with the reporting requirements. The Department will be able to match a carrier's reported flights with the carrier's scheduled flights as listed in the *Official Airline Guide*. Previously, such a matching was not possible, because carriers did not report qualifying mechanical delays and mechanical cancellations.

Title 14 CFR Part 234 does not specify an on-time flight performance standard which carriers must meet. Rather, the carriers' reports provide consumers with

information on carrier performance, which the consumer may use in carrier selection.

On-time flight performance data are pertinent information for state or local airport operators. The Port Authority filed in support of the amendments to 14 CFR 234.

The amendments to 14 CFR Part 234 simplify carrier reporting by eliminating the special, and sometimes complicated, treatment of flights affected by mechanical delays.

The three new data items were added at the request of the FAA, who will now be able to use the existing data base as a more complete source of information for airport and enroute delay studies. This action negates the need for the FAA to create a data base of its own.

**Executive Order 12612**

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism") and DOT has determined the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

*Regulatory Flexibility Act*

I certify this final rule will not have a significant economic impact on a substantial number of small entities. The amendments will affect only large certificated U.S. air carriers accounting for at least 1 percent of U.S. domestic scheduled passenger revenues (over $450 million annually for the 12 months ended March 31, 1993). The Department's economic regulations define "large certificated air carrier" to include U.S. air carriers holding a certificate issued under section 401 of the Federal Aviation Act of 1958, as amended, that operate aircraft designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds. Consequently, small carriers are not affected by this final rule.

*Paperwork Reduction Act*

The reporting and recordkeeping requirements associated with this rule were sent at the NPRM stage to the Office of Management and Budget in accordance with 44 U.S.C. Chapter 35 under OMB NO: 2138–0041. The final rule adopts those requirements. OMB has approved 14 CFR Part 234 through July 31, 1995. ADMINISTRATION: Research and Special Programs Administration; TITLE: Airline Service Quality Performance Reports; NEED FOR INFORMATION: Consumer Information and Flight Data for Air Traffic Control; PROPOSED USE OF INFORMATION: Consumer Publications and Modeling for Studying and Reducing Air Traffic Delays; FREQUENCY: Monthly; BURDEN ESTIMATE: 1,780; AVERAGE BURDEN HOURS PER RESPONDENT 178. For further information contact: The Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590–0001, (202) 366–4735 or Transportation Desk Officer, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503.

*Regulation Identifier Number*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number 2137–AB94 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

**List of Subjects in 14 CFR Part 234**

Advertising, Air carriers, Consumer protection, Reporting requirements, Travel agents, Mishandled baggage reports.

**Final Rule**

Accordingly, RSPA amends 14 CFR Part 234 Airline *Service Quality Performance Reports* as follows:

## PART 234—AIRLINE SERVICE QUALITY PERFORMANCE REPORTS—[AMENDED]

1. The authority for Part 234 is revised to read as follows:

**Authority:** 49 U.S.C. 40101, 40114, 41702, 41708 and 41712; 5 U.S.C. 553(e) and 14 CFR 302.38.

2. Section 234.2 Definitions is amended by revising the definitions of *reportable flight* and *reporting carrier*; removing the definitions of *mechanical delay* and *mechanical cancellation*; and adding new definitions in alphabetical order as follows:

**§ 234.2 Definitions.**

For the purpose of this part: *Cancelled flight* means a flight operation that was not operated, but was listed in a carrier's computer reservation system within seven calendar days of the scheduled departure.

*Discontinued flight* means a flight dropped from a carrier's computer reservation system more than seven calendar days before its scheduled departure.

*Diverted Flight* means a flight which is operated from the scheduled origin point to a point other than the scheduled destination point in the carrier's published schedule. For example, a carrier has a published schedule for a flight from A to B to C. If the carrier were to actually fly an A to C operation, the A to B segment is a diverted flight, and the B to C segment is a cancelled flight.

*Extra-section flight* means a flight conducted as an integral part of scheduled passenger service, that has not been provided for in published schedules and is required for transportation of traffic that cannot be accommodated on the regularly scheduled flight.

* * * * *

*Reportable flight* means any nonstop flight, including a mechanically delayed flight, to or from any airport within the contiguous 48 states that accounts for at least 1 percent of domestic scheduled-passenger enplanements in the previous calendar year, as reported to the Department pursuant to Part 241 of this title. Qualifying airports will be specified periodically in accounting and reporting directives issued by the Office of Airline Statistics.

*Reporting carrier* means an air carrier certificated under section 401 of the Federal Aviation Act of 1958 that accounted for at least 1 percent of domestic scheduled-passenger revenues in the 12 months ending March 31 of each year, as reported to the Department pursuant to Part 241 of this title. Reporting carriers will be identified periodically in accounting and reporting directives issued by the Office of Airline Statistics.

*Wet-leased flight* means a flight operated with a leased aircraft and crew.

3. Section 234.4 is amended by revising paragraphs (a) and (b), redesignating paragraphs (c) and (d) as (e) and (f), respectively, and adding new paragraphs (c) and (d) to read as follows:

**§ 234.4 Reporting of on-time performance.**

(a) Each reporting carrier shall file RSPA Form 234 "On-Time Flight Performance Report" with the Office of Airline Statistics on a monthly basis, setting forth the information for each of its reportable flights held out in the *Official Airline Guide* (OAG), in the computer reservations systems (CRS), or in other schedule publications. The reportable flights include, but are not limited to, cancelled flights, mechanically cancelled flights, diverted flights, new flights and wet-leased flights. The report shall be made in the form and manner set forth in accounting and reporting directives issued by the Director, Office of Airline Statistics, and shall contain the following information:

(1) Carrier and flight number.
(2) Aircraft tail number.
(3) Origin and Destination airport codes.
(4) Published OAG departure and arrival times for each scheduled operation of the flight.
(5) CRS scheduled arrival and departure time for each scheduled operation of the flight.
(6) Actual departure and arrival time for each operation of the flight.
(7) Difference in minutes between OAG and CRS scheduled arrival times.
(8) Difference in minutes between OAG and CRS scheduled departure times.
(9) Actual wheels-off and wheels-on times for each operation of the flight.
(10) Date and day of week of scheduled flight operation.
(11) Scheduled elapsed time, according to CRS schedule.
(12) Actual elapsed time.
(13) Amount of departure delay, if any.
(14) Amount of arrival delay, if any.
(15) Amount of elapsed time difference, if any.

(b) When reporting the information specified in paragraph (a) of this section for a diverted flight, a reporting carrier shall use the *original* scheduled flight number and the *original* scheduled origin and destination airport codes.

(c) A reporting carrier shall report the information specified in paragraph (a) of this section for a new flight beginning with the first day of the new scheduled operation.

(d) A reporting carrier shall not report the information specified in paragraph (a) of this section for any discontinued or extra-section flight.

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4. Section 234.5 is be revised to read as follows:

**§ 234.5 Form of reports.**

Except where otherwise noted, all reports required by this part shall be filed within 15 days of the end of the month for which data are reported. The reports must be submitted to the Office of Airline Statistics on ADP computer tape in the format specified in accounting and reporting directives issued by the Director of that office.

5. Section 234.6 is revised to read as follows:

**§ 234.6 Baggage-handling statistics.**

Each reporting carrier shall report monthly to the Department on a domestic system basis, excluding charter flights, the total number of passengers enplaned systemwide, and the total number of mishandled-baggage reports filed with the carrier. The information shall be submitted to the Department within 15 days of the end of the month to which the information applies and must be submitted with the transmittal letter accompanying the data for on-time performance in the form and manner set forth in accounting and reporting directives issued by the Director, Office of Airline Statistics.

6. Section 234.8 is amended by revising paragraphs (a) and (b)(1) to read as follows:

**§ 234.8 Calculation of on-time performance codes.**

(a) Each reporting carrier shall calculate an on-time performance code in accordance with this section and as provided in more detail in accounting and reporting directives issued by the Director, Office Airline Statistics. The calculations shall be performed for each reportable flight, except those scheduled to operate three times or less during a month. In addition, each reporting carrier shall assign an on-time performance code to each of its single plane one-stop or multi-stop flights, or portion thereof, that the carrier holds out to the public through a CRS, the last segment of which is a reportable flight.

(b) The on-time performance code shall be calculated as follows:

(1) Based on reportable flight data provided to the Department, calculate the percentage of on-time arrivals of each nonstop flight. Calculations shall not include discontinued or extra-section flights for which data are not reported to the Department.

* * * * *

7. Section 234.12 is revised to read as follows:

**§ 234.12 Waivers.**

Any carrier may request a waiver from the reporting requirements of this part. Such a request, at the discretion of the Administrator, Research and Special Programs Administration, may be granted for good cause shown. The requesting party shall state the basis for such a waiver.

Issued in Washington, D.C. on September 23, 1994.

**D.K. Sharma,**

*Administrator, Research and Special Programs Administration.*

[FR Doc. 94–24169 Filed 9–29–94; 8:45 am]

BILLING CODE 6901–05–P

**DEPARTMENT OF COMMERCE**

**Bureau of Export Administration**

**15 CFR Parts 778 and 799**

**[Docket No. 940975–4275]**

## Missile Technology Control Regime (MTCR); Revisions to the CCL

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) by revising certain entries of the Commerce Control List (CCL) to conform with changes to the Missile Technology Control Regime (MTCR) Equipment and Technology Annex. The MTCR is a multilateral forum; participating countries agree to control items contained on the Annex in order to limit proliferation of missiles capable of delivering weapons of mass destruction. Most of these revisions are based on technical consultations with MCTR countries held in September 1993, in London, and in December 1993, in Interlaken. Additionally, this rule makes other corrections and clarifications needed to make the CCL conform to the Annex. The revisions to the CCL made by this rule help to ensure that the items controlled by the United States in meeting its MTCR obligations are similar to those controlled by other MTCR participating countries.

**EFFECTIVE DATE:** This rule is effective September 30, 1994.

**FOR FURTHER INFORMATION CONTACT:** Bruce Webb, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 482–3806.

**SUPPLEMENTARY INFORMATION:**

### Background

This rule amends Part 778 to clarify missile technology licensing policy. Many of the changes to the Commerce Control List (CCL) made by this rule, directly reflecting changes in the MTCR Annex, consist of technical refinements that more precisely identify items controlled for missile technology reasons. The technical refinements in Category 1 either change certain paragraphs or add clarifying notes.

In other cases, the CCL has been brought into line where it had diverged from the Annex. In Category 3, 3A01.a.1.a replaces 3A01.a.1, and resulting changes occur in 3D21 and 3E01. As telemetering and telecontrol

equipment (5A20) are the only items in Category 5 on the Annex, the missile technology designation was removed from the "Reason for Control" paragraph of any other Category 5 entries. The GLV value limit for 5A20 is now $0. Since 7A27 now specifically controls *airborne* passive sensors, the GLV limit for that entry becomes $0. "Specially designed components" have been added to some entries to conform to the Annex. Finally, typographical errors in the definitions supplement have been corrected.

Although the Export Administration Act of 1979 (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and determined that, to the extent permitted by law, the provisions of the EAA, as amended, shall be carried out under Executive Order 12924 of August 19, 1994, so as to continue in full force and effect and amend, as necessary, the export control system heretofore maintained by the Export Administration Regulations issued under the EAA.

**Saving Clause**

Shipments of items removed from general license authorizations as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export before September 30, 1994 may be exported under the previous general license provisions up to and including October 28, 1994. Any such items not actually exported before midnight October 28, 1994, require a validated export license in accordance with this regulation.

**Rulemaking Requirements**

1. This final rule has been determined to be not significant for purposes of E. O. 12866.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005, 0694–0007, 0694–0010 and 0694–0023.

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

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Hillary Hess, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

**List of Subjects**

*15 CFR Part 778*

Exports, Nuclear energy, Reporting and recordkeeping requirements.

*15 CFR Part 799*

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 778 and 799 of the Export Administration Regulations (15 CFR Parts 730–799) are amended as follows:

1. The authority citation for 15 CFR Part 778 continues to read as follows:

**Authority:** Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; Pub. L. 102–484, 106 Stat. 2575 (22 U.S.C. 6004); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 12, 1993 (58 FR 60361, November 15, 1993); and E.O. 12924 of August 19, 1994 (59 FR 43437, August 23, 1994).

2. The authority citation for 15 CFR Part 799 continues to read as follows:

**Authority:** Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; Pub. L. 102–484, 106 Stat. 2575 (22 U.S.C. 6004); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 12, 1993 (58 FR 60361, November 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); E.O. 12868 of September 30, 1993 (58 FR 51749, October 4, 1993); E.O. 12918 of May 26, 1994 (59 FR 28205, May 31, 1994); and E.O. 12924 of August 19, 1994 (59 FR 43437, August 23, 1994).

**PART 778—[AMENDED]**

3. Section 778.7 is amended by revising paragraphs (a)(1) and (d)(1) to read as follows:

**§ 778.7 Equipment and related technical data used in the design, development, production or use of missiles.**

* * * * *

(a) * * *

(1) *Items subject to missile delivery systems controls.* The items that require a validated license because they are subject to foreign policy controls on missile delivery systems are contained within ECCNs designated by "MT" in the Reason for Control paragraph. Exporters should consult that paragraph in each ECCN to determine the specific item subject to these foreign policy controls.

* * * * *

(d) *Licensing policy.* (1) Applications to export the items will be considered on a case-by-case basis to determine whether the export would make a material contribution to the proliferation of missiles. Applications for exports of items controlled for MT by CCL category 7A or by ECCN 9A21 will be considered more favorably if such exports are determined to be destined to a manned aircraft, satellite, land vehicle or marine vessel, in quantities appropriate for replacement parts for such applications. When an export is deemed to make a material contribution to the proliferation of missiles, the license will be denied.

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4. In Supplement No. 1 to section 799.1 (the Commerce Control List), the following entries are revised as set forth below:

A. In Category 1, Materials: ECCNs 1A22B, 1A27B, 1B01A, 1B21B, 1C27B, 1C31B and 1D02A;

B. In Category 2, Materials Processing: ECCN 2B50B;

C. In Category 3, Electronics: ECCNs 3A22B, 3D21B and 3E01A;

D. In Category 4, Computers: 4A21B;

E. In Category 5, Telecommunications and "Information Security": ECCNs 5D01A, 5D02A, 5E01A and 5A20B;

F. In Category 6, Sensors: ECCN 6A29B;

G. In Category 7, Avionics and Navigation: ECCNs 7A04A, 7A23B, 7A27B, and 7D24B; and

H. In Category 9, Propulsion Systems and Transport Equipment: ECCNs 9A21B, 9B26B and 9B27B.

The following entries are amended by revising the requirements section, as set forth below:

A. In Category 1, Materials, ECCN 1A02A;

B. In Category 3, Electronics: ECCN 3A01A;

C. In Category 5, Telecommunications and "Information Security": ECCNs 5A01A and 5D03A; and

D. In Category 7, Avionics and Navigation: ECCNs 7A01A, 7A03A, 7A21B, and 7A26B.

The following entries are amended by revising the heading and the requirements section, as set forth below:

In Category 7, Avionics and Navigation: ECCNs 7A06A, 7A24B, 7B03A and 7B22B.

The revisions and amendments read as follows:

**1A02A "Composite" structures or laminates.**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit:* Kilograms
*Reason for Control:* NS, MT (see Note)
*GLV:* $1,500
*GCT:* Yes, except MT (see Note)
*GFW:* No

**Note:** MT controls apply to composite structures that are specially designed for "missile" applications (including specially designed subsystems and components).

* * * * *

**1A22B Other "composite" structures or laminates usable in "missile" systems.**

**Requirements**

*Validated License Required:* QSTVWYZ
*Reason for Control:* MT
*GLV:* $1,500
*GCT:* No
*GFW:* No

**List of Items Controlled**

a. Composite structures, laminates and manufactures thereof, including resin impregnated fiber prepregs and metal coated fiber preforms, made either with organic matrix or metal matrix utilizing fibrous or filamentary reinforcements having a specific tensile strength greater than $7.62 \times 10^4$ m ($3 \times 10^6$ inches) and a specific modulus greater than $3.18 \times 10^6$ m ($1.25 \times 10^8$ inches);

**Note:** The only resin impregnated fiber prepregs specified in 1A22.a are those using resins with a glass transition temperature ($T_g$), after cure, exceeding 145°C as determined by ASTM D4065 or national equivalents.

b. Resaturated pyrolized (i.e., carbon-carbon) materials designed for rocket systems.

**1A27B Maraging steels (steels generally characterized by high nickel, very low carbon content and the use of substitutional elements or precipitates to produce age-hardening), other than those controlled by 1A47 below, having an Ultimate Tensile Strength of $1.5 \times 10^9$ N/m² (Pa) or greater measured at 20° C, in the form of sheet, plate, or tubing with a wall or plate thickness equal to or less than 5.0 mm (0.2 inch).**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit:* $ Value
*Reason for Control:* MT
*GLV:* $0
*GCT:* No
*GFW:* No

**1B01A Equipment for the production of fibers, prepregs, preforms or composites controlled by 1A02 or 1C10, as follows, and specially designed components and accessories therefor:**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit:* $ Value
*Reason for Control:* NS, MT, NP (see Notes)
*GLV:* $0 for 1B01.a; $5,000 for all other items
*GCT:* Yes, except MT and NP (see Notes)
*GFW:* No
*GNSG:* No

**Notes:** 1. MT controls apply to all items described in this entry, except those in 1B01.d.4.

2. NP controls apply to the following items:

a. Filament winding machines described in 1B01.a that are capable of winding cylindrical rotors having a diameter between 75 mm (3 in.) and 400 mm (16 in.) and lengths of 600 mm (24 in.) or greater; and

b. Coordinating and programming controls and precision mandrels for these filament winding machines.

**List of Items Controlled**

a. Filament winding machines of which the motions for positioning, wrapping and winding fibers can be coordinated and programmed in three or more axes, specially designed for the manufacture of "composite" structures or laminates from "fibrous or filamentary materials";

b. Tape-laying or tow-placement machines of which the motions for positioning and laying tape, tows or sheets can be coordinated and programmed in two or more axes, specially designed for the manufacture of "composite" airframe or "missile" structures;

c. Multi-directional, multidimensional weaving machines or interlacing machines, including adapters and modification kits, for weaving, interlacing or braiding fibers to manufacture "composite" structures, *except* textile machinery not modified for the above end-uses;

d. Equipment specially designed or adapted for the production of "fibrous or filamentary materials", as follows:

d.1. Equipment for converting polymeric fibers (such as polyacrylonitrile, rayon, pitch or polycarbosilane) into carbon fibers or silicon carbide fibers, including special equipment to strain the fiber during heating;

d.2. Equipment for the chemical vapor deposition of elements or compounds on heated filamentary substrates to manufacture silicon carbide fibers;

d.3. Equipment for the wet-spinning of refractory ceramics (such as aluminum oxide);

d.4. Equipment for converting aluminum containing precursor fibers into alumina fibers by heat treatment;

e. Equipment for producing prepregs controlled by 1C10.e by the hot melt method;

f. Non-destructive inspection equipment capable of inspecting defects three dimensionally, using ultrasonic or X-ray tomography and specially designed for "composite" materials;

**Related ECCNs:** See 1B21B for MT controls on equipment, not controlled by 1B01A, for the production of fibers, prepregs, preforms, or composites. See 1B41B for NP controls on filament winding machines not controlled by 1B01A.

**1B21B Other equipment for the production of fibers, prepregs, preforms or composites.**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit:* $ Value
*Reason for Control:* MT

*GLV:* $0
*GCT:* No
*GFW:* No

**List of Items Controlled**

Equipment for the production of structural composites usable in "missiles", as follows:

a. Equipment designed or modified for special fiber surface treatment or for producing prepregs and preforms, not controlled by 1B01.

b. Filament winding machines, not controlled by 1B01, of which the motions for positioning, wrapping and winding fibers can be coordinated and programmed in three or more axes, designed for the manufacture of "composite" structures or laminates from "fibrous or filamentary materials".

c. Tape-laying machines, not controlled by 1B01, of which the motions for positioning and laying tape or sheets can be coordinated and programmed in two or more axes, designed for the manufacture of "composite" airframe or "missile" structures.

d. Equipment designed or modified for the production of "fibrous or filamentary materials", not controlled by 1B01, as follows:

d.1. Equipment for converting polymeric fibers (such as polyacrylonitrile, rayon, or polycarbosilane) including special equipment to strain the fiber during heating;

d.2. Equipment for the chemical vapor deposition of elements or compounds on heated filament substrates; and

d.3. Equipment for the wet-spinning of refractory ceramics (such as aluminum oxide).

**Note:** Equipment covered by 1B21.a includes but is not limited to rollers, tension stretchers, coating equipment, cutting equipment, and clicker dies.

**1C27B Other ceramic or graphite materials usable in "missile" systems.**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit:* Kilograms
*Reason for Control:* MT
*GLV:* $5,000
*GCT:* No
*GFW:* No

**List of Items Controlled**

a. Fine grain recrystallized bulk graphites (with a bulk density of at least 1.72 g/cc measured at 15° C and having a particle size of 100 x $10^{-6}$ m (100 microns) or less), pyrolytic, or fibrous reinforced graphites usable for rocket nozzles and reentry vehicle nose tips.

b. Ceramic composite materials not controlled by 1C07 (dielectric constant less than 6 at frequencies from 100 Hz to 10,000 MHz) for use in missile radomes, and bulk machinable silicon-carbide reinforced unfired ceramic usable for nose tips.

**1C31B Propellants, constituent chemicals, and polymeric substances for propellants.**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit:* Kilograms
*Reason for Control:* MT
*GLV:* $0
*GCT:* No
*GFW:* No

**List of Items Controlled**

a. Propulsive substances:

a.1 Spherical aluminum powder, as follows:

a.1.a. Spherical aluminum powder with particles of uniform diameter less than 500 x $10^{-6}$ m (500 microns), but greater than 60 x $10^{-6}$ m (60 microns), and an aluminum content of 97 percent by weight or greater;

a.1.b. Spherical aluminum powder with particles of uniform diameter 60 x $10^{-6}$ m (60 microns) or less, and an aluminum content of 97 percent by weight or greater, but less than 99 percent;

a.2. Metal fuels containing beryllium, boron, magnesium, zirconium, or alloys of boron, magnesium, or zirconium, as follows:

a.2.a. Metal fuels in particle sizes less than 500 x $10^{-6}$ m (500 microns), but equal to or greater than 60 x $10^{-6}$ m (60 microns), whether spherical, atomized, spheroidal, flaked or ground, consisting of 97 percent by weight or more of beryllium, boron, magnesium, zirconium, and alloys of boron, magnesium, or zirconium;

a.2.b. Metal fuels in particle sizes less than 60 x $10^{-6}$ m (60 microns), whether spherical, atomized, spheroidal, flaked or ground, consisting of 97 percent by weight or more, but less than 99 percent, of beryllium, boron, magnesium, zirconium, and alloys of boron, magnesium, or zirconium;

a.3. Metal fuels in particle sizes less than 500 x $10^{-6}$ m (500 microns), whether spherical, atomized, spheroidal, flaked or ground, consisting of 97 percent by weight or more of misch metal, zinc, or alloys of beryllium or alloys of zinc;

a.4. Liquid oxidizers, as follows:

a.4.a. Dinitrogen trioxide;

a.4.b. Nitrogen dioxide/dinitrogen tetroxide;

a.4.c. Dinitrogen pentoxide.

b. Polymeric substances:

b.1. Carboxy-terminated polybutadiene (CTPB);

b.2. Commercial grade Hydroxy-terminated polybutadiene (HTPB);

**Note:** Military grade (i.e., Hydroxy-terminated polybutadiene (HTPB) with a hydroxyl functionality greater than or equal to 2.2 but less than or equal to 2.4, a hydroxyl value of less than 0.77 meq/g, and a viscosity at 30°C of less than 47 poise) is controlled by the Office of Defense Trade Controls, U.S. Department of State (see Category V of the USML (22 CFR part 121)).

b.3. Polybutadiene-acrylic acid (PBAA);

b.4. Polybutadiene-acrylic acid-acrylonitrile (PBAN).

c. Other propellant additives and agents:

c.1. Burning rate modifiers as follows: Butacene;

c.2. Nitrate esters and nitrato plasticizers as follows:

c.2.a. Triethylene glycol dinitrate (TEGDN);

c.2.b. Trimethylolethane trinitrate (TMETN);

c.2.c. Diethylene glycol dinitrate (DEGDN);

c.3. Stabilizers, as follows: 2-nitrodiphenylamine.

**Note:** The following materials are controlled by the U.S. Department of State, Office of Defense Trade Controls (DTC) (see Category V of the USML):

1. Spherical aluminum powder with particles of uniform diameter 60 x $10^{-6}$ m (60 microns) or less and an aluminum content of 99 percent or greater;

2. Metal fuels in particle sizes less than 60 x $10^{-6}$ m (60 microns), whether spherical, atomized, spheroidal, flaked or ground, manufactured from material consisting of 99 percent or more of the following:

a. Boron;

b. Magnesium;

c. Zirconium;

d. Alloys of boron, magnesium, or zirconium;

e. Beryllium; or

f. Iron powder with average particle size of 3 x $10^{-6}$ m (3 microns) or less produced by hydrogen reduction of iron oxide.

**N.B.:** The metals and alloys listed in paragraphs (1) and (2) of the above Note are controlled by DTC whether or not encapsulated in aluminum, beryllium, magnesium, or zirconium.

**1D02A "Software" for the "development" of organic "matrix", metal "matrix" or carbon "matrix" laminates or "composites".**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit:* $ Value
*Reason for Control:* NS, MT
*GTDR:* No

*GTDU:* No

**Note:** MT controls apply to "software" specially designed or modified for the "development" of "composites" controlled by 1A, 1B or 1C for Missile Technology reasons.

**2B50B Spin-forming and flow-forming machines and precision rotor-forming mandrels, and specially designed components therefor.**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit:* Number; $ value for parts and accessories
*Reason for Control:* NP, MT (see Note)
*GLV:* $0
*GCT:* No
*GFW:* No
*GNSG:* Yes

**Note:** MT controls apply to items described by 2B50.a, except those that are not usable in the production of propulsion components and equipments (e.g., motor cases) for "missile" systems.

**List of Items Controlled**

a. Spin-forming and flow-forming machines, and specially designed components therefor, that:

a.1. According to the manufacturer's technical specifications, can be equipped with "numerical control" units or a computer control; *and*

a.2. Have two or more axes that can be coordinated simultaneously for "contouring control";

b. Precision rotor-forming mandrels designed to form cylindrical rotors of inside diameter between 75 mm (3 in.) and 400 mm (16 in.).

**Note:** The only spin-forming machines controlled by this ECCN 2B50B are those combining the functions of spin-forming and flow-forming.

**3A01A Electronic devices and components.**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit:* Number
*Reason for Control:* NS, MT, NP (see Notes)
*GLV:* $1,500: 3A01.c $3,000: 3A01.b.1 to b.3, 3A01.d to 3A01.f $5,000: 3A01.a, 3A01.b.4 to b.7
*GCT:* Yes, except 3A01.a.1.a. and 3A01.e.5 (see Notes)
*GFW:* Yes, except 3A01.a.1.a., 3A01.b.1 and b.3 to b.7, 3A01.c to f
*GNSG:* Yes, *except* Bulgaria, Romania, or Russia, for 3A01.e.5 only (see Notes)

**Notes:** 1. MT controls apply to 3A01.a.1.a.
2. NP controls apply to 3A01.e.5.

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**3A22B Accelerators capable of delivering electromagnetic radiation produced by "bremsstrahlung" from accelerated electrons of 2 MeV or greater and systems containing those accelerators, excluding that equipment specially designed for medical purposes.**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit:* Number
*Reason for Control:* MT
*GLV:* $5,000
*GCT:* No
*GFW:* No

**3D21B "Software" specially designed for the "development" or "production" of items controlled by 3A01.a.1.a.**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit:* $ Value
*Reason for Control:* MT
*GTDR:* No
*GTDU:* No

**3E01A Technology according to the General Technology Note for the "development" or "production" of equipment or materials controlled by 3A01, 3A02, 3B01, 3C01, 3C02, 3C03, or 3C04.**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit:* $ Value
*Reason for Control:* NS and MT (see Notes)
*GTDR:* Yes, except 3A01.a.1.a. (see Notes)
*GTDU:* No

**Notes:** 1. MT controls apply to technology specially designed for the "development" or "production" of items described in 3A01.a.1.a.

2. 3E01 does not control technology for the "development" or "production" of:

a. Microwave transistors operating at frequencies below 31 GHz;

b. Integrated circuits controlled by 3A01.a.3 to a.11, having both of the following characteristics:

1. Using technology of one micrometer or more, *and*

2. Not incorporating multi-layer structures.

**N.B.:** This Note does not preclude the export of multilayer technology for devices incorporating a maximum of two metal layers and two polysilicon layers.

**4A21B Analog computers, digital computers, or digital differential analyzers designed or modified for use in "missiles" not controlled by 4A01 and having either of the following characteristics: rated for continuous operation at temperatures from below −45° C to above +55° C; or designed as ruggedized or "radiation hardened".**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit:* Number
*Reason For Control:* MT
*GLV:* $0
*GCT:* No
*GFW:* No

**5A01A Any type of telecommunications equipment having any of the following characteristics, functions or features:**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit:* Equipment in Number, Parts and Accessories in $ Value
*Reason For Control:* NS
*GLV:* $0
*GCT:* No
*GFW:* No

* * * * *

**5D01A "Software" specially designed or modified for the "development", "production" or "use" of equipment or materials controlled by telecommunications entries 5A01, 5A02, 5A03, 5A04, 5A05, 5A06, 5B01, 5B02, or 5C01.**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit:* $ Value
*Reason For Control:* NS
*GTDR:* Yes
*GTDU:* No

**5D02A "Software" specially designed or modified to support "technology" controlled by telecommunications entries 5E01 or 5E02.**

**Requirements**

*Validated License Required:* QSTVWYZ
Unit: $ Value
*Reason For Control:* NS
*GTDR:* Yes
*GTDU:* No

**5D03A Specific "software" as described in this entry.**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit:* $ Value
*Reason For Control:* NS
*GTDR:* Yes
*GTDU:* No

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**5E01A Technology according to the General Technology Note for the "development", "production" or "use" (excluding operation) of equipment, systems, materials or "software" controlled by the telecommunications entries in 5A, 5B, 5C, or 5D.**

**Requirements**

*Validated License Required:* QSTVWYZ
*Reason For Control:* NS
*GTDR:* Yes
*GTDU:* No

**5A20B Telemetering and telecontrol equipment usable as launch support equipment for unmanned air vehicles or rocket systems.**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit:* Equipment in Number
*Reason For Control:* MT
*GLV:* $0
*GCT:* No
*GFW:* No

**6A29B Precision tracking systems.**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit:* $ Value
*Reason for Control:* MT
*GLV:* $5,000
*GCT:* No
*GFW:* No

**List of Items Controlled**

a. Tracking systems that use a code translator installed on the rocket or unmanned air vehicle in conjunction with either surface or airborne references or navigation satellite systems to provide real-time measurements of in-flight position and velocity;

b. Range instrumentation radars including associated optical/infrared trackers with the following capabilities:

b.1. Angular resolution better than 0.5 milliradians RMS;

b.2. A range of 30 km or greater, with a range resolution better than 10 meters RMS; and

b.3. Velocity resolution better than 3 meters per second.

**7A01A Accelerometers designed for use in inertial navigation or guidance systems and having any of the following characteristics, and specially designed components therefor.**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit:* $ Value
*Reason for Control:* NS, MT (see Note)
*GLV:* $5,000
*GCT:* No
*GFW:* No

**Note:** MT controls do not apply to accelerometers that are specially designed and developed as MWD (Measurement While Drilling) Sensors for use in downhole well service applications.

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**7A03A Inertial navigation systems and inertial equipment for "aircraft", and specially designed components therefor.**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit:* $ Value
*Reason for Control:* NS, MT (see Note)
*GLV:* $5,000
*GCT:* No
*GFW:* No

**Note:** Inertial navigation systems and inertial equipment, and specially designed components therefor specifically designed, modified or configured for military use are controlled by the Office of Defense Trade Controls, U.S. Department of State (see the Munitions List, Category VIII).

* * * * *

**7A04A Gyro-astro compasses, and other devices that derive position or orientation by means of automatically tracking celestial bodies or satellites, with an azimuth accuracy of equal to or less (better) than 5 seconds of arc; and specially designed components therefor.**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit:* $ Value
*Reason for Control:* NS, MT
*GLV:* $5,000
*GCT:* No
*GFW:* No

Related ECCNs: See 7A24B for MT controls on gyro-astro compasses not controlled by 7A04A.

**7A06A Airborne altimeters operating at frequencies other than 4.2 to 4.4 GHz inclusive, and specially designed components therefor, having either of the following characteristics:**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit:* $ Value
*Reason for Control:* NS, MT
*GLV:* $5,000
*GCT:* No
*GFW:* No

* * * * *

**7A21B Accelerometers, designed for use in inertial navigation systems or in guidance systems of all types, having the characteristics of either 7A21.a or 7A21.b; and specially designed components therefor.**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit: $ Value*
*Reason for Control:* MT (see Note)
*GLV:* $5,000
*GCT:* No
*GFW:* No

**Note:** MT controls do not apply to accelerometers that are specially designed and developed as MWD (Measurement While Drilling) Sensors for use in downhole well service applications.

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**7A23B Inertial or other equipment using accelerometers or gyros described in 7A21B or 7A22B, and systems incorporating such equipment; and specially designed components therefor.**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit: $ Value*
*Reason for Control:* MT (see Note)
*GLV:* $5,000
*GCT:* No
*GFW:* No

**Note:** Inertial navigation systems and inertial equipment, and specially designed components therefor, specifically designed, modified or configured for military use are controlled by the Office of Defense Trade Controls, U.S. Department of State (see the Munitions List, Category VIII).

**7A24B Other gyro-astro compasses and other devices, and specially designed components therefor.**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit:* $ Value
*Reason for Control:* MT
*GLV:* $5,000
*GCT:* No
*GFW:* No

* * * * *

**7A26B Avionics equipment and components usable in "missile" systems.**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit: $ Value*
*Reason for Control:* MT
*GLV:* $5,000
*GCT:* No
*GFW:* No

* * * * *

**7A27B Airborne passive sensors for determining bearing to specific electromagnetic sources (direction finding equipment) or terrain characteristics.**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit:* $ Value
*Reason for Control:* MT
*GLV:* $0
*GCT:* No
*GFW:* No

**7B03A Equipment specially designed for the production of equipment controlled by 7A for national security reasons, and specially designed components therefor, including:**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit:* $ Value
*Reason for Control:* NS, MT
*GLV:* $3,000
*GCT:* No
*GFW:* No

* * * * *

**7B22B Reflectometers and specially designed test, calibration, and alignment equipment and "production equipment", and specially designed components therefor, for the production of items controlled by 7A and 7B for national security or missile technology reasons and specially designed components therefor.**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit:* $ Value
*Reason for Control:* MT
*GLV:* $3,000
*GCT:* No
*GFW:* No

* * * * *

**7D24B Software "specially designed" for the "development," "production," or "use" of commodities controlled by 7A21B, 7A22B, 7A23B, 7A24B, 7A25B, 7A26B, 7A27B, 7B01A, 7B02A, 7B03A, and 7B22B for missile technology reasons.**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit:* $ Value
*Reason for Control:* MT
*GTDR:* No
*GTDU:* No

**Note:** Software for inertial navigation systems and inertial equipment, and specially designed components therefor, not certified for use on "civil aircraft" by civil aviation authorities of a COCOM country is controlled by the Office of Defense Trade Controls, U.S. Department of State (see the Munitions List, Category VIII).

**9A21B Gas turbine aero engines not controlled by 9A01, uncertified or certified, having both a maximum thrust value greater than 1000N (achieved un-installed), excluding civil certified engines with a maximum thrust value greater than 8,890N (achieved un-installed), and specific fuel consumption of 0.13kg/N/hr or less (at sea level static and standard conditions).**

Note: Engines designed or modified for "missiles" (except engines for non-military unmanned air vehicles [UAV's] or remotely piloted vehicles [RPV's]), regardless of thrust or specific fuel consumption, are controlled by the Office of Defense Trade Controls, U.S. Department of State.

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit:* Number for engines, $ Value for parts and accessories.
*Reason for Control:* MT
*GLV:* $5,000
*GCT:* No
*GFW:* No

**9B26B Other vibration test equipment, as follows:**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit:* $ Value
*Reason for Control:* MT
*GLV:* $3,000
*GCT:* No
*GFW:* No

List of Items Controlled

a. Vibration test systems and components therefor, as follows:

a.1. Vibration test systems employing feedback or closed loop techniques and incorporating a digital controller, capable of vibrating a system at 10 g RMS or more over the entire range 20 Hz to 2,000 Hz and imparting forces of 50 kN (11,250 lbs.), measured "bare table", or greater;

a.2. Digital controllers, combined with specially designed vibration test software, with a real-time bandwidth greater than 5 kHz and designed for use with vibration test systems described in 9B26.a.1;

a.3. Vibration thrusters (shaker units), with or without associated amplifiers, capable of imparting a force of 50 kN (11,250 lbs.), measured "bare table", or greater, and usable in vibration test systems described in 9B26a.1;

a.4. Test piece support structures and electronic units designed to combine multiple shaker units into a complete shaker system capable of providing an effective combined force of 50 kN, measured "bare table", or greater, and usable in vibration test systems described in 9B26a.1.

**Note:** The term "digital control" refers to equipment, the functions of which are, partly or entirely, automatically controlled by stored and digitally coded electrical signals.

b. Environmental chambers and anechoic chambers

b.1. Environmental chambers and anechoic chambers capable of simulating the following flight conditions:

b.1.a. Altitude of 15,000 meters or greater; or

b.1.b. Temperature of at least minus 50 degrees C to plus 125 degrees C; and either

b.1.c. Vibration environments of 10 g RMS or greater between 20 Hz and 2,000 Hz imparting forces of 5 kN or greater, for environmental chambers; or

b.1.d. Acoustic environments at an overall sound pressure level of 140 dB or greater (referenced to $2 \times 10^{-5}$ N per square meter) or with a rated power output of 4 kilowatts or greater, for anechoic chambers.

**9B27B Test benches or stands that have the capacity to handle solid or liquid propellant rockets or rocket motors of more than 90 KN (20,000 lbs.) of thrust, or that are capable of simultaneously measuring the three axial thrust components.**

**Requirements**

*Validated License Required:* QSTVWYZ
*Unit:* $ Value
*Reason for Control:* MT
*GLV:* $5,000
*GCT:* No
*GFW:* No

5. In Supplement No. 3 to Section 799.1 (the Commerce Control List), the definition of "missiles" is amended by revising "30 kilometers" to read "300 kilometers."

6. In Supplement No. 3 to Section 799.1 (the Commerce Control List), the definition of "principle element" is revised to read as follows:

**Supplement No. 3 to § 799.1**

DEFINITIONS

* * * * *

*Principal element* (Cat 4)—An element is a "principal element" when its replacement value is more than 35% of the total value of the system of which it is an element. Element value is the price paid for the element by the manufacturer of the system, or by the system integrator. Total value is the normal international selling price to unrelated parties at the point of manufacture or consolidation of shipment.

* * * * *

Dated: September 27, 1994.

**Sue E. Eckert,**

*Assistant Secretary for Export Administration.*

[FR Doc. 94-24242 Filed 9-28-94; 11:07 am]

BILLING CODE 3510-DT-P

## FEDERAL TRADE COMMISSION

## 16 CFR Part 230

## Guides for Advertising Shell Homes

**AGENCY:** Federal Trade Commission.

**ACTION:** Elimination of Guides.

**SUMMARY:** The Commission's Guides for Advertising Shell Homes (the "Guides") address the marketing of certain factory-built homes that, on delivery, require further construction to be inhabitable. Due to lack of industry understanding of the term "shell homes" and other circumstances, many sellers of factory-built housing have not viewed the Guides as relevant to their sales practices. The Guides, to be made up-to-date, also would require extensive revision. Although the revision and reissuance of the Guides might be warranted if there were evidence of significant marketing abuses covered by the Guides, the Commission has no such evidence. It appears that likely abuses, if any, could be adequately addressed by state and local housing code enforcement authorities. Accordingly, the Commission has determined that the costs associated with revising and reissuing the Guides would outweigh

the benefits, and the Guides should be repealed.

Although the Commission is eliminating the Guides, proceedings still may be brought against businesses under section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), for engaging in unfair or deceptive acts or practices in or affecting commerce in the advertising and sale of these products.

**EFFECTIVE DATE:** September 30, 1994.

**ADDRESSES:** Requests for copies of this document should be sent to the Public Reference Branch, Room 130, Federal Trade Commission, Washington D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Joel N. Brewer, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, (202) 326–2967.

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

As a part of its ongoing project to review all rules and guides, on September 11, 1992, the Commission invited comment on the Guides for Advertising Shell Homes, 16 CFR Part 230.[1] The notice contained six questions relating to the economic impact and continuing relevance of the Guides, any burdens relating to adherence to them, any changes needed to minimize their economic impact, their relation to other federal or state laws or regulations, and any changed conditions since they were issued and the effect of these changes on them. The comment period ended on October 13, 1992. In response, one comment was received.[2]

To obtain additional information about shell homes, staff contacted representatives of the National Institute of Building Sciences, the Manufactured Housing Institute, the National Manufactured Housing Federation, and the National Association of Home Manufacturers.[3] Additionally, staff contacted nine randomly-selected manufacturers of factory-built housing from a directory of over 250 such businesses[4] and elicited comments and advertising materials from two manufacturers or sellers of factory-built houses or factory-built housing components.[5] On the basis of the information collected by the staff, it appeared that manufacturers of factory-built housing, including manufacturers of housing the Commission has characterized as "shell" homes, are not familiar with the Guides. This is because, in part, the term "shell" homes is not adequately defined in the Guides and is not a classification used by any segment of today's factory-built housing industry.

Thus, if unlawful practices are occurring, the current Guides cannot perform their intended purpose of informing industry of the Commission's views of the practices and providing the basis for their "voluntary and simultaneous abandonment" by industry members.[6] In order to provide adequate notice of the scope and applicability of the Guides to certain forms of factory-built residential housing, the Guides would have to be revised to inform the relevant members of the industry that the Guides apply to some of their marketing practices. However, under the circumstances this would be tantamount to issuing new guides.

In these circumstances, the Commission has determined that revising or reissuing the Guides is necessary only if there is reason to believe that unfair or deceptive practices are occurring in the relevant industry to some significant extent or are likely to occur in the absence of Commission guides. Based on the response to the request for comment and on the staff interviews with the responsible heads of the housing code authorities of California, Florida, Maryland, Missouri, New Jersey, Texas and Virginia, the Vice President of the National Foundation of Manufactured Home Owners and a Senior Analyst from the American Association of Retired Persons, the Commission has determined that the practices addressed by the Guides are not common and, to the extent they exist, are adequately handled by state or local housing code authorities. Accordingly, the Commission has determined to repeal the Guides.

## II. Background

On April 12, 1962, the Commission adopted the Guides under the authority of sections 5(a) (1) and 6(g) of the FTC Act, 5 U.S.C. 45(a)(1) and 46(g).[7] The Guides address advertising claims relating to housing features that are material to consumers such as inhabitability upon delivery, dimensions, included items, savings, availability of financing, guarantees, time of delivery or installation, and whether the cost of delivery or installation is included in the advertised price. The Guides generally reflected the law previously developed by the Commission in cases involving advertising for shell homes,[8] factory-built homes,[9] and home improvements.[10]

There is no definition of shell homes in the Guides. Instead, section 230.1(a) states, "* * * the *typical* shell home does not include such features as wiring, plumbing, heating, interior trim and finish, or other requisite components * * *." (Emphasis added.) This and the cases brought before or around the time the Guides were formulated[11] indicate that the Commission intended the term "shell" to be interpreted in a generic sense—*i.e.*, structures assembled or installed in whole or in part by the seller that lack all the necessary components to make the building inhabitable when delivered to the buyer.[12]

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[1] "Request for Comments Concerning Guides for Advertising Shell Homes," 57 FR 41707, P924219, A–1, p. 41707. The record in this proceeding has been designated P924219 in the Commission's Public Reference Branch. A copy of the Commission's request for comments originally appearing in 57 FR 41707 is designated document A–1, and is filed in a single volume labeled P924219. There are three categories, "A," "B," and "G" for the materials in this volume.

[2] Comment of Marjory Wood, Chesterton, IN, P924219, G–1 (Sept. 25, 1992). Ms. Wood stated that around the time of the Great Depression her father, a civil engineer, had invented portable, demountable houses for emergency use. She suggested that his plans be revived to cope with the losses of housing occasioned by recent natural disasters.

[3] Report of telephone interviews by John Dugan, P 924219, B–7 (June 1, 1992).

[4] A.M. Watkins, *Complete Guide to Factory-Made Houses*, P924219, B–2, pp. 152–74. The purpose of staff's inquiry was to determine if manufacturers of factory-built housing are currently making advertising claims that are addressed by the Guides.

[5] Bow House, Inc., Bolton, MA, P924219, B–4; and Kan-Build, Inc., Osage City, KS, P924219, B–5. Bow House, Inc. specializes in laminated bowed rafters and other "New-England look" components of production and stick-built housing. Kan-Build, Inc., produces modular housing.

[6] *See*, 16 CFR § 1.5.

[7] 27 FR 3917 (April 25, 1962); P924219, B–10. The Guides took effect immediately upon publication in the FR. Originally appearing as section 14.6 of the Commission's Administrative Interpretations, the guides were later recodified as 16 CFR Part 230, 32 FR 15531 (Nov. 8, 1967).

[8] *Monumental Engineering, Inc.*, 58 FTC 1093 (1961); and *Lifetime, Inc.*, 59 FTC 1231 (1961).

[9] *Main Line Lumber and Millwork Co.*, 56 FTC 17 (1959); *R.H. Best, Inc.*, 54 FTC 416 (1957); *Nomis Corp.*, 34 FTC 318 (1941).

[10] *Commerce Contracting Co.*, 59 FTC 473 (1961); *Crawford Industries, Inc.*, 59 FTC 398 (1961).

[11] Five pre-guide cases involved most of the acts or practices addressed by the Guides. Two cases, *Monumental Engineering, Inc.*, 58 FTC 1093 (consent decree, 1961); and *Lifetime, Inc.*, 59 FTC 1231 (1961), which were decided relatively contemporaneously with the Commission's adoption of the Guides, are the only pre-guide cases that refer to "shell" homes. Additionally, three other cases involving factory-built housing, *Main Line Lumber and Millwork Co.*, 56 FTC 17 (consent decree, 1959); *R.H. Best, Inc.*, 54 FTC 416 (consent decree, 1957); and *Nomis Corp.*, 34 FTC 318 (1941), involved additional practices addressed by the Guides.

[12] Some industry members may be familiar with another use of the term "shell" housing that differs from the Commission's use of the term in the

Continued

Presently, it appears that other terms are now used in the industry to describe housing that the Commission characterized as "shell" housing.[13] For example, according to one source, a "shell" home is a "pre-cut" home under classifications established by the National Association of Home Manufacturers ("NAHM").[14] There are also other industry terms for factory-built housing, such as "panelized"[15] and "modular,"[16] where the degree of completeness varies, and that may not be inhabitable as sold.

### III. Review of the Guides

No member of the factory-built housing industry responded to the Commission's request for comment on the Guides.[17] Part of the explanation for this may be that the term "shell" home as it is used by the Commission in the Guides is not familiar to most current members of the industry.[18]

Factory-built housing (including homes that are inhabitable upon delivery) constitutes a large segment of the new home market. At this time the Commission does not know what portion of the factory-built housing industry is comprised of structures erected in whole or in part by the seller that lack all the necessary components to make the building inhabitable when delivered to the buyer. Based on the information collected by staff, it is probable that some portion of the industry delivers structures that are not inhabitable.[19]

Since adopting the Guides, the Commission has brought a number of actions that, without expressly mentioning the Guides, reflect the principles articulated in them. Specifically, the Commission has prohibited manufacturers of sheli, pre-cut or other factory-built housing from:

- Representing that housing was complete to a greater degree than it was (Guide 1);[20]
- Using pictorial advertising that confused higher-priced housing with prices of lower priced housing (Guide 3);[21]
- Representing that unskilled consumers will realize savings on labor, or making false and unsubstantiated claims with respect to the ease, economy or time involved in erecting the housing (Guide 4);[22]
- Offering financing without disclosing terms, or misleading consumers with respect to the terms of the financing available (Guide 5);[23]
- Using bait-and switch tactics (Guide 6);[24] and
- Representing that housing is guaranteed without disclosing the nature and duration of the guarantee, the identity of the guarantor and the manner in which the guarantor would perform (Guide 7).[25]

Additionally, manufacturers of factory-built housing continue to make claims addressed by the Guides. For example, the record reflects advertising claims with respect to inhabitability (Guide 1(,[26] depictions of size or dimensions (Guide 2),[27] pictorial representations of features not included (Guide 3),[28] savings (guide 4),[29] guarantees (Guide 7),[30] and delivery and installation (Guide 9).[31] However, the Commission has no basis to believe that the advertising it has monitored is deceptive or unfair.

### IV. Evidence of Unlawful Practices

In order to obtain some evidence relating to the prevalence of the unfair or deceptive practices in the pertinent industry staff interviewed the responsible heads of the housing code authorities of California, Florida, Maryland, Missouri, New Jersey, Texas and Virginia.[32] One interviewee, Bill Connolly, the Director of the Division of Codes and Standards in the New Jersey Department of Community Affairs, is also the present chairman of the Industrialized Building Commission (the "IBC"), the commissioners of which

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Guides. According to Philip Schneider of the National Institute of Building Sciences, a "shell" home concept was part of HUD's so-called "Operation Breakthrough" program to provide affordable housing to Americans on a large scale. Housing without any plumbing, heating or wiring, was to be produced in the factory, transported to the site in one piece or in sections, and assembled or mounted on the foundation and fitted with utilities on-site. Schneider says Operation Breakthrough was formulated while George Romney was Secretary of HUD (1969 to 1972). The program accordingly postdated the Guides by nearly a decade and could not have been their inspiration. The vestiges of Operation Breakthrough that exist today are limited to housing produced and finished with "sweat equity" as part of a publicly subsidized housing program. Report of interview of Philip Schneider by John T. Dugan, P 924219, B–7, p. 4 (June 1, 1992); re-interviewed by Joel Brewer, P 924219, B–11 (May 10, 1994).

[13] P924219, B–7, p. 3. According to one industry spokesperson, in the final analysis, it is easier to define what is "inhabitable" than what is a "shell" home. Report of interview of Barbara Martin, Buildings Systems Council, National Association of Home Builders ("NAHB"), by John Dugan, P924219, B–7, p. 4 (May 27, 1992). NAHM is now part of the Building Systems Council of NAHB.

[14] Nutt-Powell, Thomas E., *Manufactured Homes: Making Sense of a Housing Opportunity*, pp. 2–3 (1982). Pre-cut housing contains all or most of the lumber and millwork for the main structure of the house, from floor to roof, plus exterior doors and windows, insulation, and roofing materials. The package may contain additional materials and supplies for the interior as well. Pre-cut housing requires the most on-site labor to finish the house and make it inhabitable after delivery.

[15] Panelized housing consists of complete walls that are factory-made in large sections and then shipped to the site. After set-down, the inhabitability of the dwelling depends on the extent to which the structure needs work such as installing a roof or panelized roof, installing a wet core (central plumbing, heating and wiring equipment), installing a floor or panelized floor, hanging doors and windows, installing utilities and insulation, closing the panel interiors, and hooking up the utilities.

[16] Modular or sectional housing is 95% complete when it comes off the assembly line. It is shipped in two or more sections for set-down at the site. After set-down, inhabitability depends on the extent to which the house needs work finishing the interior and hooking up the utilities.

[17] In addition to publishing the Commission's request for comments in the FR, staff sent copies of the FR notice and the guides to (among others) the trade associations whose members most likely included producers of factory built housing (e.g., the National Institute of Building Science, the National Association of Home Builders, and the Manufactured Housing Institute).

[18] John Samples, President and C.E.O. of Kan-Build, Inc., Osage City, KS, responding to a staff questionnaire concerning the guides said, "I have been in this industry 20 years, and have never had knowledge of or questions pertaining to the Guide." P924219, B–5, p. 1 (Jan. 19, 1993).

[19] According to Curtis McGiver, Associate Director for Building Regulations, Virginia Department of Housing and Community Development, modular housing is sold that is unfinished when installed. He adds that in Virginia the advertising for this housing makes it clear that the price varies with the degree of completeness of the product, and that the consumer must pay a premium to receive a finished inhabitable module. Report of Interview by Joel Brewer, P 924219, B–12, p. 2 (July 20–22, 1994).

[20] *Best Homes*, 77 FTC 6 (1970); *H.R. Rieger Co.*, 75 FTC 168 (1969); *Hi-Line, Inc.*, 74 FTC 1174 (1968).

[21] *Id.*

[22] *Insilco Corp.* 91 FTC 706 (1978); *Lindal Cedar Homes, Inc.*, 87 FTC 8 (1976).

[23] *Insilco Corp.*, 91 FTC at 723; *Hi-Line, Inc.*, 74 FTC at 1181.

[24] *Best Homes*, 77 FTC at 13–14; *H.R. Rieger Co.*, 75 FTC at 172–73; *Hi-Line, Inc.*, 74 FTC at 1180.

[25] *Best Homes*, 77 FTC at 14; *H.R. Rieger Co.*, 75 FTC at 173; *Hi-Line, Inc.*, 74 FTC at 118.

[26] P924219, B–6, p. 5.

[27] P924219, B–5, pp. 7–9, 12–17, 21–39.

[28] *Id.*, p. 22.

[29] P924219, B–6, p. 1.

[30] P924219, B–5, pp. 10, 17, 20.

[31] P924219, B–6, pp. 1–2.

[32] Staff interviewed Richard Conrad, Executive Director, California Building Standards Commission; Larry Jordan, Planning Manager, Department of Community Affairs, Codes and Standards Section, Florida Division of Housing and Community Development; Jim Hannah, Director, Codes Administration, Maryland Department of Housing and Community Development; Jim Phillips, Director, Department of Manufactured Housing, Recreational Vehicles and Modular Units, Missouri Public Service Commission; Bill Connolly, Director, Division of Codes and Standards, New Jersey Department of Community Affairs; Jim Martin, Manager of Rules, Policies and Codes Section, Policies and Standards Division, Texas Department of Licensing and Regulation; and Curtis McGiver, Associate Director for Building Regulations, Virginia Department of Housing and Community Development. Report of Interviews by Joel Brewer, P 924219, B–12, pp. 2–5 (July 20–22, 1994).

comprise the housing code enforcement authorities of New Jersey, Rhode Island, and Minnesota.[33] Additionally, staff interviewed representatives of the National Foundation of Manufactured Home Owners and the American Association of Retired Persons.[34]

According to Mr. Connolly, approximately 35 states have adopted codes providing for in-factory approval of closed construction residential structures (primarily modular housing). These codes contemplate a two-step process: (1) Plan review, which occurs in the state, and (2) inspections in the plant, including out-of-state plants. Almost universally, the states contract with third parties to conduct the out-of-state in-plant inspections. For open construction factory-built buildings (*i.e.*, most panelized or all pre-cut housing), normally the local code enforcement authority will inspect the work as it is assembled. As a result of these state and local enforcement activities, the sorts of problems consumers ordinarily will encounter from factory-built housing almost exclusively consist of cosmetic or workmanship problems, or problems arising in mounting the housing at the site. The other housing code authoritues agreed.[35] Such problems are not covered by the Guides.

Staff's review indicates that, although relevant advertising exists and the affected industry is significant, the unlawful practices addressed by the Guides do not appear to be widespread and, to the extent they may exist, state or local housing code enforcement authorities can appropriately handle such problems. Although some problems of the sorts addressed by the Guides may arise in sparsely populated areas of the country where there are no local housing code authorities to inspect open construction factory-built buildings as they are assembled, the Commission has no reason to believe these problems are significant or involve significant consumer harm. Accordingly, the Commission has determined to repeal the Guides.

(Authority: 15 U.S.C. 41–58.)

**List of Subjects in 16 CFR Part 230**

Advertising, Factory-built homes, Trade practices.

**PART 230—[REMOVED]**

The Commission, under authority of sections 5(a)(1) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1) and 46(g), amends chapter I of title 16 of the Code of Federal Regulations by removing Part 230.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 94–24145 Filed 9–29–94; 8:45 am]

BILLING CODE 6750–01–M

[33] *Id.*, pp. 1, 5. At this time the IBC is comprised of the three states that have subscribed to an interstate compact on building code standards for manufactured housing (often referred to by code enforcement authorities as "industrialized" residential housing). The purpose of the IBC is to facilitate the interstate sale of factory-built housing by developing uniform housing code requirements in the subscribing states. Because it is anticipated that other states will join the IBC over time, the IBC has a Rules Development Committee to develop uniform codes to which most states could eventually subscribe. In order to assure the acceptability of the rules to other states, several state housing code officials from states other than the three Commission states (*e.g.*, Maryland and Virginia) represent them on the Rules Development Committee.

[34] Staff interviewed Leonard Wehrman, Vice President, National Foundation of Manufactured Home Owners; and George Gaberlavage, Senior Analyst, American Association of Retired Persons. *Id.*, pp. 1, 5–6. Mr. Wehrman made no specific comments, and instead advised staff to contact state housing code officials. Mr. Gaberlavage said that he believed that the best source of information on the subject of problems with factory-built housing is the state housing code authorities.

[35] *Id.* pp. 2–5. Although the state officials were unanimous in the view that the states afford consumers protection against the kinds of harms addressed by the Guides, Mr. Connolly advised that finding and preventing code violations for open factory-built structures depends on the existence of local code authorities. Although local code authorities exist in the most populous regions of the country, in sparsely populated area that is generally not the case. However, he could not tell how serious or widespread the problems were with factory-built housing in such areas.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 522

### Implantation or Injectable Dosage Form New Animal Drugs; Progesterone and Estradiol Benzoate in Combination

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Syntex Animal Health. The supplemental NADA provides for reimplantation of the drug combination progesterone/estradiol benzoate in steers fed in confinement for slaughter for additional improvement in rate of weight gain.

**EFFECTIVE DATE:** September 30, 1994.

**FOR FURTHER INFORMATION CONTACT:** Jack Caldwell, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1638.

**SUPPLEMENTARY INFORMATION:** Syntex Animal Health, Division of Syntex Agribusiness, Inc., 3401 Hillview Ave.. Palo Alto, CA 94304, filed a supplemental NADA 9–576, which provides for reimplantation of Synovex® S (200 milligrams (mg) of progesterone and 20 mg of estradiol benzoate per implant) at approximately day 70 in steers fed in confinement for slaughter for additional improvement in rate of weight gain. The supplemental NADA is approved as of August 19, 1994, and the regulations are amended in § 522.1940 (21 CFR 522.1940) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Section 522.1940(d)(2)(ii)) is revised to read "For increased rate of weight gain and improved feed efficiency," and paragraph (e) is redesignated as paragraph (d)(2)(iv), and it is amended by revising the first sentence and by removing the second paragraph because it has been superseded by enactment of the Generic Animal Drug and Patent Term Restoration Act of 1988.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cometic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning on August 19, 1994, because the supplemental NADA contains a report of new clinical investigations (other than bioequivalence or residue studies) essential to the approval of the application and conducted or sponsored by the applicant. The 3 years of marketing exclusivity applies only to the change in limitations (provides for the reimplantation of steers fed in confinement for slaughter for additional improvement in rate of weight gain) for which the application is being approved.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact

on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 522**

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

## PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

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

2. Section 522.1940 is amended by revising paragraphs (b), (d)(2)(ii), and (d)(2)(iii); and by redesignating paragraph (e) as paragraph (d)(2)(iv) and revising it to read as follows:

**§ 522.1940 Progesterone and estradiol benzoate in combination.**

* * * * *

(b) *Sponsor.* See 000033 for use as provided in paragraphs (d)(1) and (d)(2) of this section; see 021641 for use as provided in paragraphs (d)(1) and (d)(2)(i) through (d)(2)(iii)(*a*) of this section.

* * * * *

(d) * * *

(2) * * *

(ii) *Indications for use.* For increased rate of weight gain and improved feed efficiency.

(iii) *Limitations.* (*a*) For animals weighing 400 pounds or more; for subcutaneous ear implantation, one dose per animal.

(*b*) For additional improvement in rate of weight gain in steers fed in confinement for slaughter, reimplant at approximately day 70.

(iv) *NAS/NRC status.* The conditions of use specified in paragraphs (d)(2)(i) through (d)(2)(iii)(*a*) are NAS/NRC reviewed and found effective.

Dated: September 20, 1994.

**Robert C. Livingston,**

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

[FR Doc. 94–24013 Filed 9–29–94; 8:45 am]

BILLING CODE 4160–01–F

**21 CFR Part 900**

**[Docket No. 93N–0351]**

## Quality Standards and Certification Requirements for Mammography Facilities

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

**ACTION:** Interim rule; opportunity for public comment.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing regulations to implement the Mammography Quality Standards Act of 1992 (MQSA). The MQSA requires the establishment of a Federal certification and inspection program for mammography facilities; regulations and standards for accrediting bodies for mammography facilities; and standards for mammography equipment, personnel, and practices, including quality assurance. This regulation, which amends two previously published interim rules, modifies and adds to the definitions previously set forth. In addition, the interim rule provides a mechanism to request permission to meet alternative requirements, other than those previously set forth, if the proposed alternative requirement is at least as effective as the existing quality standards in achieving quality mammography services for women.

**DATES:** The interim regulation is effective October 1, 1994; written comments by December 29, 1994. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication in 21 CFR 900.12(d)(1)(i), effective on September 30, 1994.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Charles K. Showalter, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–3332.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The MQSA (Pub. L. 102–539) was enacted to establish minimum, national quality standards for mammography. The MQSA requires that, to provide mammography services legally after October 1, 1994, all facilities, except facilities of the Department of Veterans Affairs, must be both accredited by an approved accrediting body and certified by the Secretary of Health and Human Services (HHS) (the Secretary). The authority to approve accreditation bodies and to certify facilities has been delegated by the Secretary to FDA.

The MQSA was passed on October 27, 1992, in response to statistics on the prevalence of breast cancer across the United States. Breast cancer is now the most common cancer, and the second leading cause of cancer deaths among women. According to the 1992 projections by the American Cancer Society, there would be 180,000 new cases of breast cancer among women in the United States in just that year. Of these new cases, it was estimated that approximately 46,000 of these women would die from the disease. The lifetime risk of developing breast cancer is increasing. In 1992, breast cancer affected 1 in 8 women in their lifetime as compared to 1 in 11 in 1980, 1 in 14 in 1960, and 1 in 20 in 1940.

Early detection of breast cancer, typically involving physical breast examination and mammography, is the best means of preventing deaths that result from breast cancer detected at an advanced stage. The value of undergoing mammography screening is that mammography can detect cancers that are too small to be felt through physical examination (palpation). Mammograms can detect breast cancer up to 2 years before a woman or her doctor can feel a lump. In addition, these early stage cancers can be 90 to 100 percent curable (Ref. 1).

However, according to the General Accounting Office (GAO), a mammogram is one of the most difficult radiographic images to read. It must have optimal clarity for the image to be interpreted correctly. If the image quality is poor or the interpretation is faulty, the interpreter may miss an incipient cancerous lesion. This could delay treatment and result in an avoidable death or mastectomy. Further, it is equally true that poor images or faulty interpretations can lead to a false positive diagnosis, which produces needless patient anxiety, costly additional testing, and painful biopsies when normal tissue is misread as abnormal.

The Senate Committee on Labor and Human Resources held hearings on the breast cancer issue and found a wide range of problems with the current mammography system: Poor quality equipment, the lack of quality assurance procedures, poorly trained technologists and physicians, false representation of accreditation by some mammography facilities, and the lack of inspections or consistent governmental oversight. The

MQSA addresses these specific concerns by establishing national minimum standards for all mammography facilities, except the Department of Veterans Affairs, in the areas of radiation dose, equipment, personnel, and practices, such as quality control and quality assurance. The MQSA replaces a patchwork of Federal, State, and private standards and guarantees sufficient oversight and enforcement to ensure that women will receive high quality mammography services.

## II. Comments

To date, FDA has received 97 comments on the 2 interim rules that were published in the **Federal Register** of December 21, 1993 (58 FR 67558 and 58 FR 67565). These comments, which have been carefully reviewed and summarized, are under consideration as the final regulations are being developed. FDA will publish its response to the various comments in the **Federal Register** when the final rules are published.

## III. Effective Date

The effective date of this regulation is October 1, 1994. Although the effective date of a final regulation ordinarily may not be less than 30 days after date of publication in the **Federal Register**, the Administrative Procedures Act and FDA's regulations permit exceptions to this timeframe when: (1) The regulation grants an exemption or relieves a restriction; (2) the regulation interprets rules and policy statements; or, (3) good cause exists and is published for the earlier date. This interim rule satisfies any one or all of the exemption criteria that permit an earlier effective date. (See 5 U.S.C. 553(d) and 21 CFR 10.40(c)(4).)

First, this interim rule exempts certain mammography devices and procedures from quality standards established under the MQSA. Second, the interim rule provides a means for proposing alternative standards that may relieve restrictions for certain mammography facilities. Third, the interim rule provides interpretive definitions and FDA policy statements to clarify essential terms in rules previously issued under the MQSA. Finally, failure to implement this interim rule by October 1, 1994, could inadvertently render critical mammography devices and procedures illegal that are not currently intended to be covered under the MQSA. Therefore, the agency finds good cause for an effective date fewer than 30 days after publication of this regulation. Accordingly, for all these reasons, this interim rule is made effective as of October 1, 1994.

## IV. Legislative Authority

December 14, 1993, the President signed legislation (H. Rept. 2202) granting interim rule authority to the Secretary for promulgation of standards required by the MQSA. This authorization was provided in recognition of the fact that the certification deadline of October 1, 1994, could not be met without streamlining the process for initial promulgation of standards. Because of the perceived urgent public health need for Federal standards for mammography, it was decided that interim rule authority should be granted, rather than an extension of the deadline to develop standards.

Under the interim rule legislation, the Secretary is authorized to issue temporary, interim regulations setting forth standards for approving accrediting bodies and for quality standards for mammography, under section 354(e) and 354(f) of the Public Health Service Act (the PHS Act) (42 U.S.C. 263b(e) and 354(f)). Under the abbreviated process, the Secretary is required to adopt existing standards to the maximum extent feasible, such as those established by the Health Care Financing Administration (HCFA), private voluntary accreditation bodies, e.g., the American College of Radiology (ACR), and some States. Also, in developing the interim regulations, the Secretary is not required to consult with the National Mammography Quality Assurance Advisory Committee (Advisory Committee). However, after the interim standards are issued, Congress intended that the Secretary proceed with the more extensive rulemaking procedures envisioned by the original enactment of the MQSA, including the statutorily required consultation with the Advisory Committee.

FDA used this authority to issue interim requirements for accrediting bodies, quality standards, and certification on December 21, 1993. Those interim standards have been used to approve accreditation bodies and certify facilities before the October 1, 1994, deadline. However, since the interim regulations were published on December 1993, FDA's experience in applying those interim standards has convinced the agency that certain amendments to those interim rules are necessary in order to clarify the obligation that facilities have to meet under MQSA by the October 1, 1994, deadline. The regulations implemented by this interim rule add to and modify the interim rules issued on December 21, 1993, and will remain in effect until final regulations are proposed and promulgated in 1995.

## V. Provisions of the Rule

### *A. Amended Definition*

FDA's experience in developing standards and planning for implementation of the MQSA over the past year has made the agency aware that certain changes to its previously published interim definitions are necessary.

Section 900.2 (21 CFR 900.2) of the December 21, 1993, interim rule (58 FR 67558 at 67563) defines essential terms used throughout the interim rules. These definitions are intended to inform mammography facilities and consumers of the meaning of terminology used throughout the MQSA regulations. This interim rule amends and modifies certain terms defined in § 900.2.

In determining which facilities would be subject to the standards under the MQSA, Congress defined the term "facility" to include a hospital, outpatient department, clinic, radiology practice, or mobile unit, an office of a physician, or other facility, as determined by the Secretary, and, by delegation, FDA, that conducts breast cancer screening or diagnosis through mammography activities. The term does not include a facility of the Department of Veterans Affairs.

Congress further defined mammography "activities" to include the operation of equipment to produce a mammogram, the processing of film, the initial interpretation of the mammogram, and the (maintenance of) viewing conditions for that interpretation. However, Congress recognized that a mammogram may be performed in a place that is different from the facility that processes or interprets the x-ray film. In such a case, the MQSA requires the facility performing the mammogram to be responsible for meeting the MQSA quality standards.

Under this interim rule, FDA is amending the definition of "facility" under § 900.2 to clarify that it is the facility performing the mammogram that is responsible for obtaining accreditation by an FDA-approved accrediting body and certification by FDA to provide mammography services legally after October 1, 1994. The facility performing the mammogram must substantiate that the additional mammography activities of processing the x-ray film, interpreting the image, and maintaining viewing conditions, wherever performed, meet all quality

standards required under the MQSA. Facilities that provide only partial services (e.g., film processing companies or interpreting radiologists) are not required at this time to apply for accreditation or certification under MQSA, although these partial providers will have to meet MQSA standards in order to be employed by any facility that performs mammograms. In the future, FDA may require facilities that perform any portion of the process required for a mammography evaluation to be directly subject to the accreditation and certification process.

In addition, although the MQSA excludes facilities of the Department of Veterans Affairs (VA) from the scope of the legislation, VA is working to establish standards consistent with this legislation. All other facilities that conduct the following screening or diagnostic mammography activities are subject to the standards issued under the MQSA.

*B. New Definitions*

This interim rule is adding the new terms "screening mammography" and "diagnostic mammography" to § 900.2 in order to clarify which breast cancer screening or diagnostic mammography activities conducted by a facility will render that facility subject to the provisions of and regulations issued under the MQSA, and which activities are excluded from regulation. Under the MQSA, Congress defined the term "mammography" as radiography of the breast, but provided no statutory definition for the terms "screening mammography" and "diagnostic mammography." This interim rule is adding the terms "screening mammography" and "diagnostic mammography" to the definition portion of the regulations in order to clarify the scope of the regulated mammography activities. These definitions are based on definitions developed by the Agency for Health Care Policy and Research (AHCPR) and the ACR, and have been modified as necessary for purposes of MQSA implementation.

The term "screening mammography" is being defined as mammography performed on an asymptomatic patient to detect the presence of breast cancer at an early stage. In screening mammography, the patient typically has not manifested any clinical signs, symptoms, or physical findings of breast cancer. The screening mammogram is performed to detect the presence of a breast abnormality in its incipient stage and to serve as a baseline film to which future screening or diagnostic mammograms may be compared.

The term "diagnostic mammography" is being defined as mammography performed on a patient with clinical signs, symptoms, or physical findings suggestive of breast cancer; an abnormal or questionable screening mammogram; a history of breast cancer with breast conservation surgery regardless of absence of clinical breast signs, symptoms, or physical findings; or, augmented breasts regardless of absence of clinical breast signs, symptoms, or physical findings. Diagnostic mammography is also called problem-solving mammography or consultative mammography. A diagnostic mammogram is performed because there is a reasonable articulable suspicion that an abnormality may exist in the breast. The diagnostic mammogram may confirm or deny the presence of an abnormality and, if confirmed, may assist in determining the nature of the problem.

FDA has further defined the terms screening and diagnostic mammography to exclude breast imaging performed in a research setting as part of a scientific study to evaluate experimental mammography devices conducted in accordance with FDA's investigational device exemption regulations in 21 CFR part 812. Science has not progressed to the point where effective quality standards may be written for every category of experimental mammography device. Therefore, at this time these investigational devices for breast radiography will not be subject to the quality standards issued under the MQSA. However, any conventional mammography device used as part of the scientific study to provide baseline data from which to evaluate the safety and efficacy of the experimental device would be subject to MQSA quality standards.

In addition, invasive interventions which employ breast radiography devices to produce radiographic images of the breast in association with localization or biopsy (e.g., stereotactic x-ray) procedures have also been excluded from the definitions of screening and diagnostic mammography activities.

In the future, when the science has advanced to a point where effective, national quality standards may be developed, FDA may regulate facilities that employ these invasive interventions or facilities that employ experimental devices for breast radiography to ensure their compliance under the act.

*C. Alternative Standards*

FDA recognizes that there may be alternative standards to the standards issued in § 900.12 (21 CFR 900.12) of the **Federal Register** of December 12, 1993 (58 FR 67565), that are at least as effective in delivering high quality mammography services to women. In the interest of improving the overall quality of mammography, FDA wants to provide an avenue by which safe and effective alternative standards may be implemented. Accordingly, the agency has created a mechanism for qualified applicants to request permission to meet an alternative standard rather than an existing quality standard. The request must be supported by such evidence as required by the agency to render a determination that the suggested alternative is at least as effective as the agency mandated standard in helping to achieve high quality mammography.

If the agency determines that the proposed alternative is acceptable, the agency will grant the request. The applicant will receive written notice of the approval of the alternative standard, including any limitations on use of the alternative, and the period of time that the alternative may be employed. The decision will be placed in the public docket file in the Dockets Management Branch (address above), after deletion of any patient identifiers or confidential commercial information, and may also be published in the form of a notice in the **Federal Register**.

Other entities that desire to use the alternative standard must also submit an application and receive approval by the agency before they may substitute the alternative for the agency mandated standard. FDA anticipates that "me-too" entities filing an application in accordance with the regulations typically would receive a prompt response to the request. This process is necessary to ensure that those other entities wishing to avail themselves of the alternative fully understand and appreciate the alternative procedure and its applicability so that the overall quality of mammography services is maintained. However, if a manufacturer of mammography equipment applies to the agency for approval of an alternative standard based on particular characteristics of that manufacturers's equipment, FDA approval of that alternative standard would apply to all facilities using that manufacturer's equipment.

**VI. Quality Assurance Standards: Screen-Film**

FDA is amending the quality assurance (QA) standard for screen-film systems. Section 900.12(d)(1)(i) (58 FR 67565 at 67572) requires the screen-film QA program for a mammography facility to be substantially the same as that described in the 1992 edition of

"Mammography Quality Control: Radiologist's Manual, Radiologic Technologists Manual and Medical Physicist's Manual." Recently, the 1994 edition of the manual has been published. FDA has evaluated the revised QA screen-film program in this latest edition and determined that either the 1992 version or the 1994 version of the program can serve as the basis for a facility's screen-film QA program. FDA is amending § 900.12(d)(1)(i) to reflect this change.

### VII. Paperwork Reduction Act of 1980

This interim rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*Title:* Quality Standards and Certification Requirements for Mammography Facilities.

*Description:* FDA is issuing an interim rule to implement the certification and quality standards provisions of the MQSA. This regulation, which amends two previously published interim rules, modifies and adds to the definitions previously set forth. In addition, the interim rule provides a mechanism to request permission to meet alternative requirements, other than those previously set forth, if the proposed alternative requirement is at least as effective as the existing quality standards in achieving quality mammography services for women.

As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA is submitting a copy of this interim rule to OMB for its review of these information collection requirements. Other organizations and individuals desiring to submit comments regarding this burden estimate or any aspects of these information collection requirements, including suggestions for reducing the burden, should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, rm. 3208, New Executive Office Bldg., Washington, D.C. 20503, Attention: Desk Officer for FDA.

ESTIMATED ANNUAL BURDEN FOR REPORTING

| CFR section | No. of respondents | No. of responses per respondent | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|---|
| 21 CFR 900.11(b)(2), 21 CFR 900.18[1] | 25 | 1 | 25 | 2 | 50 |
| Total | | | | | 50 |

[1] FDA is unable to estimate the burden imposed by 21 CFR 900.18 at this time because there is insufficient information to determine how many requests for approval of an alternative standard will be submitted. This estimate will be provided when FDA has sufficient information on which to base an estimate.

ESTIMATED ANNUAL BURDEN FOR RECORDKEEPING

| CFR section | No. of recordkeepers | Annual hours per recordkeeping | Total annual burden hours |
|---|---|---|---|
| 21 CFR 900.11(c)(1) | 1,000 | 1 | 1,000 |
| 21 CFR 900.12(e)(1), 21 CFR 900.18[1] | 10,000 | 1 | 10,000 |
| Total Annual Burden | | | 11,050 |

[1] FDA is unable to estimate the burden imposed by 21 CFR 900.18 at this time because there is insufficient information to determine how many requests for approval of an alternative standard will be submitted. This estimate will be provided when FDA has sufficient information on which to base an estimate.

### VIII. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

### IX. Economic Impact

FDA has examined the impacts of the interim rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this interim rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the interim rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because a request for an alternative requirement is a voluntary action by the applicant and the amended definitions limit the current applicability of these requirements, the agency certifies that the interim rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

### X. References

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Report on the Mammography Quality Standards Act of 1992, U.S. Senate, Report 102–448, October 1, 1992.

### XI. Request for Comments

Interested persons may, on or before December 29, 1994, submit to the

Dockets Management Branch (address above) written comments regarding this interim rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Although these amendments to the interim regulations become effective October 1, 1994, FDA will consider and evaluate all comments it receives as part of its ongoing work on the final rules.

**List of Subjects in 21 CFR Part 900**

Electronic products, Incorporation by reference, Mammography, Medical devices, Radiation protection, Reporting and recordkeeping requirements, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 900 is amended as follows:

## PART 900—MAMMOGRAPHY

1. The authority citation for 21 CFR part 900 continues to read as follows:

**Authority:** Secs. 519, 537, and 704(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i, 360nn, and 374(e)); sec. 354 of the Public Health Service Act (42 U.S.C. 263b).

2. Section 900.2 is amended by revising paragraph (e) and by adding new paragraphs (r) and (s) to read as follows:

**§ 900.2 Definitions.**

* * * * *

(e) *Facility* means a hospital, outpatient department, clinic, radiology practice, or mobile unit, office of a physician, or other facility that conducts breast cancer screening mammography activities or conducts diagnostic mammography activities, including the following: The operation of equipment to produce a mammogram, processing of film, initial interpretation of the mammogram, and maintaining viewing conditions for that interpretation. This term does not include a facility of the Department of Veterans Affairs.

* * * * *

(r) *Diagnostic mammography* means mammography performed on a patient with: clinical signs, symptoms, physical findings suggestive of breast cancer; an abnormal or questionable screening mammogram; a history of breast cancer with breast conservation surgery regardless of absence of clinical breast signs, symptoms, or physical findings; or, augmented breasts regardless of absence of clinical breast signs, symptoms, or physical findings. Diagnostic mammography is also called problem-solving mammography or consultative mammography. This definition excludes mammography performed during invasive interventions for localization or biopsy procedures. The definition further excludes mammography performed as part of a scientific study to evaluate an experimental mammography device conducted in accordance with FDA's investigational device exemption regulations in part 812 of this chapter.

(s) *Screening mammography* means mammography performed on an asymptomatic patient to detect the presence of breast cancer at an early stage. This definition excludes mammography performed as part of a scientific study to evaluate an experimental mammography device conducted in accordance with FDA's investigational device exemption regulations in part 812 of this chapter.

3. Section 900.12(d)(1)(i) is revised to read as follows:

**§ 900.12 Quality standards.**

* * * * *

(d) * * *

(1) * * *

(i) For film-screen systems, be substantially the same as that described in the 1992 or 1994 edition of "Mammography Quality Control: Radiologist's Manual, Radiologic Technologist's Manual, and Medical Physicist's Manual," prepared by the American College of Radiology, Committee on Quality Assurance in Mammography, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American College of Radiology, Mammography Accreditation Program, 1891 Preston White Dr., Reston, VA 22091–5431; and may be inspected at the Center for Devices and Radiological Health, Division of Mammography and Radiation Programs (HFZ–200), 5600 Fishers Lane, Rockville, MD 20857; or may be examined at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

* * * * *

4. Section 900.18 is added to subpart B to read as follows:

**§ 900.18 Alternative requirements for MQSA quality standards.**

(a) *Criteria for approval of alternative standards.* Upon application by a qualified party as defined under paragraph (b) of this section, the Director, Division of Mammography Quality and Radiation Programs (the Director), may approve an alternative to a quality standard under § 900.12, when the Director determines that:

(1) The proposed alternative standard will be at least as effective in assuring quality mammography as the standard it proposes to replace, and

(2) The proposed alternative:

(i) Is too limited in its applicability to justify amending the standard, or

(ii) Offers an expected benefit to public health which is so great that the time required for the processing of an amendment to the standard would present an unjustifiable risk to public health, and

(3) The granting of the alternative is in keeping with the purposes of the Mammography Quality Standards Act of 1992.

(b) *Applicants for alternatives.* (1) Mammography facilities and accreditation bodies may apply for alternatives to the quality standards of § 900.12.

(2) State governments that are not accrediting bodies may apply for alternatives to the standards of § 900.12(a).

(3) Manufacturers and assemblers of equipment used for mammography may apply for alternatives to the standards of § 900.12 (b), (c), and (d).

(c) *Application for approval of an alternative standard.* An application for approval of an alternative standard or for an amendment or extension of the alternative standard shall be submitted in an original and two copies to the Director, Division of Mammography Quality and Radiation Programs, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. The application for approval of an alternative standard shall include the following information:

(1) Identification of the original standard for which the alternative standard is being proposed and an explanation of why it is believed necessary to propose the alternative;

(2) A description of the manner in which the alternative is proposed to deviate from the original standard;

(3) A description, supported by data, of the advantages to be derived from such deviation;

(4) An explanation, supported by data, of how such a deviation would assure equal or greater quality of production, processing, or interpretation of mammograms than the original standard;

(5) The suggested period of time that the proposed alternative standard would be in effect; and

(6) Such other information required by the Director to evaluate and act on the application.

(d) *Ruling on applications.* (1) The Director may approve or deny, in whole or in part, a request for approval of an alternative standard or any amendment or extension thereof, and shall inform the applicant in writing of this action. The written notice will state the manner in which the requested alternative standard differs from the agency standard and a summary of the reasons for approval or denial of the request. If the request is approved, the written notice will also include the effective date and the termination date of the approval, a summary of the limitations and conditions attached to the approval, and any other information that may be relevant to the approved request. Each approved alternative standard will be assigned an identifying number.

(2) Notice of an approved request for an alternative standard or any amendment or extension thereof will be placed in the public docket file in the office of the Dockets Management Branch and may also be in the form of a notice published in the **Federal Register**. The notice will state the name of the applicant, a description of the published agency standard, and a description of the approved alternative standard, including limitations and conditions attached to approval of the alternative standard.

(3) Summaries of approved alternative standards, including information on their nature and number, will be provided to the National Mammography Quality Assurance Advisory Committee.

(4) All applications for approval of alternative standards and for amendments and extensions thereof and all correspondence (including written notices of approval) on these applications will be available for public disclosure in the Dockets Management Branch, excluding patient identifiers and confidential commercial information.

(e) *Amendment or extension of an alternative standard.* An application for amending or extending approval of an alternative standard shall include the following information:

(1) The approval number and the expiration date of the alternative standard;

(2) The amendment or extension requested and the basis for the amendment or extension; and

(3) An explanation, supported by data, of how such an amendment or extension would assure equal or greater quality of production, processing, or interpretation of mammograms than the original standard.

(f) *Applicability of the alternative standards.* Any approval of an alternative standard, amendment, or extension may be implemented only by the entity to which it was granted and under the terms under which it was granted, except that when an alternative standard is approved for a manufacturer of equipment, any facility using that equipment will also be covered by the alternative standard. Other entities interested in similar or identical approvals must file their own application by following the provisions of § 900.18(c).

(g) *Withdrawal of approval of alternative standards.* The Director shall amend or withdraw approval of an alternative standard whenever the Director determines that this action is necessary to protect the public health or otherwise is justified by § 900.12. Such action will become effective on the date specified in the written notice of the action sent to the applicant, except that it will become effective immediately upon notification of the applicant when the Director determines that such action is necessary to prevent an imminent health hazard.

Dated: September 26, 1994.

**William K. Hubbard,**

*Interim Deputy Commissioner for Policy.*

[FR Doc. 94–24354 Filed 9–28–94; 12:40 pm]

BILLING CODE 4160–01–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Housing Federal Housing Commissioner

### 24 CFR Parts 200, 203, 207, 220, 221, 235, 236, 237, 241 and 242

[Docket No. R–94–1751; FR–3434–F–02]

RIN 2502–AG01

### Payment of Insurance Claims by Book Entry Form of Debentures and Statute of Limitations on Payment of Distributive Shares

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** This rule implements provisions in the Housing and Community Development Act of 1992 that authorize the Secretary to pay mortgage insurance claims with book entry forms of debentures and establish a statute of limitations on payments of Mutual Mortgage Insurance Fund distributive shares.

**EFFECTIVE DATE:** October 31, 1994.

**FOR FURTHER INFORMATION CONTACT:** Christopher Peterson, Director, Office of Mortgage Insurance Accounting and Servicing, Room 2108, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone: voice (202) 708–1046; the telecommunications device for the deaf (TDD) telephone number is (202) 708–4594. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** This rule implements two provisions contained in the Housing and Community Development Act of 1992, Pub. L. 102–550, approved October 28, 1992 (the 1992 Act). Section 516 of the 1992 Act amends sections 204, 207, 220 and 221(g), of the National Housing Act to authorize the Secretary of HUD to pay virtually any mortgage insurance claim in book entry or other form of debentures an well as in the current certificated registered form. Section 508 of the 1992 Act establishes a 6-year statute of limitation on the payment of distributive shares from the Mutual Mortgage Insurance Fund.

#### Authority To Pay Mortgage Insurance Claims With Book Entry and Other Forms of Debentures

The rule amends parts 200, 203, 207, 220, 221, 235, 236, 237, 241 and 242 of title 24 of the Code of Federal Regulations to authorize payment of mortgage insurance claims with book entry or other forms of debentures.

Under HUD's mortgage insurance programs, when a mortgage goes into default, the mortgagee is entitled to receive insurance benefits that are payable in cash or debentures. HUD currently pays most, but not all, claims in cash. One notable exception is that, under section 221(g)(4) of the National Housing Act, holders of single family mortgages insured under section 221 that are current after 20 years from final endorsement may assign the mortgages to HUD and receive debentures in exchange. Holders of current section 221 multifamily mortgages may likewise assign such mortgages to HUD in exchange for debentures if the mortgage is not sold through the auction process mandated by section 221(g)(4)(C). HUD also issues debentures for the difference between the amount of redeemed debentures and the amount of the mortgage insurance premium due, when mortgagees pay their MIP and then exercise their right to send in the debentures for redemption.

Since 1938, the Department of the Treasury has acted as Fiscal Agent for the Federal Housing Administration and

HUD with respect to debentures, and has carried out debenture processing functions on FHA's and HUD's behalf. Since 1988, Treasury has delegated much of the debenture processing functions to the Federal Reserve Bank of Philadelphia (FRBP) acting in its capacity as Fiscal Agent of the United States. The computer system used by FRBP is designed to accommodate use of book entry, as well as certificated debentures. Processing book entry debentures is considerably less costly than processing certificated debentures. Section 516 of the 1992 Act provides explicit statutory authority for HUD to convert to a book entry system.

Under current statutory authority, FRBP issues certificated debentures in multiples of $50, and issues a cash adjustment for the balance. The certificated debenture system is extremely cumbersome and expensive to administer, since FRBP must have the debenture stock printed, store and handle the debenture stock under secure conditions, process the issuance of debentures manually, transmit the debentures physically, and issue the cash adjustment separately. The certificated debentures are also cumbersome and expensive for holders to store and negotiate. Such debentures must be held under secure conditions, and the pledging and assignment through physical transfer could cause delays or lead to loss or theft.

Because of these considerations, Treasury and a number of Federal government agencies have switched from certificated to book entry securities, a shift paralleled in the equity and corporate and municipal bond markets. However, since Congress apparently contemplated the use of certificated debentures when it enacted the current provisions of sections 204, 207, and 220 of the National Housing Act, Section 516 of the 1992 Act was enacted to clarify HUD's authority to pay claims through the issuance of book entry debentures.

With enactment of section 516, the book entry system administered by FRBP can be put into operation. Effective with this rule, HUD will have authority to issue debentures in book entry form. HUD intends to implement this authority in the very near future with respect to issuance of all new debentures. An announcement of the implementation will be made prior to its effective date. Also, once this new authority is implemented, debentures issued for amounts remaining after payment of mortgage insurance premiums may also be in book entry form. In addition, holders of outstanding certificated debentures may, at their option, exchange such debentures for book entry securities. Debentures in book entry form will not thereafter be exchangeable for debentures in certificated form. Book entry debentures will be issued in a minimum amount of one dollar and increments of one cent. This will allow debentures to be issued in virtually the exact amount payable to the holder, with no cash adjustment. Interest and principal payments on book entry debentures will be made by direct deposit (electronic funds transfer) to the account and financial institution designated by the owners of the debentures. Considerable savings will accrue, both to the Federal government and to holders of debentures, by thus bringing the FHA debenture process into conformity with modern commercial practices.

**Establish a Statute of Limitations on Payments of Distributive Shares**

The rule also implements section 508 of the 1992 Act by amending 24 CFR Part 203 to establish a six-year statute of limitations within which an individual who is eligible for the payment of a distributive share could claim his or her distributive share. The amendment also transfers amounts no longer eligible for distribution because of the statute of limitations from the Participating Reserve Account to the General Surplus Account to help ensure the actuarial soundness of the Mutual Mortgage Insurance Fund.

*Publication as Final Rule*

It is the policy of the Department to publish rules for public comment before developing a rule for effect. However, in a particular case where notice and public comment are not required by statute, the procedure for advance public comment may be omitted if the Department determines that it is impracticable, unnecessary, or contrary to the public interest. In this case, revisions to the regulations are limited to those needed to reflect the clear Congressional mandate to effect a 6-year statute of limitations on claims for distributive shares and to provide authority to issue debentures in book entry form. The Department would not be able to change the minimal provisions it is setting forth in this rule in response to public comments because of the specificity of the statute being implemented. Consequently, we believe it unnecessary to accept and review public comments before putting into effect these statutory provisions.

**Other Matters**

*Regulatory Flexibility*

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does have a significant economic impact on a substantial number of small entities. The rule implements Congressional mandates which will prove cost beneficial for affected business entities both large and small.

*NEPA*

Under HUD regulations (24 CFR 50.20(k)), this rule is exempt from the requirements of the National Environmental Policy Act as set forth in 24 CFR Part 50. The rule relates to internal administrative procedures, the content of which does not involve development decisions, and does not affect the physical condition of project areas or building sites but only relates to the payment of insurance claims and distributive shares.

*Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the order. The rule does not effect any change in current relationships between HUD, the private sector and state and local governmental entities.

*Executive Order 12606, The Family*

The General Counsel, as the designated official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

*Regulatory Agenda.* This rule was listed as item 1597 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20450) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

**List of Subjects**

*24 CFR Part 200*

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

*24 CFR Part 203*

Mortgage insurance.

*24 CFR Part 207*

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

*24 CFR Part 220*

Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Urban renewal.

*24 CFR Part 221*

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

*24 CFR Part 235*

Condominiums, Cooperatives, Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

*24 CFR Part 236*

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 237*

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance.

*24 CFR Part 241*

Energy conservation, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

*24 CFR Part 242*

Hospitals, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, in chapter II of title 24 Code of Federal Regulations, parts 200, 203, 207, 220, 221, 235, 236, 237, 241, and 242, are amended as follows:

## PART 200—INTRODUCTION

1. The authority citation for 24 CFR part 200 is revised to read as follows:

**Authority:** 12 U.S.C. 1701–1715z–18, 1701s, and 1715z–11; 42 U.S.C. 3535(d), 3543, and 3544.

2. In § 200.157, paragraphs (b), (c), (d), (e), and (f)(1) are revised to read as follows:

**§ 200.157 Provisions and characteristics of debentures.**

* * * * *

(b) *Registration and denominations.* Debentures in certificated form are issued in denominations of $50, $100, $500, $1,000 and $10,000 with the name of the owner inscribed on the face of the certificate. Debentures in book entry form are issued in a minimum amount of one dollar and in increments of one cent with the name of the owner recorded in an account master record on the books of the Treasury.

(c) *Rate of interest and interchangeability.* Debentures carry a rate of interest prescribed by the Commissioner but not in excess of an annual rate determined by the Secretary of the Treasury in accordance with prescribed statutory formula involving yields or prices of outstanding marketable obligations of the United States. Debentures in certificated form of the same series bearing the same interest rate and having the same maturity date shall be freely interchangeable between the various authorized denominations and may be exchanged for similar debentures in book entry form. Debentures in book entry form cannot be exchanged for debentures in certificated form.

(d) *Negotiability and Redemption.* Debentures in certificated form are negotiable and, if in book entry form, are transferable in the manner described in applicable Treasury regulations. Debentures are fully guaranteed as to principal and interest by the United States. Debentures are redeemable on call issued by the Commissioner.

(e) *Payment of principal and interest.* Principal and interest on debentures shall be payable when due at the Department of the Treasury, Washington, DC, or any Government agency or agencies in the United States which the Secretary of the Treasury may from time to time designate for that purpose. The principal and interest shall be payable to the owner whose name shall be inscribed on the debenture in certificated form, to the owner designated as assignee as shown by executed assignments for maturing or called certificated debentures, or to the owner whose name shall be recorded in the account master record of the book entry debentures.

(f) *Transfer and use*—(1) *In general.* Debentures in certificated form are negotiable and, if in book entry form, are transferable in the manner described in applicable Treasury regulations. They may be used by approved mortgagees in lieu of cash for payment of FHA mortgage insurance premiums.

* * * * *

3. In § 200.158, the introductory text is revised and paragraphs (c) and (d) are removed, to read as follows:

**§ 200.158 Applicability of Treasury regulations to debenture transactions.**

The Department of the Treasury acts as fiscal agent for the Commissioner in connection with transactions and operations relating to debentures. Treasury's General Regulations Governing U.S. Securities (31 CFR Part 306) and its Supplemental Regulations Governing Federal Housing Administration Debentures (31 CFR Part 337) have been and are adopted as revised and amended, to the extent applicable, as the regulations of the Commissioner governing the issuance of, transactions in and redemption of debentures, including the payment of interest thereon with the following exceptions:

* * * * *

## PART 203—SINGLE FAMILY MORTGAGE INSURANCE

4. The authority citation for 24 CFR part 203 continues to read as follows:

**Authority:** 12 U.S.C. 1709, 1715b; 42 U.S.C. 3535(d).

5. Paragraph (r) of § 203.251 is revised to read as follows:

**§ 203.251 Definitions.**

* * * * *

(r) *Debentures* means registered, transferable securities in certificated or book entry form which are valid and binding obligations, issued in the name of the Mutual Mortgage Insurance Fund in accordance with the provisions of this part; such debentures are the primary liability of the Mutual Mortgage Insurance Fund and are unconditionally guaranteed as to principal and interest by the United States.

* * * * *

6. Section 203.408 is revised to read as follows:

**§ 203.408 Form and amounts of debentures.**

Debentures issued under this part shall be in such form and amounts; and shall be subject to such term and conditions; and shall include such provisions for redemption, if any, as may be prescribed by the Secretary, with the approval of the Secretary of the Treasury; and may be in book entry or certificated registered form, or such other form as the Secretary by regulation may prescribe.

7. Section 203.411 is revised to read as follows:

**§ 203.411 Cash adjustment.**

Any difference of less than $50 between the amount of debentures to be issued to the mortgagee and the total amount of the mortgagee's claim, as approved by the Commissioner, may be adjusted by the issuance of a check in payment thereof.

8. A new § 203.427 is added after § 203.426 and at the end of the undesignated center heading, "Mutual Mortgage Insurance Fund and Distributive Shares", to read as follows:

**§ 203.427 Statute of limitations on payment of distributive shares.**

The Commissioner shall not distribute any distributive share to an eligible mortgagor under § 203.423 beginning on the date which is six years after the date the Commissioner first transmitted written notification of eligibility to the last known address of the mortgagor, unless the mortgagor has applied in accordance with procedures prescribed by the Commissioner for payment of the share within the six-year period. The Commissioner shall transfer any amounts no longer eligible for distribution under this section from the Participating Reserve Account to the General Surplus Account.

9. Paragraph (f) of § 203.440 is revised to read as follows:

**§ 203.440 Definitions.**

* * * * *

(f) *Debentures* means registered, transferable securities in book entry or certificated form which are valid and binding obligations, unconditionally guaranteed as to principal and interest by the United States.

10. Section 203.483 is revised to read as follows:

**§ 203.483 Forms and amounts of debentures.**

Debentures issued under this part shall be in such form and amounts; and shall be subject to such terms and conditions; and shall include such provisions for redemption, if any, as may be prescribed by the Secretary, with the approval of the Secretary of the Treasury; and may be in book entry or certificated registered form, or such other form as the Secretary by regulation may prescribe.

11. Section 203.487 is revised to read as follows:

**§ 203.487 Cash adjustment.**

Any difference of less than $50 between the amount of debentures to be issued to the lender and the total amount of the lender's claim, as approved by the Commissioner, may be adjusted by the issuance of a check in payment thereof.

## PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

12. The authority citation for 24 CFR part 207 continues to read as follows:

**Authority:** 12 U.S.C. 1701z–11(e), 1713, and 1715b; 42 U.S.C. 3335(d).

13. Section 207.259 is amended by revising paragraph (e)(5), to read as follows:

**§ 207.259 Insurance benefits.**

* * * * *

(e) * * *

(5) Be issued in such forms and amounts; and be subject to such terms and conditions; and include such provisions for redemption, if any, as may be prescribed by the Secretary, with the approval of the Secretary of the Treasury; and may be in book entry or certificated registered form, or such other form as the Secretary by regulation may prescribe.

* * * * *

## PART 220—MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS FOR URBAN RENEWAL AND CONCENTRATED DEVELOPMENT AREAS

14. The authority citation for 24 CFR part 220 continues to read as follows:

**Authority:** 12 U.S.C. 1713, 1715b, 1715k; 42 U.S.C. 3535(d).

15. Section 220.836 is revised to read as follows:

**§ 220.836 Form and amounts of debentures.**

Debentures issued under subpart D of this part shall be in such form and amounts; and shall be subject to such terms and conditions; and shall include such provisions for redemption, if any, as may be prescribed by the Secretary, with the approval of the Secretary of the Treasury; and may be in book entry or certificated registered form, or such other form as the Secretary by regulation may prescribe.

16. Section 220.842 is revised to read as follows:

**§ 220.842 Cash adjustment.**

Any difference of less than $50 between the amount of debentures to be issued to the lender and the total amount of the lender's claim, as approved by the Commissioner, may be adjusted by the issuance of a check in payment thereof.

## PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

17. The authority citation for 24 CFR part 221 is revised to read as follows:

**Authority:** 12 U.S.C. 1707(a), 1715b, and 1715*l*, 42 U.S.C. 3535(d).

18. Section 221.780 is revised to read as follows:

**§ 221.780 Issuance of debentures.**

Upon the exercise of the assignment option and the satisfactory performance of the requirements as to assignment set out in § 207.258 of this chapter, the Commissioner shall issue the assignor mortgagee debentures having a total par value equal to the amount of the original principal obligation of the mortgage which was unpaid on the date of the assignment, plus accrued interest to such date.

## PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

19. The authority citation for 24 CFR part 232 continues to read as follows:

**Authority:** 12 U.S.C. 1715(b), 1715w, 1715z(9); 42 U.S.C. 3535(d).

20. Section 232.893 is revised to read as follows:

**§ 232.893 Cash adjustment.**

Any difference of less than $50 between the amount of debentures to be issued to the lender and the total amount of the lender's claim, as approved by the Commissioner, may be adjusted by the issuance of a check in payment thereof.

## PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOMEOWNERSHIP AND PROJECT REHABILITATION

21. The authority citation for 24 CFR part 235 continues to read as follows:

**Authority:** 12 U.S.C. 1715b and 1715z; 42 U.S.C. 3535(d).

22. Section 235.215 is revised to read as follows:

**§ 235.215 Method of paying insurance benefits.**

If the application for insurance benefits is acceptable to the Secretary, the insurance claim shall be paid in cash, unless the mortgagee files a written request with the application for payment in debentures.

## PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

23. The authority citation for 24 CFR part 236 continues to read as follows:

**Authority:** 12 U.S.C. 1715b and 1715z–1; 42 U.S.C. 3535(d).

24. Paragraph (a) of § 236.265 is revised to read as follows:

**§ 236.265 Payment of insurance benefits.**

* * * * *

(a) Insurance claims shall be paid in cash unless the mortgagee files a written request for payment in debentures.

* * * * *

## PART 237—SPECIAL MORTGAGE INSURANCE FOR LOW AND MODERATE INCOME FAMILIES

25. The authority citation for 24 part 237 is revised to read as follows:

**Authority:** 12 U.S.C. 1709, 1715b, 1715z–2; 42 U.S.C. 3535(d).

26. Section 237.260 is revised to read as follows:

**§ 237.260 Method of paying insurance benefits.**

If the application for insurance benefits is acceptable to the Commissioner, the insurance claim shall be paid in cash, unless the mortgagee files a written request with the application for payment in debentures.

## PART 241—SUPPLEMENTARY FINANCING FOR INSURED MULTIFAMILY PROJECTS

27. The authority citation for 24 CFR part 241 is revised to read as follows:

**Authority:** 12 U.S.C. 1715b, 1715z–6; 42 U.S.C. 3535(d).

28. Section 241.893 is revised to read as follows:

**§ 241.893 Cash adjustment.**

Any difference of less than $50 between the amount of debentures to be issued to the lender and the total amount of the lender's claim, as approved by the Commissioner, may be adjusted by the issuance of a check in payment thereof.

## PART 242—MORTGAGE INSURANCE FOR HOSPITALS

29. The authority citation for 24 CFR part 242 is revised to read as follows:

**Authority:** 12 U.S.C. 1715b, 1715n(t), 1715z–7; 42 U.S.C. 3535(d).

30. Section 242.260 is revised to read as follows:

**§ 242.260 Insurance benefits.**

All of the provisions of § 207.259 of this chapter relating to insurance benefits apply to mortgages on hospitals insured under this subpart, except that in a case where the mortgage involves the financing or refinancing of an existing hospital pursuant to § 242.93 and the commitment for insuring such mortgage is issued on or after April 1, 1969, the insurance claim shall be paid in cash unless the mortgagee files a written request for payment in debentures.

Dated: September 21, 1994.

**Jeanne K. Engel,**

*General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 94–24188 Filed 9–29–94; 8:45 am]

BILLING CODE 4210–27–P

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Parts 104 and 199

**RIN 0720–AA24**

**[DoD 6010.8–R]**

### Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Continued Health Care Benefit Program

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

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes a Continued Health Care Benefit Program (CHCBP) for certain DoD and other Uniformed Services health care beneficiaries who lose eligibility for health care in the Military Health Services System (MHSS). It also provides for use of the CHAMPUS benefit structure and CHAMPUS rules and outlines procedures for the CHCBP.

**EFFECTIVE DATES:** October 1, 1994.

**ADDRESSES:** Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Development Branch; Aurora, Colorado 80045–6900.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gunther J. Zimmerman, Office of the Assistant Secretary of Defense (Health Affairs), (703) 695–3331.

**SUPPLEMENTARY INFORMATION:**

**1. Overview of the Final Rule**

On April 6, 1994, an interim final rule regarding benefits and operational issues associated with implementation of the Continued Health Care Benefit Program (CHCBP) was published (59 FR 16136).

The CHCBP was directed by Congress in section 4408 of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102–484, which amended title 10, United States Code, by adding section 1078a. This law directed the implementation of a program of temporary continued health benefits coverage for certain former beneficiaries of the Department of Defense, comparable to the health benefits provided for former civilian employees of the Federal government.

Congress also directed that the program start by October 1, 1994, and replace the conversion health care programs authorized in 10 U.S.C. 1086a and 1145(b). Conversion health care is provided via a DoD contract with Mutual of Omaha and is scheduled to end September 30, 1994.

The statute directs that the benefits offered by the CHCBP must be comparable to those offered to former civilian employees of the Federal government. As is the case for those employees, the costs will be borne by the beneficiary who will pay the entire premium charge. Additionally, the Department of Defense is permitted to charge up to an additional ten percent of the premium charge to cover administrative expenses.

Under section 4408(b), eligibility to enroll in the CHCBP includes members of the Uniformed Services who are discharged or released (voluntarily or involuntarily as long as not under adverse conditions) and their dependents; certain unremarried former spouses of a member or former member; and emancipated children.

Health care coverage in the CHCBP is for a specific time period, which varies by the category of beneficiary. Coverage periods are as follows: Former uniformed services members and their dependents—up to 18 months; unremarried former spouses—up to 36 months; emancipated children (age 21 if not in college or up to age 23 if in college)—up to 36 months. Eligible beneficiaries generally will have 60 days to elect coverage after they are notified of their opportunity to enroll.

The Department of Defense considered three alternatives to implement this program: First, integration of the program within the Federal Employee Health Benefit

Program (FEHBP) health care plans under arrangement with the Office of Personnel Management (OPM); second, competitive procurement of a private insurer to administer this program; and lastly, continued CHAMPUS-type coverage, paid for by the beneficiary, with a third party administrator collecting the premiums and performing eligibility and verification functions. The first option was rejected based on the difficulties of making the transition from a DoD administered benefit to an OPM program. The second option was not selected based on the likelihood that an acquisition process involving a beneficiary group of such unpredictable size and characteristics would not result in a vendor willing to underwrite this program. Contractors would be wary that health care costs would exceed the capped premium. Thus, we elected to offer this program directly through the established mechanisms of CHAMPUS.

Under this approach, beneficiaries will continue to make use of existing CHAMPUS rules and administrative structures to receive their medical care and have medical claims paid. This feature will allow enrollees to make use of discounts and reduced copayments and provider arrangements already part of CHAMPUS in some locations. As previously noted, a third party administrator (TPA) will act as a central agent for the program. The functions of this TPA will be to: receive applications for enrollment of beneficiaries; verify eligibility and approve enrollment; notify the Defense Enrollment and Eligibility Reporting System (DEERS) of enrollment; collect premiums; and provide administrative services. CHCBP eligibles will obtain information concerning the program and the application process and other TPA functions at their local base transition office or through the nearest military treatment facility's (MTF) Health Benefits Advisor (HBA).

Congressional legislation caps premiums at a level equal to that of a comparable mid-range Health Maintenance Organization (HMO) program offered in the FEHBP. These premium rates were determined by category plan—either self or family and are not age/sex adjusted. (Similar to FEHBP premium schedules). Quarterly premium rates for fiscal year 1995 will be: $410 for self and $891 for family.

Following is a discussion of the comments we received regarding the Continued Health Care Benefit Program, and the action we are taking in response.

**1. Quarterly Premium Rates**

*Interim Final Rule.* The interim final rule states that the Department has contracted with a private sector actuarial firm to help develop premium rates.

*Comment 1A.* An organization has requested that the estimated rates be updated with the actual rates to be charged once they have been calculated.

*Response.* The following will be the FY95 quarterly premium rates for the CHCBP. Self—$410; Family—$891.

**2. Transitional Health Care Coverage**

*Interim Final Rule.* The interim final rule states the medical coverage for the Continued Health Care Benefit Program (CHCBP) will be offered via the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS).

*Comment 2A.* An organization of the military coalition has recommended that DoD offer transitional health benefits coverage through the Federal Employees Health Benefit Program (FEHBP), not CHAMPUS.

*Response.* The Department requested the Office of Personnel Management (OPM) consider granting CHCBP beneficiaries authority to select health care from their list of FEHBP programs or to make CHCBP an FEHBP program. OPM opposed this request. Additionally, the requirement to cover preexisting conditions for new enrollees would make FEHBP private insurers unlikely to enroll CHCBP beneficiaries. Therefore, standard CHAMPUS was considered the most feasible means of ensuring entitled care.

On January 19, 1988, (53 FR 1343), the Department of Defense published a rule, "Voluntary Private Health Insurance Conversion Program." This subject has been incorporated into 32 CFR part 199, section 199.20. Therefore, 32 CFR part 104 is removed.

**II. Rulemaking Procedures**

Executive Order 12866 requires certain regulatory assessments for any "significant regulatory action," defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

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

This is not a significant regulatory action under the provisions of Executive Order 12866, and it would not have a significant impact on a substantial number of small entities.

The final rule will impose additional information collection requirements on the public under the Paperwork Reduction Act of 1980 (44 USC 3501–3511), because beneficiaries will be required to enroll. OMB has granted conditional approval based on their intention of reviewing the Application Form upon its completion.

**List of Subjects in 32 CFR Parts 104 and 199**

Claims, handicapped, health insurance, and military personnel.

Accordingly, by the authority of 10 U.S.C. 301, 32 CFR Part 104 is removed and Part 199 is amended as follows:

**PART 104—[REMOVED]**

**PART 199—[AMENDED]**

1. The authority citation for Part 199 continues to read as follows:

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

2. Section 199.20 is revised as follows:

**§ 199.20 Continued Health Care Benefit Program (CHCBP).**

(a) *Purpose.* The CHCBP is a premium based temporary health care coverage program that will be available to qualified beneficiaries (set forth in paragraph (d)(1) of this section). Medical coverage under this program will mirror the benefits offered via the basic CHAMPUS program. Premium costs for this coverage are payable by enrollees to a Third Party Administrator. The CHCBP is not part of the CHAMPUS program. However, as set forth in this section, it functions under most of the rules and procedures of CHAMPUS. Because the purpose of the CHCBP is to provide a continuation health care benefit for the Department of Defense and the other Uniformed Services (e.g., NOAA, PHS, and the Coast Guard) health care beneficiaries losing eligibility, it will be administered so that it appears, to the maximum extent possible, to be part of CHAMPUS.

(b) *General provisions.* Except for any provisions the Director, OCHAMPUS may exclude, the general provisions of section 199.1 shall apply to the CHCBP as they do to CHAMPUS.

(c) *Definitions.* Except as may be specifically provided in this section, to the extent terms defined in section 199.2 are relevant to the administration of the CHCBP, the definitions contained in that section shall apply to the CHCBP as they do to CHAMPUS.

(d) *Eligibility and enrollment.*—(1) *Eligibility.* Enrollment in the CHCBP is open to the following individuals:

(i) Members of Uniformed Services, who:

(A) Are discharged or released from active duty (or full time National Guard duty), whether voluntarily or involuntarily, under other than adverse conditions;

(B) Immediately preceding that discharge or release, were entitled to medical and dental care under 10 U.S.C. 1074(a) (except in the case of a member discharged or released from full-time National Guard duty); and,

(C) After that discharge or release and any period of transitional health care provided under 10 U.S.C. 1145(a) would not otherwise be eligible for any benefit under 10 U.S.C. chapter 55.

(ii) A person who:

(A) Ceases to meet requirements for being considered an unmarried dependent child of a member or former member of the armed forces under 10 U.S.C. 1072(2)(D);

(B) On the day before ceasing to meet those requirements, was covered under a health benefits plan under 10 U.S.C. chapter 55, or transitional health care under 10 U.S.C. 1145(a) as a dependent of the member or former member; and,

(C) Would not otherwise be eligible for any benefits under 10 U.S.C. chapter 55.

(iii) A person who:

(A) Is an unremarried former spouse of a member or former member of the armed forces;

(B) On the day before the date of the final decree of divorce, dissolution, or annulment was covered under a health benefits plan under 10 U.S.C. chapter 55, or transitional health care under 10 U.S.C. 1145(a) as a dependent of the member or former member; and,

(C) Is not a dependent of the member or former member under 10 U.S.C. 1072(2)(F) or (G) or ends a one-year period of dependency under 10 U.S.C. 1072(2)(H).

(2) *Effective date.* Except for the special transitional provisions in paragraph (r) of this section, eligibility in the CHCBP is limited to individuals who lost their entitlement to regular military health services system benefits on or after October 1, 1994.

(3) *Notification of eligibility.* (i) The Department of Defense and the other Uniformed Services (National Oceanic and Atmospheric Administration (NOAA), Public Health Service (PHS), Coast Guard) will notify persons eligible to receive health benefits under the CHCBP.

(ii) In the case of a member who becomes (or will become) eligible for continued coverage, the Department of Defense shall notify the member of their rights for coverage as part of pre-separation counseling conducted under 10 U.S.C. 1142.

(iii) In the case of a child of a member or former member who becomes eligible for continued coverage:

(A) The member or former member may submit to the Third Party Administrator a notice of the child's change in status (including the child's name, address, and such other information needed); and

(B) The Third Party Administrator, within 14 days after receiving such information, will inform the child of the child's rights under 10 U.S.C. 1142.

(iv) In the case of a former spouse of a member or former member who becomes eligible for continued coverage, the Third Party Administrator will notify the individual of eligibility for CHCBP when he or she declares the change in marital status to a military personnel office.

(4) *Election of coverage.* (i) In order to obtain continued coverage, written election by eligible beneficiary must be made, within a prescribed time period. In the case of a member discharged or released from active duty (or full time National Guard duty), whether voluntarily or involuntarily; an unremarried spouse of a member or former member; or a child emancipated from a member or former member, the written election shall be submitted to the Third Party Administrator before the end of the 60-day period beginning on the later of:

(A) The date of the discharge or release of the member from active duty or full-time National Guard duty;

(B) The date on which the period of transitional health care applicable to the member under 10 U.S.C. 1145(a) ends;

(C) In the case of an unremarried former spouse of a member or former member, the date the one-year extension of dependency under 10 U.S.C. 1072(2)(H) expires; or

(D) The date the member receives the notification of eligibility.

(ii) A member of the armed forces who is eligible for enrollment under paragraph (d)(1)(i) of this section may elect self-only or family coverage. Family members who may be included in such family coverage are the spouse and children of the member.

(5) *Enrollment.* Enrollment in the Continued Health Care Benefit Program will be accomplished by submission of an application to a Third Party Administrator (TPA). Upon submittal of an application to the Third Party Administrator, the enrollee must submit proof of eligibility. One of the following types of evidence will validate eligibility for care:

(i) A Defense Enrollment Eligibility Reporting System (DEERS) printout which indicates the appropriate sponsor status and the sponsor's and dependent's eligibility dates;

(ii) A copy of a verified and approved DD Form 1172, "Application for Uniformed Services Identification and Privilege Card";

(iii) A front and back copy of a DD Form 1173, "Uniformed Services Identification and Privilege Card" overstamped "TA" for Transition Assistance Management Program; or

(iv) A copy of a DD Form 214—"Certificate of Release or Discharge from Active Duty".

(6) *Period of coverage.* CHCBP coverage may not extend beyond:

(i) For a member discharged or released from active duty (or full time National Guard duty), whether voluntarily or involuntarily, the date which is 18 months after the date the member ceases to be entitled to care under 10 U.S.C. 1074(a) and any transitional care under 10 U.S.C. 1145.

(ii) In the case of an unmarried dependent child of a member or former member, the date which is 36 months after the date on which the person first ceases to meet the requirements for being considered an unmarried dependent child under 10 U.S.C. 1072(2)(D).

(iii) In the case of an unremarried former spouse of a member or former member, the date which is 36 months after the later of:

(A) The date on which the final decree of divorce, dissolution, or annulment occurs; or

(B) If applicable, the date the one-year extension of dependency under 10 U.S.C. 1072(2)(H) expires.

(iv) In the case of an unremarried former spouse of a member or former member, whose divorce occurred prior to the end of transitional coverage, the period of coverage under the CHCBP is unlimited, if:

(A) Has not remarried before the age of 55; and

(B) Was enrolled in the CHCBP as the dependent of an involuntarily separated member during the 18-month period before the date of the divorce, dissolution, or annulment; and

(C) Is receiving a portion of the retired or retainer pay of a member or former member or an annuity based on the retainer pay of the member; or

(D) Has a court order for payment of any portion of the retired or retainer pay; or

(E) Has a written agreement (whether voluntary or pursuant to a court order)

which provides for an election by the member or former member to provide an annuity to the former spouse.

(v) For the beneficiary who becomes eligible for the Continued Health Care Benefit Program by ceasing to meet the requirements for being considered an unmarried dependent child of a member or former member, health care coverage may not extend beyond the date which is 36 months after the date the member becomes ineligible for medical and dental care under 10 U.S.C. 1074(a) and any transitional health care under 10 U.S.C. 1145(a).

(vi) Though beneficiaries have sixty-days (60) to elect coverage under the CHCBP, upon enrolling, the period of coverage must begin the day after entitlement to a military health care plan (including transitional health care under 10 U.S.C. 1145(a)) ends.

(e) *CHCBP benefits*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, the provisions of section 199.4 shall apply to the CHCBP as they do to CHAMPUS.

(2) *Exceptions.* The following provisions of section 199.4 are not applicable to the CHCBP:

(i) Paragraph (a)(2) of this section concerning eligibility:

(ii) All provisions regarding nonavailability statements or requirements to use facilities of the Uniformed Services.

(3) *Beneficiary liability.* For purposes of CHAMPUS deductible and cost sharing requirements and catastrophic cap limits, amounts applicable to the categories of beneficiaries to which the CHCBP enrollee last belonged shall continue to apply, except that for separating active duty members, amounts applicable to dependents of active duty members shall apply.

(f) *Authorized providers.* The provisions of section 199.6 shall apply to the CHCBP as they do to CHAMPUS.

(g) *Claims submission, review, and payment.* The provisions of section 199.7 shall apply to the CHCBP as they do to CHAMPUS, except that no provisions regarding nonavailability statements shall apply.

(h) *Double coverage.* The provisions of section 199.8 shall apply to the CHCBP as they do to CHAMPUS.

(i) *Fraud, abuse, and conflict of interest.* Administrative remedies for fraud, abuse and conflict of interest. The provisions of section 199.9 shall apply to the CHCBP as they do to CHAMPUS.

(j) *Appeal and hearing procedures.* The provisions of section 199.10 shall apply to the CHCBP as they do to CHAMPUS.

(k) *Overpayment recovery.* The provisions of section 199.11 shall apply to the CHCBP as they do to CHAMPUS.

(l) *Third Party recoveries.* The provisions of section 199.12 shall apply to the CHCBP as they do to CHAMPUS.

(m) *Provider reimbursement methods.* The provisions of section 199.14 shall apply to the CHCBP as they do to CHAMPUS.

(n) *Peer Review Organization Program.* The provisions of section 199.15 shall apply to the CHCBP as they do to CHAMPUS.

(o) *Preferred provider organization programs available.* Any preferred provider organization program under this part that provides for reduced cost sharing for using designated providers, such as the "TRICARE Extra" option under section 199.17, shall be available to participants in the CHCBP as it is to CHAMPUS beneficiaries.

(p) *Special programs not applicable*—(1) *In general.* Special programs established under this Part that are not part of the basic CHAMPUS program established pursuant to 10 U.S.C. 1079 and 1086 are not, unless specifically provided in this section, available to participants in the CHCBP.

(2) *Examples.* The special programs referred to in paragraph (p)(1) of this section include:

(i) The Program for the Handicapped under section 199.5;

(ii) The Active Duty Dependents Dental Plan under section 199.13;

(iii) The Supplemental Health Care Program under section 199.16; and

(iv) The TRICARE Enrollment Program under section 199.17, except for TRICARE Extra program under that section.

(3) *Exemptions to the restriction.* In addition to the provision to make TRICARE Extra available to CHCBP beneficiaries, the following two demonstration projects are also available to CHCBP enrollees:

(i) Home Health Care Demonstration; and

(ii) Home Health Care-Case Management Demonstration.

(q) *Premiums*—(1) *Rates.* Premium rates will be established by the Assistant Secretary of Defense (Health Affairs) for two rate groups—individual and family. Eligible beneficiaries will select the level of coverage they require at the time of initial enrollment (either individual or family) and pay the appropriate premium payment. The rates are based on Federal Employee Health Benefit Program employee and agency contributions required for a comparable health benefits plan, plus an administrative fee. The administrative fee, not to exceed ten percent of the basic premium amount, shall be determined based on actual expected administrative costs for administration of the program. Premiums may be revised annually and shall be published annually for each fiscal year. Premiums will be paid by enrollees quarterly.

(2) Effects of failure to make premium payments. Failure by enrollees to submit timely and proper premium payments will result in denial of continued enrollment and denial of payment of medical claims. Premium payments which are late 30 days or more past the start of the quarter for which payment is due will result in the ending of beneficiary enrollment. Beneficiaries denied continued enrollment due to lack of premium payments will not be allowed to reenroll. In such a case, benefit coverage will cease at the end of the ninety day (90) period for which a premium payment was received. Enrollees will be held liable for medical costs incurred after losing eligibility.

(r) *Transitional provisions.* (1) There will be a sixty-day period of enrollment for all eligible beneficiaries (outlined in paragraph (d)(1) of this section) whose entitlement to regular military health services system coverage ended on or after August 2, 1994, but prior to the CHCBP implementation on October 1, 1994.

(2) Enrollment in the U.S. VIP program may continue up to October 1, 1994. Policies written prior to October 1, 1994, will remain in effect until the end of the policy life.

(3) On or after the October 1, 1994, implementation of the Continued Health Care Benefit Program, beneficiaries who enrolled in the U.S. VIP program prior to October 1, 1994, may elect to cancel their U.S. VIP policy and enroll in the CHCBP.

(4) With the exception of persons enrolled in the U.S. VIP program who may convert to the CHCBP, individuals who lost their entitlement to regular military health services system coverage prior to August 2, 1994, are not eligible for the CHCBP.

(s) *Procedures.* The Director, OCHAMPUS, may establish other rules and procedures for the administration of the Continued Health Care Benefit Program.

Dated: September 26, 1994.

**L.M. Bynum,**

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

[FR Doc. 94–24289 Filed 9–29–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–94–136]

RIN 2115–AE46

## Special Local Regulation; Head of the Connecticut Regatta

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The special local regulations for the Head of the Connecticut Regatta are being permanently revised to improve the control of vessels transiting the Connecticut River near the regulated area. This regulation is needed to better protect race participants from recreational and commercial vessel traffic.

EFFECTIVE DATE: This regulation is effective on September 30, 1994.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) B.M. Algeo, Chief, Boating Affairs Branch, First Coast Guard District, (617) 223–8311.

SUPPLEMENTARY INFORMATION:

### Drafting Information

The drafters of this document are LTJG B.M. Algeo, Project Manager, First Coast Guard District, and LCDR S.R. Watkins, Project Attorney, First Coast Guard District Legal Office.

### Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days after **Federal Register** publication. The Head of the Connecticut Regatta is an event of longstanding tradition. The local community is well aware of the conditions necessary to conduct the event in a safe manner. Last year, the provisions of this rule were used to temporarily amend the permanent regulation found in 33 CFR 100.105. Based on the positive experience with that temporary rule change, the Coast Guard believes this amended regulation will allow the race to be conducted in the safest manner possible while minimizing the impact on other boaters. Publishing a NPRM and delaying the event would be contrary to the public interest given the significant public participation in the regatta and the extensive planning which has taken place.

### Background and Purpose

The permanent special local regulations for the Head of the Connecticut Regatta are found at 33 CFR 100.105. These regulations have become outdated insofar as section 100.105(b)(2) allows vessels less than 20 meters to transit the regulated area between each heat of the regatta. The number of racing shells and vessels transiting along the race course has grown to such a level that it is no longer safe to allow vessels to transit the regulated area between each heat. Regardless of the amount of planning and control in past years, racing shells have not followed the predetermined traffic patterns designed to allow vessels to transit the regulated area between heats. The race sponsor and the Coast Guard have developed a race and escort plan for the regatta which will allow vessels to transit the regulated area under escort throughout the race. Accordingly, section 100.105(b)(2) is being revised to allow vessel transits through the regulated area only at the discretion of, and under the escort of, the Coast Guard patrol commander. Based on the successful use of this provision during last year's race, the Coast Guard considers this permanent change to the regulation advisable in the interest of safety.

### Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary.

Commercial traffic on the affected portion of the Connecticut River is sparse. The race is popular and is anticipated to draw business to the local community. Local commercial entities have been notified of the race schedule. Because of the short duration of the event and the advisories that will be made, commercial entities will be able to adjust to any disruptions. The permanent change should reduce the amount of time it takes for nonparticipants to transit through the regulated area, thus further limiting the impact of the rule.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons explained in the Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

### Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

### Federalism

The Coast Guard has analyzed this regulation in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Environment

The Coast Guard considered the environmental impact of this regulation and concluded that under section 2.B.2.c of Commandant Instruction M16475.1B it is an action under the Coast Guard's statutory authority to protect public safety, and thus is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

### Final Regulation

In consideration of the foregoing, 33 CFR Part 100 is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.105 is amended by revising paragraph (b)(2) as follows:

**§ 100.105 Head of the Connecticut Regatta.**

* * * * *

(b) * * *

(2) Vessels less than 20 meters in length will be allowed to transit the regulated area only under escort and at

the discretion of the Coast Guard patrol commander.

* * * * *

Dated: September 15, 1994.

**J.L. Linnon,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 94–24156 Filed 9–29–94; 8:45 am]

BILLING CODE 4910–14–M

**33 CFR Part 117**

**[CGD05–94–046]**

**RIN 2115–AE47**

## Drawbridge Operation Regulations; Gallants Channel, Beaufort, NC

**AGENCY:** Coast Guard, DOT.

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

**SUMMARY:** The Coast Guard is changing the regulations governing the U.S. 70 Bridge across Gallants Channel, mile 0.1, in Beaufort, North Carolina, by extending the hours of restricted openings from the current 7:30 a.m. to 7:30 p.m. timeframe to the hours of 6 a.m. to 10 p.m. This rule also further limits the number of openings required during the hours of restrictions. From 6 a.m. to 10 p.m., the bridge will open three times an hour; once on the hour, once twenty minutes past the hour and once forty minutes past the hour for all waiting vessels, commercial and recreational. From 10 p.m. to 6 a.m., the bridge shall open on signal. This rule is intended to provide for regularly scheduled drawbridge openings to reduce motor vehicle traffic delays and congestion resulting from bridge openings while still providing for the reasonable needs of navigation.

**DATES:** This rule is effective October 1, 1994. Comments must be received on or before December 29, 1994.

**ADDRESSES:** Comments may be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or may be delivered to room 109 at the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (804) 398–6222. Comments will become part of this docket and will be available for inspection or copying at room 109, Fifth Coast Guard District.

**FOR FURTHER INFORMATION CONTACT:** Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, (804) 398–6222.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD05–94–046) and the specific section of this rulemaking to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this rulemaking in view of the comments.

At this time, the Coast Guard plans no public hearing, however, if future public interest and new information warrants, a public hearing may be held. Persons may request a public hearing by writing to the Commander (ob) at the address under **ADDRESSES.** The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

### Drafting Information

The drafters of this regulation are Bill H. Brazier, Project Officer, and LCDR C. Abel, Project Attorney, Fifth Coast Guard District.

### Regulatory History

The Coast Guard published a Temporary Deviation from the regulations for the Beaufort U.S. 70 drawbridge across Gallant's Channel in the **Federal Register** (59 FR 38567) on July 29, 1994. The expiration date of the deviation is September 30, 1994. The purpose of the deviation was to evaluate a modification to the current published regulation. Comments on the temporary deviation were solicited through September 30, 1994. The Coast Guard also published the temporary deviation as a public notice (PN 5–834) on July 29, 1994. Comments were solicited through September 30, 1994. Two comments have been received.

### Background and Purpose

The Carteret County Chamber of Commerce, through the North Carolina Department of Transportation, asked the Coast Guard to change the operating regulations governing the Beaufort U.S. 70 highway bridge by limiting required bridge openings for commercial boats to one opening at the top of each hour, and for recreational boats to one opening at the bottom of the hour. To supplement this request, they provide copies of bridge logs which showed the bridge opened as many as eight times an hour for the passage of vessels during the summer of 1993. The Coast Guard also obtained traffic counts from the North Carolina Department of Transportation which showed average annual vehicle traffic counts of 20,000 per day during the same period. The current Federal Regulation for this bridge requires that it open every hour on the half hour from 7:30 a.m. to 7:30 p.m. for the passage of pleasure craft. During these same hours, the bridge is required to open on signal for all other vessels. From 7:30 p.m. to 7:30 a.m., the bridge opens on signal for all vessels. The numerous random openings of the bridge under this regulation were causing vehicular traffic delays and traffic safety problems. At times, bridge openings backed traffic up through the downtown area of Beaufort to the east and west Morehead City across the channel. The intent of the requested change was to reduce the number of bridge openings and improve the flow of highway traffic.

The Coast Guard conducted an investigation into the operations of the bridge, consulting with the bridge tenders, the Mayor and City Council of Beaufort, North Carolina Department of Transportation officials and some of the local commercial waterway and highway users. The Coast Guard, in response to all comments received during our investigation, decided to pursue a more balanced approach than that originally requested by establishing a temporary deviation to the regulations and evaluating the results of that test schedule to determine if it resulted in a reasonable and beneficial compromise for both modes of transportation. The Coast Guard conducted the test for a sixty day period which provided three scheduled openings per hour for all vessels; the first at the top of the hour, the second at twenty minutes past the hour, and the third at forty minutes past the hour. The temporary deviation also extended the hours of restricted openings from the current 7:30 a.m. to 7:30 p.m. timeframe to include the hours of 6 a.m. to 10 p.m. This temporary deviation to the existing regulation was intended to establish a schedule that will meet the reasonable needs of the waterway users and at the same time reduce delays to and improve the flow of highway traffic crossing the bridge.

The Coast Guard anticipated the test would show that the total overall number of bridge openings would

decrease during the trial period as compared to the same period in 1993. Data collected by the North Carolina Department of Transportation from August 1, through August 19, 1994 showed that under the temporary deviation, the number of bridge openings during the hours of restriction was reduced by over 100 compared to the number of openings during the same dates and hours in 1993. North Carolina Department of Transportation traffic officials also stated they noted no significant highway traffic backups as a result of bridge openings during the test period. Although the Coast Guard has not yet received the additional bridge opening and highway traffic data collected by the North Carolina Department of Transportation during the remainder of the test period, all indications are that results will continue to show a reduction in the number of bridge openings and on improvement in the flow of highway traffic across the bridge. Based on the lack of complaints received during the test period, the positive written and verbal comments received on the test schedule by concerned interest groups, the demonstrated positive results shown through data collected from August 1 through August 19, and the unanimous request of all who have contacted the Coast Guard not to revert to the previous opening schedule, the Coast Guard believes it is in the public interest to continue the opening schedule used during the test period without interruption by publishing this interim rule. For the reasons above, it would be contrary to the public interest to revert to the existing regulation upon expiration of the temporary deviation and therefore, good cause exists for publishing this rule without prior notice and opportunity for comment, and making it effective in less than the 30 days after publication normally required. This rule should be effective immediately because it is in the overall public interest to do so, and the Coast Guard is not aware of any reasons not to.

**Discussion of Comments**

The Coast Guard received two written comments in response to our public notice concerning the temporary deviation to the regulations for the Gallant's Channel drawbridge. Both comments were from Beaufort City Officials (the Mayor and the Town Administrator). Both comments were favorable and expressed the belief that the temporary deviation had improved the flow of highway traffic across the bridge and reduced highway traffic delays previously attributable to frequent, unscheduled openings of the bridge. Verbal comments received by the Coast Guard from State Highway Officials, bridgetenders, a local county chamber of commerce and a representative of the commercial marine industry all indicated the 60-day temporary deviation had improved the flow of highway traffic across the bridge and had a generally favorable effect on the Town of Beaufort. They also expressed the strong opinion that reverting to the existing published regulation upon expiration of the temporary deviation would have a detrimental effect on the flow of highway traffic across the bridge and would be extremely confusing to both motorists and boaters.

**Regulatory Evaluation**

This proposal is a not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the U.S. Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the regulatory flexibility requirements. Although exempt, the Coast Guard has reviewed this rule for potential impact on small entities.

Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this rule will have a significant economic impact on your business, please submit a comment (See **ADDRESSES**) explaining why you think your business qualifies and in what way and to what degree this rule will economically affect your business.

**Collection of Information**

This rule contains no collection of information requirements under the paperwork Reduction Act (44 U.S.C. 3501 et seq.).

**Federalism Assessment**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulations**

In consideration of the foregoing, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499: 49 CFR 1.46; 33 CFR 1.05.1(g).

2. In section 117.822 is revised to read as follows:

**§ 117.822 Beaufort Channel, NC.**

From 6 a.m. to 10 p.m., the draw shall open on signal for all vessels waiting to pass every hour on the hour, twenty minutes past the hour and forty minutes past the hour. From 10 p.m. to 6 a.m., the bridge shall open on signal.

Dated: September 23, 1994.

**M.K. Cain,**

*Acting Captain, U.S. Coast Guard Commander, Fifth Coast Guard District*

[FR Doc. 94–24154 Filed 9–29–94; 8:45 am]

BILLING CODE 4910–14–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[PP 7F3521/R2079; FRL–4908–3]

RIN 2070–AB78

### Tefluthrin; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This document extends tolerances for the combined residues of the synthetic pyrethroid tefluthrin [2,3,5,6-tetrafluoro-4-methylphenyl)methyl)-(1 *alpha*, 3 *alpha*)-(*Z*)-(±)-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate] and its metabolite (*Z*)-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylic acid in or on the raw agricultural commodities corn, grain, field, and pop; corn, forage and fodder, field and pop. Zeneca Ag Products (previously, ICI Americas, Inc.) requested this regulation to extend the effective date for tolerances for maximum permissible levels of residues of this insecticide in or on these commodities.

**EFFECTIVE DATE:** This regulation becomes effective September 30, 1994.

**ADDRESSES:** Written objections, identified by the document control number, [PP 7F3521/R2079], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

**FOR FURTHER INFORMATION CONTACT:** By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6100.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of August 3, 1994 (59 FR 39502), EPA issued a proposed rule to extend to November 15, 1995, tolerances for the combined residues of the insecticide tefluthrin in or on the commodities corn, grain, field and pop; corn forage and fodder, field and pop. Because of the lack of certain data, these tolerances for tefluthrin had been established with an expiration date of July 31, 1994, by a rule published in the **Federal Register** of February 1, 1989 (54 FR 5080).

On October 20 and November 13, 1992, Zeneca Ag Products requested an extension of the conditional registration and extension of time to November 15, 1994. Zenaca also requested a waiver of the mesocosm study because of a change in Agency policy on the need for higher tiered fate and ecological effects data such as an aquatic field study. The Agency reexamined the existing ecological effects database and concluded that it had sufficient baseline data to characterize aquatic hazard for this pesticide, and the Agency waived the requirement for a mesocosm study. However, the Agency still concluded that this pesticide may pose aquatic risk from use on corn and agreed to an extension of the conditional registration until November 15, 1994, provided Zeneca submits risk reduction measures designed to reduce the potential for exposure to aquatic habitats of concern. Zeneca Ag Products agreed to these terms, and on June 14, 1993, the Agency extended the conditional registration for tefluthrin on corn to November 15, 1994. By November 15, 1994, the Agency intends to complete review of all data and other information submitted and to make Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) section 3(c)(5) or other appropriate regulatory decisions for corn use of tefluthrin.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted on the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance extension will protect the public health. Therefore, the tolerance extension is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 21, 1994.

**Stephen L. Johnson,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. By revising § 180.440, to read as follows:

**§ 180.440 Tefluthrin; tolerances for residues.**

Tolerances, to expire on November 15, 1995, are established for the combined residues of the insecticide tefluthrin (2,3,5,6 tetrafluroro-4-methylphenyl)methyl-(1 *alpha*, 3 *alpha*)-(*Z*)-(±)-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate) and its metabolite (*Z*)-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylic acid in or on the following commodities:

| Commodity | Parts per million |
|---|---|
| Corn, grain, field, and pop | 0.02 |
| Corn, forage and fodder, field and pop | .06 |

[FR Doc. 94-24244 Filed 9-30-94; 8:45 am]

BILLING CODE 6560-50-F

**40 CFR Parts 180, 185, and 186**

**[PP 7F3500, 8F3592, FAP 8H5650/R2080; FRL-4908-5]**

**RIN 2070-AB78**

## Pesticide Tolerances for Avermectin $B_1$ and its Delta-8,9-Isomer; Renewal of Time-Limited Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This document renews time-limited tolerances for residues of the insecticide avermectin $B_1$ and its delta-8,9-isomer in or on certain raw agricultural commodities and food and feed commodities. Merck & Co., Inc., requested this regulation to renew tolerances for maximum permissible levels of residues of the insecticide in or on the commodities.

**EFFECTIVE DATE:** This regulation becomes effective September 30, 1994.

**ADDRESSES:** Written objections and hearing requests, identified by the document control number, [PP 7F3500, 8F3592, FAP 8H5650/R2080], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

**FOR FURTHER INFORMATION CONTACT:** By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6100.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of August 3, 1994 (59 FR 39505), EPA issued proposed rules to renew time-limited tolerances, to expire on April 30, 1996, for the insecticide avermectin $B_1$ and its delta 8,9-isomer in or on various raw agricultural commodities under 40 CFR 180.449, food commodities under 40 CFR 185.300, and feed commodities under 40 CFR 186.300 to be consistent with conditional registrations granted to Merck & Co., Inc., for the insecticide.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted on the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the time-limited tolerances will protect the public health. Therefore, the time-limited tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register,** file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the

economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Parts 180, 185, and 186**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 21, 1994.

**Stephen L. Johnson,**

*Director, Registration Division, Office of Pesticide Programs.*

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

## PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

b. In § 180.449, by revising paragraph (a), to read as follows:

**§ 180.449 Avermectin $B_1$ and its delta-8,9-isomer; tolerances for residues.**

(a) Tolerances, to expire on April 30, 1996, are established for the combined residues of the insecticide avermectin $B_1$ and its delta-8,9-isomer (a mixture of avermectins containing ≧ 80 percent avermectin $B_{1a}$ (5-O-demethyl avermectin $B_{1a}$) and < 20 percent avermectin $B_{1a}$ (5-O-demethyl-25-di (1-methylpropyl)-25-1(1-methylethyl) avermectin $A_{1a}$) in or on the following commodities:

| Commodity | Parts per million |
|---|---|
| Citrus, whole fruit | 0.02 |
| Cattle, meat | 0.02 |
| Cattle, mbyp | 0.02 |
| Cottonseed | 0.005 |
| Milk | 0.005 |

* * * * *

## PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

b. By revising § 185.300, to read as follows:

**§ 185.300 Avermectin $B_1$ and its delta-8,9-isomer; tolerances for residues.**

Tolerances, to expire on April 30, 1996, are established for the combined residues of the insecticide avermectin $B_1$ and its delta-8,9-isomer (a mixture of avermectins containing ≧ 80 percent avermectin $B_{1a}$ (5-O-demethyl avermectin $B_{1a}$) and < 20 percent avermectin $B_{1a}$ (5-O-demethyl-25-di (1-methylpropyl)-25-1(1-methylethyl) avermectin $A_{1a}$) in or on the following commodity:

| Commodity | Parts per million |
|---|---|
| Citrus oil | 0.10 |

## PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

**Authority:** 21 U.S.C. 348.

b. In § 186.300, by revising paragraph (a) to read as follows:

**§ 186.300 Avermectin $B_1$ and its delta-8,9-isomer; tolerances for residues.**

(a) Tolerances, to expire on April 30, 1996, are established for the combined residues of the insecticide avermectin $B_1$ and its delta-8,9-isomer (a mixture of avermectins containing ≧ 80 percent avermectin $B_{1a}$ (5-O-demethyl avermectin $B_{1a}$) and < 20 percent avermectin $B_{1a}$ (5-O-demethyl-25-di (1-methylpropyl)-25-1(1-methylethyl) avermectin $A_{1a}$) in or on the following commodity:

| Commodity | Parts per million |
|---|---|
| Dried citrus pulp | 0.10 |

* * * * *

[FR Doc. 94-24249 Filed 9-29-94; 8:45 am]
BILLING CODE 6560-50-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Parts 405, 410, 411, 413, and 494

**[BPD-724-F]**

**RIN 0938-AF26**

## Medicare Program; Medicare Coverage of Screening Mammography

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises interim final regulations on Medicare coverage of screening mammography that were published in the **Federal Register** on December 31, 1990 (55 FR 53510). Those regulations implemented section 4163 of the Omnibus Budget Reconciliation Act of 1990, setting forth payment limitations and conditions for coverage of screening mammography. The conditions consist of quality standards to ensure the safety and accuracy of screening mammography services performed by qualified physicians and other suppliers of these services.

As a result of the implementation of the Mammography Quality Standards Act of 1992 (MQSA) by the Food and Drug Administration (FDA), we are conforming the conditions for coverage to the applicable FDA certification requirements that all Medicare suppliers of services must meet effective October 1, 1994. The revisions in this final rule also respond to certain comments we received on the interim final rule published on December 31, 1990; they provide clarification of certain of its provisions; and they establish conditions for coverage of diagnostic mammography that are similar to those we have established for screening mammography. In addition, this final rule reflects changes resulting from the final rule on the fee schedule for physicians' services, which was published in the **Federal Register** on December 2, 1993 (58 FR 63626).

**DATES:** These regulations are effective October 1, 1994.

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**FOR FURTHER INFORMATION CONTACT:** William Larson (Conditions for Coverage), (410) 966–4639. William Morse (Payment Limits), (410) 966–4520.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On December 31, 1990, we published interim final regulations concerning Medicare coverage of screening mammography in the **Federal Register** (55 FR 53510). These regulations implemented section 4163 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) (Public Law 101–508), which was enacted on November 5, 1990. Section 4163 amended sections 1833, 1834, 1861, 1862, 1863, 1864, 1865, 1902, and 1915 of the Social Security Act (the Act) to provide coverage of screening mammography (including a physician's interpretation of the images or films produced by the radiologic procedure) effective January 1, 1991, subject to frequency limitations, quality standards, and special payment rules.

Before we could follow up on the interim final rule and publish a final rule on Medicare coverage of screening mammography, the Mammography Quality Standards Act of 1992 (MQSA) (Public Law 101–539) was enacted on October 27, 1992, establishing new national quality standards for all mammography services. The MQSA amended part F of title III of the Public Health Service Act (the PHS Act) (42 U.S.C. 263b) to establish a comprehensive statutory mechanism for certification and inspection of all mammography facilities in the United States, except facilities of the Department of Veterans Affairs (VA). The authority to implement the provisions of the MQSA was delegated by the Secretary to the Food and Drug Administration (FDA), which published interim final regulations in this regard in the **Federal Register** (58 FR 67558 and 58 FR 67565) on December 21, 1993, with an effective date of February 22, 1994.

The MQSA did not explicitly repeal section 1834(c) of the Act, which contains the provisions governing Medicare standards for screening mammography. Furthermore, conforming provisions that would tie Medicare coverage for both screening and diagnostic mammography to MQSA standards were initially included in the Omnibus Budget Reconciliation Act of 1993 by the House of Representatives, but subsequently had to be dropped along with other nonbudget provisions in response to Senate procedural rules. These provisions were included again in a technical corrections bill that the Congress attempted to pass late in 1993, but did not pass for reasons unrelated to the substance of the bill.

The MQSA, however, as it was enacted, specifically provides that the standards under the PHS Act apply to all facilities in the country furnishing mammography, except VA facilities. Thus section 354(b) of the PHS Act, added by the MQSA, states that "No facility may conduct an examination or procedure * * * involving mammography * * * unless the facility obtains * * * a certificate issued * * * by the Secretary." Similarly, the MQSA defines a facility in the broadest terms: It includes "a hospital, outpatient department, clinic, radiology practice, or mobile unit, an office of a physician, or other facility * * * that conducts breast cancer screening or diagnosis through mammography activities."

The plain language of the PHS Act requires that facilities furnishing mammography to Medicare beneficiaries meet the standards promulgated under the MQSA. Moreover, we believe that the language of the law indicates that the Congress intended that all facilities furnishing mammography meet a consistent set of national standards. When the Congress wished to exclude facilities from these standards, it did so explicitly; thus, VA facilities are specifically not subject to the Federal standards under the MQSA. Finally, we have compared the requirements contained in the MQSA and quality standards in section 1834(c) of the Act and believe that the Medicare requirements are substantially subsumed in the PHS Act. For the reasons stated above, we believe that it was the Congress' intent that facilities have to meet only one set of Federal mammography standards and that the MQSA standards supersede the previous Medicare standards.

## II. Provisions of the Interim Final Rule

The interim final rule, published in the **Federal Register** on December 31, 1990 (55 FR 53510), implemented section 4163 of OBRA '90 by setting forth Medicare payment limitations and establishing conditions for coverage of screening mammography to ensure the safety and accuracy of the screening process.

## III. Discussion of Public Comments

We received 42 timely items of correspondence in response to the December 31, 1990 interim final rule. The comments were from professional organizations, State governments, hospitals, consumer organizations, suppliers of mammography equipment, and individual practitioners.

Of these 42 items, 30 of them dealt exclusively with the quality standards described in 42 CFR part 494, subpart B, and only 12 of them offered any comments on the other provisions of the interim regulations relating to the payment, coverage frequency, and other provisions. Since we are deleting the quality standards in subpart B and are replacing them with a cross-reference to the applicable FDA requirements, as discussed in section IV. of this preamble, it is no longer necessary to respond in this rule to the comments that were received on those standards. The other comments and our responses to those comments, however, are discussed below.

### *A. Payment Limitations*

*Comment:* One commenter suggested that the allocation between the professional and technical components for the screening mammogram should be the same as for a diagnostic mammogram.

*Response:* In the interim final rule (55 FR 53512), we used the same allocation between the two components of a screening mammogram that we had in place under the Medicare radiologist fee schedule for diagnostic mammograms because it was the best information we had available at the time and because of the lack of a persuasive argument that there should be different allocations for the two types of mammograms. In this final rule, we are changing the apportionment between the professional component and the technical component, effective for services furnished beginning January 1, 1995, to reflect the relationship between the relative value units established for a diagnostic bilateral mammogram under the fee schedule for physicians' services

for the year in question. We will not include the percentages for the professional component and the technical component in this final rule because the specificity requires a time-consuming rulemaking process when we modify the apportionment. We will announce the apportionment of the payment limits between the two components for 1995, and each year thereafter, at the same time as we announce the statutory payment limit in effect for that year. At this time, we anticipate that the apportionment of the payment limit in 1995 will be 32 percent professional component and 68 percent technical component.

*Comment:* One commenter objected to the discussion in the preamble of the interim final rule (55 FR 53513) of the difficulty rural hospitals have in furnishing the technical component of a screening mammogram within the payment limit because the rural hospitals may have a low volume of services. The commenter believed that, if a hospital and a radiologist entered into an agreement stating that the radiologist would accept a lower amount for the interpretation than Medicare would pay the radiologist directly for the interpretation, the agreement would constitute a "kickback" of a portion of the radiologist's fee to the hospital.

*Response:* We acknowledge that this agreement could constitute a kickback under the Medicare and Medicaid anti-kickback statute (42 U.S.C. 1320a–7b(b)). That statute makes it a felony to offer, pay, solicit, or receive remuneration with the intention of inducing the referral of Medicare, Medicaid, Maternal and Child Health Services Block Grant, or Social Services Block Grant program business. Activities that come within the purview of the statute are not subject to prosecution if they fit within specified safe harbors, as set forth in the regulation published in the **Federal Register** July 29, 1991 (56 FR 35952). Consequently, an organization or individual should enter into an agreement such as that referenced in the December 1990 interim final rule only if the agreement does not violate the anti-kickback statute.

*Comment:* Several commenters suggested that the rule should be modified so that a portion of the professional component of a screening mammogram be determined to represent the contribution of the primary care physician if the screening mammogram is taken in the primary care physician's office but interpreted by another physician. The commenters believed that the allocation of 37 percent of the payment limit to the interpreting physician's role overcompensates that physician and ignores the primary care physician's role in furnishing the mammogram. One commenter stated that the Physician Payment Reform Commission report entitled "The Costs of Providing Screening Mammography" allocates a flat $12 for the interpretation. As an alternative, the commenter suggested that the primary care physician be permitted to contract with the interpreting physician for payment at a rate less than 37 percent of the payment limit. Another commenter recommended that the interpretation represent 20 percent of the total fee.

*Response:* Medicare does not pay for referrals, and exacting a fee for referrals is against the law. A qualified physician who furnishes the interpretation of the screening mammogram receives payment for the professional component of the screening mammogram. If the primary care physician furnishes neither the professional component nor the technical component of the screening mammogram, he or she is entitled to no payment for the screening mammogram.

The apportionment of the screening mammography payment limit between the professional component and the technical component will reflect the payment split for the corresponding components for diagnostic mammography under the fee schedule for physicians' services. The weights of the factors reflect historical payment data, and we have no reason to believe that the apportionment is not appropriate for a screening mammography procedure.

*Comment:* One commenter stated that the purchased service limitation set forth in section 1842(n) of the Act should not apply to the technical component of a screening mammography procedure furnished in a primary care physician's office that customarily uses a temporary or leased technologist because—

- The technologist is under the direct control and supervision of the primary care physician and, as such, meets the common law rules for an employer/employee relationship applied under the Internal Revenue Code; and
- The screening mammography procedure is performed under the supervision of the primary care physician in conformance with the definition of "direct supervision" set forth in § 410.32(a).

*Response:* The purchased service limitation does not apply to screening mammography services because the procedures are not included in the definition of diagnostic tests under section 1861(s)(3) of the Act, as required by section 1842(n) of the Act, the statutory basis of the purchased service limitation. Section 1861(s)(13) of the Act provides for Part B coverage of screening mammography services, which are not subject to the requirements of section 1842(n) of the Act.

*Comment:* Two commenters stated that a "screening mammogram" is no different from a "diagnostic mammogram" and therefore should be paid at the same level.

*Response:* A screening mammogram and a diagnostic mammogram are similar in many respects, but the purposes of the two tests are distinctly different. A screening mammogram is a routine medical check; a diagnostic mammogram is made to diagnose a specific complaint or medical problem already identified by the patient or her attending physician. Section 1834(c)(4)(A) of the Act clearly establishes a $55 overall limit applicable to a screening mammography procedure in 1991 with increases in subsequent years limited to the percentage increase in the Medicare Economic Index for the subsequent year. Section 1834(b)(4)(B) of the Act authorizes the Secretary of the Department of Health and Human Services (the Secretary) to reduce this limit, after appropriate review, but does not authorize the Secretary to raise the limit. If we decide to establish the same payment for the two procedures, we might have to lower the payments for most diagnostic mammograms.

*Comment:* Two commenters recommended that the interim final rule be amended to waive the beneficiary's copayment liabilities so that older women will not have to bear out-of-pocket costs for the screening mammography procedure.

*Response:* A waiver of copayment liabilities would have to be authorized by the Congress. Section 1834(c)(1)(C) of the Act specifically limits Medicare payments to 80 percent of the least of the actual charge, the radiologist fee schedule or the physicians' fee schedule established under section 1848 of the Act as applicable, or the statutory limit for the service.

*Comment:* One commenter stated that insufficient payment levels should not be a deterrent to women having access to screening mammography services and that the relationship between current charges, payment levels, and access to the service should be taken into consideration in determining payment levels.

*Response:* We have to apply the overall payment limit established in

section 1834(c)(4) of the Act. There is no provision for exceptions to ensure access to these services in special circumstances.

*Comment:* One commenter believed that it is critical that any changes to the Medicare Part B payment system not be counter to physician payment reform. The existence of an overall national payment limit concerned another commenter who believed that the limit is inconsistent with the premise of a resource-based relative value scale payment schedule adjusted for geographic cost variations.

*Response:* Section 1834(c)(1)(C) of the Act requires that the amount of payment for screening mammography services be equal to 80 percent of the least of the actual charge, the radiologist fee schedule, or the physicians' fee schedule established under section 1848 of the Act, as applicable, or the statutory limit for the service.

*Comment:* One commenter, while conceding that we had no choice under the statute in imposing an overall $55 limit, stated that a single national rate without any recognition of geographic variations is inappropriate. The commenter believed that we should establish a price for screening mammograms within the context of other radiology services and ask the Congress to repeal the separate limit for these procedures.

*Response:* If it becomes apparent that the statutory limit is inadequate, we may make the proposal.

*Comment:* One commenter stated that radiologists would charge $32 for their interpretation, leaving only about $23 for the hospital, an amount which would cover only the cost of the film.

*Response:* Under the statutory allocation methodology implemented in the interim final rule (55 FR 53512), the professional component of the procedure in 1991 was limited to $20.35 (37 percent of $55), while the technical component was limited to $34.63 (63 percent of $55). The 1991 limiting charges for nonparticipating physicians and suppliers were: $68.75 (global), $25.44 (professional component), and $43.31 (technical component). Therefore, payment to hospitals for the technical component of screening mammography services is not determined by subtracting the amount billed for the professional component charge from the overall limit, but rather on the basis of the allocation methodology described in the interim final rule (55 FR 53512).

*Comment:* One commenter stated that the payment limit in section 1834(c)(4) of the Act is lower than the costs for screening mammography services furnished by a mobile unit in rural areas. The commenter believed that the operating costs of a mobile unit are higher than those of a stationary unit. Another commenter expressed concern that the processing of Medicare claims will increase the costs of mobile facilities and other screening centers that previously have not handled Medicare claims.

*Response:* Section 1834(c)(4) of the Act does not provide for any exception to the overall limit. Nonparticipating physicians and suppliers may bill beneficiaries higher amounts for the procedure up to the limiting charge set forth in § 405.535.

*B. Limitations on Screening Mammography Services*

*Comment:* One commenter believed that the screening mammography radiologic procedure covered under the Medicare program should not be limited to the four-view procedure specified in § 410.34(b)(1) of the interim final rule, but that additional views should be allowed as necessary in the case of particular patients.

*Response:* As we indicated in the preamble to the interim final rule (55 FR 53513), the basis for specifying that the screening mammography service must be a bilateral four-view procedure (that is, cranio-caudal and a medial lateral oblique view of each breast) is congressional intent as expressed in the Report of the Committee of Conference that accompanied Public Law No. 100–360 (H.R. Rep. No. 100–661, 100th Congress, 2nd Sess. 171 (1988)). In that report, the conferees stated that they "understood that a bilateral four-view procedure is currently considered to be the standard of care in the United States for screening mammography * * * [and] therefore anticipate that this would be initially included in the quality standards to be developed by the Secretary as a requirement for coverage."

We recognize that it may be necessary in the case of some patients to perform more than a bilateral four-view procedure. In view of the possibility that more than four images will need to be taken in the case of a particular patient, we have revised § 410.34(b)(1) (redesignated in this final rule as § 410.34(d)(1)) to state that generally "the service must, at a minimum, be a four-view exposure * * *." The need to do additional images will not have any effect on the payment amount that will be allowed for the Medicare screening mammography services because the payment amount is prescribed by statute.

To accommodate postmastectomy screening of certain women, however, we will allow, at a minimum, a two-view exposure (that is, a cranio-caudal and a medial lateral oblique view) of the remaining breast for those individuals, and still permit the facility to meet the standard. We are setting that standard as a two-view exposure.

*Comment:* Several commenters expressed concern about the limitations on the frequency of coverage of mammography screenings.

*Response:* As explained in the interim final rule (55 FR 53513), the frequency limitations specified in § 410.34 reflect the provisions imposed by section 1834(c)(2) of the Act, except for the high risk factors that were identified in § 410.34(b)(4)(i) (redesignated in this final rule as § 410.34(d)(4)(i)). As provided in section 1834(c)(2)(B) of the Act, the frequency limitations may be revised by the Secretary in consultation with the National Cancer Institute (NCI). This matter is under consideration, and will be addressed in a later notice, as appropriate.

*Comment:* One commenter suggested that this final rule discuss the importance of women having a clinical breast examination performed by a physician that would supplement the preventive value of using the Medicare screening mammography benefit. The commenter acknowledged that Medicare law authorizing screening mammography coverage does not provide for coverage and payment for a clinical breast examination as part of the screening mammography benefit. However, the commenter suggested that this final rule, at a minimum, indicate that a supplementary clinical breast examination performed by a physician be recommended in conjunction with a screening mammography examination and related physician's interpretation of the results of that radiologic examination.

*Response:* The commenter is correct. We do not have the legal authority under the screening mammography benefit to provide for coverage and payment for a clinical breast examination performed by a physician in conjunction with the use of screening mammography services. We understand, however, that NCI, ACS, the American Medical Association (AMA), the American Society of Internal Medicine, the National Medical Association, the American Academy of Family Physicians, the American College of Radiology, and other specialty groups recommend that a combination of screening mammography and a clinical breast examination is necessary for a complete early breast cancer detection

program. In this regard, NCI publishes public information brochures that explain screening mammography and strongly advise that a doctor also perform a clinical breast examination to supplement the value of the screening service. Information about breast cancer screening, including information regarding the importance of clinical breast examinations, can be obtained, free of charge, by calling the NCI-funded Cancer Information Service at 1–800–4–CANCER.

*Comment:* One commenter questioned the inclusion of "not given birth prior to age 30" as a factor indicating a high risk of developing breast cancer.

*Response:* We included "not given birth prior to age 30" as a factor indicating a high risk of developing breast cancer in the interim final rule based upon advice we received from NCI, and, in response to the comment, we have consulted further with NCI. NCI staff have advised us that the relative risk of women who have "not given birth prior to age 30" developing breast cancer is 1.4; that is, a woman who has not given birth prior to age 30 has a 40 percent higher chance of developing breast cancer over her lifetime than would otherwise be the case. This elevated risk applies over the age range of 40 to 49 that is subject to the high risk factor provision specified in the Medicare statute. Based on the advice of NCI, we have decided to retain in this final rule "not given birth prior to age 30" as a factor indicating a high risk of developing breast cancer.

*Comment:* One commenter believed that there is a need to clarify the meaning of the term "personal history of breast cancer" that is cited in § 410.34(b)(4) as one of the factors indicating a high risk of developing breast cancer. The commenter also requested clarification as to whether a biopsy that reveals a lump to be benign is reasonable evidence of "a history of breast cancer."

*Response:* The use of the term "a personal history of breast cancer" in § 410.34(b)(4) of the interim final rule was intended to mean that there is documented evidence in the woman's medical record that she has tested positive for breast cancer. Thus, a woman who has a biopsy of a lump in her breast that is determined to be benign would not be considered to have "a history of breast cancer."

*Comment:* One commenter expressed concern that the interim final rule made no reference to the possibility that the Medicare program may pay for certain medically necessary mammograms that are performed more often than the frequencies stated in the statute and the interim final rule for screening mammograms. The commenter suggested that we clarify this.

*Response:* The commenter is correct that the Medicare program may pay for certain medically necessary mammograms (also referred to as diagnostic mammograms as distinguished from screening mammograms) that are performed more frequently than the frequencies stated in the law and the interim final rule for screening mammograms. We stated this fact in the interim final rule (55 FR 53511). Under this policy, mammograms are covered if medically necessary to diagnose a specific complaint or medical problem that has been identified by the patient or her attending physician, including medical problems that may have been identified on the basis of a previous screening mammogram. This coverage is based on sections 1861(s)(1) and (s)(3) of the Act, which provide for Medicare coverage of interpretation of diagnostic X-ray tests by a physician.

*Comment:* Three commenters observed that a diagnostic mammogram requires essentially the same level of professional attention and professional expertise as does a screening mammogram, and one of these commenters suggested that similar quality standards be applied to both types of mammography services under the Medicare program.

*Response:* We agree. As we noted in response to a previous comment, a diagnostic mammogram and a screening mammogram are similar in many respects, and the Congress recognized this fact when it enacted the MQSA, which authorized the application of quality standards to both types of mammograms, effective October 1, 1994. Accordingly, we are including a condition for coverage in this rule at § 410.34(b)(2) that, in order to qualify for payment for diagnostic mammograms under the Medicare program, suppliers of these services must meet the same FDA certification requirements that we are adopting in this final rule for screening mammograms. (These certification requirements are set forth in section 354 of the PHS Act, implemented by 21 CFR part 900, subpart B.)

## IV. Provisions of the Final Rule

In this final rule, we are deleting the conditions for coverage specified in 42 CFR part 494, subpart B, which screening mammography suppliers must meet to qualify for coverage of the services under the Medicare program. Instead, we are cross-referencing the applicable FDA certification requirements, published in the Federal Register on December 21, 1993 (58 FR 67558 and 58 FR 67565), that suppliers of the services must meet effective October 1, 1994.

Based on our analysis of section 354 of the PHS Act, as added by the MQSA, and the related FDA interim regulations, we believe that we have fulfilled our responsibility to establish quality standards under section 1834(c)(3) of the Act by adopting the quality standards and related certification requirements specified in the FDA regulations.

Section 1834(c)(3) of the Act requires the Secretary to establish standards to ensure the safety and accuracy of screening mammography services performed under Medicare Part B. The quality standards that must be established include: (1) Standards that require the use of equipment specifically designed for mammography and that meet other radiological standards established by the Secretary for mammography; (2) standards that require that the mammography be performed by individuals who are licensed by a State to perform radiological procedures, or who are certified as qualified to perform radiological procedures by an appropriate program as the Secretary specifies in regulations; (3) standards that require that the results of the mammography be interpreted by a physician who is certified as qualified to interpret radiological procedures by such an appropriate board (or program) as the Secretary recognizes in regulations; and (4) requirements that, with respect to a woman's first screening mammography performed for which payment is made under the program, the results of the mammography will be placed in the woman's permanent medical records.

In the FDA interim final rule, 21 CFR subpart B, § 900.11 ("Requirements for certification"), paragraph (a) provides that after October 1, 1994, "a certificate issued by FDA will be required for lawful operation of all facilities" and that in order to obtain a certificate from FDA, facilities "are required to meet the quality standards in § 900.12 and to be accredited by an accrediting body approved by FDA" as described in 21 CFR part 900, subpart A, §§ 900.1 through 900.7. In § 900.12 of the interim final rule, FDA established standards for mammography equipment, personnel, and practices. These standards are substantially the same as the Medicare interim quality standards that were published on December 31, 1990, but when they do differ from the existing Medicare standards, they still appear to

be consistent with our mandate under section 1834(c)(3) of the Act. Thus, this final rule will remove the existing Medicare interim quality standards and, instead, will cross-refer to applicable interim FDA certification requirements for mammography services.

In addition, we are making several technical and other clarifying revisions in the remaining provisions of the existing interim regulations that we published in the **Federal Register** on December 31, 1990 (55 FR 53510). With the exception of two points of clarification, a technical change, and certain conforming changes to part 405, subpart E ("Criteria for Determination of Reasonable Charges; Payment for Services of Hospital Interns, Residents, and Supervising Physicians"), the rationale for these revisions is discussed in the "Discussion of Public Comments" in section III. of this rule.

In § 405.534 ("Limitation on payment for screening mammography services"), we are making technical changes to cross-refer to the fee schedule for physicians' services. The current § 405.534 refers to § 405.533. The latter was removed from the CFR on November 25, 1991, with the publication of the fee schedule for physicians' services in the **Federal Register** (56 FR 59622). We are also revising paragraphs (c) and (d) so that, effective for a screening mammography procedure furnished beginning January 1, 1995, the payment for the screening mammography procedure reflects the relationship between the relative value units for the professional and technical components established for a diagnostic mammography procedure under the physicians' fee schedule. Effective January 1, 1995, the apportionment of the payment limit between the professional and technical components will be changed to reflect the relationship of the two components for diagnostic bilateral mammograms under the fee schedule for physicians' services for 1995.

We are revising the title of § 405.535 to add the words "and suppliers." It will read, "Special rules for nonparticipating physicians and suppliers furnishing screening mammography services." We are also making technical changes in this section to cross-refer the reader to the fee schedule for physicians' services. Additionally, we are setting forth in § 405.535 requirements for the limiting charge if the screening mammography services are furnished by a nonparticipating physician or supplier who does not accept assignment.

*Conditions for Coverage*

In accordance with section 354 of the PHS Act, regarding coverage conditions for diagnostic and screening mammography, we are amending 42 CFR by revising § 410.34(a) to specify definitions of the terms (1) "diagnostic mammography," (2) "screening mammography," (3) "supplier of diagnostic mammography," (4) "supplier of screening mammography," (5) "certificate," (6) "provisional certificate," and (7) "meets the certification requirements of section 354 of the Public Health Services (PHS) Act."

In § 410.34, we are redesignating paragraph (b) as paragraph (d). We are adding a heading to paragraph (d), "Limitations on coverage of screening mammography services." In newly redesignated paragraph (d)(1) of § 410.34, we are clarifying that the current requirement that a mammogram "must, *at a minimum* [emphasis added], be a four-view exposure (that is, a cranio-caudal and a medial lateral oblique view of each breast)" is the minimum requirement that must be met, except in the case of a woman who is having a postmastectomy screening, when we will allow a two-view exposure (that is, a cranio-caudal and a medial lateral oblique view) of the remaining breast.

We are adding a new paragraph (b) to § 410.34 to set forth conditions for coverage of diagnostic mammography, which essentially cross-reference the same FDA certification requirements that suppliers of screening mammography must meet on October 1, 1994. Medicare Part B pays for diagnostic mammography services if the diagnostic mammography services are ordered by a doctor of medicine or osteopathy and if they are furnished by a supplier of diagnostic mammography services that meets the certification requirements of section 354 of the PHS Act, as described in 21 CFR part 900 ("Mammography"), subpart B ("Quality Standards and Certification").

We are also adding a new paragraph (c) to § 410.34 to set forth the conditions for payment of screening mammography. Medicare Part B pays for screening mammography services only if they are furnished by a supplier of screening mammography services that meets the certification requirements of section 354 of the PHS Act, as described in 21 CFR part 900, subpart B.

We are revising § 411.15 ("Particular services excluded from coverage") to replace the cross reference to subpart B of part 494 (which is being removed and reserved) with a reference to the certification requirements in section 354 of the PHS Act, as set forth in 21 CFR part 900, subpart B.

The current § 413.123(b) states that payment to hospitals for screening mammography services performed on an outpatient basis is determined in accordance with § 405.534(c). We are changing this to refer to § 405.534(d) to correct an error.

## V. Information Collection Requirements

Due to the enactment of the MQSA and its implementation by FDA, we are requesting cancellation of the information collection requirements approved under OMB control number 0938–0608 for Medicare coverage of screening mammograms, effective October 1, 1994. The latter information collection document was previously required as a result of the enactment of section 4163 of OBRA '90.

In implementing section 4163 of OBRA '90, we published interim final regulations on December 31, 1990 (55 FR 53510), including certain minimum safety and accuracy standards set forth in 42 CFR subpart B, which suppliers of screening mammography services had to meet in order to participate under Medicare, effective January 1, 1991. With the enactment of the MQSA, however, all mammography facilities in the United States, except for VA facilities, will be required, effective October 1, 1994, to have a certificate issued by FDA regardless of their source of payment. Therefore, under its delegation of authority from the Secretary of the Department of Health and Human Services, FDA will replace HCFA on October 1, 1994, as the Federal agency responsible for surveying and certifying suppliers of screening mammography services in accordance with the new MQSA standards.

## VI. Delay in the Effective Date

As required by the Administrative Procedure Act (APA), we generally provide for final rules not to be effective until 30 days after the date of publication unless we find good cause to waive the delay. As a result of the implementation of the MQSA by FDA, we are conforming the conditions for Medicare coverage of screening mammography services to the applicable FDA certification requirements, published in the **Federal Register** on December 21, 1993 (58 FR 67558 and 58 FR 67565), that all Medicare suppliers of services must meet effective October 1, 1994. We view the changes made by this rule as merely interpretative. The APA does not require that there be a delayed effective

date for an interpretative rule. Accordingly, this rule will be effective October 1, 1994, the effective date of the FDA requirements on mammography services.

**VII. Regulatory Impact Analysis**

*A. Introduction*

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all physicians and suppliers of screening mammography services and equipment are considered to be small entities.

This final rule revises interim regulations on Medicare coverage of screening mammography that were published in the **Federal Register** on December 31, 1990 (55 FR 53510). Those regulations implemented section 4163 of OBRA '90, setting conditions for coverage for and limitations on screening mammography.

In the interim final rule, we presented an analysis of the various effects that the screening mammography benefit would have on beneficiaries, physicians, and suppliers (55 FR 53518). We received no comments on the impact analysis. Below, we present revised estimates of projected Medicare costs and utilization rates and the effects, as far as they can be foreseen, of the changes we have adopted as a result of public comment. Our estimates of projected additional costs and services are lower than those we anticipated when the interim final rule was published in the **Federal Register**. One explanation for lower than anticipated costs and services for this service may be that physicians have been furnishing screening mammography services but have been billing for the services using the CPT code for diagnostic mammography.

We anticipate that Medicare coverage of screening mammography services will result in the following costs:

TABLE I.—PROJECTED BUDGET IMPACT AS A RESULT OF MEDICARE COVERAGE OF SCREENING MAMMOGRAPHY

[in millions]

| | FY 1995 | FY 1996 | FY 1997 | FY 1998 | FY 1999 |
|---|---|---|---|---|---|
| Benefit costs | $90 | $95 | $100 | $110 | $115 |

TABLE II.—PROJECTED NUMBER OF SCREENING MAMMOGRAPHIES PERFORMED AS A RESULT OF MEDICARE COVERAGE

[in millions]

| CY 1995 | CY 1996 | CY 1997 | CY 1998 | CY 1999 |
|---|---|---|---|---|
| 1.4 | 1.4 | 1.5 | 1.6 | 1.6 |

Beginning October 1, 1994, FDA replaces HCFA as the Federal agency responsible for surveying and certifying suppliers of all mammography services, both diagnostic and screening. Beginning on that date, all facilities furnishing mammography services will be expected to meet only one set of national standards. This provision should benefit mammography facilities and help ensure the safety and accuracy of screening mammography services performed under Medicare Part B. The Medicare program will no longer be responsible for funding this cost.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

*B. Rural Hospital Impact Statement*

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We do not believe small rural hospitals will be required to make any operational changes to comply with this final rule. Therefore, we are not preparing a rural impact analysis because we have determined, and the Secretary certifies, that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

**VII. List of Subjects**

*42 CFR Part 405*

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

*42 CFR Part 410*

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

*42 CFR Part 411*

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

*42 CFR Part 413*

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

*42 CFR Part 494*

Medicare, Reporting and recordkeeping requirements, X-rays.

For the reasons set forth in the preamble and under the authority of 42 U.S.C. 1302 and 1395hh, 42 CFR chapter IV is amended as follows:

A. Part 405, subpart E is amended as set forth below:

**PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED**

**Subpart E—Criteria for Determination of Reasonable Charges; Payment for Services of Hospital Interns, Residents, and Supervising Physicians**

1. The authority citation for subpart E, part 405, is revised to read as follows:

**Authority:** Secs. 1102, 1814(b), 1832, 1833(a), 1834(a), (b), and (c), 1842(b) and (h), 1848, 1861(b), (s), (v), (aa), and (jj), 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395m(a), (b), and (c), 1395u(b) and (h), 1395w-4, 1395x(b), (s), (v), (aa), and (jj), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz).

2. In § 405.534, the introductory text of paragraphs (b), (c), and (d), and paragraphs (b)(2), (b)(3), (c)(2), (c)(3),

(d)(2), and (d)(3) are revised to read as follows:

**§ 405.534 Limitation on payment for screening mammography services.**

* * * * *

(b) *Global or complete service billing representing both the professional and technical components of the procedure.* If a fee is billed for a global service, the amount of payment subject to the deductible is equal to 80 percent of the least of the following:

* * * * *

(2) The amount established for the global procedure for a diagnostic bilateral mammogram under the fee schedule for physicians' services set forth at part 414, subpart A.

(3) The payment limit for the procedure. For screening mammography services furnished in CY 1994, the payment limit is $59.63. On January 1 of each subsequent year, the payment limit is updated by the percentage increase in the Medicare Economic Index (MEI) and reflects the relationship between the relative value units for the professional and technical components of a diagnostic bilateral mammogram under the fee schedule for physicians' services.

(c) *Professional component billing representing only the physician's interpretation for the procedure.* If the professional component of screening mammography services is billed separately, the amount of payment for that professional component, subject to the deductible, is equal to 80 percent of the least of the following:

* * * * *

(2) The amount established for the professional component of a diagnostic bilateral mammogram under the fee schedule for physicians' services.

(3) The professional component of the payment limit for screening mammography services described in paragraph (b)(3) of this section.

(d) *Technical component billing representing other resources involved in furnishing the procedure.* If the technical component of screening mammography services is billed separately, the amount of payment, subject to the deductible, is equal to 80 percent of the least of the following:

* * * * *

(2) The amount established for the technical component of a diagnostic bilateral mammogram under the fee schedule for physicians' services.

(3) The technical component of the payment limit for screening mammography services described in paragraph (b)(3) of this section.

3. Section 405.535 is revised to read as follows:

**§ 405.535 Special rules for nonparticipating physicians and suppliers furnishing screening mammography services.**

If screening mammography services are furnished to a beneficiary by a nonparticipating physician or supplier that does not accept assignment, a limiting charge applies to the charges billed to the beneficiary. The limiting charge is the lesser of the following:

(a) 115 percent of the payment limit set forth in § 405.534(b)(3), (c)(3), and (d)(3) (limitations on the global service, professional component, and technical component of screening mammography services, respectively).

(b) The limiting charge for the global service, professional component, and technical component of a diagnostic bilateral mammogram under the fee schedule for physicians' services set forth at § 414.48(b)(3) of this chapter.

B. Part 410, subpart B is amended as set forth below:

## PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

### Subpart B—Medical and Other Health Services

1. The authority citation for part 410 is revised to read as follows:

**Authority:** Secs. 1102, 1832, 1833, 1834, 1835, 1861(r), (s), (aa), (cc), (ff), and (mm), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395k, 1395l, 1395m, 1395n, 1395x(r), (s), (aa), (cc), (ff), and (mm), 1395hh, and 1395rr).

2. In § 410.10, the introductory text is republished, and paragraph (e) is revised to read as follows:

**§ 410.10 Medical and other health services: included services.**

Subject to the conditions and limitations specified in this subpart, "medical and other health services" includes the following services:

* * * * *

(e) Diagnostic laboratory and X-ray tests (including diagnostic mammography that meets the conditions for coverage specified in § 410.34(b) of this subpart) and other diagnostic tests.

* * * * *

3. Section 410.34 is amended by revising the heading, removing the introductory text, revising paragraph (a), redesignating paragraphs (b)(1) through (b)(6) as paragraphs (d)(1) through (d)(6), adding a heading to newly redesignated paragraph (d), revising newly redesignated paragraph (d)(1), and adding new paragraphs (b) and (c) to read as follows:

**§ 410.34 Mammography services: Conditions for and limitations on coverage.**

(a) *Definitions.* As used in this section, the following definitions apply:

(1) *Diagnostic mammography* means a radiologic procedure furnished to a symptomatic woman for the purpose of detecting breast disease and includes a physician's interpretation of the results of the procedure.

(2) *Screening mammography* means a radiologic procedure furnished to an asymptomatic woman for the purpose of early detection of breast cancer and includes a physician's interpretation of the results of the procedure.

(3) *Supplier of diagnostic mammography* means a facility that is certified and responsible for ensuring that all diagnostic mammography services furnished to Medicare beneficiaries meet the conditions for coverage of diagnostic mammography services as specified in paragraph (b) of this section.

(4) *Supplier of screening mammography* means a facility that is certified and responsible for ensuring that all screening mammography services furnished to Medicare beneficiaries meet the conditions and limitations for coverage of screening mammography services as specified in paragraphs (c) and (d) of this section.

(5) *Certificate* means the certificate described in 21 CFR 900.2(b) that may be issued to, or renewed for, a facility that meets the requirements for conducting an examination or procedure involving mammography.

(6) *Provisional certificate* means the provisional certificate described in 21 CFR 900.2(m) that may be issued to a facility to enable the facility to qualify to meet the requirements for conducting an examination or procedure involving mammography.

(7) The term *meets the certification requirements of section 354 of the Public Health Service (PHS) Act* means that in order to qualify for coverage of its services under the Medicare program, a supplier of diagnostic or screening mammography services must meet the following requirements:

(i) Must have a valid provisional certificate, or a valid certificate, that has been issued by FDA indicating that the supplier meets the certification requirements of section 354 of the PHS Act, as implemented by 21 CFR part 900, subpart B.

(ii) Has not been issued a written notification by FDA that states that the supplier must cease conducting mammography examinations because the supplier is not in compliance with certain critical certification requirements of section 354 of the PHS

Act, implemented by 21 CFR part 900, subpart B.

(iii) Must not employ for provision of the professional component of mammography services a physician or physicians for whom the facility has received written notification by FDA that the physician (or physicians) is (or are) in violation of the certification requirements set forth in section 354 of the PHS Act, as implemented by 21 CFR 900.12(a)(1)(i).

(b) *Conditions for coverage of diagnostic mammography services.* Medicare Part B pays for diagnostic mammography services if they meet the following conditions:

(1) They are ordered by a doctor of medicine or osteopathy (as defined in section 1861(r)(1) of the Act).

(2) They are furnished by a supplier of diagnostic mammography services that meets the certification requirements of section 354 of the PHS Act, as implemented by 21 CFR part 900, subpart B.

(c) *Conditions for coverage of screening mammography services.* Medicare Part B pays for screening mammography services if they are furnished by a supplier of screening mammography services that meets the certification requirements of section 354 of the PHS Act, as implemented by 21 CFR part 900, subpart B.

(d) *Limitations on coverage of screening mammography services.* The following limitations apply to coverage of screening mammography services:

(1) The service must be, at a minimum—

(i) A four-view exposure (that is, a cranio-caudal and a medial lateral oblique view of each breast); or

(ii) In the case of a postmastectomy patient, a two-view exposure (that is, a cranio-caudal and a medial lateral oblique view) of the remaining breast.

* * * * *

C. Part 411, subpart A is amended as set forth below:

## PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

### Subpart A—General Exclusions and Exclusion of Particular Services

1. The authority citation for part 411 continues to read as follows:

**Authority:** Secs. 1102, 1834, 1842(l), 1861, 1862, 1866, 1871, 1877, and 1879 of the Social Security Act (42 U.S.C. 1302, 1395m, 1395u(l), 1395x, 1395y, 1395cc, 1395hh, 1395nn, and 1395pp).

2. In § 411.15, the introductory text for the section is republished, and paragraph (a)(1) is revised to read as follows:

**§ 411.15 Particular services excluded from coverage.**

The following services are excluded from coverage.

(a) Routine physical checkups such as—

(1) Examinations performed for a purpose other than treatment or diagnosis of a specific illness, symptom, complaint, or injury, except for screening mammography (including a physician's interpretation of the results) that meets the conditions for coverage and limitations on coverage of screening mammography specified at § 410.34 of this chapter and the certification requirements of section 354 of the PHS Act, as implemented by 21 CFR part 900, subpart B.

* * * * *

D. Part 413, subpart F is amended as set forth below:

## PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

### Subpart F—Specific Categories of Costs

1. The authority citation for part 413 is revised to read as follows:

**Authority:** Secs. 1102, 1122, 1814(b), 1815, 1833 (a), (i), and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a–1, 1395f(b), 1395g, 1395l (a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

2. In § 413.123, paragraph (b) is revised to read as follows:

**§ 413.123 Payment for screening mammography performed by hospitals on an outpatient basis.**

* * * * *

(b) *Payment to hospitals for outpatient services.* Payment to hospitals for screening mammography services performed on an outpatient basis is determined in accordance with the technical component billing requirements in § 405.534(d) of this chapter.

## PART 494—[REMOVED AND RESERVED]

E. Part 494 is removed and reserved.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance.)

Dated: August 3, 1994.

**Bruce C. Vladeck,**

*Administrator, Health Care Financing Administration.*

Dated: September 8, 1994.

**Donna E. Shalala,**

*Secretary.*

[FR Doc. 94–24335 Filed 9–29–94; 8:45 am]

BILLING CODE 4120–01–P

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**42 CFR Part 417**

**[OMC–009–FC]**

**RIN: 0938–AG92**

## Medicare Program; Qualified Health Maintenance Organizations: Technical Amendments

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final rule with comment period.

**SUMMARY:** This rule clarifies and updates portions of the HCFA regulations that pertain to Federal qualification and continued regulation of health maintenance organizations (HMOs), inclusion of qualified HMOs in employee health benefits plans, and the administration of outstanding loans and loan guarantees that were awarded before October 1, 1986, under the Public Health Service Act (PHS Act). This rule is part of a special project to clarify and update all of 42 CFR part 417, which contains the regulations applicable to all entities that provide prepaid health care, that is, HMOs, CMPs (competitive medical plans) and HCPPs (health care prepayment plans).

These are technical and editorial changes that do not affect the substance of the regulations. They are intended to make it easier to find particular provisions, to provide overviews of the different program aspects, and to better ensure uniform understanding of the rules.

**DATES:** *Effective Date:* These regulations are effective on October 31, 1994.

*Comment Date:* We will consider all comments received at the appropriate address as provided below no later than 5 p.m. on November 29, 1994.

**ADDRESSES:** Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: OMC–9–FC, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (an original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or
Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Due to staff limitations, we cannot accept facsimile (FAX) transmission of comments. Comments will be available for public inspection as they are received, beginning approximately 3 weeks from date of publication in the **Federal Register**, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

**FOR FURTHER INFORMATION CONTACT:** Tracy Jensen, (202) 619–2158.

**SUPPLEMENTARY INFORMATION:**

## A. Background

This rule revises subparts D, E, F, and V of part 417 of the HCFA rules as part of the special project noted in the **SUMMARY.**

The first two steps in the project to clarify and update part 417 were the publication of two final rules identified as OCC–22–F and OCC–15–FC. The first was published in the **Federal Register** on October 17, 1991, at 56 FR 51984; the second, on July 15, 1993, at 58 FR 38062.

The regulation identified as OCC–22–F—

- Removed most of the outdated content;
- Redesignated certain portions of part 417 to free section numbers needed so that new rules can be incorporated in logical order; and
- Designated the remaining text under subpart headings that identify the different program aspects so that it is easier to refer to those aspects and to find particular rules.

The second regulation, identified as OCC–15–F—

- Through nomenclature and definition changes, established certain terms to be used throughout part 417 with the aim of avoiding confusion, making clear that responsibility for the prepaid health care programs has been delegated to HCFA, and ensuring use of the most precise terms available.
- Established a separate subpart C with four sections to set forth the many requirements that apply to the organization and operation of HMOs, and that were previously compressed into a single section (§ 417.107).

As a result of the redesignations made by OCC–22–F and OCC–15–FC, §§ 417.107 through 417.119 are now available for new rules that are required because of statutory amendments that affect the furnishing of services by qualified HMOs or may be needed because of future changes in the statute.

## B. Changes in the Regulations

In order to clarify and update subparts D, E, F, and V, this rule makes the following changes:

- Uses terminology established by OCC–15–FC or that reflects accepted usage in all HCFA regulations.
- Revises long unbroken columns of text to designate separate provisions and to provide headings that help the reader to get an overview and to find particular provisions.
- Uses the active voice and the present indicative (rather than the future tense) to describe what HCFA or its employees, agents, or contractors do, and uses the most precise terms available.

A specific goal is to complete the separation of the rules that pertain to assurances required of entities applying for Federal qualification from those that pertain to assurances given in applying for financial assistance (grants, loans, and loan guarantees) that was available under the PHS Act before October 1986. To achieve this goal, we have—

- Removed the portion of § 417.160 applicable to financial assistance that is no longer available; and
- Added a new § 417.940 in subpart V to reference § 417.163(g) as applicable to entities that have outstanding loans or loan guarantees, and that fail to comply with assurances they gave in applying for the loan or loan guarantee. (Section 417.163(g) provides that HCFA may bring civil action to enforce compliance with assurances.)

In addition, we have—

- Removed the definitions of the three types of "qualified" HMOs (§ 417.141) because definitions are not used for substantive content, and in this case simply constituted a partial duplication of the rules themselves;
- Incorporated paragraph (a) of § 417.143 into § 417.140 to set forth the scope of the whole subpart D; and
- Removed §§ 417.168 and 417.169 from subpart F because their content is being transferred to § 417.142(g) and (h).

*Waiver of Proposed Rulemaking*

With one exception, the changes made by this rule are technical and editorial in nature. Their aim is to simplify, clarify, and update subparts D, E, F, and V without substantive change.

We have removed from § 417.169 (now redesignated as § 417.142(h)), the words "for purposes of receiving assistance under this subpart." HCFA has consistently interpreted this language (which appears in section 1307(d) of the PHS Act) as applying to continued qualification of HMOs as well as to initial applications for assistance that was available under that Act before October 1986. This interpretation avoids what would be an unintended result: Now that the assistance is no longer available, HMOs that had qualified in connection with their requests for assistance would have to disenroll their Federal Employee Health Benefit Program (FEHBP) enrollees in order to retain qualification and to be able to take advantage of the requirement that employers include qualified HMOs in their employee health benefits plans. It was a mistake to include in § 417.169 the limiting language, which did not appear in the predecessor rule issued in 1974. We have deleted the language to achieve consistency between paragraphs (g) and (h) of § 417.142 and with HCFA's long-standing interpretation of the statute.

Given this justification, we find that there is good cause to waive proposed rule-making procedures as unnecessary. As previously indicated, however, we will consider timely comments from anyone who questions the deletion of the reference to "assistance" or believes that, in making the technical and editorial changes, we have altered the substance of the rules. Although we cannot respond to comments individually, if we revise these rules as a result of comments, we will discuss all timely comments in the preamble to the revised rules.

*Paperwork Reduction Act*

These regulations contain no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

*Regulatory Impact Statement*

Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act (RFA) and section 1102(b) of the Social Security Act, we prepare a regulatory flexibility analysis for each rule, unless the Secretary certifies that the particular rule will not have a significant economic impact on a substantial number of small entities, or a significant impact on the operation of a substantial number of small rural hospitals.

We have not prepared a regulatory flexibility analysis because we have determined, and the Secretary certifies, that these rules will not have a significant impact on a substantial number of small entities or on the

operation of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

**List of Subjects in 42 CFR Part 417**

Administrative practice and procedure, Health maintenance organizations (HMOs), Medicare.

42 CFR Part 417 is amended as set forth below.

## PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

A. The authority citation for part 417 is revised to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), Title XIII of the Public Health Service Act (42 U.S.C. 300e through 300e–17), and 31 U.S.C. 9701, unless otherwise noted.

B. Subpart D is amended as set forth below.

### Subpart D—Application for Federal Qualification

1. Section 417.140 is revised to read as follows:

**§ 417.140 Scope.**

This subpart sets forth—

(a) The requirements for—

(1) Entities that seek qualification as HMOs under title XIII of the PHS Act; and

(2) HMOs that seek—

(i) qualification for their regional components; or

(ii) Expansion of their service areas;

(b) The procedures that HCFA follows to make determinations; and

(c) Other related provisions, including application fees.

**§ 417.141 [Removed]**

2. Section 417.141 is removed.

3. Section 417.142 is revised to read as follows:

**§ 417.142 Requirements for qualification.**

(a) *General rules.* (1) An entity seeking qualification as an HMO must meet the requirements and provide the assurances specified in paragraphs (b) through (f) of this section, as appropriate.

(2) HCFA determines whether the entity is an HMO on the basis of the entity's application and any additional information and investigation (including site visits) that HCFA may require.

(3) HCFA may determine that an entity is any of the following:

(i) An operational qualified HMO.

(ii) A preoperational qualified HMO.

(iii) A transitional qualified HMO.

(b) *Operational qualified HMO.* HCFA determines that an entity is an operational qualified HMO if—

(1) HCFA finds that the entity meets the requirements of subparts B and C of this part.

(2) The entity, within 30 days of HCFA's determination, provides written assurances, satisfactory to HCFA, that it—

(i) Provides and will provide basic health services (and any supplemental health services included in any contract) to its enrollees;

(ii) Provides and will provide these services in the manner prescribed in sections 1301(b) and 1301(c) of the PHS Act and subpart B of this part;

(iii) Is organized and operated and will continue to be organized and operated in the manner prescribed in section 1301(c) of the PHS Act and subpart C of this part;

(iv) Under arrangements that safeguard the confidentiality of patient information and records, will provide access to HCFA and the Comptroller General or any of their duly authorized representatives for the purpose of audit, examination or evaluation to any books, documents, papers, and records of the entity relating to its operation as an HMO, and to any facilities that it operates; and

(v) Will continue to comply with any other assurances that it has given to HCFA.

(c) *Preoperational qualified HMO.* (1) HCFA may determine that an entity is a preoperational qualified HMO if it provides, within 30 days of HCFA's determination, satisfactory assurances that it will become operational within 60 days following that determination and will, when it becomes operational, meet the requirements of subparts B and C of this part.

(2) Within 30 days after receiving notice that the entity has begun operation, HCFA determines whether it is an operational qualified HMO. In the absence of this determination, the entity is not an operational qualified HMO even though it becomes operational.

(d) *Transitional qualified HMO: General rules*—(1) *Basic requirements.* HCFA may determine that an entity is a transitional qualified HMO if the entity—

(i) Meets the requirements of paragraph (d)(2) through (d)(4) of this section; and

(ii) Provides the assurances specified in paragraphs (d)(5) through (d)(7) of this section within 30 days of HCFA's determination.

(2) *Organization and operation.* The entity is organized and operated in accordance with subpart C of this part, except that it need not—

(i) Assume full financial risk for the provision of basic health services as required by § 417.120(b); or

(ii) Comply with the limitations that are imposed on insurance by § 417.120(b)(1).

(3) *Range of services.* The entity is currently providing the following services on a prepaid basis:

(i) Physician services.

(ii) Outpatient services and inpatient hospital services. (The entity need not provide or pay for hospital inpatient or outpatient services that it can show are being provided directly, through insurance, or under arrangements, by other entities.)

(iii) Medically necessary emergency services.

(iv) Diagnostic laboratory services and diagnostic and therapeutic radiologic services.

These services must meet the requirement of § 417.101, but may be limited in time and cost without regard to the constraints imposed by § 417.101(a).

(4) *Payment for services*—(i) *General rule.* The entity pays for basic health services in accordance with § 417.104, except that it need not comply with the copayments limitations imposed by § 417.104(a)(4).

(ii) *Determination of payment rates.* In determining payment rates, the entity need not comply with the community rating requirements of §§ 417.104(b) and 417.105(b).

(5) *Contracts in effect on the date of HCFA's determination.* The entity gives assurances that it will meet the following conditions with respect to its group and individual contracts that are in effect on the date of HCFA's determination, and which are renewed or renegotiated during the period approved by HCFA under paragraph (d)(6) of this section:

(i) Continue to provide services in accordance with paragraph (d)(3) of this section.

(ii) Continue to be organized and operated and to pay for basic health services in accordance with paragraphs (d)(2) and (d)(4) of this section, respectively.

(6) *Time-phased plan.* The entity gives assurances as follows:

(i) It will implement a time-phased plan acceptable to HCFA that—

(A) May not extend for more than 3 years from the date of HCFA's determination; and

(B) Specifies definite steps for meeting, at the time of renewal of each

group or individual contract, all the requirements of subparts B and C of this part.

(ii) Upon completion of this time-phased plan, it will—

(A) Provide basic and supplemental services to all of its enrollees; and

(B) Be organized and operated, and provide services, in accordance with subparts B and C of this part.

(7) *Contracts entered into after the date of HCFA's determination.* The entity gives assurances that, with respect to any group or individual contract entered into after the date of HCFA's determination, it will—

(i) Be organized and operated in accordance with subpart C of this part; and

(ii) Provide basic health services and any supplemental health services included in the contract, in accordance with subpart B of this part.

(e) *Failure to sign assurances timely.* If HCFA determines that an entity meets the requirements for qualification and the entity fails to sign its assurances within 30 days following the date of the determination, HCFA gives the entity written notice that its application is considered withdrawn and that it is not a qualified HMO.

(f) *Qualification of regional components.* An HMO that has more than one regional component is considered qualified for those regional components for which assurances have been signed in accordance with this section.

(g) *Special rules: Enrollees entitled to Medicare or Medicaid.* For an HMO that accepts enrollees entitled to Medicare or Medicaid, the following rules apply:

(1) The requirements of titles XVIII and XIX of the Act, as appropriate, take precedence over conflicting requirements of sections 1301(b) and 1301(c) of the PHS Act.

(2) The HMO must, with respect to its enrollees entitled to Medicare or Medicaid, comply with the applicable requirement of title XVIII or XIX, including those that pertain to—

(i) Deductibles and coinsurance;

(ii) Enrollment mix and enrollment practices;

(iii) State plan rules on copayment options; and

(iv) Grievance procedures.

(3) An HMO that complies with paragraph (g)(2) of this section may obtain and retain Federal qualification if, for its other enrollees, the HMO meets the requirements of sections 1301(b) and 1301(c) of the PHS Act and implementing regulations in this subpart D and in subparts B and C of this part.

(h) *Special rules: Enrollees under the Federal employee health benefits program (FEHBP).* An HMO that accepts enrollees under the FEHBP (Chapter 89 of title 5 of the U.S.C.) may obtain and retain Federal qualification if, for its other enrollees, it complies with the requirements of section 1301(b) and 1301(c) of the PHS Act and implementing regulations in this subpart D and subparts B and C of this part.

4. Section 417.144 is revised to read as follows:

**§ 417.144 Evaluation and determination procedures.**

(a) *Basis for evaluation and determination.* (1) HCFA evaluates an application for Federal qualification on the basis of information contained in the application itself and any additional information that HCFA obtains through on-site visits, public hearings, and any other appropriate procedures.

(2) If the application is incomplete, HCFA notifies the entity and allows 60 days from the date of the notice for the entity to furnish the missing information.

(3) After evaluating all relevant information, HCFA determines whether the entity meets the applicable requirements of §§ 417.142 and 417.143.

(b) *Notice of determination.* HCFA notifies each entity that applies for qualification under this subpart of its determination and the basis for the determination. The determination may be granting of qualification, intent to deny, or denial.

(c) *Intent to deny.* (1) If HCFA finds that the entity does not appear to meet the requirements for qualification and appears to be able to meet those requirements within 60 days, HCFA gives the entity notice of intent to deny qualification and a summary of the basis for this preliminary finding.

(2) Within 60 days from the date of the notice, the entity may respond in writing to the issues or other matters that were the basis for HCFA's preliminary finding, and may revise its application to remedy any defects identified by HCFA.

(d) *Denial and reconsideration of denial.* (1) If HCFA denies an application for qualification under this subpart, HCFA gives the entity written notice of the denial and an opportunity to request reconsideration of that determination.

(2) A request for reconsideration must—

(i) Be submitted in writing, within 60 days following the date of the notice of denial;

(ii) Be addressed to the HCFA officer or employee who denied the application; and

(iii) Set forth the grounds upon which the entity requests reconsideration, specifying the material issues of fact and of law upon which the entity relies.

(3) HCFA bases its reconsideration upon the record compiled during the qualification review proceedings, materials submitted in support of the request for reconsideration, and other relevant materials available to HCFA.

(4) HCFA gives the entity written notice of the reconsidered determination and the basis for the determination.

(e) *Information on qualified HMOs—*(1) **Federal Register** *notices.* In quarterly **Federal Register** notices, HCFA gives the names, addresses, and service areas of newly qualified HMOs and describes the expanded service areas of other qualified HMOs.

(2) *Listings.* A cumulative list of qualified HMOs is available from the following office, which is open from 8:30 a.m. to 5 p.m., Monday through Friday: Office of Managed Care, Room 4360, Cohen Building, 400 Independence Avenue SW., Washington, DC 20201.

C. Subpart E is amended as set forth below.

## Subpart E—Inclusion of Qualified Health Maintenance Organizations in Employee Health Benefits Plans

1. Section 417.150 is amended to revise the introductory text, add definitions of "agreement," "contract," and "qualified HMO," remove the definition of "health benefits," and revise the definitions of "bargaining representative," "collective bargaining agreement," "eligible employee," "employer," "health benefits plan," "public entity," and "to offer a health benefits plan" to read as follows:

**§ 417.150 Definitions.**

As used in this subpart, unless the context indicates otherwise—

*Agreement* means a collective bargaining agreement.

*Bargaining representative* means an individual or entity designated or selected, under any applicable Federal, State, or local law, or public entity collective bargaining agreement, to represent employees in collective bargaining, or any other employee representative designated or selected under any law.

* * * * *

*Collective bargaining agreement* means an agreement entered into between an employing entity and the bargaining representative of its employees.

*Contract* means an employer-employee or public entity-employee contract, or a contract for health benefits.

*Eligible* employee means an employee who meets the employer's requirements for participation in the health benefits plan.

* * * * *

*Employer* has the meaning given that term in section 3(d) of the Fair Labor Standards Act of 1938, except that it—

(1) Includes non-appropriated fund instrumentalities of the United States Government; and

(2) Excludes the following:

(i) The governments of the United States, the District of Columbia and the territories and possessions of the United States, the 50 States and their political subdivisions, and any agencies or instrumentalities of any of the foregoing, including the United States Postal Service and Postal Rate Commission.

(ii) Any church, or convention or association of churches, and any organization operated, supervised, or controlled by a church, or convention or association of churches that meets the following conditions:

(A) Is an organization that is described in section 501(c)(3) of the Internal Revenue Code of 1954.

(B) Does not discriminate, in the employment, compensation, promotion or termination of employment of any personnel, or in the granting of staff and other privileges to physicians or other health personnel, on the grounds that the individuals obtain health care through HMOs, or participate in furnishing health care through HMOs.

*Health benefits plan* means any arrangement, to provide or pay for health services, that is offered to eligible employees, or to eligible employees and their eligible dependents, by or on behalf of an employing entity.

*Public entity* means the 50 states, Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands and American Samoa and their political subdivisions, the District of Columbia, and any agency or instrumentality of the foregoing, and *political subdivisions* include counties, parishes, townships, cities, municipalities, towns, villages, and incorporated villages.

*Qualified HMO* means an HMO that has in effect a determination, made under subpart D of this part, that the HMO is an operational, preoperational, or transitional qualified HMO.

*To offer a health benefits plan* means to make participation in a health benefits plan available to eligible employees, or to eligible employees and their eligible dependents regardless of whether the employing entity makes a financial contribution to the plan on behalf of these employees, directly or indirectly, for example, through payments on any basis into a health and welfare trust fund.

2. Sections 417.151 through 417.156 are revised to read as follows:

**§ 417.151 Applicability.**

(a) *Basic rule.* This subpart applies to any employer or public entity that offers a health benefits plan to its employees and meets the conditions specified in paragraphs (b) through (e) of this section.

(b) *Number of employees.* During any calendar quarter of the preceding calendar year, the employer or public entity employed an average of not less than 25 employees.

(c) *Minimum wage.* During any calendar quarter of the preceding calendar year, the employer was required to pay the minimum wage specified in section 6 of the Fair Labor Standards Act of 1938, or would have been required to pay that wage but for section 13(a) of that Act.

(d) *Federal assistance under section 317 of the PHS Act.* The public entity has a pending application for, or is receiving, assistance under section 317 of the PHS Act.

(e) *Request for inclusion of qualified HMO.* The employer or public entity has received, from at least one qualified HMO, a request to be included in the health benefits plan offered to employees, and the following conditions are met:

(1) The request is in writing and meets the requirements of § 417.152.

(2) At least 25 of the employees of the employer or public entity reside within the HMO's service area.

**§ 417.152 Request for inclusion of the HMO in a health benefits plan; employing entity's response.**

(a) *Time limitations.* (1) Unless otherwise agreed to by the HMO and the employing entity or its designee, an HMO's request for inclusion in a health benefits plan must be received by the employing entity or designee—

(i) Not more than 365 nor less than 180 days before the expiration or renewal date of—

(A) A health benefits contract or employing entity-employee contract; or

(B) A collective bargaining agreement; or

(ii) In the case of a public entity, any longer period prescribed by State law.

(2) For purposes of this paragraph, the dates are considered to be as follows:

(i) For a collective bargaining agreement that is automatically renewable or without fixed term, the expiration or renewal date is the earliest anniversary date of the agreement.

(ii) For a collective bargaining agreement that is for a fixed term of more than 1 year and provides that its health benefits terms may be renegotiated during the term of the agreement, the expiration date is the date provided by the agreement for discussion of health benefits changes.

(b) *To whom the request must be addressed.* The HMO must direct its written request for inclusion to—

(1) The employer's managing official at the employer site being solicited or the employer's designee; or

(2) The public entity's chief executive officer or designee.

(c) *Required information.* The request must include the following:

(1) Evidence showing that the HMO has been determined to be a qualified HMO in accordance with section 1310(d) of the PHS Act and subpart D of this part.

(2) A description of the HMO's service area or proposed service area and the dates when the HMO will furnish basic and supplemental health services in the area.

(3) Indication of whether the HMO furnishes the basic health services that are the services of health professionals—

(i) Through health professionals who are—

(A) Members of the HMO's staff;

(B) Members of one or more medical groups;

(C) Members of one or more individual practice associations (IPAs); or

(D) Under direct contract with the HMO; or

(ii) Through any combination of the foregoing.

(4) If the HMO provides health services through IPAs, a listing of member physicians by name, specialty, and whether they are accepting new patients from the HMO enrollment. This listing must be current within 90 days of the date of the request for inclusion.

(5) If the HMO provides health services other than through IPAs, for each ambulatory care facility the facility's address, days and hours of operation, a statement whether it is accepting new patients from the HMO enrollment, and the names and specialties of the facility's providers of basic and supplemental health services. This information must be current within 90 days of the date of the request for inclusion.

(6) A list of the hospitals where HMO enrollees will be provided basic and supplemental health services.

(7) Identification of the type of HMO entity specifying, for example, whether for profit or nonprofit, public or private, sole proprietorship, partnership or stock corporation; the members of the HMO's policymaking body; and the principal managing officer of the HMO.

(8) A statement of the HMO's capacity to accept new enrollees and the likelihood of any future limitations on enrollment.

(9) The HMO's most recently audited annual financial statement.

(10) Proposed implementing agreements between the HMO and the employer, public entity, or designee for the HMO offering.

(11) Sample copies of solicitation brochures and enrollment literature that will be used in the offer of the HMO option to employees.

(12) The HMO's current rates, including copayments, for basic and uniformly included supplemental health services and the dates these rates became effective; or the HMO's estimated rates for these services.

(d) *Employing entity's response*—(1) *Timing.* An employing entity or its designee must respond in writing to an HMO's request for inclusion no later than 60 days after receipt of the request.

(2) *Basic statement.* The response must state whether the employing entity has 25 or more employees who reside within the HMO's service area.

(3) *Additional information: Public entities only.* A public entity's response must specify the health benefits, including limitations and exclusions, that are required under State law or regulations for employees of the public entity.

(4) *Additional information: All employing entities.* If the employing entity has 25 or more employees who reside within the HMO's service area, the response must include the following:

(i) Expiration or renewal dates of contracts that cover those employees.

(ii) The amount of the employing entity's current contribution and, if applicable, the employee's contribution, for health benefits, and the dates when those contribution levels became effective.

(iii) The expiration dates of any collective bargaining agreements covering those employees.

(e) *Effect of inadequate request.* If the request for inclusion does not meet the requirements of paragraphs (a) through (c) of this section, the following rules apply:

(1) The employing entity is not required to include the HMO option in its employees' health benefits plan under § 417.154 until the HMO makes its request in accordance with those paragraphs.

(2) The employing entity or its designee must, within 60 days after receipt of the request, notify the HMO in writing of the basis for its conclusion that the request does not meet the requirements of paragraphs (a) through (c) of this section.

(f) *New request for inclusion.* (1) If an employing entity includes the HMO option in a health benefits plan in accordance with a request meeting the requirements of paragraphs (a) through (c) of this section, the employing entity must offer the HMO option to all the eligible employees who reside in the HMO's service area during the entire health benefits year.

(2) However, if no employees enroll during the health benefits year, the HMO seeking inclusion in the health benefits plan for subsequent enrollment periods must submit a new request in accordance with paragraphs (a) through (c) of this section.

**§ 417.153 Offer of HMO option to employees.[1]**

(a) *Basic rule.* An employing entity subject to this subpart must, at the time it offers a health benefits plan to its eligible employees, include in the plan the option of enrollment in qualified HMOs in accordance with this section.

(b) *Employees to whom the HMO option must be offered.* Each employing entity must offer the option of enrollment in a qualified HMO to each eligible employee and his or her eligible dependents who reside in the HMO's service area.

(c) *Manner of offering the HMO option.* (1) For employees who are represented by a bargaining representative, the option of enrollment in a qualified HMO——

(i) Must first be presented to the bargaining representative; and

(ii) If the representative accepts the option, must then be offered to each represented employee.

(2) For employees not represented by a bargaining representative, the option must be offered directly to those employees.

**§ 417.154 HMOs that must be included in a health benefits plan.**

(a) *HMOs of different models*—(1) *Categories of HMO models.* The following categories describe the manner in which an HMO furnishes the basic health services that are provided by physicians.

(i) A "staff/group model HMO" provides more than one-half of those services through members of the HMO's staff or of a medical group or groups.

(ii) An "IPA/direct contract model HMO" provides those services through——

(A) An IPA or IPAs; or

(B) A combination of IPAs, medical groups, staff, and individual physicians and other health professionals under contract with the HMO.

(2) *Requirement.* If at least one HMO from each category described in paragraph (a)(1) of this section requests inclusion in a health benefits plan, the employing entity must include at least one HMO from each category.

(3) *Terms.* For purposes of this paragraph (a), "health professionals under contract" does not include health professionals who are members of any of the following:

(i) The HMO's staff.

(ii) Medical groups.

(iii) Entities that would be medical groups if they met the following requirements:

(A) For the group members individually, the coordinated practice of their profession represents more than 50 percent of their professional activity.

(B) For the group as a whole, the delivery of health services to HMO enrollees represents more than 35 percent of their professional activity.

(b) *Additional HMOs that must be included.* An employing entity that is subject to this subpart must offer its eligible employees the option of enrollment in additional qualified HMOs if the HMOs demonstrate that at least 25 of those eligible employees reside in the HMO's service areas and meet either of the following conditions:

(1) They do not reside in the service areas of other HMOs already included in the employing entity's health benefits plan.

(2) They cannot enroll in any other HMO included in the plan because those HMOs have closed their enrollment to additional eligible employees of the employing entity.

(c) *Optional inclusion of alternative HMOs.* An employing entity may include in its health benefits plan, instead of an HMO that made a timely request for inclusion, one or more other HMOs that may not have made a request within the established time limits but are willing to be included, if the following conditions are met:

(1) The alternative HMOs are of the same type (as described in paragraph (a) of this section) as the HMO that submitted the timely request.

(2) All of the eligible employees who reside in the service area of the HMO

[1] The statutory requirement for the employing entity to include the HMO option has a sunset date of October 24, 1995. Accordingly, the statutory requirement expires on that date unless Congress extends it.

that made the timely request reside in the service areas of the alternative HMOs.

**§ 417.155 How the HMO option must be included in the health benefits plan.**

(a) *HMO access to employees*—(1) *Purpose and timing.*

(i) *Purpose.* The employing entity must provide each HMO included in its health benefits plan fair and reasonable access to all employees specified in § 417.153(b), so that the HMO can explain its program in accordance with § 417.124(b).

(ii) *Timing.* The employing entity must provide access beginning at least 30 days before, and continuing during, the group enrollment period.

(2) *Nature of access.* (i) Access must include, at a minimum, opportunity to distribute educational literature, brochures, announcements of meetings, and other relevant printed materials that meet the requirements of § 417.124(b).

(ii) Access may not be more restrictive or less favorable than the access the employing entity provides to other offerors of options included in the health benefits plan, whether or not those offerors elect to avail themselves of that access.

(b) *Review of HMO offering materials.* (1) The HMO must give the employing entity or designee opportunity to review, revise, and approve HMO educational and offering materials before distribution.

(2) Revisions must be limited to correcting factual errors and misleading or ambiguous statements, unless—

(i) The HMO and the employing entity agree otherwise; or

(ii) Other revisions are required by law.

(3) The employing entity or designee must complete revision of the materials promptly so as not to delay or otherwise interfere with their use during the group enrollment period.

(c) *Group enrollment period; prohibition of restrictions; effective date of HMO coverage*—(1) *Prohibition of restrictions.* If an employing entity or designee includes the option of enrollment in a qualified HMO in the health benefits plan offered to its eligible employees, it must provide a group enrollment period before the effective date of HMO coverage. The employing entity may not impose waiting periods as a condition of enrollment in the HMO or of transfer from HMO to non-HMO coverage, or exclusions, or limitations based on health status.

(2) *Effective date of coverage.* Unless otherwise agreed to by the employing entity, or designee, and the HMO, coverage under the HMO contract for employees selecting the HMO option begins on the day the non-HMO contract expires or is renewed without lapse.

(3) *Coordination of benefits.* Nothing in this subpart precludes the uniform application of coordination of benefits agreements between the HMOs and the other carriers that are included in the health benefits plan.

(d) *Continued eligibility for "free-standing" health benefits*—(1) *Basic requirement.* At the request of a qualified HMO, the employing entity or its designee must provide that employees selecting the option of HMO membership will not, because of this selection, lose their eligibility for free-standing dental, optical, or prescription drug benefits for which they were previously eligible or would be eligible if selecting a non-HMO option and that are not included in the services provided by the HMO to its enrollees as part of the HMO prepaid benefit package.

(2) *"Free-standing" defined.* For purposes of this paragraph, the term "free-standing" refers to a benefit which—

(i) Is not integrated or incorporated into a basic health benefits package or major medical plan, and

(ii) Is—

(A) Offered by a carrier other than the one offering the basic health benefits package or major medical plan; or

(B) Subject to a premium separate from the premium for the basic health benefits package or major medical plan.

(3) *Examples of the employing entity's obligation with respect to the continued eligibility.* (i) The health benefits plan includes a free-standing dental benefit. The HMO does not offer any dental coverage as part of its health services provided to members on a prepaid basis. The employing entity must provide that employees who select the HMO option continue to be eligible for dental coverage. (If the dental coverage is not optional for employees selecting the non-HMO option, nothing in this regulation requires that the coverage be made optional for employees selecting the HMO option. Conversely, if this coverage is optional for employees selecting the non-HMO option, nothing in this regulation requires that the coverage be mandatory for employees selecting the non-HMO option.)

(ii) The non-HMO option provides free-standing coverage for optical services (such as refraction and the provision of eyeglasses), and the HMO does not. The employing entity must provide that employees who select the HMO option continue to be eligible for optical coverage.

(iii) The non-HMO option includes dental coverage in its major medical package, with a common deductible applied to dental as well as non-dental benefits. The HMO provides no dental coverage as part of its pre-paid health services. Because the dental coverage is not free-standing, the employing entity is not required to provide that employees who select the HMO option continue to be eligible for dental coverage, but is free to do so.

(e) *Opportunity to select among coverage options: Requirement for affirmative written selection*—(1) *Opportunity other than during a group enrollment period.* The employing entity or designee must provide opportunity (in addition to the group enrollment period) for selection among coverage options, by eligible employees who meet any of the following conditions:

(i) Are new employees.

(ii) Have been transferred or have changed their place of residence, resulting in—

(A) Eligibility for enrollment in a qualified HMO for which they were not previously eligible by place of residence; or

(B) Residence outside the service area of a qualified HMO in which they were previously enrolled.

(iii) Are covered by any coverage option that ceases operation.

(2) *Prohibition of restrictions.* When the employees specified in paragraph (e)(1) of this section are eligible to participate in the health benefits plan, the employing entity or designee must make available, without waiting periods or exclusions based on health status as a condition, the opportunity to enroll in an HMO, or transfer from HMO coverage to non-HMO coverage.

(3) *Affirmative written selection.* The employing entity or designee must require that the eligible employee make an affirmative written selection in any of the following circumstances:

(i) Enrollment in a particular qualified HMO is offered for the first time.

(ii) The eligible employee elects to change from one option to another.

(iii) The eligible employee is one of those specified in paragraph (e)(1) of this section.

(f) *Determination of copayment levels and supplemental health services.* The selection of a copayment level and of supplemental health services to be contracted for must be made as follows:

(1) For employees represented by a collective bargaining representative, the selection of copayment levels and supplemental health services is subject to the collective bargaining process.

(2) For employees not represented by a bargaining representative, the selection of copayment levels and supplemental health services is subject to the same decisionmaking process used by the employing entity with respect to the non-HMO option in its health benefits plan.

(3) In all cases, the HMO has the right to include, with the basic benefits package it provides to its enrollees for a basic health services payment, on a non-negotiable basis, those supplemental health services that meet the following conditions:

(i) Are required to be offered under State law.

(ii) Are included uniformly by the HMO in its prepaid benefit package.

(iii) Are available to employees who select the non-HMO option but not available to those who select the HMO option.

**§ 417.156 When the HMO must be offered to employees.**

(a) *General rules.* (1) The employing entity or designee must offer eligible employees the option of enrollment in a qualified HMO at the earliest date permitted under the terms of existing agreements or contracts.

(2) If the HMO's request for inclusion in a health benefits plan is received at a time when existing contracts or agreements do not provide for inclusion, the employing entity must include the HMO option in the health benefits plan at the time that new agreements or contracts are offered or negotiated.

(b) *Specific requirements.* Unless mutually agreed otherwise, the following rules apply:

(1) *Collective bargaining agreement.* The employing entity or designee must raise the HMO's request during the collective bargaining process—

(i) When a new agreement is negotiated;

(ii) At the time prescribed, in an agreement with a fixed term of more than 1 year, for discussion of change in health benefits; or

(iii) In accordance with a specific process for review of HMO offers.

(2) *Contracts.* For employees not covered by a collective bargaining agreement, the employing entity or designee must include the HMO option in any health benefits plan offered to eligible employees when the existing contract is renewed or when a new health benefits contract or other arrangement is negotiated.

(i) If a contract has no fixed term or has a term in excess of 1 year, the contract must be treated as renewable on its earliest anniversary date.

(ii) If the employing entity or designee is self-insured, the budget year must be treated as the term of the existing contract.

(3) *Multiple arrangements.* In the case of a health benefits plan that includes multiple contracts or other arrangements with varying expiration or renewal dates, the employing entity must include the HMO option, in accordance with paragraphs (b)(1) and (b)(2) of this section,—

(i) At the time each contract or arrangement is renewed or reissued; or

(ii) The benefits provided under the contract or arrangement are offered to employees.

3. Sections 417.158 and 417.159 are revised to read as follows:

**§ 417.158 Payroll deductions.**

Each employing entity that provides payroll deductions as a means of paying employees' contributions for health benefits or provides a health benefits plan that does not require an employee contribution must, with the consent of an employee who selects the HMO option, arrange for the employee's contribution, if any, to be paid through payroll deductions.

**§ 417.159 Relationship of section 1310 of the Public Health Service Act to the National Labor Relations Act and the Railway Labor Act.**

The obligation of an employing entity subject to this subpart to include the HMO option in any health benefits plan offered to its eligible employees must be carried out consistently with the obligations imposed on that employing entity under the National Labor Relations Act, the Railway Labor Act, and other laws of similar effect.

D. Subpart F is amended as set forth below.

## Subpart F—Continued Regulation of Federally Qualified Health Maintenance Organizations

1. The heading of subpart F is revised to read as set forth above.

2. Section 417.160 is revised to read as follows:

**§ 417.160 Applicability.**

This subpart applies to any entity that has been determined to be a qualified HMO under subpart D of this part.

3. Section 417.163 is revised to read as follows:

**§ 417.163 Enforcement procedures.**

(a) *Complaints.* Any person, group, association, corporation, or other entity may file with HCFA a written complaint with respect to an HMO's compliance with assurances it gave under subpart D of this part. A complaint must—

(1) State the grounds and underlying facts of the complaint;

(2) Give the names of all persons involved; and

(3) Assure that all appropriate grievance and appeals procedures established by the HMO and available to the complainant have been exhausted.

(b) *Investigations.* (1) HCFA may initiate investigations when, based on a report, a complaint, or any other information, HCFA has reason to believe that a Federally qualified HMO is not in compliance with any of the assurances it gave under subpart D of this part.

(2) When HCFA initiates an investigation, it gives the HMO written notice that includes a full statement of the pertinent facts and of the matters being investigated and indicates that the HMO may submit, within 30 days of the date of the notice, a written report concerning these matters.

(3) HCFA obtains any information it considers necessary to resolve issues related to the assurances, and may use site visits, public hearings, or any other procedures that HCFA considers appropriate in seeking this information.

(c) *Determination and notice by HCFA*—(1) *Determination.* (i) On the basis of the investigation, HCFA determines whether the HMO has failed to comply with any of the assurances it gave under subpart D of this part.

(ii) HCFA publishes in the **Federal Register** a notice of each determination of non-compliance.

(2) *Notice of determination: Corrective action.* (i) HCFA gives the HMO written notice of the determination.

(ii) The notice specifies the manner in which the HMO has not complied with its assurances and directs the HMO to initiate the corrective action that HCFA considers necessary to bring the HMO into compliance.

(iii) The HMO must initiate this corrective action within 30 days of the date of the notice from HCFA, or within any longer period that HCFA determines to be reasonable and specifies in the notice. The HMO must carry out the corrective action within the time period specified by HCFA in the notice.

(iv) The notice may provide the HMO an opportunity to submit, for HCFA's approval, proposed methods for achieving compliance.

(d) *Remedy: Revocation of qualification.* If HCFA determines that a qualified HMO has failed to initiate or to carry out corrective action in accordance with paragraph (c)(2) of this section—(1) HCFA revokes the HMO's qualification and notifies the HMO of this action.

(2) In the notice, HCFA provides the HMO with an opportunity for reconsideration of the revocation,

including, at the HMO's election, a fair hearing.

(3) The revocation of qualification is effective on the tenth calendar day after the day of the notice unless HCFA receives a request for reconsideration by that date.

(4) If after reconsideration HCFA again determines to revoke the HMO's qualification, this revocation is effective on the tenth calendar day after the date of the notice of reconsidered determination.

(5) HCFA publishes in the Federal Register each determination it makes under this paragraph (d).

(6) A revocation under this paragraph (d) has the effect described in § 417.164.

(e) *Notice by the HMO.* Within 15 days after the date HCFA issues a notice of revocation, the HMO must prepare a notice that explains, in readily understandable language, the reasons for the determination that it is not a qualified HMO, and send the notice to the following:

(1) The HMO's enrollees.

(2) Each employer or public entity that has offered enrollment in the HMO in accordance with subpart E of this part.

(3) Each lawfully recognized collective bargaining representative or other representative of the employees of the employer or public entity.

(f) *Reimbursement of enrollees for services improperly denied, or for charges improperly imposed.* (1) If HCFA determines, under paragraph (c)(1) of this section, that an HMO is out of compliance, HCFA may require the HMO to reimburse its enrollees for the following—

(i) Expenses for basic or supplemental health services that the enrollee obtained from other sources because the HMO failed to provide or arrange for them in accordance with its assurances.

(ii) Any amounts the HMO charged the enrollee that are inconsistent with its assurances. (Rules applicable to charges for all enrollees are set forth in §§ 417.104 and 417.105. The additional rules applicable to Medicare enrollees are in § 415.454.)

(2) This paragraph applies regardless of when the HMO failed to comply with the appropriate assurances.

(g) *Remedy: Civil suit*—(1) *Applicability.* This paragraph applies to any HMO or other entity to which a grant, loan, or loan guarantee was awarded, as set forth in subpart V of this part, on the basis of its assurances regarding the furnishing of basic and supplemental services or its operation and organization, as the case may be.

(2) *Basis for action.* If HCFA determines that the HMO or other entity has failed to initiate or refuses to carry out corrective action in accordance with paragraph (c)(2) of this section, HCFA may bring civil action in the U.S. district court for the district in which the HMO or other entity is located, to enforce compliance with the assurances it gave in applying for the grant, loan, or loan guarantee.

4. Section 417.164 is revised to read as follows:

**§ 417.164 Effect of revocation of qualifiers on inclusion in employee's health benefit plans.**

When an HMO's qualification is revoked under § 417.163(d), the following rules apply:

(a) The HMO may not seek inclusion in employees health benefits plans under subpart E of this part.

(b) Inclusion of the HMO in an employer's health benefits plan—

(1) Is disregarded in determining whether the employer is subject to the requirements of subpart E of this part; and

(2) Does not constitute compliance with subpart E of this part by the employer.

5. Section 417.166 is revised to read as follows:

**§ 417.166 Waiver of assurances.**

(a) *General rule.* HCFA may release an HMO from compliance with any assurances the HMO gives under subpart D of this part if—

(1) The qualification requirements are change by Federal law; or

(2) The HMO shows good cause, consistent with the purposes of title XIII of the PHS Act.

(b) *Basis for finding of good cause.* (1) Grounds upon which HCFA may find good cause include but are not limited to the following:

(i) The HMO has filed for reorganization under Federal bankruptcy provisions and the reorganization can only be approved with the waiver of the assurances.

(ii) State laws governing the entity have been changed after it signed the assurances so as to prohibit the HMO from being organized and operated in a manner consistent with the signed assurances.

(2) Changes in State laws do not constitute good cause to the extent that the changes are preempted by Federal law under section 1311 of the PHS Act.

(c) *Consequences of waiver.* If HCFA waives any assurances regarding compliance with section 1301 of the PHS Act, HCFA concurrently revokes the HMO's qualification unless the waiver is based on paragraph (a)(1) of this section.

**§§ 417.168 and 417.169 [Removed]**

6. Sections 417.168 and 417.169 are removed.

E. Subpart V is amended as set forth below:

## Subpart V—Administration of Outstanding Loans and Loan Guarantees

1. Section 417.910 is revised to read as follows:

**§ 417.910 Applicability.**

The regulations in this subpart apply, as appropriate, to public and private entities that have loans or loan guarantees that—

(a) Were awarded to them before October 1986 under section 1304 or section 1305 of the PHS Act; and

(b) Are still outstanding.

2. Section 417.911 is amended to remove the definitions of any *12-month period, health system agency* (including *State health planning and development agency*), and *nonprofit.*

**§§ 417.912 through 417.919, 417.921 through 417.926, 417.932, 417.933, 417.935, and 417.936 [Removed]**

3. Sections 417.912 through 417.919, 417.921 through 417.926, 417.932, 417.933, 417.935, and 417.936 are removed.

4. Sections 417.934 and 417.937 are revised to read as follows:

**§ 417.934 Reserve requirement.**

(a) *Timing.* Unless the Secretary approved a longer period, an entity that received a loan or loan guarantee under section 1305 of the PHS Act was required to establish a restricted reserve account on the earlier of the following:

(1) When the HMO's revenues and costs of operation reached the break-even point.

(2) At the end of the 60-month period following the Secretary's endorsement of the loan or loan guarantee.

(b) *Purpose and amount of reserve.* The reserve had to be constituted so as to accumulate, no later than 12 years after endorsement of the loan or loan guarantee, an amount equal to 1 year's principal and interest.

**§ 417.937 Loan and loan guarantee provisions.**

(a) *Disbursement of loan proceeds.* The principal amount of any loan made or guaranteed by the Secretary under this subpart was disbursed to the entity in accordance with an agreement entered into between the parties to the loan and approved by the Secretary.

(b) *Length and maturity of loans.* The principal amount of each loan or loan guarantee, together with interest

thereon, is repayable over a period of 22 years, beginning on the date of endorsement of the loan, or loan guarantee by the Secretary. The Secretary could approve a shorter repayment period if he or she determined that a repayment period of less than 22 years is more appropriate to an entity's total financial plan.

(c) *Repayment.* The principal amount of each loan or loan guarantee, together with interest thereon is repayable in accordance with a repayment schedule that is agreed upon by the parties to the loan or loan guarantee and approved by the Secretary before or at the time of endorsement of the loan. Unless otherwise specifically authorized by the Secretary, each loan made or guaranteed by the Secretary is repayable in substantially level combined installments of principal and interest to be paid at intervals not less frequently than annually, sufficient in amount to amortize the loan through the final year of the life of the loan. Principal repayment during the first 60 months of operation could be deferred with payment of interest only during that period. The Secretary could set rates of interest for each disbursement at a rate comparable to the rate of interest prevailing on the date of disbursement for marketable obligations of the United States of comparable maturities, adjusted to provide for appropriate administrative charges.

5. A new § 417.940 is added, to read as follows:

**§ 417.940 Civil action to enforce compliance with assurances.**

The provisions of § 417.163(g) apply to entities that have outstanding loans or loan guarantees administered under this subpart.

F. Technical amendments.

1. In § 417.124, a new paragraph (e)(4) is added, to read as follows:

**§ 417.124 Administration and management.**

* * * * *

(e) *Conversion of enrollment.* * * *

(4) The HMO must offer the enrollment on the same terms and conditions that it makes available to other nongroup enrollees.

**§ 417.150 [Amended]**

2. In § 417.150, in the definitions of "carrier" and "designee", "membership" is revised to read "enrollment".

**§ 417.400 [Amended]**

3. In § 417.400, in paragraph (a), "as amended by section 114 of public law 97–248. Section 1876 of the Act," is removed and "which" is added in its place.

**§ 417.436 [Amended]**

4. In § 417.436, in paragraph (a)(11), "Advanced directives" is revised to read "Advance directives".

**§ 417.460 [Amended]**

5. In § 417.460, the heading of paragraph (a) is revised to read *"Disenrollment of Medicare beneficiaries."*

**§ 417.801 [Amended]**

6. In § 417.801, in paragraph (b)(2), ", a beneficiary," is removed, and "individual" is revised to read "enrollee" each time it appears.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773, Medicare Hospital Insurance Program; No. 93.774, Medicare Supplementary Medical Insurance Program)

Dated: June 23, 1994.

**Bruce C. Vladeck,**

*Administrator, Health Care Financing Administration.*

Dated: September 7, 1994.

**Donna E. Shalala,**

*Secretary.*

[FR Doc. 94–23281 Filed 9–29–94; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### 43 CFR Public Land Order 7088

**[CO–930–4210–06; COC–43908]**

### Withdrawal of National Forest System Land for Breckenridge Ski Area; Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order withdraws 280 acres of National Forest System land from mining for protection of recreational resources and facilities at the Breckenridge Ski Area. This withdrawal is an addition to the existing Breckenridge Ski Area. The land has been and remains open to such forms of disposition as may by law be made of National Forest System land and to mineral leasing.

**EFFECTIVE DATE:** September 30, 1994.

**FOR FURTHER INFORMATION CONTACT:** Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), for protection of facilities at the Breckenridge Ski Area:

**Sixth Principal Meridian**

Arapaho National Forest

T. 6 S., R. 78 W.,
Sec. 34, Nominal W½W½ (Protraction Diagram No. 9. accepted April 26, 1965).
T. 7 S., R. 78 W.,
Sec. 3, Nominal N½NW¼ and N½S½NW¼ (Protraction Diagram No. 45, accepted August 20, 1986).

The area described contains approximately 280 acres in Summit County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire June 14, 2038, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land and Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: September 26, 1994.

**Bob Armstrong,**

*Assistant Secretary of the Interior.*

[FR Doc. 94–24266 Filed 9–29–94; 8:45 am]

BILLING CODE 4310–JB–P

### 43 CFR Public Land Order 7089

**[CO–930–4210–06; COC–54072]**

### Withdrawal of National Forest System Land for the Purgatory Ski Area; Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order withdraws 2,360.78 acres of National Forest System land from mining for 50 years to protect recreational resources and facilities at the Purgatory Ski Area. The land has been and remains open to such forms of disposition as may by law be made of National Forest System land and to mineral leasing.

**EFFECTIVE DATE:** September 30, 1994.

**FOR FURTHER INFORMATION CONTACT:** Doris E. Chelius, BLM Colorado State

Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)) for protection of the Purgatory Ski Area:

**New Mexico Principal Meridian**

San Juan National Forest

T. 39 N., R. 9 W.,
Sec. 22, lots 1 to 4, inclusive, S½NW¼ and S½;
Sec. 23, lots 1 through 16, inclusive;
Sec. 24, W½E½NE¼NW¼, W½E½NW¼, and W½NW¼;
Sec. 25, lot 10.

A parcel described by metes and bounds within sec. 24, beginning at corner No. 1, being the southwest corner of sec. 24, T. 39 N., R. 9 W., described as follows:

From Corner No. 1, by metes and bounds,
S. 89°25′ E., 661.98 ft.;
N. 1°03′05″ W., 65.84 ft.;
N. 89°24′28″ W., 661.86 ft.;
S. 1°00′37″ E., 65.84 ft. to corner No. 1, the place of beginning.

A parcel described by metes and bounds within secs. 21, 26, 27, and 28; Beginning at corner No. 1, being the ¼-corner of secs. 21 and 22, T. 39 N., R. 9 W., described as follows:

From Corner No. 1, by metes and bounds,
S. 88°50′23′ W., 2481.30 ft, on the E–W centerline of sec. 21;
S. 0°07′ W., 1,282.19 ft.;
S. 32°10′ E., 3,132.00 ft.;
S. 68°17′ E., 2,585.32 ft.;
N. 80°12′ E., 2,343.21 ft.;
S. 82°04′ E., 1,723.00 ft.,
S. 60°04′ E., 1,939.00 ft.;
S. 82°45′ E., 2,070.00 ft.,
N. 41°04′ E., 3,350.00 ft.,
N. 0°53′ W., 1,903.12 ft. to the northeast corner of sec. 26;
S. 84°27′ W., 5,782.26 ft. to the northwest corner of sec. 26;
S. 85°33′ W., 5,767.74 ft. to the northwest corner of sec. 27;
N. 0°05′ W., 2,583.90 ft. to corner No. 1, the point of beginning.

The area described contains approximately 2,360.78 acres in La Plata County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: September 26, 1994.

**Bob Armstrong,**

*Assistant Secretary of the Interior.*

[FR Doc. 94–24267 Filed 9–29–94; 8:45 am]

BILLING CODE 4310–JB–P

## 43 CFR Public Land Order 7090

**[CO–932–4210–06; COC–39308]**

## Withdrawal of National Forest System Land for Keystone Ski Area; Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order withdraws approximately 1,778 acres of National Forest System lands from mining for protection of recreational resources and facilities at the Keystone Ski Area. This withdrawal is an addition to the existing Keystone Ski Area. The lands have been and remain open to such forms of disposition as may by law be made of National Forest System lands and to mineral leasing.

**EFFECTIVE DATE:** September 30, 1994.

**FOR FURTHER INFORMATION CONTACT:** Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), for protection of facilities at the Keystone Ski Area:

**Sixth Principal Meridian**

Arapaho National Forest

T. 5 S., R. 76 W.,
Sec. 19, lots 19, 22, 25, 26, and 58;
Sec. 20, lots 30, 31, and 46;
Sec. 29, W½E½SW¼, W½NW¼, and W½E½NW¼ exclusive of patented land;
Sec. 32, W½NE¼NW¼, SW¼NW¼, and W½SW¼.
T. 5 S., R. 77 W.,
Sec. 24, lot 13 and E½SW¼;
Sec. 25, SE¼NW¼, E½NE¼SW¼, and SW¼SE¼;
Sec. 36, NE¼NE¼, NE¼SE¼ and E½NW¼SE¼.
T. 6 S., R. 76 W.,
Sec. 5, S½ exclusive of patented land;
Sec. 6, lots 2, 7, and 10;
Sec. 7, SE¼SW¼ and SW¼SE¼;
Sec. 8, N½ and N½N½SW¼ exclusive of patented land.
T. 6 S., R. 77 W.,
Sec. 2, SE¼NE¼;
Sec. 12, SW¼NW¼, NE¼SW¼, and S½SE¼.

The areas described aggregate approximately 1,778.03 acres in Summit County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire October 15, 2036, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land and Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: September 26, 1994.

**Bob Armstrong,**

*Assistant Secretary of the Interior.*

[FR Doc. 94–24268 Filed 9–29–94; 8:45 am]

BILLING CODE 4310–JB–P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 46 CFR Part 67

**[CGD 94–008]**

**RIN 2115–AE83**

## Documentation of Vessels

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is amending its vessel documentation regulations. The amendments clarify the vessel documentation regulations by restating the citizenship requirements for trusts to reflect the Coast Guard's policy; by correcting an existing cross-reference error regarding mortgagee consent for exchange of Certificates of Documentation; by implementing statutory requirements concerning the endorsements on Certificates of Documentation for dredges and towing vessels; and by making other minor technical amendments.

**EFFECTIVE DATE:** October 31, 1994.

**ADDRESSES:** Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary,

Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Don M. Wrye, Vessel Documentation and Tonnage Survey Branch, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security and Environmental Protection; (202) 267–1492.

**SUPPLEMENTARY INFORMATION:**

**Drafting Information**

The principal persons involved in drafting this document are Lieutenant Commander Don M. Wrye, Project Manager, and C.G. Green, Project Counsel, Office of Chief Counsel.

**Regulatory History**

On June 20, 1994, the Coast Guard published a notice of proposed rulemaking entitled "Documentation of Vessels" in the **Federal Register** (59 FR 31580). The Coast Guard received one letter commenting on the proposal. No public hearing was requested, and none was held.

**Background and Purpose**

On November 15, 1993, the Coast Guard published a final rule in the **Federal Register** (58 FR 60256) which revised 46 CFR Part 67 to implement a number of statutory initiatives to simplify and streamline the documentation process, to implement user fees for vessel documentation services, and to clarify the regulations and present them in a more orderly fashion. The final rule was the subject of two correction documents which appeared in the **Federal Register** on December 13, 1993, at 58 FR 65130 and 58 FR 65243. That final rule became effective on January 1, 1994. The present rulemaking, among other things, corrects certain errors and omissions in the 1993 final rule. It also clarifies the citizenship requirements for a trust arrangement as a vessel-owning entity, and states the endorsements required for dredges and towing vessels.

On June 7, 1988, Congress amended 46 U.S.C. app. § 316 (Pub. L. 100–329) to require towing vessels to be documented with a coastwise or Great Lakes endorsement, as appropriate. On November 4, 1992, Congress amended 46 U.S.C. app. § 292 (Pub. L. 102–587) to require vessels of at least five net tons engaged in dredging in the navigable waters of the United States to be documented with a coastwise endorsement. Neither of these statutory requirements were included in the revision of Part 67. In order to state those requirements and to clarify the endorsement requirements for vessels employed in towing or dredging, the regulations need to be amended. This rule accomplishes that amendment.

**Discussion of Comments and Changes**

The Coast Guard received only one comment letter in response to the notice of proposed rulemaking. That comment addresses only the proposed amendment to redesignated § 67.36 regarding trusts.

Proposed § 67.36 set forth the citizenship requirements for trust arrangements as vessel-owning entities. In addition, the citizenship requirements for trust arrangements were described in detail, like those for corporations and partnerships, to specify the requirements for each endorsement. Paragraph (a) of proposed § 67.36 set forth the general requirements for a registry or recreational endorsement that each trustee and each beneficiary with an enforceable interest in the trust be citizens. This paragraph simply restated the current regulatory requirements for trusts found in § 67.37. Paragraphs (b) and (c) of proposed § 67.36 set forth the citizenship requirements for a fishery endorsement and a coastwise or Great Lakes endorsement, respectively. These requirements reflect the statutory citizenship requirements for these endorsements applicable to any business entity owning a documented vessel. The owner citizenship requirements for a coastwise or Great Lakes endorsement may be found in § 2 of the Shipping Act, 1916 (46 U.S.C. app. § 802) and 46 U.S.C. § 12107, respectively, and the owner citizenship requirements for a fishery endorsement may be found in 46 U.S.C. § 12108. None of the current citizenship requirements for trusts would have been changed by the proposal.

The comment raised three points concerning proposed § 67.36. First, the comment stated that the term "trust arrangement" is not a well defined or easily understood concept in law, and questioned how it should be distinguished from the term "trust", which is a well defined and understood concept. The Coast Guard recognizes that there are numerous kinds of trusts. Indeed, reference to "Black's Law Dictionary" (Fifth Edition) reveals some 75 kinds of defined trusts. One of the general definitions of a trust is, "Any arrangement whereby property is transferred with intention that it be administered by trustee for another's benefit." The Coast Guard's intention in using the term "trust arrangement" is to permit the use of as wide a range of trust types as vessel-owning entities as permissible. The Coast Guard disagrees that the term is confusing or that it need be distinguished from "trust". Therefore, the term will not be changed in the final rule.

The second point raised by the comment concerns the requirement that each beneficiary with an enforceable interest in the trust be a citizen. The comment notes that in some trusts the beneficiaries are often unborn persons. The comment noted that while such an unborn beneficiary has an enforceable interest in the trust, that same beneficiary, by virtue of being unborn, has no citizenship. The comment reasons that the effect of the requirement will be to preclude trusts with unborn beneficiaries from qualifying as a vessel-owning entity for documentation purposes.

An unborn beneficiary as described in the comment could have a vested interest in the trust. However, that interest would also be a contingent interest—with live birth being the minimum condition—which means that the interest is not a present interest. The Coast Guard's position is that the determinants of U.S. citizenship, even under circumstances of dual citizenship of infants, are sufficiently well settled that the citizenship of beneficiaries who hold present enforceable interests can be established. The Coast Guard never intended for the requirement of an enforceable interest to apply to mere contingent interests. Rather, the intent of the requirement is to permit the designation of discretionary or charitable beneficiaries who do not have to meet the citizenship requirement. Since the issue of the citizenship of beneficiaries holding the kinds of contingent future interests mentioned by the comment is not ripe for determination until the interest becomes a present interest, the Coast Guard sees no need to change the requirement.

The third point raised by the comment concerns the additional requirement in paragraph (c) of § 67.36 to obtain a coastwise or Great Lakes endorsement, that at least 75 percent of the equity interest in the trust be owned by citizens. The comment concluded that since paragraph (a), in effect, requires all beneficiaries to be citizens, the additional equity interest requirement is rendered absurd. The Coast Guard disagrees with the conclusion of the comment that paragraph (a) requires that all beneficiaries be citizens. Since those

beneficiaries who do not have an enforceable interest do not have to meet the citizenship requirement, the additional requirement is needed to limit foreign equitable ownership to not more than 25 percent. The percentage parameters is consistent with all other citizen/foreign ownership interest parameters for a vessel qualified to engage in the coastwise trade.

The wording of proposed § 67.36, as well as other proposed amendments described in the notice of proposed rulemaking, are unchanged in this final rule.

**Regulatory Evaluation**

This rulemaking is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. As discussed earlier in this preamble, this rulemaking clarifies the citizenship requirements of a trust as a vessel-owning entity, corrects certain errors and omissions made in the 1993 final rule which revised 46 CFR part 67, clarifies a cross-reference with regard to calculation of fees for copies of instruments and documents, and addresses the statutorily required endorsements for vessels employed in towing and dredging. These matters are administrative in nature and do not have any economic impacts on the regulated public.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rulemaking will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

The Coast Guard expects the impact of this proposal to be minimal because it only clarifies the structure of a trust as a vessel-owning entity, corrects certain errors and omissions made in the 1993 final rule which revised 46 CFR part 67, clarifies a cross-reference with regard to calculation of fees for copies of instruments and documents, and addresses the statutorily required endorsements for vessels employed in towing or dredging. This proposal would bring the regulations into conformity with current policy and practice. These matters are administrative in nature and do not have any economic impacts on the regulated public. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This proposal contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

**Federalism**

The Coast Guard has analyzed this rulemaking under the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environment**

The Coast Guard considered the environmental impact of this rulemaking and concluded that under section 2.B.2. of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule has been determined to be categorically excluded because the changes are administrative in nature and clearly have no environmental impact. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

**List of Subjects in 46 CFR Part 67**

Fees, Incorporation by reference, Vessels.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR part 67 as follows:

**PART 67—[AMENDED]**

1. The authority citation for part 67 is revised to read as follows:

**Authority:** 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103, 2107, 2110; 46 U.S.C. app. 841a, 876; 49 CFR 1.46.

2. In § 67.19, paragraphs (a) and (b) are revised to read as follows:

**§ 67.19 Coastwise or Great Lakes endorsement.**

(a) A coastwise endorsement entitles a vessel to employment in unrestricted coastwise trade, dredging, towing, and any other employment for which a registry, fishery, or Great Lakes endorsement is not required.

(b) A Great Lakes endorsement entitles a vessel to employment in the Great Lakes trade, towing in the Great Lakes, and any other employment for which a registry, fishery, or coastwise endorsement is not required.

* * * * *

3. Section 67.35 is revised to read as follows:

**§ 67.35 Partnership.**

A partnership is a citizen if all its general partners are citizens, and:

(a) For the purpose of obtaining a registry or recreational endorsement, at least 50 percent of the equity interest in the partnership is owned by citizens.

(b) For the purpose of obtaining a fishery endorsement, more than 50 percent of the equity interest in the partnership is owned by citizens.

(c) For the purpose of obtaining a coastwise or Great Lakes endorsement or both, at least 75 percent of the equity interest in the partnership is owned by citizens.

4. Section 67.37 is redesignated as § 67.36 and revised to read as follows:

**§ 67.36 Trust.**

(a) For the purpose of obtaining a registry or recreational endorsement, a trust arrangement is a citizen if:

(1) Each of its trustees is a citizen; and

(2) Each beneficiary with an enforceable interest in the trust is a citizen.

(b) For the purpose of obtaining a fishery endorsement, a trust arrangement is a citizen if:

(1) It meets all the requirements of paragraph (a) of this section; and

(2) More than 50 percent of the equity interest in the trust is owned by citizens.

(c) For the purpose of obtaining a coastwise or Great Lakes endorsement or both, a trust arrangement is a citizen if:

(1) It meets all the requirements of paragraph (a) of this section; and

(2) At least 75 percent of the equity interest in the trust is owned by citizens.

5. Section 67.37 is added to read as follows:

**§ 67.37 Association or joint venture.**

(a) An association is a citizen if each of its members is a citizen.

(b) A joint venture is a citizen if each of its members is a citizen.

6. In § 67.39, paragraphs (b), (c), and (d) are revised to read as follows:

**§ 67.39 Corporation.**

* * * * *

(b) For the purpose of obtaining a fishery endorsement, a corporation is a citizen if:

(1) It meets all the requirements of paragraph (a) of this section; and

(2) More than 50 percent of the stock interest in the corporation including a majority of voting shares in the corporation is owned by citizens.

(c) For the purpose of obtaining a coastwise or Great Lakes endorsement or both, a corporation is a citizen if:

(1) It meets all the requirements of paragraph (a) of this section; and

(2) At least 75 percent of the stock interest in the corporation is owned by citizens.

(d) A corporation which does not meet the stock interest requirement of paragraph (c) of this section may qualify for limited coastwise trading privileges by meeting the requirements of part 68 of this chapter.

7. In § 67.119, paragraph (e) is revised to read as follows:

**§ 67.119 Hailing port designation.**

* * * * *

(e) Until such time as a port of record assignment is required in accordance with § 67.115, or the owner elects to designate a new hailing port, the provisions of paragraph (c) of this section do not apply to vessels which were issued a Certificate of Documentation before July 1, 1982.

**§ 67.145 [Amended]**

8. In § 67.145, paragraph (a) is amended by removing the cross-reference to "§§ 67.167(a) or 67.167(b) (1) through (6)" and adding, in its place, "§§ 67.167(b) (1) through (6) or 67.167(c) (1) through (8)".

9. In § 67.171, paragraph (d) is revised to read as follows:

**§ 67.171 Deletion; requirement and procedure.**

* * * * *

(d) A certificate evidencing deletion from U.S. documentation will be issued upon request of the vessel owner to the vessel's port of record upon compliance with the applicable requirements of this subpart.

10. Section 67.321 is revised to read as follows:

**§ 67.321 Requirement to report change of address of managing owner.**

Upon the change of address of the managing owner of a documented vessel, the managing owner shall report the change of address to the documentation officer at the port of record of the vessel within 10 days of its occurrence.

11. Section 67.539 is revised to read as follows:

**§ 67.539 Copies of instruments and documents.**

The fee charged for furnishing a copy of any instrument or document is calculated in the same manner as described in 49 CFR 7.95.

Dated: September 23, 1994.

**J.C. Card,**

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

[FR Doc. 94–24155 Filed 9–29–94; 8:45 am]

BILLING CODE 4910–14–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 93–293; RM–8336]**

### Radio Broadcasting Services; Harrisburg, AR

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots FM Channel 240C3 to Harrisburg, Arkansas, as that community's first local aural transmission service, in response to a petition for rule making filed on behalf of Harrisburg Broadcasting. See 58 FR 63318, December 1, 1993. Coordinates used for Channel 240C3 at Harrisburg are 35–31–23 and 90–39–42. With this action, the proceeding is terminated.

**DATES:** Effective November 14, 1994. The window period for filing applications on Channel 240C3 at Harrisburg, Arkansas, will open on November 15, 1994, and close on December 15, 1994.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634–6530. Questions related to the window application filing process for Channel 240C3 at Harrisburg should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 418–2700.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 93–293, adopted Sept. 21, 1994, and released September 27, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, N.W., Room 246, or 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

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

Radio broadcasting.

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

### PART 73—[AMENDED]

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

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

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Channel 240C3 at Harrisburg.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 94–24206 Filed 9–29–94; 8:45 am]

BILLING CODE 6712–01–M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1249

**[Ex Parte No. MC–206]**

### Revision to Accounting and Reporting Requirements for Motor Carriers of Property

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** This document contains a correction to the final rule which was published Thursday, February 3, 1994, (59 FR 5110). In that final rule proceeding the Commission eliminated the Uniform System of Accounts for common and contract motor carriers of property.

**EFFECTIVE DATE:** The final rule became effective January 1, 1994. It will take effect for the reporting year beginning January 1, 1994. This correction becomes effective September 30, 1994.

**FOR FURTHER INFORMATION CONTACT:** Ward L. Ginn, Jr., (202) 927–6187. [TDD for the hearing impaired: (202) 927–5721.]

Accordingly, the publication on February 3, 1994 of the final rule [Ex Parte No. MC–206], which was the subject of FR Doc. 94–2430, is corrected as follows:

**§ 1249.2 [Corrected]**

2. In § 1249.2, paragraph (a), the heading of the second "Class I" paragraph, referring to carriers with operating revenues of at least $3 million but less than $10 million, is corrected to read "Class II".

**Vernon A. Williams,**

*Acting Secretary.*

[FR Doc. 94–24239 Filed 9–29–94; 8:45 am]

BILLING CODE 7035–01–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**RIN 1018–AC95**

## Endangered and Threatened Wildlife and Plants; Reorganization and Republication of List of Endangered and Threatened Plants

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final Rule.

**SUMMARY:** The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), announces a reorganization and republication of the list of endangered and threatened plants. Previously organized alphabetically by plant family, the plants will now be placed in the list in alphabetical order by scientific name under broad taxonomic groupings as follows: Flowering Plants, Conifers and Cycads, Ferns and Fern Allies, and Lichens and Fungi. The family name will be retained in a separate column in the list. This republication of the plant list includes all changes published in the FEDERAL REGISTER through August 19, 1994, but does not promulgate any new regulatory changes.

**EFFECTIVE DATE:** The list below includes all rules published through August 19, 1994, and is effective on that date.

**ADDRESSES:** Comments regarding this reorganization of the plant list may be submitted to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service (452 ARLSQ), Washington, DC 20240. The complete list, updated monthly, is also available on Internet:

R9IRMLIB@mail.fws.gov

(on "SUBJECT" line type one of following choices—SEND T&E LIST or SEND T&E LIST WP; first file is ASCII delimited, second is a WordPerfect 5.1 file).

**FOR FURTHER INFORMATION CONTACT:** Ms. Jamie Rappaport Clark, at the above address (telephone 703–358–2171).

**SUPPLEMENTARY INFORMATION:**

### Background

Pursuant to section 4(c)(1) of the Act, the Fish and Wildlife Service (Service) is required to maintain the lists of endangered and threatened wildlife and plants (50 CFR 17.11 and 17.12). Since the lists were first established, the Service has sequenced plants (§ 17.12) alphabetically by the name of the plant family and then alphabetically within each family by scientific name. Almost 500 species of plants are now listed, in nearly 100 families. In an effort to make this list more useful to the general public and other users, the Service is now reorganizing the sequence of the plants so that they are alphabetical by scientific name within each of four major groups (Flowering Plants, Conifers and Cycads, Ferns and Fern Allies, and Lichens and Fungi). Additional major groups may be added in the future as necessary (e.g., Mosses and Algae).

This reorganized and republished list incorporates no regulatory changes (e.g., addition or deletion of species, changes in endangered or threatened status) that have not been previously published in the FEDERAL REGISTER. As indicated at § 17.12(d), the Service may correct or update the spelling of names, historical range information, footnotes, references to certain other applicable portions of this title, synonyms, and more current names without public notice; such information is non-regulatory in nature and is provided for the benefit of the reader. Such changes are incorporated in this republication of the list, as they have been in the past annual codifications of this section.

### Authority:

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

### Regulations Promulgation

### PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended, as set forth below:

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by revising it to read as follows:

**§ 17.12 Endangered and threatened plants.**

* * * * *

(h)The "List of Endangered and Threatened Plants" is provided below:

| Species | | Historic range | Family | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | | |
| FLOWERING PLANTS | | | | | | | |
| *Abronia macrocarpa* | Large-fruited sand-verbena | U.S.A. (TX) | Nyctaginaceae | E | 331 | NA | NA |
| *Abutilon eremitopetalum* | None | U.S.A. (HI) | Malvaceae | E | 435 | NA | NA |
| *Abutilon menzlesii* | Ko'oloa'ula | do | do | E | 243 | NA | NA |
| *Abutilon sandwicense* | None | do | do | E | 448 | NA | NA |
| *Acaena exigua* | Liliwai | do | Rosaceae | E | 467 | NA | NA |
| *Acanthomintha obovata ssp. duttonii* | San Mateo thornmint | U.S.A. (CA) | Lamiaceae | E | 204 | NA | NA |
| *Achyranthes splendens var. rotundata* | Round-leaved chaff-flower | U.S.A. (HI) | Amaranthaceae | E | 220 | NA | NA |
| *Aconitum noveboracense* | Northern wild monkshood | U.S.A. (IA, NY, OH, WI) | Ranunculaceae | T | 39 | NA | NA |
| *Aeschynomene virginica* | Sensitive joint-vetch | U.S.A. (DE, MD, NC, NJ, PA, VA) | Fabaceae | T | 470 | NA | NA |
| *Agalinis acuta* | Sandplain gerardia | U.S.A. (CT, MA, MD, NY, RI) | Scrophulariaceae | E | 325 | NA | NA |
| *Agave arizonica* | Arizona agave | U.S.A. (AZ) | Agavaceae | E | 147 | NA | NA |
| *Alectryon macrococcus* | Mahoe | U.S.A. (HI) | Sapindaceae | E | 467 | NA | NA |
| *Alsinidendron obovatum* | None | do | Caryophyllaceae | E | 448 | NA | NA |
| *Alsinidendron trinerve* | do | do | do | E | 448 | NA | NA |
| *Amaranthus pumilus* | Seabeach amaranth | U.S.A. (DE, MA, MD, NC, NJ, NY, RI, SC, VA). | Amaranthaceae | T | 498 | NA | NA |
| *Amorpha crenulata* | Crenulate lead-plant | U.S.A. (FL) | Fabaceae | E | 192 | NA | NA |
| *Amphianthus pusillus* | Little amphianthus | U.S.A. (AL, GA, SC) | Scrophulariaceae | T | 302 | NA | NA |
| *Amsinckia grandiflora* | Large-flowered fiddleneck | U.S.A. (CA) | Boraginaceae | E | 179 | 17.96(a) | NA |
| *Amsonia kearneyana* | Kearney's blue-star | U.S.A. (AZ) | Apocynaceae | E | 343 | NA | NA |
| *Ancistrocactus tobuschii (=Echinocactus t., Mammillaria t.).* | Tobusch fishhook cactus | U.S.A. (TX) | Cactaceae | E | 80 | NA | NA |
| *Apios priceana* | Price's potato-bean | U.S.A. (AL, IL, KY, MS, TN) | Fabaceae | T | 373 | NA | NA |
| *Arabis mcdonaldiana* | McDonald's rock-cress | U.S.A. (CA) | Brassicaceae | E | 44 | NA | NA |
| *Arabis serotina* | Shale barren rock-cress | U.S.A. (VA, WV) | do | E | 352 | NA | NA |
| *Arctostaphylos hookeri var. ravenii (=A. pungens ssp. r.).* | Presidio (=Raven's) manzanita | U.S.A. (CA) | Ericaceae | E | 65 | NA | NA |
| *Arctomecon humilis* | Dwarf bear-poppy | U.S.A. (UT) | Papaveraceae | E | 78 | NA | NA |
| *Arenaria cumberlandensis* | Cumberland sandwort | U.S.A. (KY, TN) | Caryophyllaceae | E | 311 | NA | NA |
| *Arenaria paludicola* | Marsh sandwort | U.S.A. (CA, OR, WA) | do | E | 511 | NA | NA |
| *Argemone pleiacantha ssp. pinnatisecta.* | Sacramento prickly-poppy | U.S.A. (NM) | Papaveraceae | E | 360 | NA | NA |
| *Argyroxiphium kauense* | Ka'u silversword | U.S.A. (HI) | Asteraceae | E | 497 | NA | NA |
| *Argyroxiphium sandwicense ssp. macrocephalum.* | 'Ahinahina (=Haleakala silversword) | do | do | E | 467 | NA | NA |
| *Argyroxiphium sandwicense ssp. sandwicense.* | 'Ahinahina (=Mauna Kea silversword) | do | do | E | 219 | NA | NA |
| *Aristida chaseae* | None | U.S.A. (PR) | Poaceae | E | 501 | NA | NA |
| *Aristida portoricensis* | Pelos del diablo | do | do | E | 398 | NA | NA |
| *Asclepias meadii* | Mead's milkweed | U.S.A. (IA, IL, IN, KS, MO, WI) | Asclepiadaceae | T | 321 | NA | NA |
| *Asclepias welshii* | Welsh's milkweed | U.S.A. (AZ, UT) | do | T | 295 | 17.96(a) | NA |
| *Asimina tetramera* | Four-petal pawpaw | U.S.A. (FL) | Annonaceae | E | 244 | NA | NA |
| *Astragalus applegatei* | Applegate's milk-vetch | U.S.A. (OR) | Fabaceae | E | 510 | NA | NA |
| *Astragalus bibullatus* | Guthrie's ground-plum | U.S.A. (TN) | do | E | 437 | NA | NA |
| *Astragalus cremnophylax var. cremnophylax.* | Sentry milk-vetch | U.S.A. (AZ) | do | E | 409 | NA | NA |
| *Astragalus humillimus* | Mancos milk-vetch | U.S.A. (CO, NM) | do | E | 187 | NA | NA |
| *Astragalus montii (=A. limnocharis var. m.).* | Heliotrope milk-vetch | U.S.A. (UT) | do | T | 298 | 17.96(a) | NA |
| *Astragalus osterhoutii* | Osterhout milk-vetch | U.S.A. (CO) | do | E | 353 | NA | NA |
| *Astragalus phoenix* | Ash Meadows milk-vetch | U.S.A. (NV) | do | T | 181 | 17.96(a) | NA |
| *Astragalus robbinsii var. jesupi* | Jesup's milk-vetch | U.S.A. (NH, VT) | do | E | 271 | NA | NA |

| Species | | Historic range | Family | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | | |
| + *Astrophytum asterias (=Echinocactus a.).* | Star cactus | U.S.A. (TX), Mexico | Cactaceae | E | 521 | NA | NA |
| + *Auerodendron pauciflorum* | None | U.S.A. (PR) | Rhamnaceae | E | 531 | NA | NA |
| *Banara vanderbiltil* | Palo de Ramo1n | .....do | Flacourtiaceae | E | 255 | NA | NA |
| *Baptisia arachnifera* | Hairy rattleweed | U.S.A. (GA) | Fabaceae | E | 39 | NA | NA |
| *Berberis sonnel (=Mahonia s.)* | Truckee barberry | U.S.A. (CA) | Berberidaceae | E | 76 | NA | NA |
| *Betula uber* | Virginia round-leaf birch | U.S.A. (VA) | Betulaceae | E | 39 | NA | NA |
| *Bidens cuneata* | Cuneate bidens | U.S.A. (HI) | Asteraceae | E | 141 | NA | NA |
| *Bidens micrantha ssp. kalealaha* | Ko'oko'olau | .....do | .....do | E | 467 | NA | NA |
| *Bidens wiebkei* | .....do | .....do | .....do | E | 480 | NA | NA |
| *Blennosperma bakeri* | Sonoma sunshine (=Baker's stickyseed). | U.S.A. (CA) | .....do | E | 453 | NA | NA |
| *Boltonia decurrens* | Decurrent false aster | U.S.A. (IL, MO) | .....do | T | 341 | NA | NA |
| *Bonamia grandiflora* | Florida bonamia | U.S.A. (FL) | Convolvulaceae | T | 297 | NA | NA |
| + *Brighamia insignis* | 'Olulu | U.S.A. (HI) | Campanulaceae | E | 530 | NA | NA |
| *Brighamia rockil* | Pua 'ala | .....do | .....do | E | 480 | NA | NA |
| *Buxus vahlii* | Vahl's boxwood | U.S.A. (PR, VI) | Buxaceae | E | 197 | NA | NA |
| *Caesalpinia kavaiense (=Mezoneuron k.).* | Uhluhi | U.S.A. (HI) | Fabaceae | E | 238 | NA | NA |
| *Callicarpa ampla* | Capá rosa (=péndula cimarrona) | U.S.A. (PR) | Verbenaceae | E | 461 | NA | NA |
| *Callirhoe scabriuscula* | Texas poppy-mallow | U.S.A. (TX) | Malvaceae | E | 109, 112 | NA | NA |
| *Calyptronoma rivalis* | Palma de manaca or manac palm | U.S.A. (PR) | Arecaceae | T | 375 | NA | NA |
| + *Calyptranthes thomasiana* | None | U.S.A. (PR, VI) British VI | Myrtaceae | E | 529 | NA | NA |
| *Camissonia benitensis* | San Benito evening-primrose | U.S.A. (CA) | Onagraceae | T | 172 | NA | NA |
| *Campanula robinsiae* | Brooksville (=Robins') bellflower | U.S.A. (FL) | Campanulaceae | E | 356 | NA | NA |
| *Canavalia molokaiensis* | 'Awikiwiki | U.S.A. (HI) | Fabaceae | E | 480 | NA | NA |
| *Cardamine micranthera* | Small-anthered bittercress | U.S.A. (NC) | Brassicaceae | E | 363 | NA | NA |
| *Carex specuicola* | Navajo sedge | U.S.A. (AZ, UT) | Cyperaceae | T | 178 | 17.96(a) | NA |
| *Castilleja grisea* | San Clemente Island Indian paint-brush. | U.S.A. (CA) | Scrophulariaceae | E | 26 | NA | NA |
| *Caulanthus californicus* | California jewelflower | .....do | Brassicaceae | E | 395 | NA | NA |
| *Centaurium namophilum* | Spring-loving centaury | U.S.A. (CA, NV) | Gentianaceae | T | 181 | 17.96(a) | NA |
| *Centaurium sebaeoides* | 'Awiwi | U.S.A. (HI) | .....do | E | 448 | NA | NA |
| *Cereus eriophorus var. fragrans* | Fragrant prickly-apple | U.S.A. (FL) | Cactaceae | E | 208 | NA | NA |
| *Chamaesyce celastroides var. kaenana.* | 'Akoko | U.S.A. (HI) | Euphorbiaceae | E | 448 | NA | NA |
| *Chamaesyce deltoidea ssp. deltoidea (=Euphorbia d. ssp. d.).* | Deltoid spurge | U.S.A. (FL) | .....do | E | 192 | NA | NA |
| + *Chamaesyce deppeana(=Euphorbia d.).* | 'Akoko | U.S.A. (HI) | .....do | E | 536 | NA | NA |
| *Chamaesyce garberi (=Euphorbia g.)* | Garber's spurge | U.S.A. (FL) | .....do | T | 192 | NA | NA |
| *Chamaecrista glandulosa var. mirabilis (=Cassia mirabilis).* | None | U.S.A. (PR) | Fabaceae | E | 379 | NA | NA |
| *Chamaesyce halemanui* | .....do | U.S.A. (HI) | Euphorbiaceae | E | 464 | NA | NA |
| *Chamaesyce kuwaleana* | 'Akoko | .....do | .....do | E | 448 | NA | NA |
| *Chamaesyce skottsbergii var. kalaeloana (=Euphorbia s. var. k.).* | 'Ewa Plains 'akoko | .....do | .....do | E | 120 | NA | NA |
| *Chionanthus pygmaeus* | Pygmy fringe-tree | U.S.A. (FL) | Oleaceae | E | 256 | NA | NA |
| *Chorizanthe howellii* | Howell's spineflower | U.S.A. (CA) | Polygonaceae | E | 472 | NA | NA |
| + *Chorizanthe pungens var. hartwegiana.* | Ben Lomond spineflower | .....do | .....do | E | 528 | NA | NA |
| + *Chorizanthe pungens var. pungens* | Monterey spineflower | .....do | .....do | T | 528 | NA | NA |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| + | *Chorizanthe robusta (incl.var. robusta & hartwegii.* | Robust spineflower | .....do | .....do | E | 528 | NA | NA |
| | *Chorizanthe valida* | Sonoma spineflower | .....do | .....do | E | 472 | NA | NA |
| | *Chrysopsis floridana (=Heterotheca f.)* | Florida golden aster | U.S.A. (FL) | Asteraceae | E | 232 | NA | NA |
| | *Cirsium pitcheri* | Pitcher's thistle | U.S.A. (IL, IN, MI, WI), Canada (Ont.) | .....do | T | 315 | NA | NA |
| | *Cirsium vinaceum* | Sacramento Mountains thistle | U.S.A. (NM) | .....do | T | 276 | NA | NA |
| | *Clematis morefieldii* | Morefield's leather-flower | U.S.A. (AL) | Ranunculaceae | E | 468 | NA | NA |
| | *Clematis socialis* | Alabama leather-flower | .....do | .....do | E | 245 | NA | NA |
| + | *Clermontia lindseyana* | 'Oha wai | U.S.A. (HI) | Campanulaceae | E | 532 | NA | NA |
| | *Clermontia oblongifolia ssp. brevipes* | .....do | .....do | .....do | E | 480 | NA | NA |
| | *Clermontia oblongifolia ssp. mauiensis* | .....do | .....do | .....do | E | 467 | NA | NA |
| + | *Clermontia peleana* | .....do | .....do | .....do | E | 532 | NA | NA |
| + | *Clermontia pyrularia* | .....do | .....do | .....do | E | 532 | NA | NA |
| | *Clitoria fragrans* | Pigeon wings | U.S.A. (FL) | Fabaceae | T | 500 | NA | NA |
| + | *Colubrina oppositifolia* | Kauila | U.S.A. (HI) | Rhamnaceae | E | 532 | NA | NA |
| | *Conradina brevifolia* | Short-leaved rosemary | U.S.A. (FL) | Lamiaceae | E | 507 | NA | NA |
| | *Conradina etonia* | Etonia rosemary | .....do | .....do | E | 507 | NA | NA |
| | *Conradina glabra* | Apalachicola rosemary | .....do | .....do | E | 507 | NA | NA |
| | *Conradina verticillata* | Cumberland rosemary | U.S.A. (KY, TN) | .....do | T | 452 | NA | NA |
| | *Cordylanthus maritimus ssp. maritimus.* | Salt marsh bird's-beak | U.S.A. (CA), Mexico (Baja California) | Scrophulariaceae | E | 44 | NA | NA |
| | *Cordylanthus palmatus* | Palmate-bracted bird's-beak | U.S.A. (CA) | .....do | E | 235 | NA | NA |
| | *Cornutia obovata* | Palo de nigua (=capá jugüerilla) | U.S.A. (PR) | Verbenaceae | E | 307 | NA | NA |
| | *Coryphantha ramillosa* | Bunched cory cactus | U.S.A. (TX), Mexico (Coahuila) | Cactaceae | T | 77 | NA | NA |
| + | *Coryphantha scheeri var. robustispina* | Pima pineapple cactus | U.S.A. (AZ, Mexico (Sonora)) | .....do | E | 515 | NA | NA |
| | *Coryphantha sneedii var. leei (=Escobaria l., Mammillaria l.).* | Lee pincushion cactus | U.S.A. (NM) | .....do | T | 61 | NA | NA |
| | *Coryphantha sneedii var. sneedii (=Escobaria s., Mammillaria s.).* | Sneed pincushion cactus | U.S.A. (NM, TX) | .....do | E | 82 | NA | NA |
| | *Cranichis ricartii* | None | U.S.A. (PR) | Orchidaceae | E | 451 | NA | NA |
| | *Crescentia portoricensis* | Higuero de Sierra | .....do | Bignoniaceae | E | 301 | NA | NA |
| | *Crotalaria avonensis* | Avon Park harebells | U.S.A. (FL) | Fabaceae | E | 500 | NA | NA |
| | *Cryptantha crassipes* | Terlingua Creek cats-eye | U.S.A. (TX) | Boraginaceae | E | 439 | NA | NA |
| | *Cucurbita okeechobeensis ssp. okeechobeensis.* | Okeechobee gourd | U.S.A. (FL) | Cucurbitaceae | E | 507 | NA | NA |
| + | *Cyanea asarifolia* | Haha | U.S.A. (HI) | Campanulaceae | E | 530 | NA | NA |
| + | *Cyanea copelandii ssp. copelandii* | .....do | .....do | .....do | E | 532 | NA | NA |
| + | *Cyanea grimesiana spp. obatae* | .....do | .....do | .....do | E | 541 | NA | NA |
| + | *Cyanea hamatiflora ssp. carlsonii* | .....do | .....do | .....do | E | 532 | NA | NA |
| | *Cyanea lobata* | .....do | .....do | .....do | E | 467 | NA | NA |
| | *Cyanea macrostegia ssp. gibsonii* | None | .....do | .....do | E | 435 | NA | NA |
| | *Cyanea mannii* | Haha | .....do | .....do | E | 480 | NA | NA |
| | *Cyanea mceldowneyi* | .....do | .....do | .....do | E | 467 | NA | NA |
| | *Cyanea pinnatifida* | .....do | .....do | .....do | E | 448 | NA | NA |
| | *Cyanea procera* | .....do | .....do | .....do | E | 480 | NA | NA |
| + | *Cyanea shipmannii* | .....do | .....do | .....do | E | 532 | NA | NA |
| + | *Cyanea stictophylla* | .....do | .....do | .....do | E | 532 | NA | NA |
| | *Cyanea superba* | None | .....do | .....do | E | 467 | NA | NA |
| + | *Cyanea truncata* | Haha | .....do | .....do | E | 536 | NA | NA |
| | *Cyanea undulata* | None | .....do | .....do | E | 436 | NA | NA |
| | *Cycladenia humilis var. jonesii* | Jones cycladenia | U.S.A. (AZ, UT) | Apocynaceae | T | 229 | NA | NA |
| + | *Cyrtandra crenata* | Ha'iwale | U.S.A. (HI) | Gesneriaceae | E | 536 | NA | NA |
| + | *Cyrtandra giffardii* | .....do | .....do | .....do | E | 532 | NA | NA |
| + | *Cyrtandra limahuliensis* | .....do | .....do | .....do | T | 530 | NA | NA |
| | *Cyrtandra munroi* | .....do | .....do | .....do | E | 467 | NA | NA |
| + | *Cyrtandra polyantha* | .....do | .....do | .....do | E | 536 | NA | NA |
| + | *Cyrtandra tintinnabula* | .....do | .....do | .....do | E | 532 | NA | NA |
| | *Dalea foliosa (=Petalostemum f.)* | Leafy prairie-clover | U.S.A. (AL, IL, TN) | Fabaceae | E | 422 | NA | NA |
| | *Daphnopsis hellerana* | None | U.S.A. (PR) | Thymelaeaceae | E | 309 | NA | NA |

| Species | | Historic range | Family | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | | |
| *Deeringothamnus pulchellus* | Beautiful pawpaw | U.S.A. (FL) | Annonaceae | E | 244 | NA | NA |
| *Deeringothamnus rugelii* | Rugel's pawpaw | .....do | .....do | E | 244 | NA | NA |
| + *Delissea rhytidosperma* | None | U.S.A. (HI) | Campanulaceae | E | 530 | NA | NA |
| *Delphinium variegatum ssp. kinkiense (=D. k.).* | San Clemente Island larkspur | U.S.A. (CA) | Ranunculaceae | E | 26 | NA | NA |
| *Dicerandra christmanii* | Garrett's mint | U.S.A. (FL) | Lamiaceae | E | 207, 362 | NA | NA |
| *Dicerandra cornutissima* | Longspurred mint | .....do | .....do | E | 207 | NA | NA |
| *Dicerandra frutescens* | Scrub mint | .....do | .....do | E | 207, 362 | NA | NA |
| *Dicerandra immaculata* | Lakela's mint | .....do | .....do | E | 180 | NA | NA |
| *Dodecahema leptoceras (=Centrostegia l.).* | Slender-horned spineflower | U.S.A. (CA) | Polygonaceae | E | 291 | NA | NA |
| *Dubautia herbstobatae* | Na'ena'e | U.S.A. (HI) | Asteraceae | E | 448 | NA | NA |
| *Dubautia latifolia* | None | .....do | .....do | E | 464 | NA | NA |
| *Dubautia pauciflorula* | .....do | .....do | .....do | E | 436 | NA | NA |
| *Dudleya traskiae* | Santa Barbara Island liveforever | U.S.A. (CA) | Crassulaceae | E | 39 | NA | NA |
| *Echinocereus chisosensis var. chisosensis (=E. reichenbachii var. c.).* | Chisos Mountain hedgehog cactus | U.S.A. (TX) | Cactaceae | T | 335 | NA | NA |
| *Echinocereus fendleri var. kuenzleri (=E. kuenzleri, E. hempelii* of authors, not Fobe). | Kuenzler hedgehog cactus | U.S.A. (NM) | .....do | E | 70 | NA | NA |
| *Echinocactus horizonthalonius var. nicholii.* | Nichol's Turk's head cactus | U.S.A. (AZ) | .....do | E | 71 | NA | NA |
| *Echinacea laevigata* | Smooth coneflower | U.S.A. (GA, MD, NC, PA, SC, VA) | Asteraceae | E | 481 | NA | NA |
| *Echinocereus lloydii (=E. roetteri var. l.).* | Lloyd's hedgehog cactus | U.S.A. (TX) | Cactaceae | E | 67 | NA | NA |
| *Echinocereus reichenbachii var. albertii (=E. melanocentrus).* | Black lace cactus | .....do | .....do | E | 68 | NA | NA |
| *Echinacea tennesseensis* | Tennessee purple coneflower | U.S.A. (TN) | Asteraceae | E | 49 | NA | NA |
| *Echinocereus triglochidiatus var. arizonicus (=E. arizonicus).* | Arizona hedgehog cactus | U.S.A. (AZ) | Cactaceae | E | 62 | NA | NA |
| *Echinocereus triglochidiatus var. inermis (=E. coccineus var. i., E. phoeniceus var. i.).* | Spineless hedgehog cactus | U.S.A. (CO, UT) | .....do | D | 93 | NA | NA |
| *Echinocereus viridiflorus var. davisii (=E. davisii).* | Davis' green pitaya | U.S.A. (TX) | .....do | E | 81 | NA | NA |
| *Enceliopsis nudicaulis var. corrugata* | Ash Meadows sunray | U.S.A. (NV) | Asteraceae | T | 181 | 17.96(a) | NA |
| *Eremalche kernensis (=E. parryi ssp. k.).* | Kern mallow | U.S.A. (CA) | Malvaceae | E | 395 | NA | NA |
| *Eriastrum densifolium ssp. sanctorum* | Santa Ana River woolly-star | .....do | Polemoniaceae | E | 291 | NA | NA |
| *Eriastrum hooveri* | Hoover's woolly-star | .....do | .....do | T | 395 | NA | NA |
| *Erigeron maguirei var. maguirei* | Maguire daisy | U.S.A. (UT) | Asteraceae | E | 202 | NA | NA |
| *Erigeron rhizomatus* | Zuni (=Rhizome) fleabane | U.S.A. (NM) | .....do | T | 177 | NA | NA |
| *Eriogonum gypsophilum* | Gypsum wild-buckwheat | .....do | Polygonaceae | T | 110, 112 | 17.96(a) | NA |
| *Eriogonum longifolium var. gnaphalifolium.* | Scrub buckwheat | U.S.A. (FL) | .....do | T | 500 | NA | NA |
| *Eriogonum ovalifolium var. williamsiae* | Steamboat buckwheat | U.S.A. (NV) | .....do | E | 237 | NA | NA |
| *Eriogonum pelinophilum* | Clay-loving wild-buckwheat | U.S.A. (CO) | .....do | E | 151 | 17.96(a) | NA |
| *Eryngium aristulatum var. parishii* | San Diego button-celery | U.S.A. (CA) | Aplaceae | E | 512 | NA | NA |
| *Eryngium constancei* | Loch Lomond coyote-thistle | .....do | .....do | E | 194E, 249 | NA | NA |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| *Eryngium cuneifolium* | Snakeroot | U.S.A. (FL) | do | E | 256 | NA | NA |
| *Erysimum capitatum var. angustatum* | Contra Costa wallflower | U.S.A. (CA) | Brassicaceae | E | 39 | 17.96(a) | NA |
| *Erysimum menziesii* | Menzies' wallflower | do | do | E | 472 | NA | NA |
| + *Erysimum teretifolium* | Ben Lomond wallflower | do | do | E | 528 | NA | NA |
| *Erythronium propullans* | Minnesota dwarf trout lily | U.S.A. (MN) | Liliaceae | E | 221 | NA | NA |
| *Escobaria minima (=Coryphantha m., C. nellieae, Escobaria n., Mammillaria n.).* | Nellie cory cactus | U.S.A. (TX) | Cactaceae | E | 81 | NA | NA |
| *Escobaria robbinsorum (=Cochiseia r., Coryphantha r.).* | Cochise pincushion cactus | U.S.A. (AZ), Mexico (Sonora) | do | T | 214 | NA | NA |
| + *Eugenia koolauensis* | Nioi | U.S.A. (HI) | Myrtaceae | E | 536 | NA | NA |
| *Euphorbia telephioides* | Telephus spurge | U.S.A. (FL) | Euphorbiaceae | T | 463 | NA | NA |
| *Eutrema penlandii* | Penland alpine fen mustard | U.S.A. (CO) | Brassicaceae | T | 509 | NA | NA |
| + *Exocarpos luteolus* | Heau | U.S.A. (HI) | Santalaceae | E | 530 | NA | NA |
| *Frankenia johnstonii* | Johnston's frankenia | U.S.A. (TX), Mexico (Nuevo Leon) | Frankeniaceae | E | 155 | NA | NA |
| *Gahnia lanaiensis* | None | U.S.A. (HI) | Cyperaceae | E | 435 | NA | NA |
| *Galactia smallii* | Small's milkpea | U.S.A. (FL) | Fabaceae | E | 192 | NA | NA |
| *Gardenia brighamii* | Na'u or Hawaiian gardenia | U.S.A. (HI) | Rubiaceae | E | 198 | NA | NA |
| *Geocarpon minimum* | None | U.S.A. (AR, MO) | Caryophyllaceae | T | 275 | NA | NA |
| *Geranium arboreum* | Hawaiian red-flowered geranium | U.S.A. (HI) | Geraniaceae | E | 465 | NA | NA |
| *Geranium multiflorum* | Nohoanu | do | do | E | 467 | NA | NA |
| *Geum radiatum* | Spreading avens | U.S.A. (NC, TN) | Rosaceae | E | 381 | NA | NA |
| *Gilia tenuiflora ssp. arenaria* | Monterey gilia | U.S.A. (CA) | Polemoniaceae | E | 472 | NA | NA |
| *Goetzea elegans* | Beautiful goetzea or matabuey | U.S.A. (PR) | Solanaceae | E | 176 | NA | NA |
| *Gouania hillebrandii* | None | U.S.A. (HI) | Rhamnaceae | E | 165 | 17.96(a) | NA |
| *Gouania meyenii* | do | do | do | E | 448 | NA | NA |
| + *Gouania vitifolia* | do | do | E | 541 | NA | NA |
| *Grindelia fraxino-pratensis* | Ash Meadows gumplant | U.S.A. (CA, NV) | Asteraceae | T | 181 | 17.96(a) | NA |
| *Haplostachys haplostachya var. angustifolia.* | None | U.S.A. (HI) | Lamiaceae | E | 73 | NA | NA |
| *Harperocallis flava* | Harper's beauty | U.S.A. (FL) | Liliaceae | E | 57 | NA | NA |
| *Harrisia portoricensis (=Cereus p.)* | Higo chumbo | U.S.A. (PR) | Cactaceae | T | 397 | NA | NA |
| *Hedeoma apiculatum* | McKittrick pennyroyal | U.S.A. (NM, TX) | Lamiaceae | T | 118 | 17.96(a) | NA |
| *Hedeoma todsenii* | Todsen's pennyroyal | U.S.A. (NM) | do | E | 110, 112 | 17.96(a) | NA |
| + *Hedyotis cookiana* | 'Awiwi | U.S.A. (HI) | Rubiaceae | E | 530 | NA | NA |
| *Hedyotis coriacea* | Kio'ele | do | do | E | 467 | NA | NA |
| *Hedyotis degeneri* | None | do | do | E | 448 | NA | NA |
| *Hedyotis mannii* | Pilo | do | do | E | 480 | NA | NA |
| *Hedyotis parvula* | None | do | do | E | 448 | NA | NA |
| *Hedyotis purpurea var. montana* | Roan Mountain bluet | U.S.A. (NC, TN) | do | E | 381 | NA | NA |
| *Hedyotis st.-johnii* | Na Pali beach hedyotis | U.S.A. (HI) | do | E | 441 | NA | NA |
| *Helianthus schweinitzii* | Schweinitz's sunflower | U.S.A. (NC, SC) | Asteraceae | E | 424 | NA | NA |
| *Helonias bullata* | Swamp pink | U.S.A. (DE, GA, MD, NC, NJ, NY, SC, VA). | Liliaceae | T | 326 | NA | NA |
| + *Hesperomannia arborescens* | None | U.S.A. (HI) | Asteraceae | E | 536 | NA | NA |
| *Hesperomannia arbuscula* | do | do | do | E | 448 | NA | NA |
| *Hesperomannia lydgatei* | do | do | do | E | 436 | NA | NA |
| *Hexastylis naniflora* | Dwarf-flowered heartleaf | U.S.A. (NC, SC) | Aristolochiaceae | T | 347 | NA | NA |
| *Hibiscus arnottianus ssp. immaculatus* | Koki'o ke'oke'o | U.S.A. (HI) | Malvaceae | E | 480 | NA | NA |
| + *Hibiscus clayi* | Clay's hibiscus | do | do | E | 530 | NA | NA |
| *Hibiscadelphus distans* | Kauai hau kuahiwi | do | do | E | 225 | NA | NA |
| *Hoffmannseggia tenella* | Slender rush-pea | U.S.A. (TX) | Fabaceae | E | 209 | NA | NA |
| + *Howellia aquatilis* | Water howellia | U.S.A. (CA, ID, MT, OR, WA) | Campanulaceae | T | 542 | NA | NA |
| *Hudsonia montana* | Mountain golden heather | U.S.A. (NC) | Cistaceae | T | 107 | 17.96(a) | NA |
| *Hymenoxys herbacea (=H. acaulis var. glabra).* | Lakeside daisy | U.S.A. (IL, OH) Canada (Ont.) | Asteraceae | T | 310 | NA | NA |
| *Hymenoxys texana* | Texas prairie dawn-flower (=Texas bitterweed). | U.S.A. (TX) | do | E | 218 | NA | NA |

| | Species | | Historic range | Family | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|---|
| | Scientific name | Common name | | | | | | |
| | *Hypericum cumulicola* | Highlands scrub hypericum | U.S.A. (FL) | Hypericaceae | E | 256 | NA | NA |
| | *Ilex cookii* | Cook's holly | U.S.A. (PR) | Aquifoliaceae | E | 277 | NA | NA |
| | *Ilex sintenisii* | None | do | do | E | 461 | NA | NA |
| | *Iliamna corei* | Peter's Mountain mallow | U.S.A. (VA) | Malvaceae | E | 230 | NA | NA |
| + | *Ipomopsis sancti-spiritus* | Holy Ghost ipomopsis | U.S.A. (NM) | Polemoniaceae | E | 535 | NA | NA |
| | *Iris lacustris* | Dwarf lake iris | U.S.A. (MI, WI), Canada (Ont.) | Iridaceae | T | 330 | NA | NA |
| + | *Ischaemum byrone* | Hilo ischaemum | U.S.A. (HI) | Poaceae | E | 532 | NA | NA |
| | *Isodendrion hosakae* | Aupaka | do | Violaceae | E | 414 | NA | NA |
| + | *Isodendrion pyrifolium* | Wahine noho kula | do | do | E | 532 | NA | NA |
| | *Isotria medeoloides* | Small whorled pogonia | U.S.A. (CT, DC, DE, GA, IL, MA, MD, ME, MI, MO, NC, NH, NJ, NY, OH, PA, RI, SC, TN, VA, VT), Canada (Ont.). | Orchidaceae | E | 122 | NA | NA |
| | *Ivesia kingil var. eremica* | Ash Meadows ivesia | U.S.A. (NV) | Rosaceae | T | 181 | 17.96(a) | NA |
| + | *Jacquemontia reclinata* | Beach jacquemontia | U.S.A. (FL.) | Convolvulaceae | E | 523 | NA | NA |
| | *Jatropha costaricensis* | Costa Rican jatropha | Costa Rica | Euphorbiaceae | E | 154 | NA | NA |
| | *Justicia cooleyi* | Cooley's water-willow | U.S.A. (FL) | Acanthaceae | E | 356 | NA | NA |
| | *Kokia cookei* | Cooke's koki'o | U.S.A. (HI) | Malvaceae | E | 74 | NA | NA |
| | *Kokia drynarioides* | Koki'o (=hau-hele'ula or Hawaii tree cotton). | do | do | E | 167 | 17.96(a) | NA |
| | *Labordia lydgatei* | Kamakahala | do | Loganiaceae | E | 436 | NA | NA |
| | *Lasthenia burkei* | Burke's goldfields | U.S.A. (CA) | Asteraceae | E | 453 | NA | NA |
| | *Layia carnosa* | Beach layia | do | do | E | 472 | NA | NA |
| | *Lembertia congdonii* | San Joaquin wooly-threads | do | do | E | 395 | NA | NA |
| | *Lepanthes eltoroensis* | None | U.S.A. (PR) | Orchidaceae | E | 451 | NA | NA |
| | *Lepidium barnebyanum* | Barneby ridge-cress (=Peppercress) | U.S.A. (UT) | Brassicaceae | E | 402 | NA | NA |
| | *Leptocereus grantianus* | None | U.S.A. (PR) | Cactaceae | E | 491 | NA | NA |
| | *Lespedeza leptostachya* | Prairie bush-clover | U.S.A. (IA, IL, MN, WI) | Fabaceae | T | 254 | NA | NA |
| | *Lesquerella congesta* | Dudley Bluffs bladderpod | U.S.A. (CO) | Brassicaceae | T | 374 | NA | NA |
| | *Lesquerella filiformis* | Missouri bladderpod | U.S.A. (MO) | do | E | 253 | NA | NA |
| | *Lesquerella lyrata* | Lyrate bladderpod | U.S.A. (AL) | do | T | 403 | NA | NA |
| | *Lesquerella pallida* | White bladderpod | U.S.A. (TX) | do | E | 260 | NA | NA |
| + | *Lesquerella tumulosa* | Kodachrome bladderpod | U.S.A. (UT) | do | E | 519 | NA | NA |
| | *Liatris helleri* | Heller's blazingstar | U.S.A. (NC) | Asteraceae | T | 300 | NA | NA |
| | *Liatris ohlingerae* | Scrub blazingstar | U.S.A. (FL) | do | E | 356 | NA | NA |
| | *Limnanthes floccosa ssp. californica* | Butte County meadowfoam | U.S.A. (CA) | Limnanthaceae | E | 471 | NA | NA |
| | *Limnanthes vinculans* | Sebastopol meadowfoam | do | do | E | 453 | NA | NA |
| | *Lindera melissifolia* | Pondberry | U.S.A. (AL, AR, FL, GA, LA, MO, MS, NC, SC). | Lauraceae | E | 240 | NA | NA |
| + | *Lipochaeta fauriei* | Nehe | U.S.A. (HI) | Asteraceae | E | 530 | NA | NA |
| | *Lipochaeta kamolensis* | do | do | do | E | 467 | NA | NA |
| | *Lipochaeta lobata var. leptophylla* | do | do | do | E | 448 | NA | NA |
| + | *Lipochaeta micrantha* | do | do | do | E | 530 | NA | NA |
| | *Lipochaeta tenuifolia* | do | do | do | E | 448 | NA | NA |
| | *Lipochaeta venosa* | None | do | do | E | 73 | NA | NA |
| + | *Lipochaeta waimeaensis* | Nehe | do | do | E | 530 | NA | NA |
| | *Lobelia niihauensis* | None | do | Campanulaceae | E | 448 | NA | NA |
| + | *Lobelia oahuensis* | do | do | do | E | 536 | NA | NA |
| | *Lomatium bradshawii* | Bradshaw's desert-parsley (=lomatium). | U.S.A. (OR) | Apiaceae | E | 333 | NA | NA |
| | *Lotus dendroideus ssp. traskiae (=L. scoparius ssp. t.).* | San Clemente Island broom | U.S.A. (CA) | Fabaceae | E | 26 | NA | NA |
| | *Lupinus aridorum* | Scrub lupine | U.S.A. (FL) | do | E | 264 | NA | NA |
| | *Lupinus tidestromii* | Clover lupine | U.S.A. (CA) | do | E | 472 | NA | NA |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| *Lyonia truncata var. proctorii* | None | U.S.A. (PR) | Ericaceae | E | 501 | NA | NA |
| *Lysimachia asperulaefolia* | Rough-leaved loosestrife | U.S.A. (NC, SC) | Primulaceae | E | 274 | NA | NA |
| + *Lysimachia filifolia* | None | U.S.A. (HI) | ....do | E | 530 | NA | NA |
| *Lysimachia lydgatei* | ....do | ....do | ....do | E | 467 | NA | NA |
| *Macbridea alba* | White birds-in-a-nest | U.S.A. (FL) | Lamiaceae | T | 463 | NA | NA |
| *Malacothamnus clementinus* | San Clemente Island bush-mallow | U.S.A. (CA) | Malvaceae | E | 26 | NA | NA |
| *Manihot walkerae* | Walker's manioc | U.S.A. (TX), Mexico | Euphorbiaceae | E | 445 | NA | NA |
| + *Mariscus fauriei* | None | U.S.A. (HI) | Cyperaceae | E | 532 | NA | NA |
| *Marshallia mohrii* | Mohr's Barbara's buttons | U.S.A. (AL, GA) | Asteraceae | T | 324 | NA | NA |
| + *Melicope haupuensis* | Alani | U.S.A. (HI) | Rutaceae | E | 530 | NA | NA |
| + *Melicope knudsenii* | ....do | ....do | ....do | E | 530 | NA | NA |
| + *Melicope lydgatei(=Pelea l.)* | ....do | ....do | ....do | E | 536 | NA | NA |
| *Melicope mucronulata(=Pelea m.)* | ....do | ....do | ....do | E | 467 | NA | NA |
| + *Melicope pallida* | ....do | ....do | ....do | E | 530 | NA | NA |
| + *Melicope quadrangularis* | ....do | ....do | ....do | E | 530 | NA | NA |
| *Melicope reflexa* | ....do | ....do | ....do | E | 480 | NA | NA |
| *Mentzelia leucophylla* | Ash Meadows blazing-star | U.S.A. (NV) | Loasaceae | T | 181 | 17.96(a) | NA |
| *Mimulus glabratus var. michiganensis* | Michigan monkey-flower | U.S.A. (MI) | Scrophulariaceae | E | 392 | NA | NA |
| *Mirabilis macfarlanei* | MacFarlane's four-o'clock | U.S.A. (ID, OR) | Nyctaginaceae | E | 66 | NA | NA |
| + *Munroidendron racemosum* | None | U.S.A. (HI) | Araliaceae | E | 530 | NA | NA |
| + *Myrcia paganii* | ....do | U.S.A. (PR) | Myrtaceae | E | 529 | NA | NA |
| *Neraudia angulata* | ....do | U.S.A. (HI) | Urticaceae | E | 448 | NA | NA |
| *Nitrophila mohavensis* | Amargosa niterwort | U.S.A. (CA, NV) | Chenopodiaceae | E | 181 | 17.96(a) | NA |
| *Nolina brittoniana* | Britton's beargrass | U.S.A. (FL) | Agavaceae | E | 500 | NA | NA |
| + *Nothocestrum breviflorum* | 'Aiea | U.S.A. (HI) | Solanaceae | E | 532 | NA | NA |
| + *Nothocestrum peltatum* | ....do | ....do | ....do | E | 530 | NA | NA |
| *Nototrichium humile* | Kulu'i | ....do | Amaranthaceae | E | 448 | NA | NA |
| + *Ochrosia kilaueaensis* | Holei | ....do | Apocynaceae | E | 532 | NA | NA |
| *Oenothera avita ssp. eurekensis* | Eureka Valley evening-primrose | U.S.A. (CA) | Onagraceae | E | 39 | NA | NA |
| *Oenothera deltoides ssp. howellii* | Antioch Dunes evening-primrose | ....do | ....do | E | 39 | 17.96(a) | NA |
| *Opuntia treleasei* | Bakersfield cactus | ....do | Cactaceae | E | 395 | NA | NA |
| + *Orcuttia californica* | California Orcutt grass | ....do | Poaceae | E | 512 | NA | NA |
| *Ottoschulzia rhodoxylon* | Palo de rosa | U.S.A. (PR), Dominican Republic | Icacinaceae | E | 385 | NA | NA |
| *Oxypolis canbyi* | Canby's dropwort | U.S.A. (DE, GA, MD, NC, SC) | Apiaceae | E | 217 | NA | NA |
| *Oxytropis campestris var. chartacea* | Fassett's locoweed | U.S.A. (WI) | Fabaceae | T | 329 | NA | NA |
| *Panicum fauriei var. carteri* | Carter's panicgrass | U.S.A. (HI) | Poaceae | E | 133 | 17.96(a) | NA |
| *Paronychia chartacea (=Nyachia pulvinata).* | Papery whitlow-wort | U.S.A. (FL) | Caryophyllaceae | T | 256 | NA | NA |
| *Pedicularis furbishiae* | Furbish lousewort | U.S.A. (ME), Canada (N.B.) | Scrophulariaceae | E | 39 | NA | NA |
| *Pediocactus bradyi (=Toumeya b.)* | Brady pincushion cactus | U.S.A. (AZ) | Cactaceae | E | 63 | NA | NA |
| *Pediocactus despainii* | San Rafael cactus | U.S.A. (UT) | ....do | E | 286 | NA | NA |
| *Pediocactus knowltonii (=P. bradyi var. k., Toumeya k.).* | Knowlton cactus | U.S.A. (CO, NM) | ....do | E | 72 | NA | NA |
| *Pediocactus peeblesianus var. peeblesianus (=Echinocactus p., Navajoa p., Toumeya p., Utahia p.).* | Peebles Navajo cactus | U.S.A. (AZ) | ....do | E | 69 | NA | NA |
| *Pediocactus sileri (=Echinocactus s., Utahia s.).* | Siler pincushion cactus | U.S.A. (AZ, UT) | ....do | E | 64 | NA | NA |
| *Penstemon haydenii* | Blowout penstemon | U.S.A. (NE) | Scrophulariaceae | E | 285 | NA | NA |
| *Penstemon penlandii* | Penland beardtongue | U.S.A. (CO) | ....do | E | 353 | NA | NA |
| *Peperomia wheeleri* | Wheeler's peperomia | U.S.A. (PR) | Piperaceae | E | 255 | NA | NA |
| + *Peucedanum sandwicense* | Makou | U.S.A. (HI) | Apiaceae | T | 530 | NA | NA |
| *Phacelia argillacea* | Clay phacelia | U.S.A. (UT) | Hydrophyllaceae | E | 44 | NA | NA |
| *Phacelia formosula* | North Park phacelia | U.S.A. (CO) | ....do | E | 121 | NA | NA |
| *Phlox nivalis ssp. texensis* | Texas trailing phlox | U.S.A. (TX) | Polemoniaceae | E | 440 | NA | NA |
| *Phyllostegia glabra var. lanaiensis* | None | U.S.A. (HI) | Lamiaceae | E | 435 | NA | NA |
| *Phyllostegia mannii* | ....do | ....do | ....do | E | 460 | NA | NA |
| *Phyllostegia mollis* | ....do | ....do | ....do | E | 448 | NA | NA |
| + *Phyllostegia waimeae* | ....do | ....do | ....do | E | 530 | NA | NA |

| | Species | | Historic range | Family | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|---|
| | Scientific name | Common name | | | | | | |
| | *Physaria obcordata* | Dudley Bluffs twinpod | U.S.A. (CO) | Brassicaceae | T | 374 | NA | NA |
| | *Pilosocereus robinii (=Cereus r.)* | Key tree-cactus | U.S.A. (FL), Cuba | Cactaceae | E | 153 | NA | NA |
| | *Pinguicula ionantha* | Godfrey's butterwort | U.S.A. (FL) | Lentibulariaceae | T | 507 | NA | NA |
| | *Pityopsis ruthii (=Heterotheca r., Chrysopsis r.).* | Ruth's golden aster | U.S.A. (TN) | Asteraceae | E | 191 | NA | NA |
| + | *Plantago hawaiensis* | Laukahi kuahiwi | U.S.A. (HI) | Plantaginaceae | E | 532 | NA | NA |
| | *Platanthera leucophaea* | Eastern prairie fringed orchid | U.S.A. (AR, IA, IL, IN, ME, MI, MO, NE, NJ, NY, OH, OK, PA, VA, WI), Canada (Ont., N.B.). | Orchidaceae | T | 368 | NA | NA |
| | *Platanthera praeclara* | Western prairie fringed orchid | U.S.A. (IA, KS, MN, MO, ND, NE, OK, SD), Canada (Man.). | .....do | T | 368 | NA | NA |
| | *Poa sandvicensis* | Hawaiian bluegrass | U.S.A. (HI) | Poaceae | E | 464 | NA | NA |
| | *Poa siphonoglossa* | None | .....do | .....do | E | 464 | NA | NA |
| | *Pogogyne abramsii* | San Diego mesa mint | U.S.A. (CA) | Lamiaceae | E | 44 | NA | NA |
| + | *Pogogyne nudiuscula* | Otay mesa mint | U.S.A. (CA), Mexico (Baja California) . | .....do | E | 512 | NA | NA |
| | *Polygonella basiramia (=P. ciliata var. b.).* | Wireweed | U.S.A. (FL) | Polygonaceae | E | 256 | NA | NA |
| | *Polygala lewtonii* | Lewton's polygala | .....do | Polygalaceae | E | 500 | NA | NA |
| | *Polygonella myriophylla* | Sandlace | .....do | Polygonaceae | E | 500 | NA | NA |
| | *Polygala smallii* | Tiny polygala | .....do | Polygalaceae | E | 192 | NA | NA |
| + | *Portulaca sclerocarpa* | Po'e | U.S.A. (HI) | Portulacaceae | E | 532 | NA | NA |
| | *Potamogeton clystocarpus* | Little Aguja pondweed | U.S.A. (TX) | Potamogetonaceae . | E | 450 | NA | NA |
| | *Potentilla robbinsiana* | Robbins' cinquefoil | U.S.A. (NH, VT) | Rosaceae | E | 104 | 17.96(a) | NA |
| | *Primula maguirei* | Maguire primrose | U.S.A. (UT) | Primulaceae | T | 199 | NA | NA |
| + | *Pritchardia affinis* | Loulu | U.S.A. (HI) | Arecaceae | E | 532 | NA | NA |
| | *Pritchardia munroi* | .....do | .....do | .....do | E | 480 | NA | NA |
| | *Prunus geniculata* | Scrub plum | U.S.A. (FL) | Rosaceae | E | 256 | NA | NA |
| + | *Pteralyxia kauaiensis* | Kaulu | U.S.A. (HI) | Apocynaceae | E | 530 | NA | NA |
| | *Ptilimnium nodosum (= P. fluviatile)* ... | Harperella | U.S.A. (AL, GA, MD, NC, SC, WV) .... | Apiaceae | E | 332 | NA | NA |
| | *Purshia subintegra (=Cowania s.)* | Arizona cliffrose | U.S.A. (AZ) | Rosaceae | E | 148 | NA | NA |
| | *Quercus hinckleyi* | Hinckley's oak | U.S.A. (TX) | Fagaceae | T | 318 | NA | NA |
| | *Ranunculus acriformis var. aestivalis (=R. acris var. a.).* | Autumn buttercup | U.S.A. (UT) | Ranunculaceae | E | 355 | NA | NA |
| | *Remya kauaiensis* | None | U.S.A. (HI) | Asteraceae | E | 413 | NA | NA |
| | *Remya mauiensis* | Maui remya | .....do | .....do | E | 413 | NA | NA |
| | *Remya montgomeryi* | None | .....do | .....do | E | 413 | NA | NA |
| | *Rhododendron chapmanii* | Chapman rhododendron | U.S.A. (FL) | Ericaceae | E | 47 | NA | NA |
| | *Rhus michauxii* | Michaux's sumac | U.S.A. (GA, NC, SC, VA) | Anacardiaceae | E | 367 | NA | NA |
| | *Rhynchospora knieskernii* | Knieskern's beaked-rush | U.S.A. (DE, NJ) | Cyperaceae | T | 429 | NA | NA |
| | *Ribes echinellum* | Miccosukee gooseberry | U.S.A. (FL, SC) | Saxifragaceae | T | 190 | NA | NA |
| + | *Rollandia crispa* | None | U.S.A. (HI) | Campanulaceae | E | 536 | NA | NA |
| | *Rorippa gambellii* | Gambel's watercress | U.S.A. (CA) | Brassicaceae | E | 511 | NA | NA |
| | *Sagittaria fasciculata* | Bunched arrowhead | U.S.A. (NC, SC) | Alismataceae | E | 53 | NA | NA |
| | *Sagittaria secundifolia* | Kral's water-plantain | U.S.A. (AL, GA) | .....do | T | 386 | NA | NA |
| | *Sanicula mariversa* | None | U.S.A. (HI) | Apiaceae | E | 448 | NA | NA |
| | *Santalum freycinetianum var. lanaiense.* | Lanai sandalwood or 'iliahi | .....do | Santalaceae | E | 215 | NA | NA |
| | *Sarracenia oreophila* | Green pitcher-plant | U.S.A. (AL, GA, TN) | Sarraceniaceae | E | 56, 89 | NA | NA |
| | *Sarracenia rubra ssp. alabamensis (=S. alabamensis ssp. alabamensis).* | Alabama canebrake pitcher-plant | U.S.A. (AL) | .....do | E | 346 | NA | NA |
| | *Sarracenia rubra ssp. jonesii (=S. jonesii).* | Mountain sweet pitcher-plant | U.S.A. (NC, SC) | .....do | E | 339 | NA | NA |
| | *Scaevola coriacea* | Dwarf naupaka | U.S.A. (HI) | Goodeniaceae | E | 231 | NA | NA |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| *Schiedea adamantis* | Diamond Head schiedea | .....do | Caryophyllaceae | E | 141 | NA | NA |
| *Schiedea apokremnos* | Ma'oli'oli | .....do | .....do | E | 441 | NA | NA |
| *Schiedea haleakalensis* | None | .....do | .....do | E | 467 | NA | NA |
| *Schiedea kaalae* | .....do | .....do | .....do | E | 448 | NA | NA |
| *Schiedea lydgatei* | .....do | .....do | .....do | E | 480 | NA | NA |
| + *Schiedea spergulina var. leiopoda* | .....do | .....do | .....do | E | 530 | NA | NA |
| + *Schiedea spergulina var. spergulina* | .....do | .....do | .....do | T | 530 | NA | NA |
| *Schoepfia arenaria* | .....do | U.S.A. (PR) | Olacaceae | T | 420 | NA | NA |
| *Schoenocrambe argillacea* | Clay reed-mustard | U.S.A. (UT) | Brassicaceae | T | 457 | NA | NA |
| *Schoenocrambe barnebyi* | Barneby reed-mustard | .....do | .....do | E | 457 | NA | NA |
| *Schoenocrambe suffrutescens (=Glaucocarpum s.).* | Shrubby reed-mustard (=Toad-flax cress). | .....do | .....do | E | 293 | NA | NA |
| *Schwalbea americana* | American chaffseed | U.S.A. (AL, CT, DE, FL, GA, LA, MA, MD, MS, NC, NJ, NY, SC, TN, VA). | Scrophulariaceae | E | 478 | NA | NA. |
| *Scirpus ancistrochaetus* | Northeastern (=Barbed bristle) bulrush | U.S.A. (MA, MD, NH, NY, PA, VA, VT, WV). | Cyperaceae | E | 425 | NA | NA |
| *Sclerocactus glaucus (=Echinocactus g., E. subglaucus, E. whipplei var. g., Pediocactus g., S. franklinii, S. whipplei var. g.).* | Uinta Basin hookless cactus | U.S.A. (CO, UT) | Cactaceae | T | 59 | NA | NA |
| *Sclerocactus mariposensis (=Echinocactus m., Echinomastus m., Neolloydia m.).* | Lloyd's Mariposa cactus | U.S.A. (TX), Mexico (Coahuila) | .....do | T | 77 | NA | NA |
| *Sclerocactus mesae-verdae (=Coloradoa m., Echinocactus m., Pediocactus m.).* | Mesa Verde cactus | U.S.A. (CO, NM) | .....do | T | 75 | NA | NA |
| *Sclerocactus wrightiae (=Pediocactus w.).* | Wright fishhook cactus | U.S.A. (UT) | .....do | E | 58 | NA | NA |
| *Scutellaria floridana* | Florida skullcap | U.S.A. (FL) | Lamiaceae | T | 463 | NA | NA |
| *Scutellaria montana* | Large-flowered skullcap | U.S.A. (GA, TN) | .....do | E | 234 | NA | NA |
| *Sedum integrifolium ssp. leedyi* | Leedy's roseroot | U.S.A. (MN, NY) | Crassulaceae | T | 460 | NA | NA |
| *Senecio franciscanus* | San Francisco Peaks groundsel | U.S.A. (AZ) | Asteraceae | T | 137 | 17.96(a) | NA |
| *Serianthes nelsonii* | Hayun lagu (Guam), Tronkon guafi (Rota). | Western Pacific Ocean: U.S.A. (Guam, Rota). | Fabaceae | E | 257, 259 | NA | NA |
| *Sidalcea nelsoniana* | Nelson's checker-mallow | U.S.A. (OR, WA) | Malvaceae | T | 490 | NA | NA |
| *Sidalcea pedata* | Pedate checker-mallow | U.S.A. (CA) | .....do | E | 158 | NA | NA |
| *Silene alexandri* | None | U.S.A. (HI) | Caryophyllaceae | E | 480 | NA | NA |
| + *Silene hawaiiensis* | .....do | .....do | .....do | T | 532 | NA | NA |
| *Silene lanceolata* | .....do | .....do | .....do | E | 480 | NA | NA |
| *Silene perlmanii* | .....do | .....do | .....do | E | 448 | NA | NA |
| *Silene polypetala* | Fringed campion | U.S.A. (FL, GA) | .....do | E | 418 | NA | NA |
| *Sisyrinchium dichotomum* | White irisette | U.S.A. (NC) | Iridaceae | E | 438 | NA | NA |
| *Solanum drymophilum* | Erubia | U.S.A. (PR) | Solanaceae | E | 319 | NA | NA |
| + *Solanum sandwicense* | Popolo'alakeakua | U.S.A. (HI) | .....do | E | 530 | NA | NA |
| *Solidago albopilosa* | White-haired goldenrod | U.S.A. (KY) | Asteraceae | T | 308 | NA | NA |
| *Solidago houghtonii* | Houghton's goldenrod | U.S.A. (MI, NY), Canada (Ont.) | .....do | T | 314 | NA | NA |
| *Solidago shortii* | Short's goldenrod | U.S.A. (KY) | .....do | E | 201 | NA | NA |
| *Solidago spithamaea* | Blue Ridge goldenrod | U.S.A. (NC, TN) | .....do | T | 175 | NA | NA |
| *Spigelia gentianoides* | Gentian pinkroot | U.S.A. (FL) | Loganiaceae | E | 406 | NA | NA |
| *Spiranthes diluvialis* | Ute ladies'-tresses | U.S.A. (CO, NV, UT, WY) | Orchidaceae | T | 458 | NA | NA |
| *Spiranthes parksii* | Navasota ladies'-tresses | U.S.A. (TX) | .....do | E | 116 | NA | NA |
| *Spiraea virginiana* | Virginia spiraea | U.S.A. (GA, KY, NC, OH, PA, TN, VA, WV). | Rosaceae | T | 389 | NA | NA |
| *Stahlia monosperma* | Cóbana negra | U.S.A. (PR), Dominican Republic | Fabaceae | T | 380 | NA | NA |
| *Stenogyne angustifolia var. angustifolia.* | None | U.S.A. (HI) | Lamiaceae | E | 73 | NA | NA |
| *Stenogyne bifida* | .....do | .....do | .....do | E | 480 | NA | NA |
| *Stenogyne campanulata* | .....do | .....do | .....do | E | 464 | NA | NA |
| *Stenogyne kanehoana* | .....do | .....do | .....do | E | 466 | NA | NA |

| | Species | | Historic range | Family | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|---|
| | *Stephanomeria malheurensis* | Malheur wire-lettuce | U.S.A. (OR) | Asteraceae | E | 126 | 17.96(a) | NA |
| | *Styrax portoricensis* | Palo de jazmín | U.S.A. (PR) | Styracaceae | E | 461 | NA | NA |
| | *Styrax texana* | Texas snowbells | U.S.A. (TX) | ...do | E | 162 | NA | NA |
| | *Swallenia alexandrae* | Eureka Dune grass | U.S.A. (CA) | Poaceae | E | 39 | NA | NA |
| | *Ternstroemia luquillensis* | Palo colorado | U.S.A. (PR) | Theaceae | E | 461 | NA | NA |
| | *Ternstroemia subsessilis* | None | ...do | ...do | E | 461 | NA | NA |
| + | *Tetramolopium arenarium* | ...do | U.S.A. (HI) | Asteraceae | E | 532 | NA | NA |
| | *Tetramolopium filiforme* | ...do | ...do | ...do | E | 448 | NA | NA |
| + | *Tetraplasandra gymnocarpa* | 'Ohe'ohe | ...do | Araliaceae | E | 536 | NA | NA |
| | *Tetramolopium lepidotum ssp. lepidotum.* | None | ...do | Asteraceae | E | 448 | NA | NA |
| | *Tetramolopium remyi* | ...do | ...do | ...do | E | 435 | NA | NA |
| | *Tetramolopium rockii* | ...do | ...do | ...do | T | 480 | NA | NA |
| | *Thalictrum cooleyi* | Cooley's meadowrue | U.S.A. (FL, NC) | Ranunculaceae | E | 344 | NA | NA |
| | *Thelypodium stenopetalum* | Slender-petaled mustard | U.S.A. (CA) | Brassicaceae | E | 158 | NA | NA |
| | *Thymophylla tephroleuca (=Dyssodia t.).* | Ashy dogweed | U.S.A. (TX) | Asteraceae | E | 152 | NA | NA |
| | *Townsendia aprica* | Last Chance townsendia | U.S.A. (UT) | ...do | T | 200 | NA | NA |
| | *Trichilia triacantha* | Bariaco (=guayabacón) | U.S.A. (PR) | Meliaceae | E | 303 | NA | NA |
| | *Trifolium stoloniferum* | Running buffalo clover | U.S.A. (AR, IL, IN, KS, KY, MO, OH, WV). | Fabaceae | E | 270 | NA | NA |
| | *Trillium persistens* | Persistent trillium | U.S.A. (GA, SC) | Lliaceae | E | 39 | NA | NA |
| | *Trillium reliquum* | Relict trillium | U.S.A. (AL, GA, SC) | ...do | E | 306 | NA | NA |
| | *Tuctoria mucronata (=Orcuttia m.)* | Solano grass | U.S.A. (CA) | Poaceae | E | 44 | NA | NA |
| | *Urera kaalae* | Opuhe | U.S.A. (HI) | Urticaceae | E | 448 | NA | NA |
| | *Vernonia proctorii* | None | U.S.A. (PR) | Asteraceae | E | 501 | NA | NA |
| | *Vicia menziesii* | Hawaiian vetch | U.S.A. (HI) | Fabaceae | E | 39 | NA | NA |
| | *Viola chamissoniana ssp. chamissoniana.* | Pamakani | ...do | Violaceae | E | 448 | NA | NA |
| | *Viola helenae* | None | ...do | ...do | E | 436 | NA | NA |
| | *Viola lanaiensis* | ...do | ...do | ...do | E | 435 | NA | NA |
| | *Warea amplexifolia* | Wide-leaf warea | U.S.A. (FL) | Brassicaceae | E | 266 | NA | NA |
| | *Warea carteri* | Carter's mustard | ...do | ...do | E | 256 | NA | NA |
| | *Wilkesia hobdyi* | Dwarf iliau | U.S.A. (HI) | Asteraceae | E | 473 | NA | NA |
| | *Xylosma crenatum* | None | ...do | Flacourtiaceae | E | 464 | NA | NA |
| | *Xyris tennesseensis* | Tennessee yellow-eyed grass | U.S.A. (AL, GA, TN) | Xyridaceae | E | 430 | NA | NA |
| + | *Zanthoxylum hawaiiense* | A'e | U.S.A. (HI) | Rutaceae | E | 532 | NA | NA |
| | *Zanthoxylum thomasianum* | St. Thomas prickly-ash | U.S.A. (PR, VI) | ...do | E | 213 | NA | NA |
| | *Zizania texana* | Texas wild-rice | U.S.A. (TX) | Poaceae | E | 39 | 17.96(a) | NA |
| | *Ziziphus celata* | Florida ziziphus | U.S.A. (FL) | Rhamnaceae | E | 356 | NA | NA |
| | | CONIFERS AND CYCADS. | | | | | | |
| | *Abies guatemalensis* | Guatemalan fir or pinabete | Mexico, Guatemala, Honduras, El Salvador. | Pinaceae | T | 84 | NA | NA |
| | *Cupressus abramsiana* | Santa Cruz cypress | U.S.A. (CA) | Cupressaceae | E | 252 | NA | NA |
| | *Fitzroya cupressoides* | Chilean false larch or alerce) | Chile, Argentina | ...do | T | 79 | NA | NA |
| | *Torreya taxifolia* | Florida torreya | U.S.A. (FL, GA) | Taxaceae | E | 140 | NA | NA |
| | | FERNS AND FERN ALLIES. | | | | | | |
| | *Adiantum vivesii* | None | U.S.A. (PR) | Adiantaceae | E | 504 | NA | NA |
| | *Asplenium scolopendrium var. americanum (=P. japonica ssp. a.).* | American hart's-tongue fern | U.S.A. (AL, MI, NY, TN), Canada (Ont.). | Aspleniaceae | T | 354 | NA | NA |
| | *Cyathea dryopteroides* | Elfin tree fern | U.S.A. (PR) | Cyatheaceae | E | 277 | NA | NA |
| | *Diellia falcata* | None | U.S.A. (HI) | Aspleniaceae | E | 448 | NA | NA |
| + | *Diellia pallida (=laciniata)* | ...do | ...do | ...do | E | 530 | NA | NA |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| + *Diellia unisora* | .....do | .....do | .....do | E | 541 | NA | NA |
| *Elaphoglossum serpens* | .....do | U.S.A. (PR) | Lomariopsidaceae ... | E | 504 | NA | NA |
| *Huperzia mannii (=Lycopodium m.)* | Wawa'iole | U.S.A. (HI) | Lycopodiaceae | E | 467 | NA | NA |
| *Isoetes louisianensis* | Louisiana quillwort | U.S.A. (LA) | Isoetaceae | E | 482 | NA | NA |
| *Isoetes melanospora* | Black-spored quillwort | U.S.A. (GA, SC) | .....do | E | 302 | NA | NA |
| *Isoetes tegetiformans* | Mat-forming quillwort | U.S.A. (GA) | .....do | E | 302 | NA | NA |
| + *Lycopodium nutans* | Ha'iwale | U.S.A. (HI) | Lycopodiaceae | E | 536 | NA | NA |
| *Marsilea villosa* | 'Ihi'ihi | .....do | Marsileaceae | E | 474 | NA | NA |
| *Polystichum aleuticum* | Aleutian shield-fern (=Aleutian holly-fern). | U.S.A. (AK) | Dryopteridaceae | E | 305 | NA | NA |
| *Polystichum calderonense* | None | U.S.A. (PR) | .....do | E | 504 | NA | NA |
| *Tectaria estremerana* | .....do | .....do | .....do | E | 504 | NA | NA |
| *Thelypteris inabonensis* | .....do | .....do | Thelypteridaceae | E | 506 | NA | NA |
| *Thelypteris pilosa var. alabamensis (=Leptogramma p. var.a.).* | Alabama streak-sorus fern | U.S.A. (AL) | .....do | T | 476 | NA | NA |
| *Thelypteris verecunda* | None | U.S.A. (PR) | .....do | E | 506 | NA | NA |
| *Thelypteris yaucoensis* | .....do | .....do | .....do | E | 506 | NA | NA |
| | LICHENS. | | | | | | |
| *Cladonia perforata* | Florida perforate cladonia | U.S.A. (FL) | Cladoniaceae | E | 500 | NA | NA |

Dated: September 27, 1994.

**Mollie H. Beattie,**

*Director, U.S. Fish and Wildlife Service.*

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**50 CFR Part 17**

**RIN 1018–AB83**

## Endangered and Threatened Wildlife and Plants; Endangered Status for the Plant Tetramolopium capillare (Pamakani)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the plant *Tetramolopium capillare* (pamakani). Two extant populations containing a total of 12 known individuals of the species remain in the southwestern portion of West Maui. The species and its habitat have been variously affected or are currently threatened by fire and by habitat degradation and competition from invasive alien plant species. Due to the small number of existing individuals and their very narrow distribution, this species is subject to reduced reproductive vigor and/or an increased likelihood of extinction from stochastic events. This final rule implements the Federal protection and recovery provisions provided by the Act. It also makes operative State regulations that will protect *Tetramolopium capillare* as an endangered species.

**EFFECTIVE DATE:** October 31, 1994.

**ADDRESSES:** The complete file for this final rule is available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850.

**FOR FURTHER INFORMATION CONTACT:** Robert P. Smith, Field Supervisor, at the above address (808/541–2749).

**SUPPLEMENTARY INFORMATION:**

### Background

*Tetramolopium capillare* was first collected in 1819 on Maui by Charles Gaudichaud-Beaupre. He named this sterile specimen *Senecio capillaris*, choosing the specific epithet to refer to its very narrow involute leaves (with margins rolled under along the edges) (Gaudichaud-Beaupre 1830). Based on a fertile specimen collected on Maui in the 1830s, Sherff (1935) described and named *Tetramolopium bennettii*. After examining and comparing type specimens, St. John (1965) determined that Gaudichaud-Beaupre's *Senecio capillaris* and Sherff's *Tetramolopium bennettii* were actually the same species and that Sherff had placed the taxon in the correct genus; St. John (1965) subsequently made the new combination *Tetramolopium capillare*. Later, St. John (1974) described a new genus, *Luteidiscus*, for species of *Tetramolopium* with yellow disk florets, and formed the combination *Luteidiscus capillaris*. In the current treatment of the genus, Lowrey (1981, 1986, 1990) does not recognize St. John's division of the genus.

*Tetramolopium capillare* is a sprawling shrub with stems measuring 50 to 80 centimeters (cm) (20 to 31 inches (in)) long and covered with many glands when young. The very firm, stalkless leaves are involute and are usually 13 to 25 millimeters (mm) (0.5 to 1 in) long and 0.4 mm (about 0.01 in) wide. Flower heads are situated singly at the ends of stalks 1 to 3.5 cm (0.4 to 1.4 in) long. Located beneath each flower head are 45 to 50 bracts, arranged in a structure 3 to 4 mm (about 0.1 in) high and 7 to 10 mm (0.3 to 0.4 in) in diameter. In each flower head, 30 to 50 white, male ray florets, 3.5 to 4 mm (about 0.1 in) long and 0.6 to 8 mm (0.02 to 0.3 in) wide, surround 15 to 25 greenish yellow tinged with red, functionally female florets about 3.6 mm (0.1 in) long. The achenes (dry, one-seeded fruits) measure 2 to 2.6 mm (0.08 to 0.1 in) long and 0.7 to 0.8 mm (0.03 in) wide and are topped by a white pappus comprising a single series of bristles 1.9 to 2.1 mm (0.07 to 0.08 in) long. *Tetramolopium capillare* differs from other species of the genus by its very firm leaves with edges rolled under, its solitary flower heads, the color of its disk florets, and its shorter pappus. It differs from *Tetramolopium remyi*, with which it sometimes grows, by its more sprawling habit and the shorter stalks of its smaller flower heads (Lowrey 1990).

Historically, *Tetramolopium capillare* is known from Lahainaluna to Wailuku on West Maui (Lowrey 1981). This species is known to be extant near Halepohaku on State land (Hawaii Plant Conservation Center (HPCC) 1992a, 1992b). The two known populations, which are separated by 2.4 kilometers (km) (1.8 miles (mi)), contain a total of 12 known plants (Steve Perlman, HPCC, pers. comms., 1992). *Tetramolopium capillare* typically grows on rock substrates at elevations between 615 and 900 meters (m) (2,020 to 3,000 feet (ft)) in Lowland Dry Mixed Shrub and Grassland and in Montane Dry Shrubland. Plant species associated with the higher elevation population include *Dodonaea viscosa* ('a'ali'i), *Metrosideros polymorpha* ('ohi'a), and *Styphelia tameiameiae* (pukiawe). 'A'ali'i, *Heteropogon contortus* (pili grass), and *Myoporum sandwicense* (naio) are associates of the other population. The major threats to *Tetramolopium capillare* are fire; competition from alien plant species, particularly *Lantana camara* (lantana), *Leucaena leucocephala* (koa haole), and *Rynchelytrum repens* (Natal redtop); and reduced reproductive vigor and/or extinction from stochastic events due to the small number of existing populations and individuals (HPCC 1992a, 1992b).

### Previous Federal Action

Federal action on this species began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Tetramolopium capillare* was considered to be extinct. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species, including *Tetramolopium capillare*. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, including *Tetramolopium*

*capillare*, along with four other proposals that had expired. The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183). In these notices, *Tetramolopium capillare* was treated as a Category 1* species. Category 1* species are those that are possibly extinct. Because the species was rediscovered in 1991, it is now being listed as endangered.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of *Tetramolopium capillare* was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991. Publication of the proposed rule constituted the final one-year finding for this species.

On March 25, 1993, the Service published in the **Federal Register** (58 FR 16164) a proposal to list the plant *Tetramolopium capillare* as endangered. This proposal was based primarily on information from the Hawaii Plant Conservation Center and observations by botanists and naturalists. The Service now determines *Tetramolopium capillare* to be endangered with the publication of this rule.

**Summary of Comments and Recommendations**

In the March 25, 1993, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final listing decision. The public comment period ended May 24, 1993. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting public comment was published in the "Honolulu Star-Bulletin" on April 19, 1993. One letter of comment was received, supporting the listing of *Tetramolopium capillare*. The one issue raised in this letter is discussed below.

*Issue:* Over-collection of this species is not likely, and placing emphasis on this issue will make scientific research and horticultural conservation of the species more difficult.

*Response:* The Service feels that unrestricted collecting should not be allowed, since only two populations totaling 12 individuals are known. This should not adversely affect non-destructive scientific research and *ex situ* conservation efforts, since permits would still be available for these purposes.

**Summary of Factors Affecting the Species**

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR Part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Tetramolopium capillare* (Gaud.) St. John are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The habitat of *Tetramolopium capillare* has undergone extreme alteration because of past and present land management practices, including grazing and alien plant introductions. Cattle (*Bos taurus*), the wild progenitor of which was native to Europe, north Africa, and southwestern Asia, were introduced to the Hawaiian Islands in 1793. This animal eats native vegetation, tramples roots and seedlings, causes erosion, creates disturbed areas into which alien plants invade, and spreads seeds of alien plants (Cuddihy and Stone 1990). Feral cattle were formerly found on Maui and affected areas within the historic range of *Tetramolopium capillare* (Lowrey 1981).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Unrestricted collecting for scientific or horticultural purposes and substrate damage by individuals interested in seeing rare plants could result from increased publicity. This is a potential threat to *Tetramolopium capillare*, which has only two populations and a total of 12 known individuals. Any collection of whole plants of this species could cause an adverse impact on the gene pool and threaten the survival of the species.

C. *Disease or predation.* No evidence of disease or predation of *Tetramolopium capillare* has been reported.

D. *The inadequacy of existing regulatory mechanisms.* No State or Federal regulations currently protect *Tetramolopium capillare*. However, Federal listing will automatically invoke endangered species status under Hawaii's endangered species act.

E. *Other natural or manmade factors affecting its continued existence.* The small number of individuals and populations of *Tetramolopium capillare* increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy a significant percentage of the individuals or an entire population. Erosion due to natural weathering in areas where *Tetramolopium capillare* grows can result in the death of individual plants as well as habitat destruction. This process especially affects the continued existence of taxa or populations with limited numbers and/or narrow ranges, such as *Tetramolopium capillare*, and can be exacerbated by human disturbance and land use practices.

Erosion provides a suitable site for colonization by alien plants. Three alien plant taxa, naturalized in dry, disturbed areas on all the main Hawaiian islands, compete with *Tetramolopium capillare*. Natal redtop, an annual or perennial grass, is a major threat to both populations of *Tetramolopium capillare* (HPCC 1992a, 1992b; O'Connor 1990). Both koa haole, often the dominant species in dry, disturbed, low elevation areas, and lantana, an aggressive, thicket-forming shrub, have also invaded the habitat of *Tetramolopium capillare* (Geesnick *et al.* 1990; HPCC 1992a; S. Perlman, pers. comm., 1992). Because both populations of *Tetramolopium capillare* grow in dry areas, fire is considered a threat to the species (HPCC 1992a; S. Perlman, pers. comm., 1992).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in this final rule. Based on this evaluation, the preferred action is to list *Tetramolopium capillare* as endangered. This species numbers no more than about 12 individuals in two populations and is threatened by habitat degradation, competition from alien plants, fire, and lack of legal protection. Small population size and limited distribution make this species particularly vulnerable to reduced reproductive vigor and/or extinction from stochastic events. Because this species is in danger of extinction throughout all or a significant portion of

its range, it fits the definition of endangered as defined in the Act.

Critical habitat is not being proposed for *Tetramolopium capillare* for reasons discussed in the "Critical Habitat" section of this final rule.

**Critical Habitat**

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is listed endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for *Tetramolopium capillare*. The publication of a map and precise description of critical habitat in the **Federal Register** and local newspapers as required in a designation of critical habitat would increase the degree of threat to this species from take or vandalism and, therefore, could contribute to its decline and increase enforcement problems. The listing of this species as endangered publicizes the rarity of the plants and, thus, can make the species attractive to researchers, curiosity seekers, or collectors of rare plants. The species is found exclusively on State land. Interested parties and the State landowner have been notified of the importance of protecting the habitat of *Tetramolopium capillare*. Therefore, the Service finds that designation of critical habitat for this species is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities, and is unlikely to aid in conservation of the species.

**Available Conservation Measures**

Conservation measures provided to taxa listed as endangered under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any taxon that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No known Federal activities occur within the habitat of *Tetramolopium capillare*, which is found only on State land.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plants set forth a series of general prohibitions and exceptions that apply to all endangered plant species. With respect to *Tetramolopium capillare*, all of the prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued. The species is not common in the wild and is only rarely cultivated.

Requests for copies of the regulations concerning listed plants and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Office, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (503/231–2063; FAX 503/231–6243).

*Tetramolopium capillare* is not presently listed as an endangered species by the State of Hawaii. Both populations of this species occur on State land. Federal listing will automatically invoke listing under the State's endangered species act. Hawaii's Endangered Species Act states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * *" (HRS, sect. 195D–4(a)). State law prohibits taking of endangered plants in the State and encourages conservation by State agencies (HRS, sect. 195D–4). State laws relating to the conservation of biological resources allow for the acquisition of land as well as the development and implementation of programs concerning the conservation of biological resources (HRS, sect. 195D–5(a)). The State also may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, sect. 195D–5(c)). Funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements).

Conservation district lands are regarded, among other purposes, as necessary for the protection of endemic biological resources and the maintenance or enhancement of the conservation of natural resources. Requests for amendments to district boundaries or variances within existing classifications can be made by government agencies and private landowners (HRS, sect. 205–4). The Hawaii Department of Land and Natural Resources is mandated to initiate changes in conservation district boundaries to include "the habitat of rare native species of flora and fauna within the conservation district" (HRS, sect. 195D–5.1). Hawaii environmental policy, and thus approval of land use, is required by law to safeguard "* * * the State's unique natural environmental characteristics * * *" (HRS, sect. 344–3(1)) and includes guidelines to "Protect endangered species of individual plants and animals * * *" (HRS, sect. 344–4(3)(A)). Federal listing, because it results in State listing, also triggers these other State regulations protecting *Tetramolopium capillare*. Listing under the Federal Act would also provide additional protection to this species by making it an offense for any person to remove, cut, dig up, damage, or destroy any such plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

### References Cited


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Author: The authors of this final rule are Marie M. Bruegmann and Zella E. Ellshoff, Pacific Islands Office (see ADDRESSES section), (808/541–2749).

### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

### Regulation Promulgation

Accordingly, amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under the family indicated, to the List of Endangered and Threatened Plants:

**§ 17.12 Endangered and threatened plants.**

* * * * *

(h) * * *

| Species | | Historic range | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | |
| • • • | • | • | • | • | • | • |
| Asteraceae—Aster family: | | | | | | |
| • • • | • | • | • | • | • | • |
| *Tetramolopium capillare* ..... | Pamakani ..... | U.S.A. (HI) ..... | E | 556 | NA | NA |
| • • • | • | • | • | • | • | • |

Dated: September 9, 1994.

**Mollie H. Beattie,**

*Director, Fish and Wildlife Service.*

[FR Doc. 94–24280 Filed 9–29–94; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 672

**[Docket No. 931199–4042; I.D. 092194B]**

### Groundfish of the Gulf of Alaska

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

**ACTION:** Inseason adjustment; request for comments.


**SUMMARY:** NMFS issues an inseason adjustment prohibiting retention of rockfish species of the genera *Sebastes* and *Sebastolobus* by vessels using trawl gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent overfishing of Pacific ocean perch (POP).


**DATES:** Effective 12 noon, Alaska local time (A.l.t.), September 30, 1994, until 12 midnight, A.l.t., December 31, 1994. Comments must be received at the following address no later than 4:30 p.m., Alaska local time, October 15, 1994.

**ADDRESSES:** Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or be delivered to the fourth floor of the Federal Building, 709 West 9th Street, Juneau, AK.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, 907–586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared

by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The Magnuson Act requires that conservation and management measures prevent overfishing. The 1994 overfishing level for POP in the Central Regulatory Area of the GOA is established by the final 1994 specifications (59 FR 7647, February 16, 1994) as 1,100 metric tons (mt) and the acceptable biological catch as 850 mt. The final specifications closed directed fishing for POP in the Central Regulatory Area. As of September 30, 1994, NMFS anticipates that 880 mt of POP will have been caught.

NMFS prohibited retention of POP on August 24, 1994 (59 FR 44341). Substantial trawl fishing effort will be directed at remaining amounts of groundfish in the GOA during 1994. These fisheries can have significant bycatch of POP.

The Director, Alaska Region, NMFS, has determined, in accordance with § 672.22(a)(1)(i) and (a)(4), that closing the season by prohibiting retention of rockfish species of the genera *Sebastes* and *Sebastolobus* by vessels using trawl gear is necessary to prevent overfishing of POP, and is the least restrictive measure to achieve that purpose. Without this prohibition of retention, significant incidental catch of POP would occur by operators of trawl vessels seeking to retain as much rockfish as possible under the standards for directed fishing § 672.20(g).

Therefore, NMFS is requiring that further catches of rockfish species of the genera *Sebastes* and *Sebastolobus* by vessels using trawl gear in the Central Regulatory Area of the GOA be treated as prohibited species under § 672.20(e) effective from 12 noon, A.l.t., September 30, 1994, until 12 midnight, A.l.t., December 31, 1994.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this action is impracticable and contrary to the public interest. Without this inseason adjustment, POP in the Central Regulatory Area of the GOA will be overfished, jeopardizing the long-term capacity of that stock. Under § 672.22(c), interested persons are invited to submit written comments on this action to the above address until October 15, 1994.

### Classification

This action is taken under § 672.22 and is exempt from review under E.O. 12866.

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

Dated: September 26, 1994.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 94–24175 Filed 9–29–94; 8:45 am]

BILLING CODE 3510–22–F

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## 50 CFR Part 675

**[Docket No. 931100–4043; I.D. 092794A]**

## Groundfish of the Bering Sea and Aleutian Islands Area

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

**AGENCY:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the offshore component in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the allowance of the total allowable catch (TAC) of pollock for the offshore component in the AI.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), September 28, 1994, until 12 midnight, A.l.t., December 31, 1994.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, 907–586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The allowance of pollock TAC for vessels catching pollock for processing by the offshore component in the AI was established by the final 1994 initial groundfish specifications (59 FR 7656, February 16, 1994) and a subsequent reserve apportionment (59 FR 21673, April 26, 1994) as 34,031 metric tons (mt).

The Director of the Alaska Region, NMFS, (Regional Director) has determined, in accordance with § 675.20(a)(8), that the allowance of pollock TAC for the offshore component in the AI soon will be reached. Therefore, the Regional Director established a directed fishing allowance of 32,831 mt after determining that 1,200 mt will be taken as incidental catch in directed fishing for other species in the AI. Consequently, NMFS is prohibiting directed fishing for pollock by operators of vessels catching pollock for processing by the offshore component in the AI effective from 12 noon, A.l.t., September 28, 1994, until 12 midnight, A.l.t., December 31, 1994.

Directed fishing standards for applicable gear types may befound in the regulations at § 675.20(h).

### Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

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

Dated: September 27, 1994.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 94–24224 Filed 9–27–94; 2:52 pm]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 59, No. 189
Friday, September 30, 1994

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Parts 53, 71, 82, 92, 94, and 161

[Docket No. 87–090–2]

RIN 0579–AA22

### Exotic Newcastle Disease in Birds and Poultry; Chlamydiosis in Poultry

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

**ACTION:** Notice of reopening and extension of comment period.

**SUMMARY:** We are reopening and extending the comment period for our proposed rule that would revise completely subpart A of part 82 of title 9, Code of Federal Regulations, concerning exotic Newcastle disease in birds and poultry, and psittacosis or ornithosis in poultry. The proposed rule also would amend parts 53, 71, 92, 94, and 161 of title 9, Code of Federal Regulations, to reflect the proposed amendments to part 82. This extension will provide interested persons with additional time in which to prepare comments on the proposed rule.

**DATES:** Consideration will be given only to written comments on Docket No. 87–090–1 that are received on or before November 29, 1994.

**ADDRESSES:** Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 87–090–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Dr. C. M. Groocock, Senior Staff Veterinarian, Emergency Programs Staff, Veterinary Services, APHIS, USDA, room 746, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20872, (301) 436–8240.

**SUPPLEMENTARY INFORMATION:** On June 28, 1994, we published in the **Federal Register** (59 FR 33214–33233, Docket No. 87–090–1) a proposed rule that would revise completely 9 CFR part 82, subpart A, concerning exotic Newcastle disease in birds and poultry, and psittacosis or ornithosis in poultry. The proposed rule would also amend 9 CFR parts 53, 71, 92, 94, and 161 to reflect the proposed amendments to part 82. Comments on the proposed rule were required to be received on or before August 29, 1994. During the comment period, we received a request from a State Department of Agriculture that we extend the comment period. The commenter stated that additional time was necessary to allow interested parties and agencies within the State to evaluate fully and respond to the proposed rule. In response to this comment, and so that we may consider comments received after August 29, 1994, we are reopening and extending the public comment period on Docket No. 87–090–1 until 60 days after the date of publication of this notice in the **Federal Register**. This action will allow the requestor and all other interested persons additional time to prepare comments.

**Authority:** 7 U.S.C. 147a, 150ee, 161, 162, 450, and 1622; 15 U.S.C. 1828; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111–114, 114a, 114a-1, 115–117, 120–126, 134a, 134b, 134c, 134d, 134f, 135, 136, 136a, 612, and 613; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 26th day of September.

**Terry L. Medley,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 94–24231 Filed 9–29–94; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 94–NM–113–AD]

### Airworthiness Directives; Fokker Model F28 Mark 0100 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 Fokker Model F28 Mark 0100 series airplanes. This proposal would require modification of the fixed engine cowling at the forward and aft crane beam attachment; and an inspection of the forward and aft crane beam to detect surface damage, and repair, if necessary. This proposal is prompted by several reports of rear cabin noise (engine rumble) during flight and while taxiing, which may have been caused by the interference between the forward and aft crane beams and the fasteners in the fixed engine cowling. The actions specified by the proposed AD are intended to prevent chafing due to normal engine vibration, which could result in structural damage to the engine mount and possible separation of the engine from the airplane.

**DATES:** Comments must be received by November 10, 1994.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–113–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113,

FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

**Comments Invited**

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–113–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. 94–NM–113–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that it has received several reports of rear cabin noise (engine rumble) experienced on these airplanes during flight and while taxiing. Investigation revealed that one possible cause was interference between the forward and aft crane beams and the fasteners in the fixed engine cowling. Such interference could result in chafing due to normal engine vibration. This condition, if not corrected, could result in structural damage to the engine mount and possible separation of the engine from the airplane.

Fokker has issued Service Bulletin SBF100–71–016, dated February 18, 1994, which describes procedures for modification of the fixed engine cowling at the forward and aft crane-beam attachment; and a visual inspection of the forward and aft crane beam to detect surface damage, and repair, if necessary. This modification entails replacing fasteners of the fixed engine cowling with fasteners of a different type. This modification will ensure the structural integrity of the engine mount. The RLD classified this service bulletin as mandatory and issued Netherlands Airworthiness Directive BLA 94–038 (A), dated February 21, 1994, in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands 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 RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the fixed cowl at the forward and aft crane-beam attachment; and performing a visual inspection of the forward and aft crane beam to detect surface damage, and repair, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 83 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 90 work hours per airplane to accomplish the proposed inspection and modification, and that the average labor rate is $55 per work hour. Required parts would cost approximately $75 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $417,075, or $5,025 per airplane.

The total 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.

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

**§ 39.13 [Amended]**

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

**Fokker:** Docket 94–NM–113–AD.

*Applicability:* Model F28 Mark 0100 series airplanes, serial numbers 11244 through 11438 inclusive, certificated in any category.

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

To prevent structural damage to the engine mount and possible separation of the engine from the airplane, accomplish the following:

(a) Prior to the accumulation of 15,000 total flight hours, or within 3 months after the

effective date of this AD, whichever occurs later, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD in accordance with Fokker Service Bulletin SBF100–71–016, dated February 18, 1994.

(1) Modify the fixed engine cowling at the forward and aft crane-beam attachment in accordance with the service bulletin.

(2) Perform a visual inspection of the forward and aft crane beam to detect surface damage, in accordance with the service bulletin.

(i) If no surface damage is found, no further action is required by paragraph (a)(2) of this AD.

(ii) If any surface damage is found, prior to further flight, repair the crane beam in accordance with the service bulletin.

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

(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 airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 26, 1994.

**Darrell M. Pederson,**

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

[FR Doc. 94–24202 Filed 9–29–94; 8:45 am]

BILLING CODE 4910–13–U

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## Office of the Secretary

## 14 CFR Part 254

**[Docket No. 49330; Notice 94–14]**

**RIN 2105–AC07**

## Domestic Baggage Liability

**AGENCY:** Office of the Secretary, Department of Transportation.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** The Department is proposing to amend its rule governing the amount by which certain U.S. air carriers may limit their liability to passengers for lost, damaged, and delayed baggage. This action is in response to a petition by Public Citizen and Aviation Consumer Action Project to increase the minimum liability limit from $1,250 to $1,850 per passenger. The Department is also requesting comment on two alternate proposals: (1) to raise the minimum limit to $1,850 with a mechanism that automatically provides for periodic future increases, or (2) to raise the minimum liability limit to $2,000.

**DATES:** Comments are requested by November 29, 1994. Late-filed comments will be considered only to the extent practicable.

**ADDRESSES:** Comments should be sent, preferably in triplicate, to Docket Clerk, Docket No. 49330, Department of Transportation, 400 7th Street, SW, Room 4107, Washington, DC 20590. Comments will be available for inspection at this address from 9 a.m. to 5:30 p.m., Monday through Friday. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to the commenter.

**FOR FURTHER INFORMATION CONTACT:** Diane Mobley or Joanne Petrie, Office of Regulation and Enforcement, Office of the General Counsel, U.S. Department of Transportation, 400 7th Street SW, Room 10424, Washington, DC 20590. (202) 366–9306.

**SUPPLEMENTARY INFORMATION:**

### Background

Consumer baggage problems in air travel remain a common occurrence. Reports submitted to the Department by the major airlines indicate that over 2.2 million mishandled baggage reports were filed by passengers in 1993, although it is unknown how many of those reports resulted in claims for compensation. When baggage is lost, damaged, or delayed, the airlines are prohibited by federal regulation (14 CFR Part 254) from limiting their liability to less than $1,250 per passenger for provable damages.[1]

The amount of the minimum liability limit was last amended by a final rule effective April 10, 1984, issued by the Civil Aeronautics Board (CAB) before its "sunset" (ER–1374, 49 FR 5065, February 10, 1984). The $1,250 figure was calculated based upon the percentage increase in the Consumer Price Index for all Urban Consumers (CPIU) between the date of the previous amendment and September 1983. When setting the limit, the CAB attempted to balance the amount necessary to cover the value of most passengers' baggage while still allowing the airlines to protect themselves from extraordinary claims.

On December 22, 1993, the Department received a petition for rulemaking from Public Citizen and Aviation Consumer Action Project to increase the minimum liability limit in order to account for inflation since the 1984 amendment. The petitioners suggest that the limit should be raised to $1,850, calculated by increasing the current $1,250 limit proportionate with the increase in the CPIU from 1983 until the approximate time a new final rule would take effect (estimated to be one year from the date of the petition). A letter in support of the petition was filed by Mr. Michael Kees, a consumer who recently suffered a loss in excess of the liability limit, who asserts that a more realistic limit today would be $2,500.

The Bureau of Labor Statistics reports that in September 1983, the CPIU was 100.7 (using a 1982–84 = 100 reference base). As of April 1994, the CPIU had increased by 46.4 percent to 147.4. Stated differently, the purchasing power of a $1,250 maximum baggage claim award in 1983 had eroded to $854 in April 1994 dollars. To keep up with the 46.4 percent increase in the CPIU as of April 1994, the minimum liability limit would have to increase to $1,830. The Department believes that in addition to the direct monetary effect on consumers, an unrealistically low minimum liability limit invites the airlines simply to pay the claims rather than to address the causes of lost, damaged, and delayed baggage. The Department therefore proposes to raise the minimum liability limit to $1,850 as suggested in the petition, and seeks comment on this proposal. Carriers are requested to submit the following data on domestic baggage claims for calender year 1993 as well: (1) the total number of domestic[2] baggage claims for reimbursement and the total amount claimed (i.e., the amount that the claimants requested); (2) the total amount paid by the carrier in settling those claims; and (3) the number and total dollar amount of such claims that exceeded $1,250, and the number and total dollar amount that exceeded $1,850. This information will help the Department to assess the economic burden of the proposal on the affected airlines.

[1] The rule applies to flights on large aircraft (aircraft designed to carry more than 60 passengers), and to any flight segment included on the same ticket as a flight segment using large aircraft.

[2] A "domestic" claim for this purpose is one that is subject to Part 254. For example, a claim concerning a problem that occurred on a domestic segment of an international trip would not be included since such transportation is governed by the Warsaw Convention rather than by Part 254.

In addition to the proposal to increase the minimum baggage liability limit to $1,850, the Department requests comment on two alternate proposals: (1) to raise the minimum limit to $1,850 with a mechanism that automatically provides for periodic future increases, or (2) to raise the minimum liability limit to $2,000.

The first alternate proposal is an automatic adjustment of the minimum liability limit every other year, calculated in proportion to any change in the CPIU. When the minimum liability limit was last amended in 1984, the CAB considered and rejected a rule that would automatically adjust the liability limit based on some specified economic measure. The CAB believed that such an approach might be unduly confusing for consumers and that it would be administratively burdensome on carriers to constantly revise tickets and internal guidance. The Department requests comment on whether, with the increasing sophistication of and reliance on computers, periodic adjustment of the minimum liability limit would pose less of a burden on the industry today. A more frequent adjustment would make the limit more responsive to changes in the economy. Comment is also requested on whether there would be a need to provide for additional public comment before each adjustment rather than simply announcing each new rate by publication in the **Federal Register**, and whether there is some other method that would be preferable to changes in the CPIU for calculating appropriate future changes in the minimum liability limit. As indicated above, the CPIU was the basis used by the CAB to calculate the 1984 increase to $1,250. Prior to 1984, the CPIU was considered, along with actual baggage claim data, to set the minimum liability limit. That data has not been collected since the deregulation of the airline industry.

The Department also requests comment on its second alternate proposal, to increase the minimum baggage liability limit to $2,000. Under the current system, which includes notice requirements, passengers are expected to be aware of the minimum limit and not pack any items of greater value in their luggage unless they desire to purchase excess valuation or are personally willing to incur the risk. This is not to say that carriers would automatically pay $2,000 to passengers claiming lost, damaged, or delayed baggage. We wish to make clear that, as is the case today, our proposal would set the amount below which carriers could not limit their potential liability for provable damages. Thus, carriers could still decline to pay unjustified claims or pay only for damages actually shown. A $2,000 limitation would have the advantages of covering most items passengers are likely to pack in baggage, and being easy for passengers to remember because it is a round number. A collateral benefit of a $2,000 minimum limit would be that, in the event of future inflation, the limit would not become obsolete soon after issuance. It would also allow longer-term planning than an $1,850 limit, which might reduce administrative costs to the airlines for training, ticket stock, and computer programming.

The Department recognizes that carriers will require some period of time to use up existing ticket stock, print new tickets, and implement other necessary changes under any of the alternatives. The Department seeks comment on whether 60 days from issuance of a final rule is a sufficient time for implementation. In the case that excess ticket stock poses a particular problem for the airlines, the Department requests comment on whether the use of a sticker or an addendum stuffed in the ticket envelope would provide adequate notice of the new limit. The Department also seeks comment on whether a bifurcated implementation would be feasible (e.g., new minimum dollar limit effective in 30 days; implementation of revised notice requirement effective in 60 days, or upon exhaustion of existing ticket stock). In the case that the automatically adjusting limit is selected, the Department requests comment on whether a 30-day implementation period would be sufficient for future adjustments under that proposal. In any event, in view of the publication of the instant proposal, the Department encourages carriers to exercise prudence in placing large orders for ticket stock or ticket jackets.

The notice requirement has been clarified to better explain that written notice of the liability limit must be provided whenever air transportation is sold, whether or not the airline actually issues a ticket to the passenger. This is in response to the recent switch to a ticketless system by a few carriers. Written notice must still be provided to the passenger in conjunction with the sale of the travel, even though there is no traditional "ticket" that the notice can be printed on.

## Regulatory Analyses and Notices

The Department has determined that this action is not a significant regulatory action under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. A regulatory evaluation that examines the projected costs and impacts of the proposal has been placed in the docket. The Department certifies that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Few airlines are classified as small entities. However, since the rule could apply to small carriers to the extent that they interline with large carriers, the Department seeks comment on whether there are unidentified small entity impacts that should be considered. If comments provide information that there are significant small entity impacts, the Department will prepare a regulatory flexibility analysis at the final rule stage. The Department does not believe that there would be sufficient federalism implications to warrant the preparation of a federalism assessment.

## List of Subjects in 14 CFR Part 254

Air carriers, Consumer protection, Freight, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department proposes to amend 14 CFR Part 254 as follows:

## PART 254—[AMENDED]

1. The authority citation for Part 254 continues to read as follows:

**Authority:** Secs. 204, 403, 404, and 411, Pub. L. 85–726, as amended, 72 Stat. 743, 758, 760, 769; 49 U.S.C. 1324, 1373, 1374, 1381.

2. Section 254.4 would be revised to read as follows:

### § 254.4 Carrier liability.

On any flight segment using large aircraft, or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall not limit its liability for provable direct or consequential damages resulting from the disappearance of, damage to, or delay in delivery of a passenger's personal property, including baggage, in its custody to an amount less than $1850 for each passenger.

3. Section 254.5 would be revised to read as follows:

### § 254.5 Notice requirement.

On any flight segment using large aircraft, or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall provide to passengers, by conspicuous written material included on or with its ticket or other written notice that is issued in conjunction with the sale of the transportation, either:

(a) Notice of any monetary limitation on its baggage liability to passengers; or

(b) The following notice: "Federal rules require any limit on an airline's baggage liability to be at least $1850 per passenger."

**Alternative Proposal 1**

4. Section 254.4 would be revised to read as follows:

**§ 254.4 Carrier liability.**

On any flight segment using large aircraft, or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall not limit its liability for provable direct or consequential damages resulting from the disappearance of, damage to, or delay in delivery of a passenger's personal property, including baggage, in its custody to an amount less than the current Federal Minimum Liability Limit per passenger that is in effect on the date of the flight. The Federal Minimum Liability Limit will be re-calculated every other year, based on the percentage change in the Consumer Price Index for All Urban Consumers since the previous adjustment, and published in an announcement in the Federal Register.

5. Section 254.5 would be revised to read as follows:

**§ 254.5 Notice requirement.**

On any flight segment using large aircraft, or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall provide to passengers, by conspicuous written material included on or with its ticket or other written notice that is issued in conjunction with the sale of the transportation, either:

(a) Notice of any monetary limitation on its baggage liability to passengers; or

(b) The following notice: "Federal rules currently require any limit on an airline's baggage liability to be at least [insert the current Federal Minimum Liability Limit in effect on the date the notice is provided] per passenger." This limit is periodically revised by the Department of Transportation based on changes in the Consumer Price Index for All Urban Consumers. Therefore, a different limit may be in effect on the date of your flight.

**Alternative Proposal 2**

6. Section 254.4 would be revised to read as follows:

**§ 254.4 Carrier liability.**

On any flight segment using large aircraft, or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall not limit its liability for provable direct or consequential damages resulting from the disappearance of, damage to, or delay in delivery of a passenger's personal property, including baggage, in its custody to an amount less than $2000 for each passenger.

7. Section 254.5 would be revised to read as follows:

**§ 254.5 Notice requirement.**

On any flight segment using large aircraft, or on any flight segment that is included on the same ticket as another flight segment that uses large aircraft, an air carrier shall provide to passengers, by conspicuous written material included on or with its ticket or other written notice that is issued in conjunction with the sale of the transportation, either:

(a) Notice of any monetary limitation on its baggage liability to passengers; or

(b) The following notice: "Federal rules require any limit on an airline's baggage liability to be at least $2000 per passenger."

Issued in Washington, DC on September 26, 1994.

**Patrick Murphy,**

*Acting Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 94–24168 Filed 9–29–94; 8:45 am]

BILLING CODE 4910–62–P

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**14 CFR Part 255**

**[Docket No. 48808]**

## Computer Reservations System (CRS) Regulations

**AGENCY:** Office of the Secretary, Department of Transportation.

**ACTION:** Termination of proceeding on petition for rulemaking on rules governing computer reservations systems.

**SUMMARY:** The Department is granting a request by the American Society of Travel Agents (ASTA) that ASTA be allowed to withdraw its petition for a rulemaking to amend the Department's rules on computer reservations systems (CRSs). ASTA had asked the Department to amend its CRS rules (14 CFR Part 255) to include a prohibition against the inclusion of lost booking fees in the damages recoverable by a CRS vendor when a travel agency breaches its contract for CRS services before the end of the contract's term. ASTA is now asking the Department for leave to withdraw its petition on the ground that the largest CRS vendor has agreed to change its CRS contract practices in a way which will eliminate ASTA's need for a rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Thomas Ray, Office of the General Counsel, 400 Seventh St. S.W., Washington, D.C. 20590, (202) 366–4731.

**SUPPLEMENTARY INFORMATION:** In the United States travel agencies sell the great majority of all airline tickets. In selling air transportation (and other travel services) travel agencies primarily rely on computer reservations systems to find out what airline services and fares are available for their customers, to make bookings, and to issue tickets. Each of the CRSs operating in the United States is owned by one or more airlines or airline holding companies. The nature of the CRS and the airline businesses gives each operator of a CRS ("the vendor") a significant ability to prejudice the competitive position of other airlines and to limit the information on airline services given travel agencies and their customers. The Civil Aeronautics Board, the agency which had been responsible for airline economic regulation through 1984, therefore adopted rules regulating CRS operations under section 411 of the Federal Aviation Act ("the Act"), 49 U.S.C. 1381. Two years ago we revised those rules to further protect airline competition. 14 CFR Part 255, adopted by 57 FR 43780 (September 22, 1992).

One of the major issues in our rulemaking concerned the contract terms sought by CRS vendors from travel agencies using a CRS ("subscribers"), since several commonly-used contract terms restricted the subscribers' ability to add or switch systems. We revised our CRS rules to prohibit certain subscriber contract clauses that appeared to unreasonably interfere with a travel agency's ability to use more than one system, but we did not adopt other proposals for regulating subscriber contracts.

A number of parties in the rulemaking had complained that vendors made it difficult for subscribers to switch systems before the end of the term of their CRS contract by making a subscriber liable for substantial liquidated damages if it breached the contract. The liquidated damages formulas used by the vendors typically included an element for "lost booking fees." Booking fees—the fees paid by airlines and other travel suppliers whenever an agency uses a system to book a travel service—provide most of each vendor's CRS revenues. Lost booking fees are the amount of booking

fees the vendor would have received if the subscriber had continued to use its system during the remaining term of the contract. In calculating lost booking fees the vendor typically assumed that the subscriber would have used its system for most of its bookings. The inclusion of lost booking fees in the damages due a vendor on a subscriber's breach of contract greatly increases the damages obtainable by the vendor from the subscriber and thereby makes it much more costly for an agency to breach its CRS contract.

While we decided not to adopt a prohibition against the inclusion of lost booking fees in liquidated damages, we stated that our rules were intended to give travel agencies the ability to use more than one system and that therefore no vendor should expect a subscriber to use its system for most of the agency's bookings during the term of the contract. No vendor could therefore reasonably expect that a subscriber contract would produce a substantial flow of booking fees. As a result, we concluded that the contract law principles governing liquidated damages would make unenforceable any contract that required a subscriber to pay damages based on lost booking fees. 57 FR 43827–43828.

ASTA, the nation's largest travel agency trade association, filed a petition for rulemaking. ASTA urged us to adopt an express prohibition against the inclusion of lost booking fees in liquidated damages clauses. ASTA alleged that American Airlines' Sabre system was continuing to use such contract clauses since American argued that its contract terms were consistent with our rules. ASTA proposed that we amend § 255.8 of our rules by adding a subsection that would prohibit a vendor from requiring a subscriber to pay liquidated damages to the extent that the damages enable the vendor to recover from the subscriber the booking fees that the vendor would have obtained from participating airlines.

Two vendors, Worldspan and System One Direct Access, filed answers supporting ASTA's petition, while American opposed it. American asserted that its contract provision was merely a means of enforcing its productivity pricing formula, that the Department determined in the rulemaking that productivity pricing (a form of pricing that reduces a subscriber's CRS fees when it increases its use of the CRS) was permissible, and that the American contract provision as a practical matter could not keep an agency from using another system.

The Department invited other persons to file comments on ASTA's petition. 58 FR 41068 (August 2, 1993). In response, System One, Worldspan, Delta Air Lines (a Worldspan partner), Air France, and three travel agencies (Hewins Travel Consultants, Travelbound, Inc., and WTT, Inc., d/b/a Woodside Travel Trust) filed comments supporting ASTA's proposal or similar restrictions on vendor subscriber contracts. American again opposed such proposals. Apollo Travel Services, the marketing arm of the second largest U.S. CRS, Galileo, stated it was taking no position on ASTA's proposal but took issue with WTT's alleged misdescription of Apollo's subscriber contracts. In its comments the Orient Airlines Association asked us to begin a rulemaking on other CRS issues.

However, ASTA has moved to withdraw its rulemaking petition on the ground that American had agreed with ASTA that in future subscriber contracts American would substitute an actual damages clause for a liquidated damages clause and that American would give its subscribers the option of replacing the liquidated damages clause in their existing contracts with an actual damages clause. American would take these steps within thirty days of our dismissal of ASTA's rulemaking petition. Since American's agreement had eliminated the cause of ASTA's request for a rulemaking, ASTA wishes to withdraw its petition.

Despite ASTA's request for withdrawal, System One and Worldspan contend that ASTA's agreement with American should not keep us from proposing new rules on subscriber contracts. They contend that American could demand lost booking fees as part of its actual damages and that American's productivity pricing formula requires subscribers to guarantee that American will receive booking fees during the term of their contracts. WTT, a consortium of very large travel agencies, initially filed a pleading opposing ASTA's motion to withdraw its petition. However, WTT later stated that it wished to withdraw that opposition. WTT, which prefers market solutions to business problems, has learned that American is willing to negotiate changes in its subscriber contracts with some agencies. In WTT's opinion, this means that regulatory action is no longer necessary.

We will grant ASTA's motion to withdraw its petition for rulemaking, and we will terminate this proceeding. We do not believe that we should begin a rulemaking of the kind sought by Worldspan, System One, Delta, and the two smaller agencies at this time, even though their comments have cited practices by American and Apollo that may be troublesome. However, we do not now have detailed knowledge on the effects of our revised CRS rules, which became effective less than two years ago, nor on other changes that may have affected the operation of the CRS and airline businesses. Rather than begin a rulemaking, we prefer to begin an informal investigation into these issues In that investigation we are seeking information from vendors, airlines, travel agency groups and individual agencies, and other persons with knowledge of CRSs and related airline marketing issues.

That investigation should give us sufficient knowledge to determine whether we should propose changes to the rules and, if so, what kind of changes, just as our last rulemaking relied heavily on the examination of the CRS business undertaken by the Secretary's Task Force on Competition in the Domestic Airline Industry. *Airline Marketing Practices: Travel Agencies, Frequent Flyer Programs, and Computer Reservation Systems* (February 1990), cited at 57 FR 43782. As part of that informal investigation, we are issuing an order requiring the vendors to provide us with certain information and inviting vendors, airlines, travel agencies, and other interested persons to meet with our staff to discuss the issues. Our dismissal of ASTA's petition, of course, will not prevent us from instituting a new rulemaking on CRS issues if we find one warranted.

Issued in Washington, D.C. on September 26, 1994.

**Patrick V. Murphy,**

*Acting Assistant Secretary of Transportation for Aviation and International Affairs.*

[FR Doc. 94–24167 Filed 9–29–94; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### 27 CFR Part 24

**[Notice No. 800]**

**RIN: 1512–AA89**

### Materials and Processes Authorized for the Production of Wine and for the Treatment of Juice, Wine and Distilling Material (93F–059P)

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice solicits comment from winemakers, consumers and other interested parties as to whether, pursuant to the provisions of Section 5382 of the Internal Revenue Code of 1986, the use of certain materials and processes is acceptable in "good commercial practice" in the production, cellar treatment, and finishing of wine. If these new materials and processes are found to be acceptable, then a final rule will be published adding these new materials/processes to the wine regulations.

**DATES:** Written comments to this document must be received by November 29, 1994.

**ADDRESSES:** Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 800). Copies of the proposed regulation and any written comments received will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Robert White, Coordinator, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226 (202–927–8230).

**SUPPLEMENTARY INFORMATION:**

## Background

Several members of the wine industry have recently petitioned ATF for approval of the use of 3 wine treating processes and 1 wine treating material in the production, cellar treatment, and/or finishing of wine. Only one of the processes, the spinning cone column, is new and would be used to reduce the ethyl alcohol content of wine or to remove off flavors in wine. The other two processes are not new but either would be used in combination or would be used for a different purpose or at a different limitation than previously authorized. The processes to be used in combination are reverse osmosis and ion exchange and would be used to remove excess volatile acidity from wine. The process which would be used at a different limitation is ultrafiltration. And finally, the new wine treating material, urease enzyme, would be used to reduce urea in wine, thereby reducing the possibility of ethyl carbamate formation during wine storage.

## Wine Treating Processes

### *Spinning Cone Column*

The spinning cone column (SCC) is a gas-liquid contacting device which can process a wide range of products including slurries with very high solids contents. It is a multi-stage mass transfer device consisting of a series of alternating stationary and rotary truncated cones. During its operation the product is fed at the top of the column and then flows down the upper surface of the stationary cones under the influence of gravity and moves across the upper surface of the rotating cones in a thin film due to the applied centrifugal force. The stripping gas enters the bottom of the column and flows counter current to the liquid phase in the spaces between the fixed and rotating cones.

The petitioners who have requested ATF to approve the use of the SCC wish to use it in the production of low alcohol wine, as well as to remove off flavors in wine (e.g. volatile acidity, ethyl acetate, hydrogen sulfide, etc.).

In the production of low alcohol wine, the feed wine is initially run through the SCC to recover the volatile wine flavor essence. In the second stage of processing, the flavor essence reduced wine is run through the SCC to reduce the alcohol in the wine to the desired level. The essence, which has previously been removed, is then added back to the alcohol reduced wine to make a low alcohol wine which, according to the petitioners, retains much of its original flavor. The alcohol which has been removed from the wine can then either be used in accordance with law and regulations or be destroyed.

Treatment of wine utilizing the SCC to remove off flavors, or to reduce the alcohol content of the wine, may not alter the vinous character of the wine. Otherwise, the wine would no longer be considered standard wine.

Since the separation of alcohol from a fermented substance is considered to be a distilling process, SCC operations cannot be conducted at winery premises but must instead take place at distilled spirits plant premises.

In 1991, approval was given for several industry members to experiment with the SCC. Since then, a few industry members have been given permission, pending the final outcome of the rulemaking process, to commercially produce reduced alcohol wine and dealcoholized wine using the SCC process under the following conditions:

1. The SCC removal of any alcohol from the wine will be done on DSP premises.

2. Records will be maintained for each lot of wine put through the SCC and the fractions derived from such wine showing the date, quantity, and disposition of each fraction.

3. In the production of reduced alcohol standard wines using the SCC, the same amount of essence will be added back to any lot of wine as was originally removed.

4. Proprietors must contact their ATF Area Supervisor prior to the destruction of any alcohol or other fractions derived from the SCC process.

Other persons wishing to use the SCC technology to produce low alcohol and/or dealcoholized wines, or to remove off flavors from wine, should submit letter applications to ATF requesting permission to do so. If it is determined, through this rulemaking process, that the use of the SCC technology is in accordance with "good commercial practice," the SCC process will be added to 27 CFR 24.248 at which time no further letter applications will be required for its use.

### *Reverse Osmosis and Ion Exchange*

One industry member requested ATF to approve the use of reverse osmosis and ion exchange in combination to remove volatile acidity (VA) from bulk wine. The process combines two technologies already widely in use in the wine industry.

The process involves utilizing reverse osmosis to separate wine into various components and then using ion exchange to remove VA. The wine components, minus the VA, would then be recombined in-line to form the original wine minus the VA. The whole process takes place in a closed system.

Regulations at 27 CFR 24.248 are currently broad enough to allow ion exchange to be used to remove volatile acidity from wine or from various components of wine. However, this section of regulations does not currently authorize reverse osmosis to be used for anything other than to reduce the ethyl alcohol content of wine. The regulation change that is being proposed in this document will allow reverse osmosis to also be used to remove off flavors in wine, which would enable it to be used as part of an overall process in a closed system to remove VA from wine.

Normally, reverse osmosis must be done on distilled spirits plant premises because it is considered a distilling process resulting in a distilled spirits by-product. However, in this case, the various components of wine will only be created temporarily in a closed system and will be immediately recombined in-line to reconstitute the original wine minus VA. ATF has concluded that this type of reverse osmosis may be conducted on bonded winery premises since no separate distilled spirits product is created as a final product or by-product.

Absolutely no accumulation of ethyl alcohol outside the closed system will be allowed. Such accumulation of an ethanol solution on winery premises would subject the proprietor to the distilled spirits tax of $13.50 per proof gallon imposed by Section 5001 of the Internal Revenue Code.

ATF has approved the application from the industry member, pending the final outcome of the rulemaking process, to use these two processes in a closed system to remove VA from wine. Other persons wishing to use these two processes in a similar fashion should submit letter applications to ATF requesting permission to do so. If it is determined, through this rulemaking process, that the use of reverse osmosis and ion exchange in combination in a closed system to remove VA from wine is in accordance with "good commercial practice," this procedure will be authorized in 27 CFR 24.248 by amending the use column of reverse osmosis to state that it can be used to remove off flavors in wine. Once this change to the regulations is made, no further letter applications will be required to use these two processes in combination in a closed system to remove VA from wine.

The footnote concerning processes which must be done on distilled spirits plant premises, located at the end of 27 CFR 24.248, has been revised to state that under certain limited conditions, reverse osmosis may be used on bonded winery premises if ethyl alcohol is only temporarily created within a closed system.

*Ultrafiltration*

An industry member has requested that the limitation imposed on the use of ultrafiltration by 27 CFR 24.248 be changed to allow transmembrane pressures greater than 100 pounds per square inch (psi). The industry member states that they need to employ transmembrane pressures of up to approximately 200 psi rather than the current maximum of 100 psi which is provided for in § 24.248. The industry member indicates that their laboratory tests have shown an increase in throughput of 4 to 5-fold when the pressure is increased from 100 to 150 psi with no change in the character of the finished wine. Without this increase in throughput, the industry member states that the process is not economically viable since they can achieve the same result with other methods at a much lower cost.

The industry member states that they chose the less than 200 psi limitation as the upper limit in order to maintain a clear distinction between ultrafiltration and reverse osmosis in terms of pressure. The industry member points out that the two processes are also differentiated by the fact that the membranes specified for reverse osmosis have a much smaller pore size than those used in ultrafiltration.

The industry member submitted two samples of ultrafiltered apple wine to the ATF laboratory for analysis. The first sample was processed at 95 psi and the second sample was processed at 195 psi. The ATF laboratory analysis, based on the analytical data and on an organoleptic evaluation, showed there is no significant difference between the samples at these different pressure ratings. As a result of this analysis, the ATF laboratory stated that the basic character of the wine was not altered by increasing the authorized pressure rating from 100 psi to 195 psi.

Consequently, ATF approved the industry member's request to be allowed to use pressures of less than 200 psi when conducting operations using ultrafiltration. Other industry members wishing to use ultrafiltration at higher pressures may submit letter applications to ATF requesting permission to do so. ATF may require samples prior to giving such approval. If it is determined through the rulemaking process that ultrafiltration using pressures of less than 200 psi is considered "good commercial practice," then the regulations will be changed to incorporate this more liberal pressure limitation.

**New Wine Treating Material**

*Urease Enzyme*

An industry member has requested to be allowed to use urease enzyme derived from *Lactobacillus fermentum* to reduce levels of naturally occurring urea in wine to prevent the formation of ethyl carbamate during storage.

The enzyme is derived from the nonpathogenic, nontoxicogenic bacterium *Lactobacillus fermentum*. It contains the enzyme urease (CAS Reg. No. 9002–13–5) which facilitates the hydrolysis of urea to ammonia and carbon dioxide. It is produced by a pure culture fermentation process and by using materials that are generally recognized as safe (GRAS) or are food additives that have been approved for this use by the Food and Drug Administration (FDA).

Urease enzyme from *Lactobacillus fermentum* was approved for use in wine by FDA on December 21, 1992, effective January 21, 1993. The FDA regulation cite is 21 CFR 184.1924, Urease Enzyme Derived From *Lactobacillus fermentum*.

The manufacturer of the urease enzyme, Takeda Chemical Industries, Ltd., has also submitted several letters confirming that the urease enzyme preparation is derived from *Lactobacillus fermentum*. The company states that the enzyme is standardized with glucose syrup solids and the urease activity is adjusted to 3.5 units/mg. The company indicates that the urease enzyme meets the general and additional requirements for enzyme preparations in the "Food Chemicals Codex," 3rd edition (1981). In addition, the urease enzyme is used in food at levels not to exceed current good manufacturing practice as defined in 21 CFR 184.1924.

Takeda Chemical Industries, Ltd., states that the composition of the urease enzyme preparation is as follows:

Killed whole cells of *Lactobacillus fermentum*: 20–35%
Glucose Syrup Solids 65–80%

Takeda also states that they have confirmed that due to the low usage level (10–200 ppm) and objective of usage, addition of glucose syrup solids in this case is not considered "sweetening" of the beverage, which is prohibited in the State of California for table wine.

The industry member states that urease enzyme derived from *Lactobacillus fermentum* is economically self-limiting due to the high cost of the material. In addition, FDA, in their approval, did not set a specific numerical limit but rather limited its use to "good commercial practice." The industry member states that if a numerical limit needs to be set, it should be set no lower than 200 mg/L. The industry member also indicated that no water is required to use urease enzyme.

The industry member also submitted to the ATF laboratory two 750-milliliter samples of wine, one before and one after treatment, as well as a sample of the material. Based on an analysis of the samples and an organoleptic evaluation, the ATF laboratory concluded there were no significant differences between the control and experimental wine samples. The ATF laboratory stated that they have no objections to this enzyme preparation being used as a wine treating material at a maximum usage rate of 200 mg/L provided that the enzyme is filtered prior to final packaging of the wine as practiced in "good commercial practice."

Consequently, ATF approved the industry member's request to use urease enzyme derived from *Lactobacillus fermentum* to reduce levels of naturally occurring urea in wine to prevent the

formation of ethyl carbamate during storage. This approval was given pending final action on urease enzyme as a result of the rulemaking process. This approval is also contingent upon the industry member using urease enzyme at a level not to exceed 200 mg/L and that the enzyme preparation is filtered prior to final packaging of the wine.

ATF is requesting all interested parties to comment on whether the use of this enzyme preparation in wine to reduce ethyl carbamate formation is in accordance with "good commercial practice." We are also requesting comments on whether the maximum usage rate of 200 mg/L is appropriate. Based on the comments received, we will determine whether the use of urease enzyme for the above stated purpose is in accordance with "good commercial practice." If so, we will add this new wine treating material to the authorized list in 27 CFR 24.246.

In the meantime, if other industry members wish to use urease enzyme in their wines at a maximum usage rate of 200 mg/L to prevent or reduce the formation of ethyl carbamate, they should submit a letter application to ATF requesting permission to do so.

*Public Participation*

Comments to this notice may address any one or all of the proposals. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material or comment as confidential. Comments may be disclosed to the public. Any material which the respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The names of commenters are not exempt from disclosure.

Written comments will be available for public inspection during normal business hours at the following address: ATF Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC.

*Regulatory Flexibility Act*

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation is liberalizing in nature and will allow winemakers more flexibility when producing their wines with no negative impact on small entities. Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

*Executive Order 12866*

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly this proposal is not subject to the analysis required by this Executive Order.

*Paperwork Reduction Act*

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

*Drafting Information*

The principal author of this document is Robert L. White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms. ATF Wine Technical Advisor Richard M. Gahagan and former ATF Chemist Randolph H. Dyer have provided significant technical assistance in the evaluation and review of data pertinent to the preparation of this document.

**List of Subjects in 27 CFR Part 24**

Administrative practice and procedure, Authority delegations, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Transportation, Warehouses, Wine and vinegar.

**Authority and Issuance**

27 CFR Part 24—Wine is amended as follows:

**PART 24—WINE**

**Par. 1.** The authority citation for Part 24 continues to read as follows:

**Authority:** 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356–5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

**Par. 2.** Section 24.246 is amended in the table by revising the entry for enzymatic activity, by indenting the 13 enzyme entries immediately following enzymatic activity (ending with Protease (Trypsin)) to show that these entries all come under enzymatic activity, and by adding the new enzyme, urease, immediately after and directly under Protease (Trypsin), to read as follows:

**§ 24.246 Materials authorized for treatment of wine and juice.**

* * * * *

| Materials and use | Reference or limitation |
|---|---|
| . . . . . | . . . . . |
| Enzymatic activity: Various uses as shown below ..... | The enzyme preparation used shall be prepared from nontoxic and nonpathogenic microorganisms in accordance with good manufacturing practice and be approved for use in food by either FDA regulation or by FDA advisory opinion. |
| . . . . . | . . . . . |
| Urease: To reduce levels of naturally occurring urea in wine to help prevent the formation of ethyl carbamate. | The urease enzyme activity shall be derived from *Lactobacillus fermentum* per 21 CFR 184.1924. Use is limited to not more than 200 mg/L and must be filtered prior to final packaging of the wine. |
| . . . . . | . . . . . |

**Par. 3.** Section 24.248 is amended in the table by revising the entries for reverse osmosis and ultrafiltration, by adding the entry for spinning cone column, and by revising the footnote at the end of the section to read as follows:

**§ 24.248 Processes authorized for the treatment of wine, juice, and distilling material.**

* * * * *

| Processes | Use | Reference or limitation |
|---|---|---|
| * * * * * | | |
| Reverse osmosis [1] | To reduce the ethyl alcohol content of wine and to remove off flavors in wine. | Permeable membranes which are selective for molecules not greater than 500 molecular off flavors in wine weight with transmembrane pressures of 200 psi and greater. The addition of water other than that originally present prior to processing will render standard wine "other than standard." Use shall not alter virous character. |
| Spinning cone [1] | To reduce the ethyl alcohol content of wine and to remove off flavors in wine. | Use shall not alter vinous character. For standard wine, the same amount of essense must be added back to any lot of wine as was originally removed. |
| * * * * * | | |
| Ultrafiltration | To remove proteinaceous material from wine; to reduce harsh tannic material from white wine produced from white skinned grapes; to remove pink color from blanc de noir wine; to separate red wine into low color and high color wine fractions for blending purposes.. | Permeable membranes which are selective for molecules greater than 500 and less than 25,000 molecular weight with transmembrane pressures less than 200 psi. Use shall not alter vinuous character. 21 CFR 175.300, 177.1520, 177.1550, 177.1630, 177.2440, 177.2600, and 177.2910. |

[1] This process must be done on distilled spirits plant premises. However, reverse osmosis, under certain limited conditions, may be used on bonded winery premises if ethyl alcohol is only temporarily created within a closed system.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1383, as amended (26 U.S.C. 5381, 5382, 5385, 5386, and 5387)).

August 9, 1994.

**Daniel R. Black,**

*Acting Director.*

Approved: August 24, 1994

**Dennis M. O'Connell,**

*Acting Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement)*

[FR Doc. 94–24219 Filed 9–29–94; 8:45 am]

BILLING CODE 4810–31–U

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### 29 CFR Parts 1910, 1915, 1926, 1928

**[Docket No. H–122]**

**RIN 1218–AB37**

### Indoor Air Quality

**AGENCY:** Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

**ACTION:** Notice of Proposed Rulemaking; Schedule changes and hearing locations.

**SUMMARY:** OSHA is announcing schedule changes for the hearing and its location for the third and subsequent weeks.

**DATES:** The hearing will take place from September 20, 1994 through September 30, 1994, from October 11 through October 14, 1994, from October 24 through November 4, 1994, from November 14 through November 22, 1994 and from November 29 through December 16, 1994. The starting time is 9:30 a.m. The weeks of testimony scheduled for October 3–7, 1994 and November 7–10, 1994 have been postponed at the direction of the Administrative Law Judge and that testimony generally will be rescheduled between December 5 and December 16, 1994. A new schedule will be mailed to participants.

**ADDRESSES:** Starting On Tuesday, October 11 the hearings will be held in the Auditorium, U.S. Department of Labor, Frances Perkins Building, 3rd Street and Constitution Avenue, N.W., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Mr. Tom Hall, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone: (202) 219–8615 or 219–8618 for a recorded message on hearing changes, dates and location.

**SUPPLEMENTARY INFORMATION:** On April 5, 1994, OSHA issued a notice of proposed rulemaking addressing indoor air quality issues, including environmental tobacco smoke in the workplace. 59 FR 15968. On June 14, 1994 OSHA issued a supplemental notice giving parties until August 13, 1994 to submit comments; until August 5, 1994 to file notices of intention to appear; and until August 13, 1994 to submit testimony and evidence. The hearing was scheduled to start September 20, 1994. 59 FR 30560. These dates were *not* changed.

On September 16, OSHA announced in the **Federal Register**, (59 FR 47570) that the hearing in addition to running from September 20 through October 14, 1994, would also continue October 24 through November 22, 1994 and from November 29 into the week of December 5, 1994 because of the large number of participants who wished to testify. These dates are being modified.

On September 22, 1994 the Administrative Law Judge ordered the postponement of the hearings for the weeks of October 3–7, 1994 and November 7–10, 1994 to permit time to develop a better record. Those weeks are being rescheduled for December 5 through December 16, 1994. Witnesses scheduled for the two postponed weeks of October 3–7 and November 7–10 will

generally be rescheduled for December 5–16, 1994. An updated schedule will be mailed to participants and will be available by calling the OSHA Office of Consumer Affairs.

The persons who had requests to testify filed by marketing firms had been scheduled to testify December 5, 1994. Their testimony will be rescheduled at a date to be announced later.

In this notice, OSHA is also announcing the location the hearing, for the third and subsequent weeks, the Auditorium of the U.S. Department of Labor, 3rd Street and Constitution Avenue, N.W., Washington, D.C.

Signed at Washington D.C., this 28th day of September, 1994.

**Joseph A. Dear,**

*Assistant Secretary for Occupational Safety and Health.*

[FR Doc. 94–24348 Filed 9–29–94; 8:45 am]

BILLING CODE 4510–26–P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 117

**[CGD08–94–025]**

**RIN 2115–AE47**

## Drawbridge Operation Regulations; Sabine River, LA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** At the request of the Louisiana Department of Transportation and Development, the Coast Guard is considering a change to the regulation governing the operation of the swing span bridge on Route LA 12 over the Sabine River, mile 40.8 near Starks, between Calcasieu Parish, Louisiana and Newton County, Texas, by permitting the draw to remain closed to navigation at all times. The draw presently opens on call with 24 hours advance notice, however, there is no significant navigation on the waterway and there have been no requests to open the bridge for passage of marine traffic for 20 years.

**DATES:** Comments must be received on or before November 29, 1994.

**ADDRESSES:** Comments may be mailed to Commander(ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396 or may be delivered to Room 1313 at the same address between 8 a.m. and 3:30 p.m., Monday through Friday except Federal holidays. The comments and other materials referenced in this notice will be available for inspection and copying in room 1313 at this address. Normal office hours are between 8 a.m. and 3:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Frank, Bridge Administration Branch, (504) 589–2965.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD08–94–025) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound materials is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. David Frank at the address under "**ADDRESSES.**" The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

### Drafting Information

The principal persons involved in drafting this document are Mr. David Frank, Project Officer and Lieutenant Elisa Holland, Project Attorney.

### Background and Purpose

Upon request by the bridge owner, the Coast Guard is considering permitting the draw to remain permanently closed. Navigation requiring openings is non-existent and the bridge has not been opened for twenty years. There is no commercial navigation on the waterway in the vicinity of the bridge crossing. Vertical clearance of the bridge in the closed position is 6 feet above mean high water and 20 feet above low water. The occasional small recreational boat which uses the waterway can transit the bridge without requiring an opening. Permitting the permanent closure of the draw would result in a significant savings in maintenance costs with no effect on navigational traffic.

### Regulatory Evaluation

This rule is not a significant regulatory action under Section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040); February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), The Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities

### Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

### Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1 (series), this proposal is categorically excluded form further environmental documentation. An "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under "**ADDRESSES.**"

**List of Subjects in 33 CFR Part 117**

Bridges.

**Proposed Regulations**

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, code of Federal Regulations. as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.493 is revised to read as follows:

**§ 117.493 Sabine River.**

(a) The draws of the Southern Pacific railroad bridge, mile 19.3 near Echo, and the Kansas City Southern railroad bridge, mile 36.2 near Ruliff, shall open on signal if at least 24 hours notice is given.

(b) The draw of the S12 bridge, mile 40.8, at Starks, need not be opened for the passage of vessels.

Dated: September 21, 1994.

**R.C. North,**

*Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.*

[FR Doc. 94–24157 Filed 9–29–94; 8:45 am]

**BILLING CODE 4910–14–M**

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## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

### 37 CFR Part 1

**[Docket No. 940965–4265]**

**RIN: 0651–AA67**

### Revision of Affidavits Under 37 CFR 1.131

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Patent and Trademark Office (Office) proposes to amend the rules of practice relating to submission of affidavits or declarations under 37 CFR 1.131(a) to implement the relevant provisions of Public Law No. 103–182 and the GATT (General Agreement on Trade and Tariffs), and to provide relief in certain circumstances where a common assignee holds both an application and a patent claiming patentably indistinct, but not identical, inventions.

**DATES:** Written comments must be submitted on or before December 1, 1994. No oral hearing will be held.

**ADDRESSES:** Address written comments to the Commissioner of Patents and Trademarks, Washington, D.C. 20231, Attention: Charles E. Van Horn, Deputy Assistant Commissioner for Patent Policy and Projects, or by fax to (703) 305–8825.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Van Horn by telephone at (703) 305–9054 or Hiram Bernstein by telephone at (703) 305–9282 or by mail marked to the attention of Charles E. Van Horn, Deputy Assistant Commissioner for Patent Policy and Projects, and addressed as above.

**SUPPLEMENTARY INFORMATION:** Public Law No. 103–182 (November 4, 1993) implementing the North American Free Trade Agreement (NAFTA), amended 35 U.S.C. 104 to provide that for the purpose of obtaining a patent, an applicant can show a date of invention in the United States, or in a NAFTA country which occurred after the date of implementation (i.e., December 8, 1993). Although GATT enabling legislation has not been passed, these proposed rule changes assume that it will be passed, and therefore changes to 37 CFR 1.131(a) similar to NAFTA would be required. See Article 27, paragraph 1, of the Agreement on Trade-related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods, of the GATT. In the event that the GATT enabling legislation is not enacted when the final rules are published, the proposed rule changes relative to the GATT will be withdrawn.

The Office proposes to amend 37 CFR 1.131(a), which is currently limited to facts showing a completion of the invention in the United States, to allow for a submission of facts in an affidavit or declaration that show completion of the invention in a NAFTA or a World Trade Organization (WTO) Member country. The WTO is established under the GATT agreement to resolve disputes between signatories to the agreement. The facts presented must demonstrate completion of the invention prior to the effective date of a reference thought to bar the grant of a patent or the patentability of a claim in a patent under reexamination.

Additionally, the Office recognizes that there is a potential conflict between existing 37 CFR 1.131(a) and 37 CFR 1.602(a). Section 1.131(a) prohibits affidavits or declarations thereunder when the same patentable invention as defined in 37 CFR 1.601(n) (i.e., patentably indistinct inventions) is claimed. An interference under 35 U.S.C. 135, rather than antedating under § 1.131(a), is generally the available remedy. However, 37 CFR 1.602(a) provides that when the applications or the application and patent are owned by a single party, interferences are not declared or continued unless good cause is shown. This can result in a hardship where there is an issued patent that can no longer be amended as by filing a continuation-in-part application. Where there are two or more pending applications, the conflict can be avoided by filing a continuation-in-part application incorporating the conflicting inventions in a single application.

The Office proposes to amend 37 CFR 1.131 to broaden its application to a single party where inventions of a pending application and a patent held by the party are patentably indistinct but not identical. Under the proposed additions to § 1.131, an affidavit or declaration could be filed by a party to avoid a 35 U.S.C. 103 rejection based on a 35 U.S.C. 102(a) or (e) patent owned by that party, where the patent claimed an invention that was patentably indistinct, but not identical to an invention claimed in an application or patent undergoing reexamination.

The proposed addition to § 1.131 would not affect the use of the issued patent in a rejection based on double patenting. However, where patentably indistinct but not identical inventions are claimed, a double patenting rejection can be avoided by filing an appropriate terminal disclaimer. In addition, petitions under § 1.183 will be entertained for waiver of § 1.131 requirements in appropriate instances where two pending applications claiming patentably indistinct but not identical inventions are held by a single party.

**Discussion of Specific Rules**

Section 1.131(a), if amended to (a)(1) as proposed, would allow a § 1.131 affiant or declarant to rely upon facts occurring in a NAFTA or a WTO Member country to show completion of the invention. The term "domestic" would be changed to "U.S." The section is proposed to be amended from a single sentence to three sentences.

Section 1.131(a)(2), if added as proposed, would limit the availability of acts showing completion of the invention in a NAFTA or WTO Member country to those acts occurring subsequent to the effective date of the agreements.

Section 1.131(a)(3), if added as proposed, would allow a showing of prior invention to be made in a pending application or a patent that is undergoing reexamination where a single party holds both the application or patent undergoing reexamination and another patent where the claimed

inventions were, at the time the later invention was made, both owned by the single party or subject to an obligation of assignment to that party. Further, in order to rely on proposed § 1.131(a)(3), the inventions claimed in the application or in the patent undergoing reexamination and in the other patent must not be identical as set forth in 35 U.S.C. 102.

**Other Considerations**

The proposed rule changes are in conformity with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., Executive Order 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The Office of Management and Budget has determined that the proposed rule changes are not significant for the purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule changes will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)), because the proposed rules would affect only a small number of applications and would provide a streamlined and simplified procedure, eliminating the need for requesting waiver of the rules.

The Patent and Trademark Office has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

These rule changes will not impose any additional burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

**List of Subjects in 37 CFR Part 1**

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and record keeping requirements.

For the reasons set forth in the preamble, and pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, the Office proposes to amend Title 37 of the Code of Federal Regulations as set forth below, with deletions indicated by brackets ([]) and additions indicated by arrows (><).

## PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR, Part 1, would continue to read as follows:

**Authority:** 35 U.S.C. 6, unless otherwise noted.

2. Section 1.131 is proposed to be amended by revising paragraph (a) to read as follows:

**§ 1.131 Affidavit or declaration of prior invention to overcome cited patent or publication.**

(a) >(1)< When any claim of an application or a patent under reexamination is rejected on reference to a [domestic] >U.S.< patent which substantially shows or describes but does not claim the same patentable invention, as defined in § 1.601(n), as the rejected invention, or on reference to a foreign patent or to a printed publication, [and] the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or the person qualified under §§ 1.42, 1.43 or 1.47, [shall make] >may overcome the patent or publication by filing an appropriate< oath or declaration >.< [as to] >The oath or declaration must include< facts showing a completion of the invention in this country >or in a NAFTA or WTO Member country< before the filing date of the application on which the [domestic] >U.S.< patent issued, or before the date of the foreign patent, or before the date of the printed publication >.< [, then] >When an appropriate oath or declaration is made,< the patent or publication cited shall not bar the grant of a patent to the inventor or the confirmation of the patentability of the claims of the patent, unless the date of such patent or printed publication is more than one year prior to the date on which the inventor's or patent owner's application was filed in this country.

>(2) A date of completion of the invention may not be established under this section before December 8, 1993, in a NAFTA country, or before——in a WTO Member country other than a NAFTA country.

(3) Notwithstanding the provisions of paragraph (a)(1), a showing may be made under this section where the inventions defined by a claim in an application or a patent under reexamination and by a claim in another U.S. patent are not identical as set forth in 35 U.S.C. 102, and where the inventions were, at the time the later invention was made, owned by the same person or subject to an obligation of assignment to the same person.<

* * * * *

Dated: September 26, 1994.

**Bradford R. Huther,**

*Acting Assistant Secretary of Commerce and Acting Commissioner of Patents and Trademarks.*

[FR Doc. 94-24236 Filed 9-29-94; 8:45 am]

BILLING CODE 3510-16-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 51

[FRL-4895-4]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to revise its 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 the Federal implementation plan for the Chicago ozone nonattainment area. The proposed revision would add acetone to the list of compounds excluded from the definition of VOC on the basis that these compounds have negligible contribution to tropospheric ozone formation.

**DATES:** Comments on this proposal must be received by November 29, 1994.

**ADDRESSES:** Comments should be submitted in duplicate (if possible) to: Air and Radiation Docket and Information Center (6102), Attention: Docket No. A-94-26, 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, North Carolina. 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 Management Division (MD-15), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5245. The EPA will publish notice of a hearing, if a hearing is 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.

This action is subject to the procedural requirements of section

307(d)(1) (B), (J), and (U) of the Act, and 42 U.S.C. 7607(d)(1) (B), (J), and (U). Therefore, EPA has established a public docket for this action, A–94–26, which is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at EPA's Central Docket Section, room M–1500, 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 Management Division (MD–15), Research Triangle Park, NC 27711, phone (919) 541–5245.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Three petitions have been received by the EPA asking that acetone be added to the list of negligibly-reactive compounds in the definition of VOC at 40 CFR 51.100(s). These petitions were submitted by Eastman Chemical Company and Hoechst Celanese Corporation on April 26, 1993, Hickory Springs Manufacturing Company on May 6, 1993, and the Chemical Manufacturers Association on May 14, 1993. Along with their petitions and in supplemental submissions, these organizations submitted a variety of scientific materials which support the assertion that acetone is of negligible photochemical reactivity. These materials have been added to the docket for this rulemaking.

The petitioners based their request for the exclusion of acetone on a demonstration that the photochemical reactivity of acetone is not appreciably different from that of ethane, which is the most reactive compound on the current list of compounds which are named in the definition of VOC as being of negligible reactivity. Acetone's photochemical reactivity arises through two chemical pathways: through reaction with hydroxyl (OH) radicals ($k_{OH}$ reactivity) and through photolysis. Data on the reaction of OH radicals with various organic compounds are reported in a review article (Atkinson, R. (1990), "Gas—Phase Tropospheric Chemistry of Organic Compounds: A Review." *Atmospheric Environment*, 24 A:1–41) which gives the following rate constants for reactions of ethane and acetone with OH:

Ethane: $2.68\times10^{-13}$ cc/molecule/sec.
Acetone: $2.26\times10^{-13}$ cc/molecule/sec.

Thus, if the $k_{OH}$ reactivities alone are considered, acetone is less reactive than ethane. Unlike ethane, however, acetone undergoes photodecomposition, or photolysis, in the atmosphere to form radicals, which tend to cause increased rates of ozone formation. Total reactivity of acetone, considering both $k_{OH}$ reactivity and photolysis, was the subject of a special study reported recently (Carter, W. P. L. et al., "An Experimental and Modeling Study of the Photochemical Ozone Reactivity of Acetone," University of California/ Riverside, December 10, 1993).

The Carter report describes a series of environmental chamber experiments and computer model simulations carried out to assess the tendency of acetone to promote ozone formation under atmospheric conditions, relative to that of ethane. This was done by calculating and comparing the "incremental reactivities" of acetone and ethane for a variety of atmospheric conditions representing ozone episodes in 39 urban areas throughout the United States.

"Incremental reactivity" is the most recently proposed quantitative measure of the degree to which a VOC contributes to ozone formation in a photochemical air pollution episode. It is defined as the amount of additional ozone formation resulting from the addition of a small amount of VOG to the urban emissions, divided by the amount of compound added. This measure of reactivity takes into account all of the factors by which a VOC affects ozone formation, including the effect of the environment where the VOC reacts The latter is important because the amount of ozone formation caused by the reactions of a VOC depends significantly on the conditions within the polluted atmosphere, such as VOC to nitrogen oxide ($NO_X$) ratio, VOC composition, and sunlight intensity. Figure 1 shows distribution plots of the reactivity of acetone relative to that of ethane for the 39 urban scenarios used, where reactivity is defined in terms of grams of ozone formed per gram of VOC emitted. (Use of the unit grams of ozone formed per gram of VOC emitted is significant. Another way of defining reactivity is in terms of grams of ozone formed per mole of VOC emitted, which would give different results. For practicality, the EPA has elected to adopt the grams ozone per gram VOC basis, since grams (or tons), rather than moles, is the mass unit used in regulations dealing with VOC emissions.) In Figure 1, acetone/ethane reactivity ratios less than 1.0 indicate scenarios where acetone is less reactive than ethane. The acetone/ethane reactivity ratio, as reported by Carter, appears to have widely varying values among the 39 urban scenarios and to reflect, with a few exceptions, slightly lower reactivity for acetone. For one scenario, which represents unusually high $NO_X$ conditions, acetone was calculated to be over two times more reactive than ethane. This is due to the unusually low reactivity of ethane for that particular scenario, rather than to higher acetone reactivity. Figure 2 shows the variability of ethane reactivity relative to that of a "typical" urban VOC mix. Figure 2 also shows that the reactivity range of acetone falls entirely within the range for ethane.

BILLING CODE 6560–50–P

FIGURE 1

DISTRIBUTION PLOTS OF INCREMENTAL REACTIVITIES
OF ACETONE RELATIVE TO ETHANE
BASED ON OZONE YIELDS PER GRAM VOC

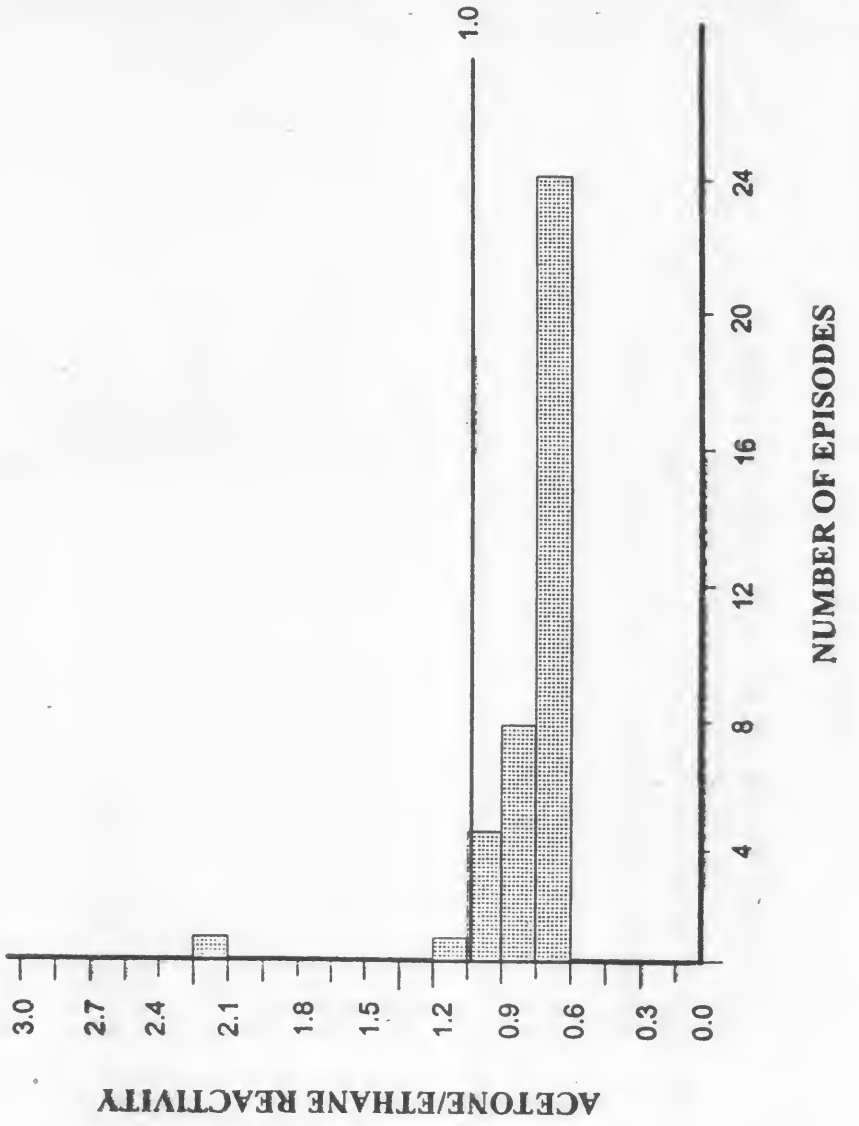
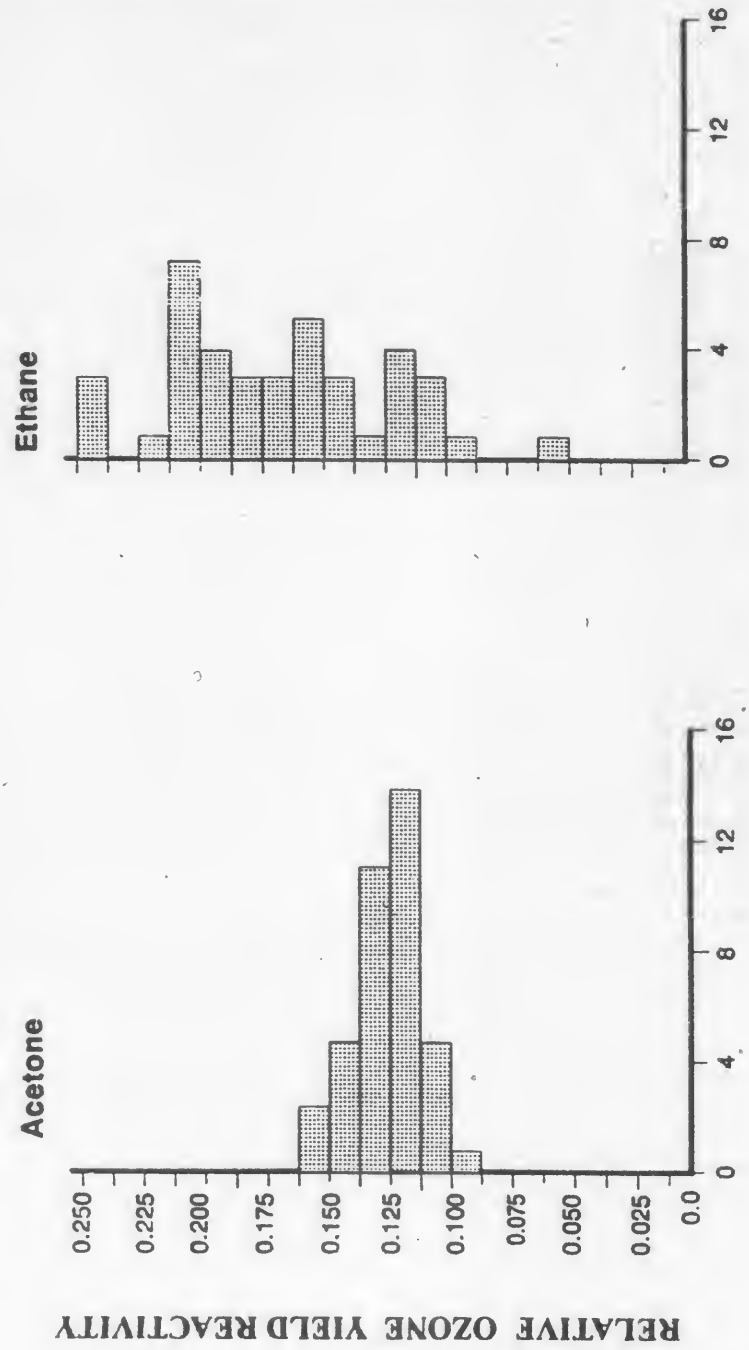


FIGURE 2

DISTRIBUTION PLOTS OF REACTIVITIES
OF ACETONE AND ETHANE
RELATIVE TO THAT OF A "TYPICAL" URBAN VOC MIX
BASED UPON OZONE YIELD PER GRAM VOC

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Although there are uncertainties in acetone's atmospheric photo-oxidation mechanism and in the other aspects of ozone-related atmospheric photochemistry, one can reasonably deduce, based on the Carter report, that acetone and ethane probably have nearly the same reactivity for most sets of environmental conditions.

Additional studies have been conducted on the relative reactivity of acetone in Europe. For example, R. G. Derwent and M. E. Jenkins (Hydrocarbons and the Long-range Transport of Ozone and PAN Across Europe, *Atmospheric Environment*, vol 24A, pp 1661–1678, 1991) used a chemical mechanism to calculate ozone impacts of acetone, ethane, and other VOC for three trajectories across Europe. The photochemical trajectory model the authors employed was developed at Harwell Laboratory (United Kingdom) and was used to calculate the photochemical ozone creation potential (POCP) values for 69 organic compounds, including acetone. The POCP values were assigned to VOC species according to a relative scale, with ethylene having a value of 100. Dr. Derwent reported in a letter (January 27, 1994) to EPA that: "A comparison of POCP's for ethane and acetone in the work of my colleagues at Harwell Laboratory, which incidentally updates the acetone entries in the VOC Protocol Annex, gives 8.2 ± 4.0 and 9.2 ± 2.0, respectively." The difference between these numbers is not considered to be statistically significant.

If acetone is accepted as having negligible photochemical reactivity, exempting acetone from regulation as an ozone precursor could contribute to the achievement of several important environmental goals. For example, acetone can be used as a substitute for several compounds that are listed as hazardous air pollutants (HAP) under section 112 of the Act. Methylene chloride and methyl chloroform are HAP that are used for metal cleaning and for flexible polyurethane foam blowing. Other HAP, such as toluene, are often used as solvents in paints and coatings. Acetone can substitute for these substances in some circumstances.

Acetone can also be used as a substitute for ozone depleting substances (ODS) which are active in depleting the stratospheric ozone layer. Under the London Amendments to the Montreal Protocol on substances that deplete the ozone layer ("Montreal Protocol"), the United States agreed to phase out production and consumption of certain chlorofluorocarbons (CFC) by the year 2000 and methyl chloroform by 2005 (see 58 FR 15016 (March 18, 1993)). In 1990, Congress added title VI to the Act in part to provide for the implementation of this phaseout (see 42 U.S.C. 7671 *et seq.*). The 1990 Amendments specified an initial list of Class I and Class II ODS, authorizing EPA to add compounds to both lists depending on a given compound's potential to contribute to stratospheric ozone depletion, (*Id.* § 7671a.) The 1990 Amendments further required phaseout of the production and consumption of Class I ODS by 2000, methyl chloroform by 2002, and Class II ODS by 2030 (see 42 U.S.C. 7671c, 7671d). At the fourth meeting, in 1992, of the parties to the Montreal Protocol in Copenhagen, Denmark, the parties adjusted the phaseout schedules for Class I substances under the Montreal Protocol to phase out Class I CFC and methyl chloroform by 1996. In 1993, EPA proposed to accelerate the phaseout of Class I CFC and methyl chloroform in order to discontinue use of these compounds after January 1, 1996 (see 58 FR 15022).

As a result of these phaseout deadlines, there is a need to develop substitutes for ODS. Allowing wider use of acetone will facilitate the transition away from ODS without adversely affecting efforts to control ground level ozone concentrations. For example, chlorofluorocarbon-11 and methyl chloroform have been used as foam-blowing agents in the manufacture of polyurethane foam. These compounds are also used in metal cleaning in the aircraft manufacturing industry. Both CFC–11 and methyl chloroform are listed as Class I substances under title VI of the Act, i.e., as substances that have the highest stratospheric ozone-depleting potential. Acetone may be able to be used as a foam-blowing agent and cleaning agent in place of these chemicals.

The EPA has already listed acetone as an acceptable ozone-depleting substance substitute under the program known as the "Significant New Alternatives Policy" (SNAP) program, (59 FR 13044, March 18, 1994). Within the context of the SNAP rule, substitutes are "acceptable" if they are technically feasible to be used as an alternative to an ODS for particular uses and give reduced overall risk to human health and the the environment compared to the ODS they replace. In the SNAP rule, EPA listed acetone as an acceptable substitute for flexible polyurethane foam blowing (59 FR 13132). The SNAP rule lists ketones (which include acetone) as an acceptable substitute for solvent cleaning in metal cleaning, electronics cleaning, and precision cleaning (59 FR 13134). Ketones are also listed in the SNAP rule as an acceptable substitute solvent for aerosols and for adhesives, coatings, and inks (59 FR 13145).

In each of these areas of concern, toxic air emissions and depletion of stratospheric ozone, adding acetone to the list of negligibly-reactive VOC will support the EPA's pollution prevention efforts. By enacting the Pollution Prevention Act of 1990, Congress established as a national policy that "pollution should be prevented or reduced at the source whenever feasible" (42 U.S.C. 13). An important part of EPA's pollution prevention strategy is encouraging companies to use substitutes in their production processes that are more environmentally benign than the substances they currently use. For example, in its blueprint for a comprehensive national pollution prevention strategy, (56 FR 7849 (February 26, 1991)), the EPA recognized that the definition of pollution prevention includes a "switch to non-toxic or less toxic substitutes" (*Id.* at 7854).

National air emissions of acetone from industrial sources were estimated to be 80,000 tons per year in 1991. It should be noted that due to the high volatility of acetone, increased use of acetone for metal cleaning will most likely increase emissions of the compound to the air.

## II. The EPA Response to the Petition

Based on the scientific data presented in the material submitted by the petitioners, EPA accepts the conclusion that acetone is not appreciably different from ethane in terms of photochemical reactivity. The EPA is responding to the petitions by proposing in this notice to add acetone to the list of compounds appearing in 40 CFR 51.100(s) that are considered to be negligibly reactive and are thus excluded from the definition of VOC for ozone SIP and ozone control purposes. The revised definition will apply in the Chicago ozone nonattainment area pursuant to the 40 CFR 52.741(a)(3) definition of volatile organic material or volatile organic compound. States are not obligated to exclude from control as a VOC those compounds that EPA has found to be negligibly reactive. However, if this proposal is made final, EPA will not enforce measures controlling acetone as part of a federally-approved ozone SIP. In addition, once this proposal is made final, States should not include acetone 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 acetone in their ozone control strategy. Further, after this proposal is made

final, acetone may not be used for emissions netting (e.g., 40 CFR 51.166(b)(2)(c)), offsetting (40 CFR appendix S), or trading with reactive VOC (Emissions Trading Policy Statement, 51 FR 43814, December 4, 1986 and Economic Incentive Program Rules, 59 FR 16690, April 7, 1994).

Since acetone will no longer be treated as a VOC, a State should revise its base year inventory and plans that rely on that inventory (e.g., the 15 percent plan) to remove acetone and the VOC emissions reduction credit taken from controlling acetone. To avoid unnecessary work, however, States may account for the fraction of the VOC inventory that acetone comprises or the amount of reduction claimed for controlling acetone. If the acetone fraction in the inventory or the amount of control claimed is not significant for a particular area, EPA would not expect a State to revise its emissions inventory or a plan based on that inventory to account for the revised VOC definition.

In addition, corrections are made to the names of three compounds which have previously been exempted from the definition of VOC; 1,1,1-trichloro-2,2,2-trifluoroethane (CFC–113) is changed to 1,1,2-trichloro-1,2,2-trifluoroethane (CFC–113); chlorodifluoromethane (CFC–22) is changed to chlorodifluoromethane (HCFC–22); and trifluoromethane (FC–23) is changed to trifluoromethane (HFC–23). These changes are corrections to nomenclature only and are not substantive.

Pursuant to 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities because it relaxes current regulatory requirements rather than imposing new ones. The EPA has determined that this rule is not "significant" under the terms of Executive Order 12866 and is, therefore, not subject to Office of Management and Budget (OMB) review. This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Assuming this rulemaking is subject to section 317 of the Act, the Administrator concludes, weighing the Agency's limited resources and other duties, that it is not practicable to conduct an extensive economic impact assessment of today's action since this rule will relax current regulatory requirements. Accordingly, the Administrator simply notes that any costs of complying with today's action, any inflationary or recessionary effects of the regulation, and any impact on the competitive standing of small businesses, on consumer costs, or on energy use, will be less than or at least not more than the impact that existed before today's action.

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

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: September 23, 1994.

**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 continues to read as follows:

**Authority:** 42 U.S.C. 7410(a)(2), 7475(e), 7502(a) and (b), 7503, 7601(a)(1), and 7620.

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

**§ 51.100 Definitions.**

* * * * *

(s) * * *

(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); acetone; and perfluorocarbon compounds which fall into these classes:

* * * * * *

[FR Doc. 94–24251 Filed 9–29–94; 8:45 am]

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**40 CFR Part 70**

**[IL001; FRL–5081–9]**

## Clean Air Act Proposed Interim Approval Of Operating Permits Program; Illinois

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

**ACTION:** Proposed interim approval.

**SUMMARY:** The EPA proposes interim approval of the Operating Permits Program submitted by Illinois for the purpose of complying with Federal requirements which mandate that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

**DATES:** Comments on this proposed action must be received in writing by October 31, 1994.

**ADDRESSES:** Comments should be addressed to Jennifer Drury-Buzecky at the Region V address.

Copies of the State's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois, 60604. Please contact Jennifer Drury-Buzecky at (312) 886–3194 to arrange a time if inspection of the submittal is desired.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Drury-Buzecky, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 886–3194.

**SUPPLEMENTARY INFORMATION:**

### I. Background and Purpose

As required under title V of the Clean Air Act ("the Act") as amended (1990), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. 40 CFR 70.4(e)(2), however, allows the Administrator to extend the

review period of a State's submittal if the State's submission is materially altered during the one-year review period. This additional review period may not extend beyond one year following receipt of the revised submission. EPA received material changes to Illinois' submission on April 18, 1994, and July 18, 1994. In addition, the State requested on May 16, 1994, that EPA include the State's insignificant activities regulations, currently undergoing rulemaking at the state level, in EPA's final rulemaking on the State's submittal. 35 Illinois Administrative Code 201 (35 IAC 201). Because these material changes stopped EPA's final review clock, a final EPA action on the State's submittal may not occur by November 15, 1994. EPA will act expeditiously to promulgate a final notice on the State's revised submission after the publication of this proposal and formal adoption of all State rules.

The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993, date, or by the end of an interim program, it must establish and implement a Federal program.

## II. Proposed Action and Implications

### *A. Analysis of State Submission*

The EPA is proposing to grant interim approval to the operating permits program submitted by Illinois on November 15, 1993. While Illinois' program substantially meets the requirements of 40 CFR part 70, certain deficiencies must be corrected in the State's submittal before EPA can fully approve the State's submittal. This document will outline the corrections necessary for full approval.

For more detailed information on the analysis of the State's submission, please refer to the part 70 Operating Permits Program Review Checklist and technical support document accompanying this approval.

1. Support Materials

A letter from Jim Edgar, Governor of the State of Illinois, to Administrator Carol Browner, accompanying the State's submittal, names the Illinois Environmental Protection Agency (IEPA) as the state agency responsible for the administration of Illinois' title V operating permit program throughout the entire state. Since the State entitles its title V operating permit program the "Clean Air Act Permit Program (CAAPP)", CAAPP will be used throughout this document when referencing the State's program.

Also included in the State's submittal is a narrative description of the CAAPP summarizing how the State will meet the requirements of 40 CFR part 70 and a legal opinion fromRoland W. Burris, Attorney General of the State of Illinois, certifying that the legal authority exists for the State to administer and enforce the title V program. According to the narrative and a specific request from the State referenced above, the State intends to develop future regulations governing insignificant activities. The State anticipates that these regulations will be finalized by the time of EPA's final action on this submittal. The narrative also describes the existing federally enforceable state operating permit program (FESOP), previously approved by EPA, that the State will utilize to allow sources to limit their potential to emit through federally enforceable operating restrictions to avoid title V requirements.

The Illinois CAAPP submittal contains all the elements required by 40 CFR 70.4(b). Although the State's submittal does not include an Implementation Agreement, the State and EPA will soon develop an implementation agreement that accounts for the implementation issues unique to Illinois' CAAPP.

The majority of the State's program is found in section 39.5 of the Illinois Environmental Protection Act. 415 ILCS 5/39.5. Additional regulations are found in 35 IAC 270, 105, 106, 252, 253, and draft versions of both 201 and 211.

2. Regulations and Program Implementation

*a. Applicability*

The Illinois program meets the requirements of 40 CFR 70.2 and 70.3 for applicability.

*b. Permit Applications*

The Illinois program substantially meets the requirements of 40 CFR 70.5 for permit applications.

One permit application issue will require a legislative amendment before EPA can fully approve the State's program. The current State legislative provision concerning source certification of applications, 415 ILCS 5/39.5(5)(e), does not require the responsible official certifying a document to make a "reasonable inquiry" or that the statement be based upon "information and belief" according to 40 CFR 70.5(d) and 70.6(c)(1). The State must amend this provision in its legislation to ensure that certifications by responsible officials comply with all Federal requirements, namely that the official has made a reasonable inquiry and that the certification is based upon information and belief. EPA is, therefore, proposing interim approval until this deficiency is corrected.

Another potential deficiency in the State's program concerns insignificant activities. Illinois is currently developing regulations for insignificant activities in 35 IAC 201 and 211. The regulations propose insignificant emission limits for hazardous air pollutants (HAP), specific categories of insignificant activities or emission levels of all regulated pollutants, and provisions to allow sources to propose their own insignificant activities.

Insignificant activity thresholds which are considered to be acceptable by EPA for Illinois' program would fall in the range of 1–2 tons per year for criteria pollutants and the de minimis levels established under 112(g) or lower for HAPs. These insignificance levels are appropriate for the State's program because of the 25 ton per year major source threshold level established in the State's severe ozone nonattainment areas, and because of the overall major source threshold level for HAPs established at 10 tons per year of one HAP and 25 tons per year of any combination of HAPs. Illinois' insignificant activity regulations establish insignificance levels of no more than 1 lb/hr of any non-HAP (approximately 4 tons per year) and no more than .1 lb/hr of any HAP (approximately .4 tons per year) per emission unit. Because Illinois' insignificant activity regulations fail to comply with EPA's notion of acceptable thresholds, EPA could only propose interim approval for the State's 201 and 211 regulations. If EPA's concerns are addressed in the State's final regulations before final action on this notice, then EPA can fully approve the State's insignificant activities. Alternatively, if the State does not address EPA's concerns before final action on this notice, then EPA's final action will include an interim approval on this issue.

*c. Permit Issuance, Renewal, Reopenings and Revisions*

The Illinois program meets the requirements of 40 CFR 70.7(h) for public participation and 40 CFR 70.7(e)(2) minor modifications. Two interim approval issues exist, however, with respect to the State's definition of administrative permit amendment. 415 ILCS 5/39.5(13)(c)(vi) allows incorporation of revised limitations or

other requirements resulting from the application of an approved economic incentives rule, a marketable permits rule or generic emissions trading rule into a CAAPP permit through the administrative amendment procedure. Since 40 CFR 70.7(d) does not allow the use of an administrative permit amendment to accomplish incorporation of emissions trades into a part 70 permit, the State's definition of administrative amendment is one basis for the EPA's proposal to grant interim approval of the State's program. The State must amend its legislation to require the use of the significant modification procedure to incorporate emission trades into a CAAPP permit before the EPA can fully approve the State's definition of administrative amendment.

The second interim approval issue is found in 415 ILCS 5/39.5(13)(c)(v). The State's program allows incorporation of requirements from preconstruction review permits authorized under an EPA-approved preconstruction permit program into a CAAPP permit through the administrative amendment procedure, provided that the permit meets procedural and compliance requirements substantially equivalent to those in the State's CAAPP permit issuance process (emphasis added). The EPA encourages the use of the administrative amendment procedure to incorporate preconstruction review permits into part 70 permits. Nevertheless, 40 CFR 70.7(d)(1)(v) allows such incorporation only when the State's preconstruction review program meets procedural and compliance requirements substantially equivalent to the requirements of 40 CFR 70.7 and 70.8 that would be applicable to the change if it were subject to review as a permit modification, and compliance requirements substantially equivalent to those contained in 40 CFR 70.6. The EPA interprets 40 CFR part 70 to require that the State's part 70 regulations or preconstruction permit program detail the actual procedural and compliance requirements necessary to incorporate preconstruction permits into part 70 permits.

For full approval of the State's program, the State would need to develop regulations detailing the actual procedural and compliance requirements necessary for incorporation of preconstruction permits into part 70 permits. These regulations would need to supplement the State's title V submittal or be submitted as a revision to the State's preconstruction permit program state implementation plan.

*d. Permit Content*

Another major component of the State's program concerns the contents of a CAAPP permit. The State's CAAPP substantially meets the requirements of 40 CFR 70.6, including the requirements for operational flexibility. A CAAPP permit will incorporate applicable requirements of existing State Implementation Plans (SIP), as well as any future applicable requirements promulgated by EPA. Legislative authority exists in 415 ILCS 5/39.5(11) to develop general permits covering numerous similar sources, except for sources subject to the Acid Rain Program. These general permits are targeted for future development.

One issue of EPA concern with State programs is the ability of a part 70 source to obtain a waiver from any applicable requirement. The Illinois Pollution Control Board (IPCB) has the authority to issue a variance from requirements imposed by State law. 415 ILCS 5/35–38, previously approved into the State's SIP for non-part 70 sources, allows the IPCB discretion to grant relief from compliance with State rules and regulations. The EPA regards this provision as wholly external to the program submitted for approval under part 70, and consequently is proposing to take no action on this provision of State law. The EPA has no authority to approve provisions of State law, such as the variance provisions referred to, which are inconsistent with the CAA. The EPA does not recognize the ability of a permitting authority or other state entity to grant relief from the duty to comply with the terms of a federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. For example, 40 CFR 70.6(g) defines the circumstances under which an affirmative defense can be raised when an action is brought against a source for noncompliance with a permit condition. The EPA reserves the right to enforce the terms of the part 70 permit where the permitting authority or other state entity purports to grant relief from the duty to comply with a part 70 permit in a manner inconsistent with part 70 procedures.

415 ILCS 5/39.5(5)(s) and 35 IAC 270.408 of the State's submittal incorporate previously approved SIP provisions into the CAAPP program (35 IAC 201.261 through 201.265) which allow an owner or operator of a CAAPP source to include within its CAAPP application a request for permission to operate during a startup, malfunction, or breakdown. These provisions appear to allow sources to exceed emission limits and standards of the State's SIP, but are not applicable to any other requirements of a title V permit. Since sources that request these exceedances must request them in their CAAPP applications, EPA will have the opportunity to review and comment on these different emission limits just as it would comment on any other permit provision. Since these provisions were previously approved into Illinois' SIP, the incorporation of these provisions into Illinois' part 70 regulations is not problematic for the approval of the State's program as long as these provisions never apply to other Federal requirements in a title V permit and do not diminish the State's authority to assure the source's compliance with all applicable requirements.

Another component of permit content is the length of time in which a source must notify the permitting authority to report a deviation from a permit condition. Part 70 of the operating permits regulations requires prompt reporting of deviations from the permit requirements. 40 CFR 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviation likely to occur and the applicable requirements. Although the permit program regulations should define prompt for purposes of administrative efficiency and clarity, an acceptable alternative is to define prompt in each individual permit. The EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. Prompt reporting, however, must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under 40 CFR 70.6(a)(3)(iii)(A). Illinois addresses the issue of prompt reporting in 415 ILCS 5/39.5(7)(f)(ii) of its CAAPP legislation. Because Illinois did not actually define "prompt," EPA may veto permits that do not contain sufficiently prompt reporting requirements for deviations.

*e. Enforcement*

The Illinois program substantially meets the requirements of 40 CFR 70.11 with regard to enforcement authority. One issue, however, requires a change in existing State legislation to bring the State's enforcement authority completely in accord with the requirements of part 70. 415 ILCS 5/44(j)(4)(D) of the Illinois Environmental Protection Act prohibits the knowing tampering of any monitoring device or

record. 40 CFR 70.11(a)(3)(iii), however, prohibits the knowing tampering of any monitoring device or method. The State must amend its legislative provision to include a prohibition against knowing tampering of a monitoring method. The EPA, therefore, proposes interim approval of the State's program.

Another issue concerning title V enforcement authority is the ability of a source to request an alternative emission limit equivalent to that stated in a SIP. 415 ILCS 5/39.5(7)(q) allows a source to demonstrate in its CAAPP application that an alternative emission limit would be equivalent to that contained in the applicable IPCB regulations. The State submitted revised regulations that restricted the use of alternative emission limits in 35 IAC 270.401(e) to the situation where the applicable EPA-approved SIP allows for such determination. Since this revision to the State regulations adequately addresses EPA's concerns regarding the use of alternative equivalent emission limits, the State may utilize equivalent alternative emission limits in its CAAPP when the underlying SIP provision allows for such determination.

3. Permit Fee Demonstration

415 ILCS 5/39.5(18) of the State's legislation provides for the collection of fees in the amount of $13.50 per ton of allowable emissions. Sources allowed to emit less than 100 tons per year in the aggregate of all regulated air pollutants shall pay a flat fee of $1000 and no source shall be required to pay a fee in excess of $100,000. Since the State is not charging the presumptive minimum, 40 CFR 70.9 requires that the State collect fees sufficient to cover the permit program costs. Based upon the State's fee demonstration, EPA believes that the amount of fee revenue collected by the State is sufficient to run the State's program. Collection of fees based upon allowable emissions results in the collection of fees from tons of pollution not actually emitted. Monies collected from the program will be deposited in a special fund in the State Treasury known as the CAA Permit Fund and a board appointed by the State legislature will evaluate the State's fee structure to ensure that future collection of funds will be sufficient to run the program.

On July 18, 1994, the State submitted additional information clarifying its detailed fee demonstration. As a result of this additional information, the EPA believes the State's detailed fee demonstration meets the requirements of 40 CFR part 70. Please refer to the technical support document and letter dated June 21, 1994, from IEPA, included with the docket on this approval, for more information regarding the State's fee demonstration.

4. Provisions Implementing the Requirements of Other Titles of the Act

*a. Authority and/or Commitments for Section 112 Implementation*

Illinois has demonstrated in its title V program submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in Illinois' enabling legislation and in regulatory provisions defining "applicable requirements" and stating that the permit must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow Illinois to issue permits that assure compliance with all section 112 requirements.

The EPA is interpreting the above legal authority to mean that Illinois is able to carry out all section 112 activities. For further rationale on this interpretation, please refer to the Technical Support Document accompanying this rulemaking and the April 13, 1993, guidance memorandum titled "Title V Program Approval Criteria for section 112 activities," signed by John Seitz.

*b. Implementation of 112(g) Upon Program Approval*

As a condition of approval of the part 70 program, Illinois is required to implement section 112(g) of the Act from the date of approval of the part 70 program. Imposition of case-by-case determinations of MACT or offsets under section 112(g) will require the use of a mechanism for establishing federally enforceable restrictions on a source-specific basis. The EPA is proposing to approve Illinois' preconstruction permitting program, found in 35 IAC 201–203, under the authority of title V and part 70 solely for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a State rule implementing EPA's section 112(g) regulations. EPA believes this approval is necessary so that Illinois has a mechanism in place to establish federally enforceable restrictions for section 112(g) purposes from the date of part 70 approval. Although section 112(l) generally provides authority for approval of State air toxics programs, title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purposes of section 110 or any other provision under the Act. If Illinois does not wish to implement section 112(g) through its preconstruction permit program and can demonstrate that an alternative means of implementing section 112(g) exists, the EPA may, in the final action approving Illinois' part 70 program, approve the alternative instead.

This proposed approval is for an interim period only, until such time as the State receives delegation of the section 112(g) rules. Accordingly, EPA is proposing to limit the duration of this approval to a reasonable time following promulgation of section 112(g) regulations so that Illinois, acting expeditiously, will be able to adopt rules consistent with the section 112(g) regulations.

Once EPA promulgates the section 112(g) rules, implementation of title V requires that Illinois adopt these rules within a reasonable period of time. EPA considers final adoption by the State 12 months after EPA promulgation a reasonable period of time. Once the State adopts the section 112(g) rules, the State will issue permits in accordance with the section 112(g) rules.

*c. Program for Delegation of Section 112 Standards as Promulgated*

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) approval requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70.Therefore, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of Illinois' program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated. Because the State of Illinois has historically accepted automatic delegation of section 112 standards and requirements, EPA proposes to approve the delegation of section 112 standards and requirements through automatic delegation. Therefore, once EPA promulgates a section 112 standard, the State of Illinois will automatically assume responsibility for collection and receipt of any information required by the standard, as well as any further activities agreed to by IEPA and EPA. The details of this delegation mechanism will be set forth in a Memorandum of Agreement between Illinois and EPA expected to be completed prior to approval of Illinois' section 112(l) program for straight delegations. This program applies to

both existing and future standards, but is limited to sources covered by the part 70 program.

The EPA is proposing approval under section 112(l) of the Clean Air Act (CAA) of Illinois' state operating permits program for the purposes of creating federally enforceable limitations on the potential to emit of Hazardous Air Pollutants (HAPs) regulated under section 112 of the CAA. The EPA is approving this program as meeting the criteria articulated in the June 28, 1989, **Federal Register** notice for State operating permit programs to establish limits federally enforceable on potential to emit.

The June 28, 1989, notice provided that EPA would approve a state operating permit program into a SIP for the purpose of establishing federally enforceable limits on a source's potential to emit if the program met five specific requirements. This notice, because it was written prior to the 1990 amendments to section 112, addressed only SIP programs to control criteria pollutants. Federally enforceable limits on criteria pollutants (i.e., VOC's or PM–10) may have the incidental effect of limiting certain HAPs listed pursuant to section 112(b). This situation would occur when a pollutant classified as a HAP is also classified as a criteria pollutant.[1] As a legal matter, no additional program approval by EPA is required in order for these criteria pollutant limits to be recognized for this purpose.

EPA has determined that the five approval criteria for approving FESOP programs into the SIP, as specified in the June 28, 1989, **Federal Register** notice, are also appropriate for evaluating and approving the programs under section 112(l). The June 28, 1989, notice does not address HAP because it was written prior to the 1990 amendments to section 112 and not because it establishes requirements unique to criteria pollutants. Hence, the following five criteria are applicable to state operating permit program approvals under section 112(l): (1) The program must be submitted to and approved by EPA; (2) The program must impose a legal obligation on the operating permit holders to comply with the terms and conditions of the permit and that permits which do not conform to either the operating permit program requirements, the requirements of EPA's underlying regulations or the June 28, 1989, criteria may be deemed "not federally enforceable" by EPA; (3) The program must contain terms and conditions that are at least as stringent as any requirements contained in the SIP or enforceable under the SIP or any section 112 or other Clean Air Act standard or requirement; (4) Permits issued under the program must contain conditions that are permanent, quantifiable, and enforceable as a practical matter; and (5) Permits issued under the program must be subject to participation, including at a minimum advance notice of the permit in the form of a 30-day public comment period.

In addition to meeting the criteria in the June 28, 1989, notice, a state operating permit program must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) allows EPA to approve a program only if it: (1) Contains adequate authority to assure compliance with any section 112 standards or requirements; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act.

The EPA plans to codify the approval criteria for programs limiting potential to emit of HAP in Subpart E of part 63, the regulations promulgated to implement section 112(l) of the Act. The EPA currently anticipates that these criteria, as they apply to state operating permit programs, will mirror those set forth in the June 28, 1989, notice, with the addition that the State's authority must extend to HAP instead of or in addition to VOC's and PM–10. The EPA currently anticipates that state operating permit programs that are approved pursuant to section 112(l) prior to the subpart E revisions will have had to meet these criteria, and hence, will not be subject to any further approval action.

The EPA believes it has authority under section 112(l) to approve programs to limit potential to emit of HAPs directly under section 112(l) prior to this revision to subpart E. Section 112(l)(5) requires EPA to disapprove program that are inconsistent with guidance required to be issued under section 112(l)(2). This might be read to suggest that the "guidance" referred to in section 112(l)(2) was intended to be a binding rule. Even under this interpretation, the EPA does not believe that section 112(l) requires this rulemaking to be comprehensive. That is, it need not address all instances of approval under section 112(l). The EPA has already issued regulations under section 112(l) that would satisfy this requirement. Given the severe timing problems posed by impending deadlines set forth in MACT standards and for submittal of title V applications, EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to issuance of a rule specifically addressing this issue. Accordingly, EPA is proposing approval of Illinois' program now so as to enable Illinois to begin issuing federally enforceable permits as soon as possible.

EPA proposes the approval of Illinois' federally enforceable state operating permit program (FESOP) program for the purpose of limiting potential to emit of HAP. The Illinois FESOP program was previously approved for the purpose of limiting potential to emit of criteria pollutants on December 17, 1992. 57 FR 59928. In that notice, EPA stated that the Illinois state operating permit program met the five criteria required for Federal approvability under the June, 1989, register notice. See 57 FR 59930–59931. Illinois' FESOP program: (1) Was submitted to and approved by EPA into the SIP; (2) provides that all sources are under a legal obligation to adhere to the terms and limitations of such permits and that permits which do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed "not federally enforceable" by EPA; (3) provides that the Illinois Environmental Protection Agency (IEPA) and Illinois Pollution Control Board must act in a manner consistent with all pertinent Federal statutes and regulations including the SIP; (4) ensures that all permit conditions are permanent, quantifiable and enforceable as a practical matter; and (5) ensures that all FESOP permits are issued subject to public participation, including advance notification in the form of at least a 30-day public comment period. By approving the Illinois FESOP program, EPA recognized the Illinois FESOP program as a federally enforceable method of limiting potential to emit of criteria pollutants. 415 ILCS 5/9.1(d)(2) provides the statutory authority for the State to include the requirements of section 111 and 112 of the Act, including any regulations promulgated thereunder, into state permits.

Regarding the statutory criteria under section 112(l), the EPA believes that Illinois' FESOP program contains authority to assure compliance with section 112 requirements since the third criteria of the June 28, 1989 notice is met, that is, since the program does not provide for waiving any section 112 requirement. Sources would still be required to meet section 112 requirements applicable to non-major

[1] The EPA intends to issue guidance addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAP to below section 112 major source levels.

sources. Regarding adequate resources, Illinois has included in its request for approval under section 112(l) a commitment to provide adequate resources to implement and enforce the program. This request is contained in a September 14, 1994, letter from Bharat Mathur, Chief of the Bureau of Air, IEPA, to Stephen Rothblatt, Chief, Regulation Development Branch, EPA Region 5. Fees will be collected from FESOP sources through both the title V and FESOP process. Sources that apply for FESOPs through the title V process will pay a fee of $1000. Sources applying through the FESOP program will be charged a fee based upon actual emissions. Since the processing of a FESOP permit consumes considerably less resources than the processing of a title V permit, the State believes that sufficient resources will be available to administer FESOP permits for those who request and qualify. The EPA believes this mechanism will be sufficient to provide for adequate resources to implement this program, and will monitor the State's implementation of the program to assure that adequate resources continue to be available.

Illinois' FESOP program also meets the requirement for an expeditious schedule for assuring compliance. A source seeking a voluntary limit on potential to emit is probably doing so to avoid a Federal requirement applicable on a particular date. Nothing in this program would allow a source to avoid or delay compliance with the Federal requirement if it fails to obtain the appropriate federally enforceable limit by the relevant deadline. Finally, Illinois' FESOP program is consistent with the objectives of the section 112 program since its purpose is to enable sources to obtain federally enforceable limits on potential to emit to avoid major source classification under section 112. The EPA believes this purpose is consistent with the overall intent of section 112.

The EPA recognizes that state operating permits may already exist that contain restrictions on the potential to emit of HAPs. As long as the State issued these permits in accordance with all State regulations and the criteria discussed above, EPA will consider these permits to be federally enforceable upon promulgation of this action.

*d. Title IV*

Illinois' program contains adequate authority to issue permits which reflect the requirements of title IV and its implementing regulations. Illinois' submittal letter contains a commitment to revise its regulations as necessary to accommodate Federal revisions and additions to title IV and the Acid Rain regulations once they are promulgated.

*B. Options for Approval/Disapproval and Implications*

The EPA is proposing to grant interim approval to the operating permits program submitted by Illinois on November 15, 1993. If this approval is promulgated, the State must make the following changes to receive full approval: (1) The State must amend 415 ILCS 5/39.5(5)(e) to ensure that certifications by responsible officials comply with all Federal requirements, namely that the official has made a reasonable inquiry and that the certification is based upon information and belief; (2) the State must amend 415 ILCS 5/39.5(13)(c)(vi) to require the use of the significant modification procedure to incorporate emission trades into a CAAPP permit; (3) for full approval of the State's program, the State must develop regulations detailing the actual procedural and compliance requirements necessary for incorporation of preconstruction permits into part 70 permits as a supplement to the State's title V submittal or submitted as a revision to the State's preconstruction permit program state implementation plan; (4) the State must amend 415 ILCS 5/44(j)(4)(D) to include a prohibition against knowing tampering of a monitoring method; and (5) the State must correct all deficiencies in its insignificant activities regulations currently under development. If finalized insignificant activities rules address EPA's concerns and these rules are submitted prior to final action on this notice, then EPA can grant full approval of these rules. If EPA's concerns are not addressed prior to final action, then the State's insignificant activities rules will receive interim approval.

Illinois' program is not fully approvable because of the deficiencies mentioned above. The program, however, substantially meets the requirements of part 70 because Illinois' CAAPP complies with all other part 70 requirements. This interim approval, which may not be renewed, extends for a period of up to 2 years. Because the interim approval automatically expires two years after promulgation of a final interim approval, the State may submit its interim corrections at any time, however, the State may not submit its corrections any later than 18 months after promulgation of final interim approval. The EPA will then have six months to promulgate a final action.

During the interim approval period, the State is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the 3-year time period for processing the initial permit applications.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

## III. Administrative Requirements

*A. Request for Public Comments*

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

(1) To allow interested parties a means 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. The EPA will consider any comments received by October 31, 1994.

*B. Executive Order 12866*

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

*C. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysisassessing 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.

Operating permit program approvals under section 502 of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal operating permit program approval does not impose any new requirements, I certify 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 regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning operating permit programs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct 1976); 42 U.S.C. 7410(a)(2).

**List of Subjects in 40 CFR Part 70**

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: September 21, 1994.

**David A. Ullrich,**

*Acting Regional Administrator.*

[FR Doc. 94–24253 Filed 9–29–94; 8:45 am]

BILLING CODE 6560–50–F

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**40 CFR Part 372**

[OPPTS–400086; FRL–4773–6]

## Acetone; Toxic Chemical Release Reporting; Community Right-to-Know

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to delete acetone from the list of toxic chemicals subject to section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) in response to a petition filed by Eastman Chemical Company and Hoechst Celanese. Specifically, EPA is granting this petition by proposing to delist because the Agency believes that acetone does not meet any of the EPCRA section 313(d)(2) criteria for remaining on the list. Moreover, as published elsewhere in this issue of the Federal Register, EPA is proposing to add acetone to the list of compounds excluded from the definition of A Volatile Organic Compound (VOC) under the Clean Air Act. VOCs contribute to the formation of ozone in the lower atmosphere (troposphere), and ozone is known to cause significant adverse effects on human health and environment. EPA has previously determined that VOCs meet the criteria for listing under EPCRA section 313. Therefore, finalization of this proposed rule is contingent upon the finalization of the proposed rule to exclude acetone from EPA's definition of a VOC.

**DATES:** Written comments should be received by November 29, 1994.

**ADDRESSES:** Written comments should be submitted in triplicate to: OPPT Docket Clerk, TSCA Nonconfidential Information Center (NCIC), also known as the TSCA Public Docket Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NE–B607, 401 M Street SW., Washington, DC 20460. Comments should include the document control number for this proposal, OPPTS–400086.

**FOR FURTHER INFORMATION CONTACT:** Maria J. Doa, Petitions Coordinator, 202–260–9592, for specific information on this proposed rule, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental protection Agency, Mail Code 5101, 401 M Street SW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: 703–412–9877 or Toll free TDD: 1–800–553–7672.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

*A. Statutory Authority*

This proposed rule is issued under sections 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–499).

*B. Background*

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act of 1990, 42 U.S.C. 13106. Section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add or delete chemicals from the list, and sets forth criteria for these actions. EPA has added and deleted chemical from the original statutory list. Under section 313(e), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA must respond to petitions within 180 days either by initiating a rulemaking or by publishing an explanation of why the petition is denied.

EPA issued a statement of petition policy and guidance in the Federal Register of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for submitting petitions. On May 23, 1991 (56 FR 23703), EPA published guidance regarding the recommended content of petitions to delete individuals members of the section 313 and metal compound categories.

### II. Description of Petition

On September 24, 1991, EPA received a petition from Eastman Chemical Company and Hoechst Celanese to delete acetone from the EPCRA section 313 list of toxic chemicals. The petitioners contend that acetone should be deleted from the EPCRA section 313 list because it does not meet any of the EPCRA section 313(d)(2) criteria and because acetone's low photochemical reactivity does not present substantial concerns for formation of tropospheric ozone or other air pollutants.

Acetone is high volume chemical that is widely used as an industrial solvent and chemical intermediate, and which is regulated under several environmental statutes other than EPCRA. Acetone is on the list of hazardous substances (40 CFR 302.4) under section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9602, with a reportable quantity of 5,000 pounds. Due to its ignitability acetone is regulated under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.*, as a hazardous waste and its implementing regulations at 40 CFR 261.33.

*A. Status of Acetone Under the CAA*

Currently, acetone is considered a Volatile Organic Compound (VOC) and emissions of VOCs are managed under regulations (40 CFR parts 51 and 52) that implement Title I of the Clean Air Act, as amended (CAA), 42 U.S.C. 7401 et. seq. The CAA requires States to submit to EPA for approval State Implementation Plans (SIPs) that establish a strategy to reduce the emissions of a regulated pollutant to

attain and maintain the National Ambient Air Quality Standards (NAAQS). Under the SIP program, the attainment of the NAAQS for ozone are dependent in part on the control of releases of VOCs. Section 182(a)(3)(B) of the CAA requires States to adopt regulations requiring sources of VOC (or oxides of nitrogen ($NO_X$)) emissions to provide the State reports showing the actual emissions of VOC and $NO_X$. This annual reporting of VOC emissions by the sources to their State air agencies has been required as of November 1993. Only facilities located in areas that are designated non-attainment for ozone or in attainment areas within ozone transport regions are required to report. EPA's definition of VOCs excludes certain listed chemicals that have been determined to be negligibly photochemically reactive (57 FR 3941, February 3, 1992). Elsewhere in this issue of the **Federal Register**, EPA is proposing to add acetone to the list of compounds excluded from the definition of a VOC, since it has been preliminarily determined that acetone has a negligible contribution to tropospheric ozone formation.

*B. VOC Petitions Under EPCRA Section 313*

This is the third petition that EPA has received to delist a VOC from the EPCRA section 313 list. EPA received on July 13, 1988, a petition to delist ethylene and propylene from the EPCRA section 313 list and on September 9, 1988, a petition to delist cyclohexane. Both petitions were denied due to concerns about chemical reactions in the troposphere that lead to the formation of ozone and other air pollutants such as formaladehyde (i.e., these chemicals clearly fit the definition of VOCs). Ozone is known to cause significant adverse affects on human health and the environment.

**III. EPA's Technical Review of Acetone**

The technical review of the petition to delete acetone included an analysis of the toxicological effects of acetone and the production and release values known for acetone. (Refs. 1, 5 and 6)

*A. Toxicological Evaluation of Acetone*

1. *Acute toxicity.* The acute oral $LD_{50}$ of acetone in rats is about 6.7 grams/kilogram (g/kg). Lethal concentrations by inhalation are on the order of 40,000 to 46,000 parts per million (ppm) for 1 hour for rats, mice, and guinea pigs, and 21,000 ppm for 2 hours for rats. Acetone produced moderate corneal injury to the eye in rabbits and mild skin irritation.

In humans, eye, nose, and throat irritations have been observed at 500 and 1,000 ppm. Symptoms of accidental exposure may include slight intoxication, headache, lassitude, drowsiness, loss of appetite, nausea, vomiting, respiratory depression, and coma. Central nervous system depression and narcotic effects are likely to occur at concentrations in excess of 10,000 ppm. Liver and kidney damage have also been observed in humans exposed accidentally.

2. *Chronic toxicity.* Workers exposed chronically to 750 ppm acetone experienced irritation of mucous tissues of the eye, upper respiratory system, and gastrointestinal system. In another survey, workers also experienced respiratory tract irritation, dizziness, and loss of strength at concentrations of 1,000 ppm, 3 hours per day, over a period of 7 to 15 years.

3. *Subchronic toxicity.* A 90-day subchronic toxicity study in rats produced a no-observed-adverse-effect level (NOAEL) of 100 milligrams/kilogram/day (mg/kg/day) and a lowest-observed-adverse-effect level (LOAEL) of 500 mg/kg/day based on increased liver and kidney weights and nephrotoxicity. Based on these studies, EPA has developed a Reference Dose (RfD) of 0.1 mg/kg/day.

4. *Carcinogenicity.* EPA has classified acetone as "not classifiable as to carcinogenicity" (Group D). There is currently no evidence to suggest a concern for carcinogenicity.

5. *Mutagenicity.* The weight of evidence indicates that acetone is not mutagenic in several mutagenicity assay systems.

6. *Developmental toxicity.* A NOAEL of 2,200 ppm by inhalation has been reported for developmental toxicity of acetone in rats and mice.

7. *Neurotoxicity.* There are no data sufficient to support a chronic concern for significant irreversible neurotoxicity.

8. *Environmental effects.* Acetone is readily biodegradable in aquatic systems. Its octanol/water partition coefficient (−0.24) indicates a low potential for bioaccumulation, and its high water solubility indicates that acetone is not likely to biomagnify. The most sensitive aquatic species are probably the water flea ($LC_{50}$ equals 10 milligrams/liter (mg/L)) and the flagellated protozoa ($LC_{50}$ equals 28 mg/L). Also, a no-observed-effect concentration (NOEC) of 100 microliters/liter (ul/L) has been reported for higher plants.

*B. Production, Use and Release of Acetone*

For 1992, the United States (U.S.) production of acetone was 2.4 billion pounds. In addition, 96 million pounds of acetone were imported. Domestic consumption was 2.2 billion pounds. The majority of the domestic use of acetone was as an intermediate. Acetone is also used in the production of drugs, pharmaceuticals, cosmetics and specialty chemicals. Acetone also has numerous uses as a process solvent and in direct applications (Ref. 5).

The Toxic Release Inventory (TRI) reports that during 1992 a total of 138,728,984 pounds of acetone were released into the environment, the 7th highest amount of releases for EPCRA section 313 chemicals. Of that total, 133,989,435 pounds were released to air (4th highest on TRI); 999,584 pounds were released to surface waters (11th highest on TRI); 559,265 pounds were released to land; and 3,180,700 pounds were injected underground (15th highest on TRI). In addition, 88,666,077 pounds of acetone were transferred to Publicly Owned Treatment Works (POTWs) and other off-site locations.

*C. Technical Summary*

EPA's toxicological evaluation of acetone indicates that it exhibits acute toxicity only at levels that greatly exceed releases and resultant exposures. Based on EPA's hazard assessment, the Agency has determined that acetone: (1) Cannot reasonably be anticipated to cause cancer or neurotoxicity and is not mutagenic, and (2) cannot reasonably be anticipated to cause adverse developmental effects or other chronic effects except at relatively high dose levels. Acetone causes adverse environmental effects only at relatively high dose levels.

**IV. Rationale for Granting**

EPA is granting the petition by proposing to delete acetone from the EPCRA section 313 list. EPA believes that acetone does not meet the toxicity criteria of EPCRA section 313(d)(2)(A) because acetone exhibits acute toxicity only at levels that greatly exceed releases and resultant exposures. Specifically acetone cannot reasonably be anticipated to cause "* * * significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring releases."

Based on EPA's hazard assessment of acetone, the Agency has determined that acetone exhibits low toxicity in chronic studies. Therefore, EPA believes that acetone does not meet the toxicity criteria of EPCRA section 313(d)(2)(B).

EPA believes that acetone does not meet the toxicity criteria of EPCRA section 313(d)(2)(C) because acetone

causes adverse environmental effects only at relatively high dose levels.

Elsewhere in this issue of the Federal Register, EPA is proposing to add acetone to the list of compounds excluded from the definition of a VOC since it has been preliminarily determined to have negligible contribution to tropospheric ozone formation. In addition to the findings discussed above, based on this proposal, EPA believes that acetone does not meet the toxicity criteria of EPCRA section 313(d)(2)(B) and (C) because acetone's contribution to the formation of tropospheric ozone and other air pollutants is negligible. VOCs contribute to the formation of ozone in the lower atmosphere (troposphere) and ozone is known to cause significant adverse effects on human health and the environment. EPA has previously determined that VOCs meet the criteria for listing under EPCRA section 313. Therefore, finalization of this proposed rule is contingent upon the issuance of a final rule to add acetone to the list of compounds excluded from the definition of a VOC.

Today's action is not intended, and should not be inferred to affect the status of acetone under any statute or program other than the Toxic Release Inventory reporting under EPCRA section 313 and the PPA section 6607. Specifically, the removal of acetone from the EPCRA section 313 list will not in any way alter its continued status under the Resource Conservation and Recovery Act or section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act. The petitioners, Eastman Chemical Company and Hoechst Celanese, do not request the removal of acetone from any other statute; moreover, the Agency feels such action at this time would be inappropriate. In support, the Agency notes that the three lists, and the three statutes under which they are maintained, serve relevantly different purposes. Furthermore, each statute prescribes different standards for adding or deleting chemicals or pollutants from its respective list.

## V. Request for Public Comment

EPA requests public comment on this proposal to delete acetone from the list of chemicals subject to EPCRA section 313. Comments should be submitted to the address listed under the ADDRESSES unit. All comments should be received on or before November 29, 1994.

## VI. Rulemaking Record

The record supporting this proposed rule is contained in the docket number OPPTS–400086. All documents, including an index of the docket, are available in the TSCA Nonconfidential Information Center (NCIC), also known as the TSCA Public Docket Office, from noon to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. NE–B607, 401 M Street SW., Washington, DC 20460.

## VII. References

(1) IRIS. 1991. Integrated Risk Information System. U.S. Environmental Protection Agency, Washington, DC.

(2) USEPA, OPPTS, EAB. Cinalli, C., "Exposure Report for Acetone," dated April 13, 1994.

(3) USEPA, OPPTS, EAB. Nold, A. and Cinalli C., "Addendum to Exposure Report for Acetone," dated June 15, 1994.

(4) USEPA, OPPTS, ETD. Memorandum and attachment from Brian J. Evans to Daniel R. Bushman, Economics and Technology Division, "Section 313 Petition on Acetone Chemistry Report," dated November 27, 1991.

(5) USEPA, OPPTS, EETD. Memorandum and attachment from William Silagi to Tami McNamara, EAD, "Economic Report for TRI Acetone Petition," dated May 5, 1994.

(6) USEPA, OPPTS, HERD. Memorandum and attachment from Elbert L. Dage to Dan Bushman, ETD entitled "HERD Hazard Assessment of Acetone," dated December 19, 1991.

## VIII. Regulatory Assessment Requirements

### *A. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action likely to lead to a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the terms of this Executive Order, it has been determined that this proposed rule is not "significant" and therefore not subject to OMB review.

### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act of 1980, the Agency must conduct a small business analysis to determine whether a substantial number of small entities will be significantly affected by a proposed rule. Because this proposed rule eliminates an existing requirement, it would result in cost savings to facilities, including small entities.

### *C. Paperwork Reduction Act*

This proposed rule does not have any information collection requirements under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

### List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: September 15, 1994.

**Lynn R. Goldman,**

*Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

Therefore it is proposed that 40 CFR part 372 be amended as follows:

## PART 372—[AMENDED]

1. The authority citation for part 372 would continue to read as follows:

**Authority:** 42 U.S.C. 11023 and 11048.

**§ 372.65 [Amended]**

2. Sections 372.65 (a) and (b) are amended by removing the entire entry for acetone under paragraph (a) and removing the entire CAS No. entry for 67–64–1 under paragraph (b).

[FR Doc. 94–24252 Filed 9–29–94; 8:45 am]

BILLING CODE 6560–50–M

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**40 CFR Part 745**

**[OPPTS–62128A; FRL–4914–4]**

**RIN 2070–AC64**

## Lead; Requirements for Lead-Based Paint Activities; Notice of Hearing

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

**ACTION:** Informal Hearing.

**SUMMARY:** On September 2, 1994, EPA published a proposed rule governing lead-based paint activities to ensure that individuals engaged in such activities

are properly trained; that training programs are accredited; and that contractors engaged in such activities are certified. The proposed rule would also establish standards for performing lead-based paint activities and require that all lead-based paint activities be performed by certified individuals. When promulgated, the rule would fulfill the mandate of section 402(a)(1) of Title IV of the Toxic Substances Control Act (TSCA). Additionally, as part of the proposed rule, EPA has, in accordance with section 404(d) of TSCA, developed a proposed Model State Program. When promulgated, this program may be adopted by any State that seeks to administer and enforce a State program under Title IV of TSCA. In that notice, the Agency stated that it would hold an informal hearing. EPA will hold a 1–day public hearing.

**DATES:** The hearing will take place on October 26, 1994, from 1 p.m. until 5 p.m. Those persons interested in attending the hearing are requested to notify the Agency on or before October 20, 1994 by calling 202–554–1404. In addition, three copies of any request to participate must be forwarded to the EPA Docket.

**ADDRESSES:** The hearing will be held at the Crystal City Hyatt, 2799 Jefferson Davis Highway, Arlington, VA. Three copies of any request to participate in the informal hearing, identified with docket number OPPTS–62128A must be submitted to: TSCA Docket Receipt (7407), Office of Pollution Prevention and Toxics, Rm. E–G99, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551. For technical questions: Diane Sheridan, Telephone: (202) 260–0961.

**SUPPLEMENTARY INFORMATION:** Each person or organization desiring to participate in the informal hearing shall file a written request to participate with the TSCA Docket Receipts at the location listed under ADDRESSES. The request must be received by the Agency no later than October 20, 1994. The request shall include: (1) A brief statement of the interest of the person or organization in the proceeding; (2) a brief outline of the points to be addressed; (3) an estimate of the time required; and (4) if the request comes from an organization, a non-binding list of the persons to take part in the presentation. Organizations are requested to bring with them, to the extent possible, employees with individual expertise in and responsibility for each of the areas to be addressed.

**List of Subjects in 40 CFR Part 745**

Environmental protection, Hazardous substances, Lead, Recordkeeping and notification requirements.

Dated: September 26, 1994.

**Mark A. Greenwood,**

*Director, Office of Pollution Prevention and Toxics.*

[FR Doc. 94–24245 Filed 9–29–94; 8:45 am]

BILLING CODE 6560–50–F

## LEGAL SERVICES CORPORATION

### 45 CFR Part 1608

### Prohibited Political Activities

**AGENCY:** Legal Services Corporation.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed regulation would revise the Legal Services Corporation's ("Corporation" or "LSC") regulation relating to prohibited political activities. The proposed revisions both clarify existing law and substantively expand the scope of certain prohibitions. The proposal also includes a number of technical and structural revisions to make the rule easier to apply and use.

**DATES:** Comments should be received on or before November 29, 1994.

**ADDRESSES:** Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First St., N.E., 11th Floor, Washington, DC 20002–4250.

**FOR FURTHER INFORMATION CONTACT:** Victor M. Fortuno, General Counsel, Office of the General Counsel, (202) 336–8810.

**SUPPLEMENTARY INFORMATION:** On June 19 and July 15, 1994, the Operations and Regulations Committee ("Committee") of the LSC Board of Directors held public hearings on proposed revisions to 45 CFR Part 1608, LSC's regulation on electoral political activities. At the July 15 meeting in Washington, DC, the Committee approved a draft to be published in the **Federal Register** as a proposed rule for public comment and agreed to extend the customary 30-day comment period to 60 days.

The Committee recognizes that Congress is currently considering reauthorization legislation for the Corporation. Whenever Congress does pass a new LSC Act, the Corporation's regulations will be revisited and revised accordingly.

**Authority**

A technical correction has been made to the authority section. The reference to § 2996f(b)(2) is incorrect and has been replaced by reference to § 2996f(b)(4).

*Section 1608.1 Purpose*

No change is proposed for this section.

*Section 1608.2 Definitions*

The definition of "attorney" is based on the one found in Part 1600. It would apply to attorneys employed by a recipient as well as to PAI attorneys who are providing services to eligible clients referred by a recipient.

The definition of "political" in Part 1608 is intended to supersede the definition of "political" in 45 CFR Part 1600. The term applies only to restrictions in this part and needs revision to better reflect the scope of the statutory provisions implemented by this regulation. The definition is also revised from the definition in Part 1600 to delete references to "ballot measures" and "publicity and propaganda." Part 1608 implements several statutory restrictions on a variety of electoral political activities, so it is difficult to have a definition of political activities that is true to the meaning of the specific political activities regulated in each statutory restriction. Therefore, instead of a definition that refers to specific activities such as ballot measures, a more general definition is retained and "ballot measures" are dealt with in the section that sets out the restrictions on those activities. In addition, the term "publicity and propaganda" generally refers to grassroots lobbying activities which are not directly implicated by any of this part's restrictions and are better dealt with in the Corporation's regulations on lobbying, 45 CFR Part 1612.

The definition of "legal assistance activities" is proposed to be deleted. It has been difficult to interpret and is not based on any statutory language. The language is instead incorporated into the only provision (the proposed § 1608.7) that uses the phrase. Nothing in this part is intended to suggest that an employee may not use his or her own salary to make personal contributions to political organizations or campaigns.

A definition of "staff attorney" is added and is intended to supersede the definition of "staff attorney" currently found in 45 CFR Part 1600. The definition is modified to clarify that a "staff attorney" means an attorney who

is a salaried employee of a recipient and not a private attorney who has contracts with a recipient to provide part-time legal services to program clients. Section 1608.3 Attorney-client relationship.

This section has been moved from § 1608.7 in the current regulation to make it clear that all of the restrictions and prohibitions contained in Part 1608 are subject to the exception for legal representation. This section would apply to PAI attorneys when they are engaged in legal assistance activities supported by a recipient.

*Section 1608.4 Prohibitions Applicable to the Corporation and to Recipients*

The only change to this section is the addition of language intended to better reflect the statutory prohibition. The revision clarifies that no resources of the Corporation or of a recipient may be used for political activities or purposes. Section 1608.5 Prohibitions applicable to all employees

The current § 1608.4, which applies to all Corporation and recipient employees, and most of the current § 1608.5, which applies to Corporation employees and staff attorneys, have been merged into § 1608.5 in the proposed rule. The Committee believes that the rule's prohibitions concerning the misuse of official authority and coercion should apply to all Corporation and recipient employees. Section 1608.6 Prohibition applicable to Corporation employees and to staff attorneys.

There is no substantive change in this section other than to accommodate the merger reflected in the proposed § 1608.5. The prohibition on candidacy for partisan elective public office is still applicable only to Corporation employees and staff attorneys.

*Section 1608.7 Prohibitions Applicable to All Attorneys*

This proposal incorporates the relevant language from the current definition of "legal assistance activities" deleted from § 1608.2 into paragraph (a). Further, paragraph (a), together with paragraph (b), makes explicit what is not restricted by the Act, both with respect to individual attorneys and recipients.

First, consistent with the provision of the LSC Act that restricts these activities, the proposal makes it clear that recipients' non-LSC resources are not restricted, so long as they are used by attorneys who receive no LSC funding.

Second, this section would apply to all attorneys employed by a recipient as well as PAI attorneys who are providing recipient supported legal assistance to the recipient's clients. However, an attorney may do the activities regulated by this section on "his or her own time." For an attorney employed by a recipient, that means any time outside of normal working hours (e.g., evenings, weekends, and leave time) so long as the attorney is not representing or providing legal assistance to the recipient's clients. Thus, an attorney employed by a recipient should not transport a recipient's clients to the polls on a workday, even if it is in the evening outside of normal working hours, if he or she could be presumed to be working for the recipient. But that same attorney could take leave to do so, or could do so if clearly identifying him or herself as a private citizen rather than as a legal services attorney, because the attorney would clearly be doing it on his or her own time.

For a PAI attorney, it means any time that the attorney is not actually working on PAI activities. Thus, a PAI attorney could participate in political activities as a regular part of his or her private practice, so long as the activity is not done while providing PAI services supported by the recipient. The restriction would not affect any other paid or pro bono work that the PAI attorney does.

Finally, paragraph (b) makes it clear that an attorney is free to contribute his or her own funds, including those derived from a salary from the recipient, to political activities.

Paragraph (c) is added to clarify the scope of the statutory restriction regarding voter registration activity. Clearly, Congress intended to prohibit legal services attorneys, while working on program time or using LSC resources, from participating directly in voter registration drives that could easily be tailored to achieve some partisan political purpose. However, the restriction applies only to attorneys and not to recipients specifically. Legal services programs are often requested by public officials to place nonpartisan information regarding voter registration procedures and qualifications in their waiting rooms to encourage voter registration among the clients. While many programs permit the materials in their offices, many others are hesitant to do so. In light of the developments such as the new "Motor Voter Registration" law and the fact that the LSC Act does not restrict voter registration activity by recipients, the regulation should state clearly that engaging in nonpartisan activities, such as making available nonpartisan voter registration information, is permissible.

*Section 1608.8 Enforcement*

This section is proposed to be deleted. The current language refers to the enforcement provisions in § 1612.5 However, the enforcement provisions of Part 1612 were removed from § 1612.5 and are currently found in § 1612.12. Regardless, the Committee believes that the enforcement procedures dealing with other matters are not appropriate for this part and has decided to deal with compliance issues outside the context of this rule.

**List of Subjects in 45 CFR Part 1608**

Legal services, Political activities.

For the reasons set forth in the preamble, LSC proposes to revise 45 CFR part 1608 to read as follows:

## PART 1608—PROHIBITED POLITICAL ACTIVITIES

Sec.



**Authority:** 42 U.S.C. 2996(5), 2996d(b)(2), 2996e(b)(3), 2996(b)(5)(B), 2996e(d)(3), 2996e(d)(4), 2996e(e)(1), 2996e(e)(2), 2996f(a)(6), 2996f(b)(4).

### § 1608.1 Purpose.

This part is designed to ensure that the Corporation's resources will be used to provide high-quality legal assistance and not to support or promote political activities or interests. The part should be construed and applied so as to further this purpose without infringing upon the constitutional rights of employees or the professional responsibilities of attorneys to their clients.

### § 1608.2 Definitions.

As used in this part,

(a) *Attorney* means a person who provides legal assistance to eligible clients of, or referred by, a recipient and who is authorized to practice law in the jurisdiction where assistance is provided.

(b) *Political* means associated with a political party or the campaign of any candidate for elective public or party office, or engendering support for or opposition to any such political party or candidate.

(c) *Staff attorney* means an attorney who is employed by a recipient and more than one-half of whose annual

professional salary is derived from the proceeds of a grant from or contract with the Legal Services Corporation or is received from a recipient that limits its activities to providing legal assistance to clients eligible for assistance under the Act.

**§ 1608.3 Attorney-client relationship.**

Nothing in this part is intended to prohibit an attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

**§ 1608.4 Prohibitions applicable to the Corporation and to recipients.**

(a) Neither the Corporation nor any recipient shall use any political test or qualification in making any decision, taking any action, or performing any function under the Act.

(b) Neither the Corporation nor any recipient shall contribute or make available any Corporation or recipient funds, personnel or equipment, regardless of source:

(1) To any political party or association;

(2) To the campaign of any candidate for public or party office; or

(3) For use in advocating or opposing any ballot measure, initiative or referendum.

**§ 1608.5 Prohibitions applicable to all employees.**

No employee of the Corporation or of any recipient shall—

(a) intentionally identify the Corporation or a recipient with any partisan or nonpartisan political activity, or with the campaign of any candidate for elective public or party office;

(b) use any Corporation funds for activities prohibited to attorneys under §§ 1608.6 or 1608.7; nor shall an employee intentionally identify or encourage others to identify the Corporation or a recipient with such activities;

(c) use official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for elective public office, whether partisan or nonpartisan; or

(d) directly or indirectly coerce, attempt to coerce, command or advise any employee of the Corporation or of any recipient to pay, lend, or contribute anything of value to a political party, or committee, organization, agency or person for political purposes.

**§ 1608.6 Prohibition applicable to Corporation employees and to staff attorneys.**

No Corporation employee and no staff attorney shall, at any time, be a candidate for partisan elective public office.

**§ 1608.7 Prohibitions applicable to all attorneys.**

(a) No attorney who is engaged in legal assistance activities supported in whole or in part by resources derived from a grant from or contract with the Corporation shall, during the hours the attorney is working for the recipient or while actually providing legal assistance to or representing clients of, or referred by, the recipient, engage in:

(1) any political activity;

(2) any activity to provide voters with transportation to the polls, or to provide similar assistance in connection with an election; or

(3) any voter registration activity.

(b) Nothing in this section shall prohibit any attorney from engaging in the activities prohibited in § 1608.7(a) on his or her own time or from contributing his or her personal funds or resources to support such activities.

(c) Nothing in this section shall prohibit a recipient from making available general, nonpartisan information on voter registration procedures or qualifications.

Dated: September 27, 1994.

**Victor M. Fortuno,**

*General Counsel.*

[FR Doc. 94–24275 Filed 9–29–94; 8:45 am]

BILLING CODE 7050–01–P

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## 45 CFR Part 1621

## Client Grievance Procedures

**AGENCY:** Legal Services Corporation.

**ACTION:** Proposed Rule.

**SUMMARY:** This proposed regulation would revise the Legal Services Corporation's ("Corporation" or "LSC") regulation relating to client grievance procedures. The proposed rule revises the procedural requirements for client grievances and conforms the rule to applicable rules of professional responsibility and the attorney-client privilege. The proposal also includes a number of technical and structural revisions to make the rule easier to apply.

**DATES:** Comments should be received on or before November 29, 1994.

**ADDRESSES:** Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First Street NE., 11th Floor, Washington, DC 20002–4250.

**FOR FURTHER INFORMATION CONTACT:** Victor M. Fortuno, General Counsel, Office of the General Counsel, (202) 336–8810.

**SUPPLEMENTARY INFORMATION:** On June 19 and July 15, 1994, in Washington, DC., the Operations and Regulations Committee ("Committee") of the LSC Board of Directors held hearings on proposed revisions to 45 CFR part 1621, LSC's regulation on client grievance procedures. At the July 15 meeting, the Committee approved a draft to be published in the **Federal Register** as a proposed rule for public comment and agreed to extend the customary 30-day comment period to 60 days.

The Committee recognizes that Congress is currently considering reauthorization legislation for the Corporation. Whenever Congress does pass a new LSC Act, the Corporation's regulations will be revisited and revised accordingly.

*Section 1621.1 Purpose*

The revisions to this section are intended to clarify that there is no statutory entitlement to legal services or to a particular type of legal assistance. The intent of this rule is to provide for a mechanism whereby applicants for service or clients may complain about the denial of service or the quality of services provided.

The proposed revisions to this section also make it clear that the rules regarding complaints about the quality and manner of service apply only to recipients that actually provide services to clients and not to those support centers and other recipients that do not offer direct intake. They also clarify that the "applicants for service" and the "clients" are not, for the purposes of these rules, local legal services programs, but rather, that they are the financially eligible clients represented by LSC-funded programs. Finally, the revisions are intended to clarify that a recipient is not accountable to the entire client community with regard to client grievances, but only to its actual clients and, to a limited extent, to those members of the community who actually apply for services.

*Section 1621.2 Grievance Committee*

The proposed revision to this section would allow a recipient to include more than a proportionate number of clients on a grievance committee. The current rule requires that the committee be composed of lawyer and client members in approximately the same proportion in which they serve on the governing body.

However, there is no statutory requirement governing the composition of board committees and, for client grievance issues, it may be preferable in some situations to have more than one-third of the committee membership be clients. In any event, at least one lawyer must be on the committee.

*Section 1621.3 Complaints About the Quality or Manner of Providing Services*

Paragraph (a) is revised to clarify that the grievance procedure is available only to actual clients or their representatives, and not to opposing counsel or some other person who is disgruntled by the recipient's operations. It is also designed to address complaints not only about the quality of legal assistance, but also about a client's general treatment by the recipient's staff, including the receptionist, intake workers, or any other staff member who interacts with clients.

Paragraph (a) is also revised to require a program to establish procedures for complaints about PAI attorneys. These procedures need not be the same as they are for program staff. The Corporation has a strong interest in encouraging involvement of the private bar in its recipients' PAI projects and does not want the grievance procedures to act as a deterrent to such involvement. However, the Corporation also sees the value in providing some complaint mechanism for dissatisfied clients. Therefore, the Corporation is especially interested in receiving comments from the private bar on this issue. Such comments should address issues such as local ethical requirements to report malpractice on the part of attorneys, complaint procedures, and appropriate actions that should be taken when a complaint is found to have merit.

Paragraph (b) sets out the minimum requirements for a program's grievance procedures. It adds a requirement that complaints be in writing and retains the provision for transcription of oral complaints into writing, so that grievance committees would not have to respond to every oral statement made about a recipient. If a grievance committee does not satisfactorily resolve the matter based on the written complaint, the provision provides that the complainant then has an opportunity to address the committee in person or by teleconference. Although not required by the proposed rule, procedures may include a provision allowing a complainant to appeal the grievance committee's decision to the program's whole board of directors.

This provision also clarifies that there is no attorney-client relationship between the complainant and the board's grievance committee. Thus, in order for the grievance committee to investigate a complaint, the client would have to consent to disclose any necessary confidential information. It is important to require that the consent be explicit, rather than simply treating the filing of a complaint as an implied consent. The consent called for is limited to those disclosures to the committee or the board necessary to consider the grievance.

Paragraph (c) adds a provision setting out what a grievance committee may do in response to a complaint made pursuant to this Part. This is an effort to make it clear that the committee could recommend any action that is consistent with the applicable rules of professional responsibility, but it would be up to the executive director to determine what action is appropriate and to implement such action.

Paragraph (d) requires a recipient to maintain a file, separate from the client's case file, containing a copy or summary of every written complaint and a statement of its disposition. In view of the second sentence of this paragraph, the requirement in the current rule that the file be preserved for review by the Corporation has been deleted. The second sentence adds a provision that prohibits the recipient from disclosing any information in the file that would violate the attorney-client privilege or the applicable rules of professional responsibility. Keeping the information the Corporation may need to see in a file separate from the client's case file would make it easier for the Corporation to have access to complaint information in a manner that would be less likely to jeopardize the confidentiality of client information. The Committee believes that the provisions on access to client information should be consistent with the applicable rules of professional responsibility and with section 1006(b)(3) of the LSC Act, which prohibits LSC from abrogating the authority of states and local jurisdictions to enforce those rules.

The ABA's Standing Committee on Legal Aid and Indigent Defendants ("SCLAID") has expressed great concern about the protection of client confidences, secrets, and other information gained in the course of representation, and has urged the Committee to adopt rules that would permit LSC to have access to information only in a manner consistent with the applicable rules of professional responsibility. The Committee proposal makes it clear that complaint information disclosed by a client should not be disclosed to LSC or to any third party, except as permitted by applicable rules. Generally, that would mean that when the identity of a client is not known, information may be made available so long as it does not identify a client, either directly or indirectly. Thus, a client's name and any other information that could associate the document with a particular client, such as an address or the name of an employer, should be redacted.

Once a document has been purged of any information that could be used to identify a particular individual or that could be associated with a particular person, that document could be shared with LSC, consistent with the rules of professional responsibility. However, the Committee solicits comments as to whether other information than that which would identify a client may have to be withheld pursuant to local rules of professional responsibility. The comments should include specific examples of types of information that would have to be withheld.

In the event that LSC is investigating a specific complaint involving a previously identified client, unless the specific client has consented to the disclosure, the recipient may be under an obligation to withhold from LSC substantially more of the information provided by the client in order to ensure that secrets, confidences, and information gained in the course of the representation are not inappropriately revealed. Should the information thus provided prove insufficient to permit LSC to fulfill its obligation to ensure that recipients meet the requirements of this part, it is anticipated that the recipient and LSC will work together to devise an acceptable manner in which to proceed. Of course, if LSC is investigating a complaint at the request of a client, the client may consent to the disclosure of the information.

*Section 1621.4 Complaints About Denial of Assistance*

Paragraph (a) is revised to require recipients to establish simple procedures for the timely review of a complaint by an applicant for service regarding a decision to deny service.

Paragraph (b) sets out the requirements for such procedures, which should include instructions on how an applicant may obtain information on the reasons for a denial of service, including information on the recipient's priorities, eligibility guidelines, statutory restrictions on representation, and a recipient's case acceptance criteria. Case acceptance criteria would include, but would not be limited to, consideration of the merits of the applicant's case and any conflicts of

interest that may exist. The Committee would like to hear comments on other items that should be included as case acceptance criteria. The procedures should also contain information on how a complainant can make a complaint and confer with a recipient's director or a member of the grievance committee regarding the denial of service.

Proposed paragraph (c) requires recipients to make reasonable and appropriate efforts to inform applicants about the complaint procedures. What is reasonable and appropriate would vary depending on the resources of a recipient and the volume of its applicants. There are a variety of ways, depending on the circumstances, in which the standard could be met. They include, but are not limited to: (1) Providing written information about the complaint procedure to all rejected applicants whose eligibility is determined in person; (2) providing written notification to rejected applicants whose determinations are routinely acknowledged in writing; (3) using voice mail or other available technology, if appropriate and economically feasible; or (4) providing oral descriptions of the complaint procedures for rejected applicants who express dissatisfaction with the determination. The standard would not include a practice that would overwhelm a program's telephone system or exact too high an administrative cost.

Paragraph (d) prohibits the recipient from disclosing any information maintained by the recipient regarding a complaint of denial of assistance to the Corporation or any third party in a manner that would violate the attorney-client privilege or the applicable rules of professional responsibility. This paragraph does not require the recipient to maintain a file on complaints of denial of assistance.

Although recipients are not required to do so by the rule, they should make reasonable and appropriate efforts to ensure that non-English speaking individuals and those with communicative disorders understand the complaint procedures, have the tools to adequately express their complaints, and receive appropriate explanations of why their applications for service were denied or what actions are being taken in response to their complaints.

**List of Subjects in 45 CFR Part 1621**

Legal services.

For reasons set forth in the preamble, part 1621 is proposed to be revised to read as follows:

## PART 1621—CLIENT GRIEVANCE PROCEDURES

Sec.
1621.1 Purpose.
1621.2 Grievance Committee.
1621.3 Complaints about the quality or manner of providing services.
1621.4 Complaints about denial of assistance.

**Authority:** 42 U.S.C. 2996e(b)(3); 2996f(a)(1).

### § 1621.1 Purpose.

By providing an effective complaint mechanism for an applicant for service who believes that legal assistance has been denied improperly, or for a client who is dissatisfied with the quality or manner of services provided, this part seeks to insure that recipients treat every client and applicant for service fairly and with dignity and respect and provide each client with high quality legal services.

### § 1621.2 Grievance Committee.

The governing body of a recipient shall establish a grievance committee or committees, composed of lawyer and eligible client members of the governing body. One third or more of the members of each grievance committee shall be eligible client members of the governing body.

### § 1621.3 Complaints about the quality or manner of providing services.

(a) A recipient shall establish procedures for determining the validity of a complaint by a client about the manner or quality of services that have been provided to the client by members of the recipient's staff or by private attorneys under part 1614 of these regulations.

(b) The procedures shall provide at least:

(1) Information to a client at the time of the initial visit about how to make a complaint;

(2) Prompt consideration of each complaint by the director of the recipient, or the director's designee; and

(3) An opportunity for a complainant to submit a written complaint to a grievance committee established by the governing body pursuant to § 1621.2, if the director of the recipient or the director's designee is unable to resolve the matter to the complainant's satisfaction.

(i) Upon request, the recipient shall transcribe a brief written statement of the complaint, dictated by the complainant, for submission to the grievance committee.

(ii) Each written complaint shall include a signed statement by the complainant giving limited written consent to disclose client confidences, secrets or other information relating to the representation of the complainant necessary to investigate the matters and issues raised by the complaint.

(4) The procedures shall also provide an opportunity for the complainant to appear before the grievance committee, either in person or by teleconference, if the grievance committee is unable to resolve the matter to the complainant's satisfaction based on the written complaint. The complainant may be assisted by another person.

(c) The grievance committee may recommend that the director of the recipient take appropriate action to correct any problems that it finds as a result of a review of a complaint made under this section. No actions shall be taken that are inconsistent with the applicable rules of professional responsibility.

(d) The recipient shall maintain a file, separate from the case file, containing either a copy or, if appropriate, a complete and accurate summary of every written complaint made pursuant to § 1621.3 and a statement of its disposition. The recipient shall not disclose the contents of this file to the Corporation or to any other third party in a manner that would violate the attorney-client privilege or applicable rules of professional responsibility, without the express written consent of the client.

### § 1621.4 Complaints about denial of assistance.

(a) A recipient shall establish simple procedures for timely review of a complaint by an applicant for service regarding (1) a decision by the recipient to deny service and (2) the reasons for the denial.

(b) The procedures shall include instructions regarding how applicants for service can:

(1) obtain information necessary to explain why service was denied, including information describing the recipient's priorities, eligibility guidelines, applicable restrictions on representation contained in the Act and regulations, and case acceptance criteria. Such case acceptance criteria may include, but shall not be limited to, the merits of a client's claim and any conflicts of interest that may exist;

(2) make a complaint questioning the denial of assistance; and

(3) confer with the director of the recipient or the director's designee, and, to the extent practicable, with a member of a grievance committee established pursuant to § 1621.2 regarding the reasons for the decision denying service.

(c) Recipients shall make reasonable and appropriate efforts to inform applicants who have been denied service about the complaint procedures set out in § 1621.4(b).

(d) A recipient shall not disclose to the Corporation or to any third party any documents maintained by the recipient regarding denials of assistance that would violate the attorney-client privilege or applicable rules of professional responsibility, without the express written consent of the applicants for service.

Dated: September 27, 1994.

**Victor M. Fortuno,**

*General Counsel.*

[FR Doc. 94–24276 Filed 9–29–94; 8:45 am]

BILLING CODE 7050–01–P

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### 49 CFR Parts 192 and 195

**RIN 3137–AB71**

**[Docket No. PS–126; Notice 2]**

### Passage of Instrumented Internal Inspection Devices

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

**ACTION:** Notice of Proposed Rulemaking; Response to Petitions for Reconsideration.

**SUMMARY:** On April 12, 1994, RSPA published a final rule requiring that new and replaced pipeline facilities be constructed to accommodate inspection by instrumented internal inspection devices commonly known as "smart pigs." RSPA has received two petitions for reconsideration of that rule as it applies to gas pipelines. In response to those petitions, this notice proposes to modify the rule with respect to: Replacements in gas transmission lines located in less populated areas; and replacements in gas transmission lines located offshore. In addition, in order to allow completion of rulemaking on these proposals, this notice proposes limited extension of the compliance dates for certain current requirements. Finally, this document announces RSPA's decision with respect to other matters raised in the petitions.

**DATES:** Comments on the limited extension of the compliance dates for current requirements are due October 31, 1994. Comments on other modifications of the rule are due November 29, 1994. Commenters should submit as part of their written comments all the material that is considered relevant to any statement of fact or argument made.

**ADDRESSES:** Comments may be mailed or hand delivered to the Dockets Unit [DHM–20], Room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590–0001. Telephone: (202) 366–5046. Comments should identify the Docket No. and Regulatory Identification Number (RIN) stated in the heading of this document; the original and two copies should be submitted. Persons wishing to receive confirmation of receipt of their comments should include a self addressed stamped envelope. Public Dockets may be reviewed and copied between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Albert C. Garnett, (202) 366–2036, Office of Pipeline Safety, regarding the subject matter of this notice, or Dockets Unit, (202) 366–5046 for copies of this notice or other materials in the docket.

**SUPPLEMENTARY INFORMATION:**

#### Background

RSPA published a final rule under Docket No. PS–126 (Amendments 190–5, 192–72, 193–9, and 195–50) requiring operators of gas, hazardous liquid and carbon dioxide pipelines to design and construct new pipelines and portions of pipelines on which replacements are made to accommodate the passage of smart pigs (59 FR 17275; April 12, 1994). Among the provisions for gas transmission lines, 49 CFR 192.150(a) requires that:

> * * * each new transmission line and each line section of a transmission line where the line pipe, valve, fitting or other line component is replaced must be designed and constructed to accommodate the passage of instrumented internal inspection devices.

The term "line section" was defined (in § 192.3) as a continuous run of transmission line between adjacent compressor stations, between a compressor station and storage facilities, between a compressor station and a block valve, or between adjacent block valves. It was derived from a definition already in use for hazardous liquid and carbon dioxide pipelines (§ 195.2).

Several specific exceptions to the requirements in § 192.150(a) are provided, including one for offshore gas transmission lines less than 10 inches in nominal diameter that transport gas to onshore facilities. In addition, under § 192.150(b)(8) an operator may seek a specific exception to be based upon a RSPA finding that it would be impracticable to design and construct a transmission line for the passage of smart pigs.

#### Requests for Stay and Petitions for Reconsideration

The Interstate Natural Gas Association of America (INGAA) filed a "Request for a Stay of the Effective Date [May 12, 1994] of the Final Rule; Passage of Instrumented Internal Inspection Devices" dated May 4, 1994. INGAA requests that RSPA stay until at least January 1, 1995, that provision of the final rule requiring a line section, as defined in 49 CFR § 192.3, to be modified to accommodate smart pigs whenever a line pipe, valve, fitting, or other line component is replaced in a line section. To support their request for a stay, INGAA notes that the 1994 summer replacement/rehabilitation work is in progress and that funds for modification of line sections have not been allocated by operators. INGAA also argues that there was procedural error in the rulemaking process.

INGAA also filed a "Petition for Reconsideration of the Final Rule; Passage of Instrumented Internal Inspection Devices" dated May 10, 1994. INGAA asks that the definition of "line section" be deleted from 49 CFR § 192.3 and that all offshore gas transmission lines be exempt from the final rule. Issues raised by INGAA to support its request for deletion of "line section" are lack of authority to promulgate such a rule and procedural error. INGAA points to technical infeasibility and impracticability to support its request for exemption of offshore gas transmission lines.

The American Gas Association (AGA) filed a "Request for Administrative Stay of the May 12, 1994 effective date and Petition for Reconsideration of RSPA's Final Rule on Passage of Instrumented Internal Inspection Devices." Arguing that immediate implementation would harm public safety by diverting funds from other safety projects, AGA requests that RSPA immediately stay the effective date with respect to replacement of line sections. In addition, AGA requests that RSPA grant reconsideration of the final rule in order to address the costs, benefits, and practicability of the replacement requirement to modify the complete line section to accommodate smart pigs. To support this, AGA argues that RSPA failed to consider the standards for pipeline safety rules set out in 49 U.S.C. § 60102(b) (formerly section 3(a) of the Natural Gas Pipeline Safety Act); there was no opportunity for public comment on the definition of line section; the

Technical Pipeline Safety Standards Committee (TPSSC) was not given opportunity to review relevant provisions; and the final rule was not reviewed by the Office of Management and Budget (OMB).

The three documents submitted by INGAA and AGA are in the docket.

**Stay of Compliance With Line Section Replacement**

In its request to stay application of the line section replacement provision of the final rule, INGAA explained that "almost all decisions, to include funding, for pipeline replacement and rehabilitation are made at least a year preceding the summer work season * * *" INGAA states that the one year lag time includes time required for "design work, obtaining bids for work, selecting contractors, ordering material, obtaining approval from FERC (Federal Energy Regulatory Commission), performing environmental analyses and obtaining Federal and State environmental and archaeological permits when necessary, and obtaining landowner approval for right-of-way work on their property." As a result, INGAA believes that it is "far too late to comply with a May 12, 1994, effective date to make 'line sections' piggable". AGA echoes this sentiment by stating that if the May 12, 1994, effective date of the final rule remains in place, "pipeline replacement projects currently in progress for 1994 would have to be canceled, since the administrative permits and plans for such projects were in place during the winter of 1993–94."

The concerns expressed by INGAA and AGA led RSPA to advise INGAA, AGA, and the American Petroleum Institute on May 12, 1994, that it was suspending enforcement, until further notice, of the final rule insofar as it requires making the entire line section accommodate smart pigs if the line pipe, valve, fitting or other component is replaced. The suspension did not effect the requirements that pipeline operators design and construct new onshore and offshore pipelines or the actual line pipe, valve, fitting or other line component being replaced to accommodate smart pigs. Furthermore, operators were encouraged to voluntarily modify any obstructions in the line section to accommodate smart pigs whenever any replacement is made.

This notice addresses INGAA's and AGA's request for a stay in a more formal manner. First, this notice proposes to extend the compliance date for replacements made in gas transmission pipelines to allow operators to continue replacing any line pipe, valve, fitting or other line component (with a replacement that accommodates smart pigs) without requiring that any other obstructions in the line section be designed and constructed to accommodate smart pigs. As discussed below, RSPA is proposing to partially grant reconsideration of the final rule as it applies to replacements in gas transmission pipelines. At the same time, we are proposing to extend compliance dates to allow for completion of rulemaking on the reconsideration. Second, the suspension of enforcement with respect to gas transmission pipelines will remain in effect until February 2, 1995, or until RSPA finalizes action with respect to compliance dates, whichever is earlier.

**Effect on Hazardous Liquid and Carbon Dioxide Pipelines**

The petitions for reconsideration and requests for administrative stay received addressed only gas transmission pipelines. However, because of the possibility that the issues raised could be equally applicable to hazardous liquid and carbon dioxide pipelines, the suspension of enforcement applied equally to hazardous liquid and carbon dioxide pipelines.

RSPA has considered whether the reconsideration granted in this notice with respect to aspects of the final rule as they apply to gas transmission lines should be expanded to hazardous liquid and carbon dioxide pipelines. RSPA has decided not to expand the reconsideration to include hazardous liquid and carbon dioxide pipelines. First, there has been no request to do so. Second, hazardous liquid pipelines pose environmental risks generally unrelated to the population surrounding the pipelines. The relief proposed below with respect to gas transmission lines arise from the nature of those pipelines and their location with respect to population. Finally, based on data collected by RSPA (below) in 1989, approximately 41.7% of (136,359 miles) of natural gas transmission lines were not able to accommodate a smart pig for reasons other than lack of launchers or receivers, while only 10.5% (16,275 miles) of hazardous liquid pipelines were similarly not piggable.

Because RSPA is not proposing any changes in the final rule with respect to hazardous liquid and carbon dioxide pipelines, the suspension of enforcement with respect to those lines is immediately (insert date of publication of this NPRM) lifted and compliance will be enforced.

**Replacements**

*A. Authority for Requirement*

INGAA argues that RSPA lacks the authority to promulgate a rule requiring operators to modify line sections to accommodate smart pigs when portions of the sections are replaced. INGAA bases its argument on the assumption that the statutory authority for the rule is the change to the basic authorities for requiring modification of existing pipelines to accommodate smart pigs that was made by sections 103 and 203 of the Pipeline Safety Act of 1992 (P.L. 102–508, Oct. 24, 1992). That change authorizes RSPA to require changes to existing lines whose basic construction would accommodate a smart pig. The 1992 authority would allow RSPA to require the installation of launchers and receivers in lines that already can be smart "pigged" should the decision be made in a future rulemaking that the line must be so inspected. INGAA's assumption that RSPA was relying on this 1992 amendment in this rulemaking is incorrect.

The requirement in the final rule for replacement of the line section is based upon authority enacted in 1988 that now reads:

> The Secretary shall prescribe minimum safety standards requiring that the design and construction of a new gas pipeline transmission facility or hazardous liquid pipeline facility, and the required replacement of an existing gas pipeline transmission facility, hazardous liquid pipeline facility, or equipment, be carried out, to the extent practicable, in a way that accommodates the passage through the facility of an instrumented internal inspection device (commonly referred to as a "smart pig").

49 U.S.C. 60102 (f). This section supports the final rule that requires any needed changes to the line section to accommodate smart pigs whenever one or more components must be replaced. A more narrow reading, one in which only the individual components must be made smart "piggable", would render the provision virtually meaningless. This is so because the factors that restrict "piggability" are often related to the geometry of the line (such as bends) rather than to an individual component (such as a valve). The use of valves that cannot accommodate smart pigs is largely in pipelines in which the geometry does not allow inspection by smart pigs. Thus a more narrow reading, in which only the single component being replaced must accommodate the internal inspection by smart pigs, would result in virtually no change in the "piggability" of existing pipelines.

Congress clearly intended that change in the "piggability" occur.

Accordingly, RSPA has the authority to issue the final rule. However, as discussed below, RSPA agrees that there may be instances in which the final rule requires that modifications be made to the entire line section which may not be feasible.

*B. Scope of the Notice*

AGA and INGAA argue that both the definition of "line section" and the mandatory modification of line sections were not included in the proposed rule, effectively precluding meaningful comment. AGA and INGAA claim that the notice of proposed rulemaking was so inadequate as to violate the requirement of the Administrative Procedure Act (APA) for notice and comment in the informal rulemaking process.

The notice proposed that each "replacement transmission line" (or, for hazardous liquid pipelines, each "replacement pipeline") be made to accommodate smart pigs. Much of the comment on the issue of replacement questioned the scope of the terms "replacement transmission lines" and "replacement lines." Commenters speculated about the end points of the segments of lines that had to be made to accommodate smart pigs when a replacement was required. Under the proposed language, any replacement in a transmission line could require modification of the entire line to accommodate smart pigs. AGA itself expressed concern that the proposed rule would be read to require altering an entire transmission line.

Recommendations to narrow the terms for replacement used in the proposed rule by substituting the term "line section" came from comments to the proposed rule filed by a pipeline trade association and a pipeline operator. These two commenters favored the term because it was already defined in 49 CFR 195.2 and it clearly set out the length to be made to accommodate smart pigs. Other commenters suggested similar terms such as "replacement transmission section" (recommended by AGA), "segment", and "line segment". However, none of these terms was as clearly defined as "line section", and RSPA, on the basis of the comments, chose to adopt the more recognized term to clarify the intent of the rule. This solution to the concerns raised by the commenters is clearly within the scope of the broadly worded proposal.

Accordingly, RSPA provided an opportunity for meaningful comment, consistent with the APA.

*C. Advisory Committee Review*

Both petitioners complain that there was no opportunity for consideration by the Technical Pipeline Safety Standards Committee (TPSSC) of the requirement to modify replacement line sections to accommodate smart pigs because line section was not mentioned in the notice or in the summary of comments that was prepared by RSPA for the August 3, 1993 TPSSC meeting. Consistent with 49 U.S.C. 60115, RSPA presented the published Notice of Proposed Rulemaking to the TPSSC. In addition, RSPA passed out a draft summary of the comments. The TPSSC accepted the proposed rule as reasonable, feasible and practicable provided several changes were incorporated. Since the TPSSC reviews and advises on the proposed rule, it is understandable that the final rule may differ from the proposal considered or accepted by that committee. In this case, the final rule was drafted and published some eight months later. Although RSPA is required to consider the TPSSC's advice (but is not obligated to adopt any of the TPSSC's recommendations), several issues raised by the TPSSC were incorporated in the final rule.

Accordingly, RSPA considered the TPSSC recommendations in an appropriate manner.

*D. Economic Impact*

Both INGAA and AGA claim that RSPA failed to consider adequately the economic impact of the replacement aspect of the final rule. However, many of the changes RSPA incorporated into the final rule were done at least in part because of economic arguments advanced by commenters. For example, based on INGAA's and AGA's comments to the NPRM, RSPA incorporated the procedure to address unforeseen contingencies in replacements (§ 192.150(c)); a clear exception for gas gathering lines (§ 192.9); an exception for pipelines located in storage fields because of the small diameter piping configured in a grid-like pattern (§ 192.150(b)(3)); and an exception for transmission pipelines within a distribution system (§ 192.150(b)(6)). In addition, the definition of "line section" was developed in part to address AGA concerns that "pigging" a short segment is not economically feasible and that the proposed rule could be read to require modification of the entire transmission line. Each of these incorporated changes reduced the economic impact of the final rule.

INGAA points to the costs of obtaining needed approvals for replacement projects from the Federal Energy Regulatory Commission (FERC), Federal and state environmental and archaeological agencies, and property owners. INGAA claims that some of these may take a year or more to obtain. To the extent that approvals are needed before work on the line can be done, the final rule provides for delays. In response to INGAA and AGA comments, § 192.150(c) sets out a procedure to allow an operator to delay required modifications to the line section for up to one year should situations such as delays in needed approvals occur. However, many replacements will not require approvals. For example, FERC regulation 18 CFR § 2.55 does not require prior approval whenever the replacement is less than $6.6 million (1994 limit) and does not reduce service or change the capacity of the line. Certainly the replacement of certain obstructions such as reduced port valves and short radius bends will fall into this category and not require any approval from FERC.

Both INGAA and AGA argue that the requirement to modify other obstructions in the line section whenever a replacement is made will potentially increase the cost of compliance with the final rule to over $100 million per year. However, very little cost data was provided to support the argument. Moreover, based on information now available about numbers of gas transmission lines that will not accommodate smart pigs and the estimated frequency with which operators must install replacements in lines, RSPA believes the costs to be substantially less. The economic evaluation prepared for the final rule was based on available data relating to costs and frequency of replacements made in gas transmission lines. That evaluation estimated costs at $1.05 million per year. Now under the heading—Requests for Information from Commenters—this notice requests the operators to provide up-to-date information on the gas transmission lines that are the subject of this notice. Thus, gas operators and petitioners will have an opportunity to provide specific information on the length of affected lines that are currently unable to accommodate smart pigs (for reasons other than lack of launchers and receivers) and the extent of replacements made in recent years for reasons other than to accommodate smart pigs.

Accordingly, RSPA finds that the cost of compliance with the final rule would not exceed $100 million annually. In addition, the relief proposed in this

notice will further reduce the cost of compliance.

*E. Executive Order 12866*

AGA argues additionally that RSPA violated Executive Order (E.O.) 12866, titled "Regulatory Planning and Review," since "the costs of compliance with this rule could potentially reach over $100 million annually" and the Office of Management and Budget (OMB) did not review the final rule. RSPA disagrees. In the first place, as already noted, RSPA believes the costs of the final rule to be well below $100 million annually. Second, E.O. 12866 provides for OMB review of only "significant regulatory actions" unless OMB declines to review such a significant action. The procedure for determining that a regulatory action is not "significant" and for obtaining the concurrence of OMB with that determination is laid out in Section 6(a)(3)(A) of E.O. 12866 and "Guidance for Implementing E.O. 12866." The latter is a memorandum from Sally Katzen, Administrator for the Office of Information and Regulatory Affairs, OMB, to the heads of executive departments and agencies dated October 12, 1993. RSPA routinely follows this procedure by submitting lists of planned regulatory actions to OMB and obtaining its concurrence in designations of "significant" and "nonsignificant." OMB concurred in the designation of this final rule as "nonsignificant" on February 23, 1994. Finally, RSPA notes that E.O. 12866 is an internal management tool of Executive branch of the Federal Government and does not create any right to OMB review enforceable by any person against RSPA.

Accordingly, the final rule complies with the requirements of E.O. 12866 and OMB, as explained above.

*F. Reasonableness*

Petitioners argue that the final rule is unreasonable in requiring modification of line sections when single components are replaced. Petitioners assert that such modifications result in minimal benefits and excessive costs. RSPA believes that significant benefits can accrue from inspections with smart pigs. Both the Colonial Pipeline Company's and the Texas Eastern Pipeline Company's experiences with pipeline failures caused by outside force damage demonstrate the benefits of internally inspecting pipelines using smart pigs. The Colonial failure on March 28, 1993 resulted in the release of an estimated 408,000 gallons of petroleum into Sugarland Run Creek, a tributary of the Potomac River. The Texas Eastern failure occurred on March 23, 1994 when a 36-inch gas transmission line exploded. The resulting fire leveled 128 condominium units in Edison, New Jersey and caused death, injury, and substantial property damage.

The failure in each case resulted from mechanical damage to the pipeline caused by external damage that occurred at an indeterminate time before the failure. Recent technological developments in smart pigs allow for internal inspections that identify dents, gouges, and other anomalies that could lead to failure on buried pipelines. Smart pig inspections done on each pipeline following these failures have resulted in the detection and removal of anomalies that could, over time, have led to additional failures.

In addition, smart pig inspections have long been used by pipeline operators concerned about corrosion.

In each of these cases, serious pipeline failures occurred in high density populated areas placing a significant portion of the population at risk. In each case, the "piggability" of the pipelines provided a more certain means to assure that similar incidents would not recur on those pipelines. Such "piggability" is the goal of the final rule. Requiring a pipeline operator to make necessary modifications in a line section whenever a replacement is made is not only reasonable, but also necessary for safety in high-density populated areas.

Accordingly, RSPA finds no reason to reconsider the final rule as it applies to replacements in line sections in Class 3 and 4 locations.

With respect to gas transmission pipelines in less populated areas, AGA argues that a requirement to modify the complete line section to accommodate smart pigs "will result in a risk to public safety by diverting limited funds for capital improvement projects—many of them safety related—to making pipelines accommodate smart pigs in rural areas where there would be little, if any, benefit to the public." After citing two examples of replacement projects that would have had large enormous increases under the line section modification requirement, AGA goes on to state that "this enormous increase in costs will result in the final rule having an economic impact of well over $100 million annually for the industry." While RSPA does not accept these costs as typical for modifying the obstructions to smart pigs in most line sections, we see the need to reconsider the resulting benefits in less populated areas.

Accordingly, as discussed below, we are proposing to modify the final rule as it applies to replacements in Class 1 and 2 locations.

**Offshore Pipelines**

INGAA requests that RSPA reconsider the final rule and except all new and replaced offshore transmission lines from compliance. INGAA argues that requiring offshore transmission lines to accommodate smart pigs is technically infeasible and impracticable and does not meet the special statutory criteria for pipeline safety standards. Those criteria, found in 49 U.S.C. 60102(b), require consideration of relevant available pipeline safety data, appropriateness of the standards for the particular type of pipeline transportation or facility, the reasonableness of the proposed standards, and the extent to which the standards will contribute to public safety and the protection of the environment.

To support its position, INGAA states generally that RSPA ignored technical material presented to show that offshore pipelines cannot be "smart pigged", including an assertion that most offshore gas pipelines are not constructed to accommodate smart pigs. RSPA disagrees strongly with this argument. The issue is not whether existing offshore lines can be "smart pigged" but whether new offshore transmission lines can be constructed or existing offshore gas transmission lines can be modified to accommodate smart pigs. RSPA considered technical material relating to problems such as tight bends, restrictive subsea connections, and limited space on platforms in deciding that they can be. No technical information has been submitted to RSPA that concludes that offshore gas transmission lines would be incapable of accommodating smart pigs if they are so designed and constructed. Their construction is not dissimilar from that of offshore hazardous liquid pipelines, many of which are already constructed in a manner that would accommodate smart pigs.

INGAA is incorrect in citing 1992 changes to the statutory authority as the basis for the final rule. As discussed above, that statutory change was not used to support the final rule. In addition, INGAA is incorrect that RSPA ignored recommendations of the TPSSC. As discussed above, RSPA is not obligated to adopt the recommendations of the advisory committee, only to consider them. Discussion of RSPA's consideration of those recommendations is included in the preamble to the final rule, but is commingled with the discussion of RSPA's response to commenters to the proposed rule. Furthermore, RSPA's consideration of

the criteria contained in 49 U.S.C. 60102(b), the technical data, and recommendations of the TPSSC resulted in the exception provided in the final rule for offshore gas transmission lines less than 10 inches in nominal diameter that transport gas to onshore facilities.

INGAA also points to the lack of population around offshore lines and the periodic cleaning of the gas transmission lines that removes condensates as justification for exception from the rules for these pipelines. The rationale is that offshore gas transmission lines do not pose either serious safety or environmental concerns justifying the cost of assuring that the lines can accommodate smart pigs. RSPA agrees that we may not have fully considered these factors in applying the rules to offshore gas transmission pipelines and accordingly propose a change to the final rule.

INGAA asserts that most offshore gas pipeline operators use cleaning pigs to periodically sweep condensate to onshore separation facilities. This keeps the offshore pipelines free from condensate and greatly reduces the environmental impact of an offshore leak by eliminating the risk of a condensate sheen. RSPA agrees that a leak in an offshore gas transmission line, that is free of significant accumulations of condensate, poses minimal risk to the natural environment.

As noted, RSPA agrees that the offshore gas pipelines do not pose the same safety risk as onshore pipelines. The offshore safety risk is to workers on platforms and to vessels. The latter risk is extremely remote absent the possibility of a collision between a vessel and an underwater pipeline. This possibility has been minimized by the issuance of § 192.612, which required operators to conduct underwater inspections in shallow waters in the Gulf of Mexico to determine whether they pose a risk to navigation and to re-bury those pipelines. RSPA is working on a proposal addressing the need for similar periodic underwater inspections.

The accident reports for offshore incidents received by RSPA indicate that risk to workers on platforms comes from gas leaks in the risers. The leaks are the result of condensate with corrosive agents that is likely to collect in the riser's elbows and cause internal corrosion. Also, external corrosion at the riser's "splash zone" is caused by the degradation of protective coatings from wave action. Both types of corrosion are detectible by smart pigs. However, as INGAA points out, modification of riser bends in order to accommodate smart pigs is costly. RSPA notes that there are alternative techniques of inspecting these risers for corrosion that are generally more effective (and less costly) than use of smart pigs that survey the entire pipeline. These include divers, remotely operated vehicles carrying ultrasonic thickness devices, or specially equipped tethered smart pigs.

Furthermore, it is important to note the recommendation contained in a 1994 study of marine pipeline safety by the National Research Council of the National Academy of Sciences titled—Improving The Safety Of Marine Pipelines. The study, co-sponsored by the Minerals Management Services and RSPA, had input from persons in industry, academia, and state and federal government who are experts in their fields and knowledgeable about the marine pipeline environment, suggested that:

> * * * marine pipelines already constructed be exempted from federal or state requirements for the use of currently available smart pigs for external or internal corrosion detection. New medium- to large-diameter pipelines running from platform to platform or platform to shore should be designed to accommodate smart pigs whenever reasonably practical.

Accordingly, RSPA denies INGAA's petition to except new offshore gas transmission lines. However, as discussed below, RSPA has reconsidered benefits associated with the offshore gas transmission lines and proposes to modify the requirement under § 192.150(b)(7) of the final rule with respect to replacements in these lines.

**Proposed Rules**

First, as discussed above in the section titled "Stay of compliance with line section replacement," RSPA proposes to extend to February 1, 1995, the compliance date with respect to replacements in gas transmission lines.

Second, RSPA proposes to modify § 192.150(b) to add a new exception for replacements in the line sections of existing gas transmission lines in Class 1 and 2 locations. This exception would be limited to those situations in which an operator, who wishes to avail itself of the exception, can demonstrate that modifying the line section to accommodate smart pigs is not feasible, and not needed for future safety.

The safety prong of this test requires consideration of the operating and maintenance history of the line section. RSPA expects that the operator will take into account such factors as the reason for the replacement, corrosion history, leak history, and the risk of outside force damage. For example, if the replacement that triggers the application of § 192.150(a) is required because of corrosion and the line section has a history of corrosion problems, or if external damage from earth movement is a concern, future safety considerations may require the line section to accommodate smart pigs.

A decision that modifying a line section is not feasible might be based on the nature and costs of the modification. For example, if (other than the replacement) the only modification on the line section needed to accommodate smart pigs is to replace a reduced port valve, and that modification will allow internal inspection of the entire line section, then the operator might reasonably conclude that the modification is feasible. However, if modification of the line section would require the acquisition of costly new right-of-way to straighten bends, the operator might reasonably conclude that modification is not feasible.

In reconsidering the benefits and costs of modifying line sections in these less populated areas, we have considered that we expect to promulgate, in the near future, a final rule in Docket No. PS–101, Excavation Damage Prevention Programs for Gas and Hazardous Liquid and Carbon Dioxide Pipelines. The notice for this rulemaking (53 FR 24747; June 30, 1988) proposed to require gas pipeline operators to expand their damage prevention programs to cover rural areas. Any such requirement that is in the resulting final rule would increase the safety of gas pipelines in Class 1 and 2 locations from failures caused by dig-ins.

Finally, with respect to existing offshore gas transmission lines, RSPA proposes to allow operators who (1) use cleaning pigs to remove condensate in offshore transmission lines and (2) inspect platform risers for corrosion to avoid modification of the complete line section when a replacement is made. The regular removal of condensates reduces the likelihood of internal corrosion and of the negative environmental impact of a large sheen in the event of a significant leak. The regular inspection of risers for corrosion by any of the effective methods available provides the necessary assurance of safety for personnel working on the platform.

**Requests for Information From Commenters**

The purpose of the questions posed below is to gather new or updated information relating to the issues in this rulemaking. Much of the data which RSPA has available were gathered in

order to meet the requirement for a congressionally-mandated study on the feasibility of requiring the use of smart pigs. To obtain information for this study, RSPA solicited information from interested parties through a Federal Register notice titled "Instrumented Internal Inspection Devices" (54 FR 20948; May 15, 1989). The data were summarized in Table 1 of the study titled "Instrumented Internal Inspection Devices (A Study Mandated By P.L. 100–561)," published November 1992. Table 1 indicated that 136,359 miles of gas transmission lines and 16,275 miles of hazardous liquid pipelines would not accommodate instrumented pigs for reasons not relating to the absence of launchers or receivers. Since this rulemaking only responds to petitions for reconsideration received from the two gas pipeline trade associations, updating of the mileage figures for hazardous liquid and carbon dioxide pipelines is not relevant.

RSPA invites interested persons to forward comments to the docket as directed under ADDRESSES) that include up-to-date information on the following:

(1) What is the mileage, current to December 31, 1993, of the gas transmission lines that would not accommodate smart pigs for reasons other than lack of launchers and receivers?

(a) Indicate the mileage of onshore gas transmission lines affected by the final rule.

(b) Indicate the mileage of offshore gas transmission lines affected by the final rule.

(2) During the five calendar years, 1989 through 1993, what was the total length of replacements (actual length of replaced pipe, valves, fittings, or other line components), installed for reasons other than to accommodate smart pigs?

(a) Indicate the mileage of such replacements in onshore gas transmission lines affected by the final rule.

(b) Indicate the mileage of such replacements in offshore gas transmission lines affected by the final rule.

(3) When replacements are made in a gas transmission line affected by the final rule, are there alternatives to making the line section accommodate smart pigs that would ensure the entire transmission line would accommodate smart pigs in a reasonable number of years? Commenters are requested to support their alternatives with appropriate data.

## Rulemaking Analyses and Notices

*Executive Order 12866 and DOT Regulatory Policies and Procedures*

This proposed rule is not considered a significant regulatory action under 3(f) of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget. The notice is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979); because it does not impose additional requirements and has the effect of extending a compliance date. The original regulatory evaluation of the final rule has been modified because this proposed rule would reduce costs and is available for review in the docket for this notice.

*Federalism Assessment*

This proposed rule will not have substantial direct effects on the relationship between the Federal 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 (52 FR 41685; October 30, 1987), RSPA has determined that this notice does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

*Regulatory Flexibility Act*

There are very few small entities that operate pipelines affected by this rulemaking. To the extent that any small entity is affected, the effect is minimal because it does not impose additional requirements and has the effect of extending a compliance date. Based on these facts, I certify that under section 605 of the Regulatory Flexibility Act that this proposed rule does not have a significant impact on a substantial number of small entities.

**List of Subjects in 49 CFR Part 192**

Pipeline safety, Reporting and recording requirements. In consideration of the foregoing, RSPA proposes to amend title 49 of the Code of Federal Regulations part 192 as follows:

## PART 192—[AMENDED]

1. The authority citation for part 192 is revised to read as follows:

**Authority:** 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60118; 49 CFR 1.53.

2. In § 192.150, the introductory text of paragraph (b) is republished without change, paragraph (b)(8) would be redesignated as paragraph (b)(9) and revised, paragraph (b)(7) would be redesignated as paragraph (b)(8) and revised, a new paragraphs (b)(7) and (d) would be added, to read as follows:

**§ 192.150 Passage of internal inspection devices.**

* * * * *

(b) This section does not apply to:

* * * * *

(7) Replacements in transmission lines in Class 1 or 2 locations (other than replaced line pipe, valve, fitting, or other line component) if the operator can demonstrate that modifying the line section to accommodate instrumented internal inspection devices:

(i) is not feasible; and

(ii) is not, based on an assessment of the operating and maintenance history of the line section, needed for future safety.

(8) Offshore transmission lines, other than new transmission lines 10¾ inches or greater in nominal diameter, if the operator can demonstrate:

(i) that cleaning pigs are regularly run to sweep condensate from the lines; and

(ii) that platform risers are regularly inspected for corrosion.

(9) Other piping that, under § 190.9 of this chapter, the Administrator finds in a particular case would be impracticable to design and construct to accommodate the passage of instrumented internal inspection devices.

* * * * *

(d) An operator replacing a line pipe, valve, fitting, or other line component in a transmission line in a Class 1 or 2 location need not comply, until February 2, 1995, with the requirement in paragraph (a) of this section that requires modification of the line section containing the component.

Issued in Washington, DC on September 23, 1994.

**D.K. Sharma,**

*Administrator, Research and Special Programs Administration.*

[FR Doc. 94–24080 Filed 9–29–94; 8:45 am]

BILLING CODE 4910–60–P

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**National Highway Traffic Safety Administration**

**49 CFR Part 571**

**[Docket No. 91–49; Notice 04]**

**RIN [2127–AF43]**

## Federal Motor Vehicle Safety Standards for Electric Vehicles

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Request for Comments.

**SUMMARY:** The purpose of this notice is to solicit public comments to help NHTSA assess the need to regulate electric vehicles (EVs) with respect to battery electrolyte spillage in a crash or rollover, and electric shock hazard in a crash or rollover and during repair or maintenance. Comments are requested on the potential safety hazards associated with each, and possible regulatory solutions, for original equipment EVs and EV conversions.

**DATES:** Comments must be received by November 29, 1994.

**ADDRESSES:** Comments on the notice should refer to the docket number and notice number shown above, and be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4949. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary R. Woodford, NRM–01.01, Special Projects Staff, Office of Rulemaking, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–4931).

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

A sizeable increase in the number of alternatively fueled motor vehicles, including electric vehicles (EVs), in the United States is expected. This expectation stems from initiatives by the President, Congress, State and local governments, and private interests, since these vehicles could help reduce air pollution and conserve petroleum fuel.

The Clean Air Act Amendments of 1990 include provisions that promote the use of alternative fuels in motor vehicles. Under these Amendments, fleet vehicles sold in geographic areas with the most serious air pollution problems will be subject to emission standards that will require the use of clean fuels, including methanol and ethanol, reformulated gasoline, natural gas, liquefied petroleum gas, and electric power.

In addition, the Energy Policy Act of 1992 (EPACT) requires Federal, State, and alternative fuel provider fleets to acquire increasing percentages of alternatively fueled vehicles. The Department of Energy is in the process of initiating a rulemaking, as required by EPACT, to determine if private fleets should also be required to purchase certain percentages of alternatively fueled vehicles as part of their new fleet acquisitions.

Executive branch initiatives will also encourage the increased use of alternatively fueled vehicles. Executive Order 12844, dated April 21, 1993, directs that purchases of alternatively fueled vehicles by the Federal government by substantially increased beyond the levels required by current law. It also established the Federal Fleet Conversion Task Force to accelerate the commercialization and market acceptance of alternatively fueled vehicles throughout the country.

A primary impetus for introduction of large numbers of EVs in the U.S. market is a regulation of the California Air Resources Board. Similar regulations are under consideration by other States. The California regulation requires that not less than two percent of a manufacturer's sales in the State (roughly 40,000 vehicles total) must be zero emission vehicles (ZEVs), beginning in model year 1998. This requirement will increase to 10 percent or roughly 200,000 vehicles beginning in model year 2003. The definition of a ZEV is a vehicle that emits no exhaust or evaporative emission of any kind. Currently, the EV is the only vehicle which meets these requirements.

The National Highway Traffic Safety Administration (NHTSA) is authorized by law (49 U.S.C. 30101–30169) to regulate the safety performance of motor vehicles and motor vehicle equipment through the issuance of Federal motor vehicle safety standards (FMVSSs). In addition, NHTSA has the authority to issue guidelines for States to use in state motor vehicle inspection programs.

Supplementing this authority in the area of alternatively fueled vehicle safety, the Energy Policy Act of 1992 requires that NHTSA must "within three years after enactment promulgate rules setting forth safety standards in accordance with [the agency's statutory authority] applicable to all conversions." In addition, the Clean Air Act Amendments of 1990 include a provision that NHTSA promulgate necessary rules regarding the safety of vehicles converted to run on clean fuels.

NHTSA wishes to assure the safe introduction of EVs and other alternatively fueled vehicles to the market without impeding technology development.

## II. Background

On December 27, 1991, the agency published in the **Federal Register** an advance notice of proposed rulemaking (ANPRM) on EV safety (56 FR 67038). The purpose of the notice was to help NHTSA determine what existing FMVSSs may need modification to better accommodate the unique technology of EVs, and what new safety standards may need to be written to assure their safe introduction. The ANPRM requested comments on a broad range of potential EV safety issues including battery electrolyte spillage and electric shock hazard, and elicited widespread public interest. A total of 46 comments were received.

After reviewing all of the comments and information received in response to the ANPRM, NHTSA concluded in a November 18, 1992 notice (57 FR 54354) that it was premature to initiate rulemaking for new EV safety standards at that time. In the areas of battery electrolyte spillage and electric shock hazard in a crash, the agency concluded that further research was needed.

In 1993 NHTSA conducted research and testing on two converted EVs. The vehicles were tested relative to several FMVSSs, including a crash test in accordance with FMVSS No. 208, Occupant Crash Protection. The two vehicles were equipped with lead-acid batteries located in the front and rear (engine and luggage compartments). One vehicle was equipped with twelve 12-volt batteries (five in the front and seven in the rear). The second vehicle was equipped with ten 12-volt batteries (four in the front and six in the rear). The tests involved frontal crashes into a fixed barrier at 48 kilometers per hour (kph). In both crashes the front batteries sustained significant damage, spilling large quantities of electrolyte. On one vehicle 10.4 liters of electrolyte spilled from the front batteries as a result of the crash. On the other vehicle 17.7 liters of electrolyte spilled from the front batteries. In addition, several electrical arcs were observed under the hood of one vehicle during the crash.

Based on the results of this research and the increasing interest in using EVs to meet clean air requirements, the agency has decided to reexamine through this notice the safety issues involving EV battery electrolyte spillage and electric shock hazard. NHTSA notes that the Society of Automotive Engineers (SAE) through its various committees is also exploring possible voluntary industry standards and guidelines in these two areas. The agency wishes to identify the magnitude of the potential safety hazards involved, as well as possible solutions for both original equipment EVs and EV conversions.

With respect to conversions, NHTSA's statutory authority distinguishes between two populations of vehicle conversions. The distinction is based on whether the vehicle is converted before

or after the first sale to the ultimate consumer.

When a vehicle is converted to an alternative fuel before the first sale to the ultimate consumer, the converter is in the same position as an original vehicle manufacturer. The converter must certify that the vehicle still complies with all applicable FMVSSs, including any fuel system integrity standards applicable to the alternative fuel. For example, if a converter before the first sale converted a gasoline powered vehicle to an EV, and if NHTSA has promulgated an electrolyte spillage standard applicable to that model year EV, the converter would need to certify that, among other requirements, the vehicle complied with the electrolyte spillage requirements. In the case of a noncompliance, the manufacturer or converter must recall and remedy the noncompliant vehicles by repair or replacement; in addition, NHTSA has the authority to impose a civil penalty of $1000 per violation up to a maximum of $800,000.

By contrast, if a vehicle is converted after the first sale to a consumer, different requirements apply. 49 U.S.C. 30122(b) provides that:

> A manufacturer, distributor, dealer, or motor vehicle repair business may not knowingly make inoperative any part of a device or element of design installed on or in a motor vehicle * * * in compliance with an applicable Federal motor vehicle safety standard.

This includes a vehicle's fuel system. (The prohibition only applies to a converter which is functioning as a "manufacturer, distributor, dealer, or motor vehicle repair business," not to an individual or to a commercial entity which converts a vehicle for its own purposes.) This provision differs from requirements before first sale in that the converter does not "certify" compliance with the standard, but instead must not "knowingly make inoperative."

Using the above example of conversion from gasoline to EV, if a converter after first sale to the consumer converted a gasoline-powered vehicle to an EV, and if NHTSA regulated electrolyte spillage for that model year vehicle, the converter need not certify compliance to the electrolyte spillage standard. However, the converter could not knowingly perform the conversion in such a way that the vehicle would fail to meet the requirements of the electrolyte spillage standard. If this standard was tested for compliance by means of crash tests, this might be impractical for converters. Therefore, for aftermarket conversions, NHTSA is exploring the promulgation of regulations which would define "make inoperative" in terms of design requirements as a surrogate for the FMVSS requirements. The penalty for noncompliance with Section 30122(b)'s make inoperative provision is $1000 per violation, up to a maximum of $800,000.

In addition to Federal motor vehicle safety standards, NHTSA has the statutory authority to issue vehicle safety inspection standards which can serve as guidelines for those States which conduct safety inspection programs. The agency could issue such inspection standards for EVs, which a State could voluntarily use if it opts to conduct vehicle inspections for converted EVs.

Thus, in this notice NHTSA seeks comments on a variety of possible approaches to address the potential safety hazards of EV battery electrolyte spillage and electric shock hazard. Among the possible options are:

(1) *Federal safety regulation for EVs and EVs converted before the first sale to a consumer.* These would most likely be primarily performance oriented requirements, such as in FMVSS No. 301, *Fuel System Integrity*, which limits the amount of allowable fuel leakage for liquid fuels after a barrier crash and rollover test. Although the agency's goal in establishing safety standards is to have performance oriented requirements, the agency does have some latitude to establish design oriented requirements when necessary or more appropriate.

(2) *Regulations to define the term "make inoperative" in Section 30122(b) as it applies to EVs converted after the first sale to a consumer.* These regulations would most likely be design oriented, since it may not be practical for a converter to crash test, and thereby destroy, the converted vehicle. Such regulations would help vehicle converters understand what constitutes "make inoperative" in converting a vehicle to electric power. An example of such regulations could be where to locate or how to protect the EV batteries so as to minimize battery damage and therefore minimize electrolyte spillage in a crash.

(3) *Vehicle safety inspection standards to serve as guidelines for those States which conduct motor vehicle safety inspection programs.* The agency could issue such inspection standards for EVs, which a State could voluntarily use if it chooses to conduct vehicle inspections of EVs, both original equipment and conversions.

## III. Potential Problem Areas and Possible Solutions

In this section of the notice NHTSA requests comments on the potential safety hazards due to EV battery electrolyte spillage in a crash or rollover, and due to electric shock in a crash or rollover and during repair and maintenance. Information is also sought on possible means to address such hazards through performance and design requirements for original equipment EVs and EV conversions. Information is requested separately for (1) EVs with a GVWR of 4536 kg or less and all school buses, which is the population of vehicles NHTSA traditionally has regulated for fuel system integrity, and for (2) EVs with a GVWR greater than 4536 kg, excluding EV school buses, since there may be potential safety hazards and possible approaches which are unique to vehicles of this size and type. Finally, other information on EVs is requested, including current and projected EV populations and production, industry and State or local guidelines on EV safety, hybrid EVs, charging, batteries, and starter interlock performance.

This section of the notice is organized as follows:

A. Battery Electrolyte Spillage
- —Potential Safety Problem
- —Possible FMVSS Performance Requirements
- --Possible Requirements for Conversions After First Sale to Consumers
- —EVs With GVWR Greater Than 4536 Kilograms

B. Electric Shock Hazard
- —Potential Safety Problem
- —Possible FMVSS Performance Requirements
- —Possible Requirements for Conversions After First Sale to Consumers
- —EVs With GVWR Greater Than 4536 Kilograms

C. Other

### *A. Battery Electrolyte Spillage*

#### Potential Safety Problem

Currently-produced EVs carry onboard the vehicle a relatively large number of batteries, and therefore a substantial amount of electrolyte solution. Because of the hazards of electrolyte, there is the potential in a crash or rollover for injury to vehicle occupants, bystanders, and emergency rescue and clean-up personnel. The agency requests comments on the potential safety hazards for EVs with a GVWR of 4536 kg or less, and all EV school buses regardless of weight.

1. Describe the different types of propulsion batteries which are expected to be used in EVs over the next five and ten years, including the form (liquid or gel), chemical properties, and

temperatures of the various electrolyte solutions. Which of the electrolyte solutions are acidic, basic, or water reactive, and to what extent? How many batteries and what quantity of electrolyte are expected to be onboard EVs over the next five and ten years? Where will the batteries be located on EVs?

2. Is there a potential safety problem with electrolyte contacting occupants, bystanders, rescue teams, or clean-up personnel as a result of an EV crash or rollover? If so, what are the potential safety consequences? Can chemical or thermal burns result? Is there the potential for toxic or asphyxiant vapors? If so, from which electrolytes and due to what quantities of spillage?

3. What is the potential fire hazard of spilled or sprayed electrolyte in a crash or rollover? Could battery electrolyte ignite in the same way as a fuel? If so, which electrolytes and in what quantities, concentrations, or mixtures, and at what temperatures? What is the likelihood that leaking electrolyte at a crash scene could serve as an electrical conductor or short circuit, thereby creating a fire hazard?

4. The agency understands that sodium-sulphur batteries operate with liquid coolant at approximately 316 degrees C., which circulates around the batteries and through a heat exchanger onboard the EV. The temperature of liquid coolants for internal combustion engines on conventional vehicles is much lower, approximately 91 degrees C. Further, sodium-sulphur batteries require an extremely strong vacuum insulated container to retain the heat and prevent spillage in an accident. Sodium can explode if it comes into contact with water. Is there a potential safety problem with high temperature battery coolants contacting occupants, bystanders, rescue teams, or clean-up personnel as a result of an EV crash or rollover? If so, what are the safety concerns? Can burn injuries result? What types of coolants are used with EV batteries, and what are their corresponding temperature ranges during driving and charging operations?

5. Describe the likelihood and potential safety consequences of having spilled electrolyte from an EV crash mix with a different electrolyte or with other vehicle fluids, such as gasoline, diesel fuel, engine coolant, or oil. Could a chemical fire or explosion occur, and if so, with which electrolytes and fluids? Is there the potential for toxic or asphyxiant vapors? Please discuss.

6. Describe all EV crashes or rollovers or noncrash events involving spilled electrolyte, including the sequence of events, a description of the EV, and the type of electrolyte which spilled. Were there injuries or fatalities as a result of the spilled electrolyte? If so, please describe.

7. Discuss the need for federal regulation to address the potential safety hazards of battery electrolyte spillage in a crash or rollover, or noncrash event.

Possible FMVSS Performance Requirements

One approach which the agency could use to address electrolyte spillage in a crash or rollover is to limit the amount of allowable spillage through a performance test. This could be similar to the requirements in FMVSS No. 301, *Fuel System Integrity,* which limits the amount of allowable liquid fuel spillage after barrier crash and static rollover tests. FMVSS No. 303, *Fuel System Integrity of Compressed Natural Gas Vehicles,* contains similar crash test limitation requirements. FMVSS No. 301, for example, after barrier crash tests requires that there be no more than (1) One ounce (28 grams) by weight of liquid fuel loss from the time of barrier impact until vehicle motion has ceased, (2) five ounces (142 grams) during the next five minutes, and (3) one ounce (28 grams) per minute during the next 25 minutes. These requirements apply to vehicles of 10,000 pounds (4536 kg) GVWR or less when subjected to a 30 mph (48 kph) frontal fixed barrier crash test, or 20 mph (32 kph) lateral or 30 mph (48 kph) rear moving barrier crash test. For school buses with a GVWR greater than 10,000 pounds (4536 kg), FMVSS No. 301 requires a 30 mph (48 kph) moving barrier impact at any point from any angle on the bus with the same allowable fuel loss. FMVSS No. 301 has similar fuel spillage limitations during a static rollover test, following a crash test, for vehicles of 10,000 pounds (4536 kg) GVWR or less.

Comments are requested on possible approaches for addressing the safety hazards of electrolyte spillage in a crash or rollover for EVs with a GVWR of 4536 kg or less, and for all EV school buses regardless of weight.

8. Discuss the appropriateness of using an approach similar to that of FMVSS No. 301 to regulate the safe performance of EV electrolyte spillage in a crash or rollover.

9. What would be an appropriate amount of electrolyte spillage to allow after a crash or rollover test? Please discuss. Should it be based on the number or type of batteries onboard the EV, or whether spillage occurs inside or outside the passenger compartment or cargo areas? If so, how much should be allowed? For example, should a "level of hazard" be defined by battery type, which would allow spillage of larger quantities of less harmful electrolytes and smaller quantities of the more harmful electrolytes? Would it be appropriate to require no spillage? Is there an amount that would approximate the no-spillage condition?

10. Would it be appropriate to set similar requirements for the spillage of high temperature liquid coolants from EV batteries? If so, what should be the allowable amounts of spillage? What should be the threshold temperature above which spillage requirements are needed?

11. Are there other performance requirements that should be considered in addressing the safety hazards of EV battery electrolyte spillage in a crash or rollover? If so, please describe them.

Possible Requirements for Conversions After First Sale to Consumers

In the case of EVs converted after first sale to a consumer, where the "make inoperative" requirements apply, it may not be practical to test for the safe performance of electrolyte spillage through a crash test since this would destroy the converted vehicle. Design oriented requirements may be more appropriate, such as defining where to locate or how to protect the EV batteries in a crash or rollover. Comments are requested on possible approaches for EVs with a GVWR of 4536 kg or less, and all EV school buses regardless of weight.

12. For EVs converted after first sale to a consumer, would it be appropriate to define the term "make inoperative" as being not able to comply with the performance requirements of a crash standard? For example, would it be appropriate to require such EV conversions to be tested in accordance with any crash test requirements the agency may establish relative to battery electrolyte spillage? please discuss.

13. Alternatively, would it be appropriate to establish separate design requirements as a surrogate for performance requirements, to address electrolyte spillage in a crash or rollover for EV after-first-sale conversions? Please discuss. Would such requirements provide a level of performance comparable to that of a vehicle crash test? If so, please describe them.

14. Discuss the appropriateness of requiring that batteries be placed onboard the EV at locations which minimize their damage in a crash or rollover, or in a protective box. What locations would minimize battery damage? What requirements should be placed on battery box design, construction, or testing? Should the

boxes be constructed with dual walls to allow some crush of the outer wall in a crash or rollover?

15. Would it be appropriate to require that all batteries be equipped with threaded vent/filler caps, rather than friction-fit caps, to minimize electrolyte spillage? Alternatively, should only sealed batteries be used—those without vent/filler caps?

16. Discuss the need for EV labeling with respect to electrolyte spillage. Should EVs be labeled with the type of battery electrolyte onboard the vehicle to assist emergency rescue teams at a crash scene?

17. Would such design requirements be appropriate for States to use as guidelines in conducting motor vehicle safety inspection programs: If not, what requirements would be more appropriate? Please describe them.

EVs With GVWR Greater Than 4536 Kilograms

In this section of the notice NHTSA requests comments in response to items 1 through 17 above, as they apply to original equipment EVs and EV conversions with GVWR greater than 4536 kilograms, excluding school buses. These include transit buses, intercity buses, trucks, and other heavy vehicles. NHTSA requests information on this group of vehicles separately, since there may be potential electrolyte spillage problems, and possible solutions, which are unique to such heavy vehicles.

18. Please provide the information requested in Questions 1–17 above, as it applies to EVs with a GVWR greater than 4536 kg, excluding school buses. Should these types of EVs be regulated for electrolyte spillage in a crash or rollover? Are there unique safety hazards among EVs of this size and type?

19. Should heavy EVs, other than school buses, be crash tested for electrolyte spillage in the same way as heavy school buses in FMVSS No. 301, *Fuel System Integrity*, where a contoured barrier traveling at 48 kph strikes the vehicle at any point and angle? Please discuss. Are there other approaches which would be more appropriate for addressing electrolyte spillage in heavy EVs? For example, what type of design standard or alternative approach would be necessary to provide a level of safety equivalent to that of FMVSS No. 301, and how would this be evaluated?

*B. Electric Shock Hazard*

Potential Safety Problem

The electric propulsion systems for current technology EVs operate at a relatively high level of electric power. In the case of the two EV conversions which the agency crash tested in 1993, the nominal voltage levels for the electric propulsion systems were 120 and 144 volts with a maximum battery system current limit (controlled by fuse) of 400 and 350 amps for the Sebring and Solectria vehicles, respectively. Current technology EVs have battery voltage levels up to 400 volts or more, and maximum current ratings up to 400 amps. Because of these high levels of electric power, there is the potential for electric shock to occupants and rescue teams as a result of an EV crash or rollover. There is also the potential for electric shock to persons performing EV repair and maintenance.

The agency requests information on the potential safety hazards of electric shock for EVs with a GVWR of 4536 kg or less, and all EV school buses regardless of weight.

20. What levels of voltage (volts) and current (amps) are expected to be used in EV propulsion systems over the next five and ten years? Do these levels depend on vehicle size or the type of electric drive system onboard the EV (AC or DC)? Please describe.

21. Describe the potential for electric shock to vehicle occupants and rescue teams as a result of an EV crash or rollover. How could electric shock be incurred by each? What technologies and designs are being incorporated by EV manufacturers to minimize or eliminate such hazard?

22. Describe the potential for electric shock to trained service personnel and "do-it-yourself" persons while performing EV repair and maintenance. How could electric shock be incurred by each? What technologies, designs, instructions or labeling are being incorporated by EV manufacturers and converters to minimize or eliminate such hazard?

23. Provide the minimum levels of electric shock to the human body in terms of current, time, and voltage (up to 600 volts), which can produce injuries and fatalities. Describe the types of injuries that can be incurred, along with the corresponding levels of current, time, and voltage. Can such injuries be related to the Abbreviated Injury Scale (AIS) for automotive medicine? What levels and time periods can cause fatal injury? Do these vary based on whether the current is AC or DC, or on the age, weight, and general health of the person? Please discuss.

24. Describe the potential for an electrical fire as a result of an EV crash or rollover. How could an electrical fire occur? Is it possible for a high power electrical connector or conductor onboard the EV to become short circuited to another object, become overheated, and thereby cause a fire? What is the likelihood of this?

25. Describe all incidents of electric shock to occupants or rescue teams as a result of an EV crash or rollover or noncrash event, or to persons performing EV repair or maintenance. Include a description of the circumstances, the vehicles and persons involved, and what type and severity of injury or fatality that occurred due to electric shock.

26. Discuss the need for federal vehicle regulation to address electric shock hazard as a result of an EV crash or rollover, noncrash event, or during EV repair or maintenance.

Possible FMVSS Performance Requirements

NHTSA requests comments on possible approaches for addressing the safety hazards of electric shock in a crash or rollover, and during repair and maintenance, for EVs with a GVWR of 4536 kg or less, and all EV school buses regardless of weight.

27. Would it be appropriate to require EV circuit interrupter performance in a crash or rollover, which would automatically disconnect the propulsion batteries from all other electrical circuits and thereby prevent high voltage and current flow to other parts of the vehicle? Such response would be similar in timing and deceleration level to that of an occupant protection airbag in a crash. Does the technology exist to require such performance of a circuit interrupter for EV propulsion batteries in a crash or rollover? Please discuss.

28. What time period, deceleration level, and vehicle attitude should be required for circuit interrupter performance of EV propulsion batteries in a crash or rollover? Should these be related to the minimum injury levels for electric shock discussed earlier, or whether the EV drive system is AC or DC? What types of circuit interrupter device should be required? Please discuss.

29. What is an appropriate method of compliance testing circuit interrupter performance of EV propulsion batteries in a crash or rollover? Would an EV crash test (front, side, or rear) and static rollover test, as in FMVSS No. 301, be appropriate, where performance of the circuit interrupter could be measured over time at a certain deceleration or vehicle attitude? Alternatively, could a component test of the circuit interrupter be conducted, which would eliminate the need for a vehicle crash test? Please discuss.

30. Would it be appropriate to require that EV batteries, connectors, cables, and wiring be located, routed, and insulated so as to minimize or eliminate electric shock hazard due to a crash or rollover, or during repair and maintenance? Similarly, should there be a requirement for minimum wire size in EV circuits? For example, what should be the minimum wire sizes for AC and DC propulsion drive circuits ranging from 120 to 600 volts? Should there be a requirement that EV propulsion circuits not be grounded to the vehicle chassis (electrically isolated)? What standards and guidelines are being used by current EV manufacturers and converters? Please discuss.

31. Would it be appropriate to require EVs to have a means of manually disconnecting the propulsion batteries from other EV circuits for safety during repair or maintenance? Additionally, should circuit interruption performance be required of EV circuits through means such as fuses, circuit breakers, or ground fault interrupters? What types should be required? Are EV controllers typically equipped with capacitors which can remain energized even after the main power circuit has been disconnected? What technologies are available? Please discuss.

32. Would it be appropriate to require EV labeling and written instructions to minimize electric shock hazard as a result of a crash or rollover, or during repair or maintenance? Should an EV be labeled as "Electric Vehicle," along with labels or instructions on the location and method of manually disconnecting the propulsion batteries? Please discuss.

33. Should there be requirements for battery container dielectric strength? If so, what levels should be established and how should this be tested? What standards currently exist? Please discuss.

34. Are there other performance requirements that should be considered in addressing the safety hazards of electric shock in EVs as a result of a crash or rollover, or during repair or maintenance? If so, please describe them.

Possible Requirements for Conversions After First Sale to Consumers

In the case of EVs converted after first sale to a consumer, where the "make inoperative" requirements apply, it may not be practical to test for electric shock safety through a crash test since this would destroy the converted vehicle. Design oriented requirements may be more appropriate. Comments are requested on possible approaches for EVs with a GVWR of 4536 kg or less, and all EV school buses regardless of weight.

35. Please provide the information requested in Questions 27–34 above, as it applies to EVs converted after the first sale to a consumer.

36. Are there other design requirements that should be considered in addressing the safety hazards of electric shock in EV conversions as a result of a crash or rollover, or during repair or maintenance? If so, please describe them.

EVs With GVWR Greater Than 4536 Kilograms

In this section comments are requested in response to items 20 through 36 above, as they apply to original equipment EVs and EV conversions with GVWR greater than 4536 kilograms, excluding EV school buses. These include transit buses, intercity buses, trucks, and other heavy vehicles. NHTSA requests information on this group of vehicles separately, since there may be potential electric shock hazards, and possible solutions, which are unique to such heavy vehicles.

37. Please provide the information requested in Questions 20–36 above, as it applies to EVs with a GVWR greater than 4536 kg, excluding EV school buses.

38. Are there unique safety hazards among EVs of this size and type? Should these types of EVs be regulated for electric shock hazard in a crash or rollover, or during repair and maintenance? If so, how?

*C. Other*

Other information on EVs is requested for both original equipment EVs and EV conversions of all sizes, addressing hybrid electric vehicles, standards and guidelines, EV populations, charging, batteries, and starter interlock performance, as follows:

Hybrid Electric Vehicles

39. Are there unique safety problems presented by hybrid electric vehicles (HEV) relative to electrolyte spillage or electric shock? An HEV is one which can operate on electric power, another fuel such as gasoline, or both. Are there any unique safety problems which could occur when both fuel sources are being utilized? Are there other potential safety problems which should be considered relative to HEVs, or EVs equipped with range extenders? Please discuss.

Standards and Guidelines

40. Describe industry, State, or local standards or guidelines that could be used to address the safety hazards of EV battery electrolyte spillage or electric shock. Are there standards or guidelines for industrial or recreational vehicles, such as forklifts or golf carts, which could be applied to EVs? Please describe.

41. Which States require motor vehicle safety inspection of EVs, and what are the requirements? Please describe.

EV Populations

42. Provide estimates of the number of EVs in operation within the United States today, and the number expected within the next five and ten years. Please categorize by vehicle type. For vehicles with GVWR less than or equal to 4536 kg, categorize by passenger car, pickup truck, van, and other. For vehicles with GVWR greater than 4536 kg, categorize by school bus, transit bus, intercity bus, heavy truck, and other. What portions of these represent original equipment EVs, EV conversions before the first sale to a consumer, and EV conversions after first sale? Which types of EV propulsion batteries are expected to be used? Please describe.

43. What is the likelihood that there will be an EV conversion industry for used vehicles, i.e., those converted after first sale to a consumer? Please discuss.

Charging

44. Describe the technology and potential safety problems associated with EV recharging. Should there be federal safety requirements? Should these include requirements for battery box venting or flame arrestor performance, to protect against emissions of explosive battery gases during recharging and other times of vehicle operation? What standards, guidelines, or design practices are being followed by manufacturers and converters to assure EV safety in this area? Please discuss.

Batteries

45. Is there a potential safety hazard with EV batteries becoming projectiles in a crash or rollover? Should there be federal requirements for battery restraints? What standards, guidelines, design practices, or other requirements are currently being followed by manufacturers and converters? Please discuss.

46. What Federal, State, and local requirements currently exist for the disposal, recycling, and transport of EV batteries? Do the requirements distinguish between batteries which are damaged and leak, and those which do not leak? Please discuss.

Transmission Starter Interlock

47. The agency understands that some EVs have a forward, neutral, and reverse switch, while others have no neutral position or other means such as a clutch for disconnecting the drive train from the propulsion motor. Is there a potential safety problem with inadvertent starting and unwanted vehicle motion among those EVs which have no means of disconnecting the drive train? Please discuss.

48. What types of EV drive train designs are expected over the next five and ten years? Is there a need for requiring EV starter interlock performance, similar to that required on automatic transmissions in FMVSS No. 102, *Transmission Shift Level Sequence, Starter Interlock, and Transmission Braking Effect*? FMVSS No. 102 requires that the engine starter be inoperative when the transmission shift level is in a forward or reverse drive position. Please discuss.

**Submission of Comments**

The agency invites written comments from all interested parties. It is requested that 10 copies of each written comment be submitted.

No comment may exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to a comment without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit specified information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation, 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after the closing date.

To the extent possible, comments filed after the closing date will also be considered. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

(49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegations of authority at 49 CFR 1.50)

Issued on: September 26, 1994.

**Stanley R. Scheiner,**

*Acting Associate Administrator for Rulemaking.*

[FR Doc. 94-24165 Filed 9-29-94; 8:45 am]

BILLING CODE 4910-59-M

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

### Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Endangered Status for Delissea Undulata (No Common Name)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; notice of reopening of comment period.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces that the comment period on the proposed rule to list *Delissea undulata* (No Common Name) is reopened through November 29, 1994. The Service has reopened the comment period to ensure that all parties have adequate time to provide comments on this proposed rule.

**DATES:** The comment period, which originally closed on August 26, 1994, now closes November 29, 1994. Public hearing requests which originally were to have been received by August 11, 1994, now must be received by November 14, 1994.

**ADDRESSES:** Comments, information, and questions should be sent to Robert P. Smith, Pacific Islands Ecoregion Manager, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Marie M. Bruegmann, at the above address (808-541-3441).

**SUPPLEMENTARY INFORMATION:**

**Background**

*Delissea undulata* is known only from one individual, which is located on the island of Hawaii. The greatest immediate threats to the survival of this species are habitat degradation and predation by domestic and feral animals, fire, and competition with alien plants. The small population size of one individual with its limited gene pool also poses a serious threat to this species. A rule proposing to *Delissea undulata* as endangered was published in the **Federal Register** (59 FR 32946) on June 27, 1994. The Service reopens the comment period to ensure that all parties have adequate time to provide comments on this proposed rule.

The Service solicits peer review of all interested parties and scientific specialists, particularly in regards to:

—Scientific data relating to the taxonomy of this species;

—Scientific or commercial data concerning the biology and ecology of this species.

All comments received on *Delissea undulata* will be summarized in the final decision document (final rule or notice of withdrawal) and will be included in the administrative record of the final decision.

**Author**

The primary author of this proposed rule is Marie M. Bruegmann, Pacific Islands Ecoregion, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808-541-3441).

**Authority**

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: September 23, 1994.

**Thomas Dwyer,**

*Acting Regional Director, Fish and Wildlife Service.*

[FR Doc. 94-24193 Filed 9-29-94; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018–AC48

## Endangered and Threatened Wildlife and Plants; Notice of Public Hearings on Proposed Rule and Notice of Extension of Comment Period on Proposed Rule To Reclassify the Bald Eagle From Endangered to Threatened in Most of the Lower 48 States

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; notice of public hearings and extension of comment period.

**SUMMARY:** The Service gives notice of the agency's intent to hold public hearings and extend the comment period on the proposed rule to reclassify the bald eagle. The public hearings are being held in response to written requests. The comment period will be extended to accommodate the public hearings and to allow appropriate time for the public to provide further comments.

**DATES:** The comment period on the proposed rule, which was originally scheduled to close on October 11, 1994, will be extended to November 9, 1994.

The first public hearing will be held from 7 p.m. to 9 p.m. on Tuesday, October 18, 1994. The second public hearing will be held from 6:30 p.m. to 9:30 p.m. on Tuesday, October 25, 1994.

**ADDRESSES:** The first public hearing will be held at the Somerset County Park Commission Environmental Education Center, 190 Lord Stirling Road, Basking Ridge, New Jersey 07920. The second public hearing will be held at St. Michael's Chapter House, Window Rock, Arizona 86515. Comments and materials concerning this proposal should be sent to Chief, Division of Endangered Species, Fish and Wildlife Service, Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Comments and materials received will be available for public inspection, by appointment, during normal business hours, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jody Gustitus Millar, Bald Eagle Recovery Coordinator, 309–793–5800.

**SUPPLEMENTARY INFORMATION:** The bald eagle (*Haliaeetus leucocephalus*) is listed as endangered under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), in the lower 48 states, except Washington, Oregon, Minnesota, Wisconsin, and Michigan, where it is listed as threatened. The bald eagle also occurs in Alaska and Canada, where it is not at risk and is not protected under the Act; and in small numbers in northern Mexico. The Fish and Wildlife Service (Service) proposed to reclassify the bald eagle from endangered to threatened in the lower 48 states except in certain portions of the American Southwest and to classify those eagles in adjacent Mexico as endangered. The bald eagle would remain threatened in the five states where it is currently listed as threatened. The special rule for threatened bald eagles would be revised. This action would not alter those conservation measures already in force to protect the species and its habitats.

The **Federal Register** notice announcing the proposed rule was published on July 12, 1994 (59 FR 35584). The original comment period ended on October 11, 1994, and the deadline for receipt of public hearing requests was August 26, 1994. Eight requests for public hearings have been received within the deadline—three from within Rhode Island, three from Delaware, and two from within Arizona, including the Navajo Nation.

Those parties wishing to make statements for the record should have available a copy of their statements to be presented to the Service at the start of the hearing. Oral statements may be limited to 5 or 10 minutes, if the number of parties present necessitates some limitation. There are no limits to the length of written comments presented at this hearing or mailed to the Service.

Dated: September 26, 1994.

**Sam Marler,**

*Regional Director.*

[FR Doc. 94–24194 Filed 9–29–94; 8:45 am]

BILLING CODE 4310–55–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

50 CFR Part 654

[I.D. 092794B]

## Stone Crab Fishery for the Gulf of Mexico

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

**ACTION:** Notice of availability of an amendment to a fishery management plan and request for comments.

**SUMMARY:** NMFS announces that the Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 5 to the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico (FMP) for review by the Secretary of Commerce (Secretary). Written comments are requested from the public.

**DATES:** Written comments must be received on or before November 28, 1994.

**ADDRESSES:** Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702.

Requests for copies of Amendment 5, which includes an environmental assessment and a regulatory impact review, should be sent to the Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 331, 5401 West Kennedy Boulevard, Tampa, FL 33069–2486, FAX: 813–225–7015.

**FOR FURTHER INFORMATION CONTACT:** Peter Eldridge, 813–570–5306.

**SUPPLEMENTARY INFORMATION:** The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that a fishery management plan or amendment prepared by fishery management council be submitted to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving an amendment, immediately publish notification stating that the amendment is available for public review and comment. The Secretary will consider public comment in determining approvability of the amendment.

Amendment 5 proposes to: (1) Place a 4-year moratorium, beginning July 1, 1994, on the issuance by the Director, Southeast Region, NMFS (Regional Director), of Federal numbers and color codes for use on stone crab vessels and gear; (2) establish a procedure whereby the Florida Marine Fisheries Commission (FMFC) may request the Regional Director to implement in the exclusive economic zone by regulatory amendment, with the Council's oversight, modification to certain gear and harvest limitations applicable to State waters that were proposed by the FMFC and approved by the Florida Governor and Cabinet; (3) add to the objectives of the FMP the following: "Provide for a more flexible management system that minimizes regulatory delay to assure more effective, cooperative state and Federal management of the fishery."

NMFS published notification of the proposed moratorium on July 1, 1994 (59 FR 33947), which advised fishermen that, if Amendment 5 is approved and implemented, any Federal numbers/

color codes issued between July 1, 1994, and the effective date of the implementing regulations would no longer be valid.

Proposed regulations to implement Amendment 5 are scheduled for publication within 15 days.

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

Dated: September 27, 1994.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 94–24243 Filed 9–27–94; 2:57 pm]

BILLING CODE 3510–22–F

# Notices

Federal Register
Vol. 59, No. 189
Friday, September 30, 1994

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

### Provincial Interagency Executive Committees (PIEC) Advisory Committees

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

**ACTION:** Notice of intent to establish a Federal Advisory Committee.

**SUMMARY:** In response to the need of the United States Department of Agriculture and the United States Department of the Interior for advice on coordination and implementation of the Record of Decision of April 13, 1994 for management of habitat for late-successional and old-growth forest related species within the range of the Northern Spotted Owl, the Departments have agreed to establish twelve advisory committees. The purpose of the Advisory Committees is to provide advice on coordinating the implementation of the Record of Decision. The Advisory Committees will provide advice and recommendations to promote better integration of forest management activities among Federal and non-Federal entities to ensure that such activities are complementary.

**FOR FURTHER INFORMATION CONTACT:** Susan Yonts-Shepard, Staff Assistant for National Forest System Operations, Forest Service, USDA, (202) 205–1519.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the United States Department of Agriculture in consultation with the Department of the Interior intends to establish twelve Advisory Committees to the Provincial Interagency Executive Committees (PIECs) The purpose of the PIECs is to facilitate the coordinated implementation of the Record of Decision (ROD) of April 13, 1994. The PIECs consist of representatives of some or all of the following Federal Agencies; the Forest Service, Bureau of Land Management, Fish and Wildlife Service, National Marine Fisheries Service, National Park Service, Bureau of Indian Affairs, and Environmental Protection Agency. The purpose of the PIEC Advisory Committees is to advise the PIECs on coordinating the implementation of the ROD. Each PIEC Advisory Committee also will provide advice regarding implementation of a comprehensive ecosystem management strategy for Federal land within a province (provinces are defined in the ROD at E–19). The PIEC Advisory Committees will provide advice and recommendations to promote better integration of forest management activities among Federal and non-Federal entities to ensure that such activities are complementary.

The PIEC Advisory Committees are necessary and in the public interest in connection with the duties and responsibilities of the United States Department of Agriculture and of the United States Department of the Interior. The ROD provides direction to the Forest Service and the Bureau of Land Management for developing an ecosystem management approach that is consistent with statutory authority for land use planning. Ecosystem management at the province level requires improved coordination among governmental entities responsible for land management decisions and the public they serve.

The Chairperson of each PIEC Advisory Committee will alternate annually between the Forest Service representative and the Bureau of Land Management representative in provinces where both agencies administer land. When the Bureau of Land Management is not represented on the PIEC, the Forest Service representative will serve as Chairperson. The Chairperson will serve as the Executive Secretary and as the designated Federal official under sections 10 (e) and (f) of the Federal Advisory Committee Act (5 U.S.C. APP.).

Appointments to the PIEC Advisory Committees will be made by the Regional Forester, Pacific Northwest Region after consultation with the State Director, Bureau of Land Management, Oregon State Office, when appropriate (in provinces where the Bureau of Land Management administers land), and the Regional Interagency Executive Committee. The Regional Forester, Pacific Northwest Region, also shall consult with the Regional Forester, Pacific Southwest Region, when appropriate. The Bureau of Land Management State Director, Oregon State Office, shall consult with the Bureau of Land Management State Director, California State Office, when appropriate.

The action of establishing the Advisory Committees does not require amendment of Bureau of Land Management (BLM) and Forest Service planning documents because these explanatory statements that appear in the ROD (Attachment A, E–17) are not standards and guidelines or land allocations, which would require an amendment process to change. The BLM and Forest Service will provide further notices, as needed, for additional actions or adjustments when implementing interagency coordination, public involvement, and other aspects of the ROD.

Equal opportunity practices will be followed in all appointments to the Advisory Committee. To ensure that the recommendations of the Advisory Committee have taken into account the needs of the diverse groups served by the Departments, membership should include individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Dated: September 8, 1994.

**Wardell C. Townsend,**

*Assistant Secretary for Administration.*

[FR Doc. 94–24172 Filed 9–29–94; 8:45 am]
BILLING CODE 3410–11–M

### Intergovernmental Advisory Committee to the Regional Interagency Executive Committee

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

**ACTION:** Notice of intent to establish a Federal Advisory Committee.

**SUMMARY:** In response to the need of the Secretaries of Agriculture and Interior for advice on coordination and implementation of the Record of Decision of April 13, 1994 for management of habitat for late-successional and old-growth forest related species within the range of the Northern Spotted Owl, the Secretaries have agreed to establish an advisory committee. The Intergovernmental Advisory Committee will provide

advice and recommendations to the Regional Interagency Executive Committee to facilitate better integration of forest management activities among Federal and non-Federal governmental entities to ensure that such activities are complementary.

FOR FURTHER INFORMATION CONTACT: Susan Yonts-Shepard, Staff Assistant for National Forest System Operations, Forest Service USDA, (202) 205–1519.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Secretary of Agriculture after consultation with the Secretary of the Interior intends to establish the Intergovernmental Advisory Committee (Advisory Committee) to the Regional Interagency Executive Committee (RIEC). The purpose of the RIEC, consisting of the Pacific Northwest Federal agency heads of the Forest Service, Bureau of Land Management, Fish and Wildlife Service, National Marine Fisheries Service, Bureau of Indian Affairs, National Park Service, and Environmental Protection Agency, is to facilitate the coordinated implementation of the Record of Decision (ROD) of April 13, 1994. The Advisory Committee to the RIEC will provide advice and recommendations to provide better integration of forest management activities among Federal and non-Federal governmental entities, to ensure that such activities are complementary. The Advisory Committee will also promote an exchange of views on ecosystem management among the land management agencies of the Federal, State, local, and tribal governments in the range of the northern spotted owl.

The Secretaries have determined that the work of the Advisory Committee is necessary and in the public interest and relevant to the duties of the Department of Agriculture and Department of the Interior. The duties of the Advisory Committee will be to provide advice and recommendations to the RIEC regarding the coordinated implementation of the ROD. No other advisory committee or agency of the Department of Agriculture or Department of the Interior can perform the tasks that will be assigned to the Advisory Committee.

The Chairperson of the Advisory Committee will alternate between the Regional Forester of the Pacific Northwest Region, Forest Service and the Oregon State Director, Bureau of Land Management. The Executive Director of the Regional Ecosystem Office will serve as the Executive Secretary and as the designated Federal official under sections 10 (e) and (f) of the Federal Advisory Committee Act (5 U.S.C. App.).

Appointments to the Advisory Committee will be made by the Secretary of Agriculture after consultation with the Secretary of the Interior.

The action of establishing the Advisory Committee does not require amendment of Bureau of Land Management (BLM) and Forest Service planning documents because the statements referring to interagency coordination in the ROD (Attachment A, E–15 to E–17) are not standards and guidelines or land allocations, which would require an amendment process to change. The BLM and Forest Service will provide further notices, as needed, for any additional actions or adjustments when implementing interagency coordination, public involvement, and other aspects of the ROD.

Equal opportunity practices will be followed in all appointments to the Advisory Committee. To ensure that the recommendations of the Advisory Committee have taken into account the needs of the diverse groups served by the Departments, membership should include individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Dated: September 8, 1994.

**Wardell C. Townsend, Jr.,**

*Assistant Secretary for Administration.*

[FR Doc. 94–24173 Filed 9–29–94; 8:45 am]

BILLING CODE 3410–11–M

## Packers and Stockyards Administration

### Proposed Posting of Stockyards

The Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

FL–135 Madison Livestock Market, Inc., Madison, Florida
MO–278 Wheeler & Sons Livestock Auction, Osceola, Missouri
NY–172 The Box W Ranch & Sales, Shushan, New York
PA–157 Smoketown Quality Dairy Sales Co., Lancaster, Pennsylvania

Pursuant to the authority under Section 302 of the Packers and Stockyards Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of said Act.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Livestock Marketing Division, Packers and Stockyards Administration, Room 3408–South Building, U.S. Department of Agriculture, Washington, DC 20250 by *October 6, 1994.* All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, DC, this 22d day of September 1994.

**Merle E. Paulsen,**

*Acting Director, Livestock Marketing Division.*

[FR Doc. 94–24235 Filed 9–29–94; 8:45 am]

BILLING CODE 3410–KD–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Articles of Quota Cheese; Quarterly Update to Annual Listing of Foreign Government Subsidies

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Publication of Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Quota Cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Karn Goff or Brian Albright, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as

defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the TAA.

Dated: September 26, 1994.

**Susan G. Esserman,**

*Assistant Secretary for Import Administration.*

APPENDIX.—QUOTA CHEESE SUBSIDY PROGRAMS

| Country | Program(s) | Gross [1] subsidy | Net [2] subsidy |
|---|---|---|---|
| Austria | Export Restitution Payments | 226.2¢/lb. | 226.2¢/lb. |
| Belgium | European Community (EC) Restitution Payments | 50.1¢/lb. | 50.1¢/lb. |
| Canada | Export Assistance on Certain Types of Cheese | 25.3¢/lb. | 25.3¢/lb. |
| Denmark | EC Restitution Payments | 50.2¢/lb. | 50.2¢/lb. |
| Finland | Export Subsidy | 94.3¢/lb. | 94.3¢/lb. |
| France | EC Restitution Payments | 52.8¢/lb. | 52.8¢/lb. |
| Germany | EC Restitution Payments | 56.6¢/lb. | 56.6¢/lb. |
| Greece | EC Restitution Payments | 0.0¢/lb. | 0.0¢/lb. |
| Ireland | EC Restitution Payments | 46.7¢/lb. | 46.7¢/lb. |
| Italy | EC Restitution Payments | 75.3¢/lb. | 75.3¢/lb. |
| Luxembourg | EC Restitution Payments | 56.9¢/lb. | 56.9¢/lb. |
| Netherlands | EC Restitution Payments | 37.6¢/lb. | 37.6¢/lb. |
| Norway | Indirect (Milk) Subsidy | 17.6¢/lb. | 17.6¢/lb. |
| | Consumer Subsidy | 39.0¢/lb. | 39.0¢/lb. |
| | | 56.6¢/lb. | 56.6¢/lb. |
| Portugal | EC Restitution Payments | 36.3¢/lb. | 36.3¢/lb. |
| Spain | EC Restitution Payments | 43.06/lb. | 43.06/lb. |
| Switzerland | Deficiency Payments | 161.3¢/lb. | 161.3¢/lb. |
| U.K | EC Restitution Payments | 36.7¢/lb. | 36.7¢/lb. |

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 94-24274 Filed 9-29-94; 8:45 am]
BILLING CODE 3510-DS-P

[C-357-001]

## Leather Wearing Apparel From Argentina; Final Results of Countervailing Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Results of Countervailing Duty Administrative Review.

**SUMMARY:** On May 17, 1994, the Department of Commerce (the Department) published the preliminary results of its administrative review of the countervailing duty order on leather wearing apparel from Argentina (59 FR 25611). We have now completed this review and determine the total net subsidy to be zero for all companies for the period January 1, 1991 through December 31, 1991.

**EFFECTIVE DATE:** September 30, 1994.

**FOR FURTHER INFORMATION CONTACT:** Sylvia Chadwick or Rick Herring, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202)482-2786.

**SUPPLEMENTARY INFORMATION:**

### Background

On May 17, 1994, the Department published in the **Federal Register** (59 FR 25611) the preliminary results of its administrative review of the countervailing duty order on leather wearing apparel from Argentina (48 FR 11480; March 18, 1983). We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Therefore, there have been no changes in the analysis of programs between the preliminary results and these final results. We have now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

### Scope of Review

Imports covered by this review are shipments of Argentine leather coats, jackets and other apparel including leather vests, pants and shorts for men, boys, women, girls and infants. Also included are outer shells and parts and pieces of leather wearing apparel. This merchandise is classifiable under item number 4203.10.40 of the *Harmonized Tariff Schedule* (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review period is January 1, 1991 through December 31, 1991. This review involves one company, Comercio Internacional S.A.C.I.F.I.A. (Comercio), which accounts for virtually all exports to the United States, and nine government programs.

### Final Results of Review

As a result of our review, we determine the total net subsidy to be zero during the period January 1, 1991 through December 31, 1991.

Therefore, the Department will instruct the Customs Service not to assess countervailing duties on shipments of the subject merchandise from all companies, exported on or after January 1, 1991, and on or before December 31, 1991. Further, as provided by section 751(a)(1) of the Act, the Department will instruct Customs that the cash deposit rate on shipments of this merchandise from all companies, entered or withdrawn from warehouse for consumption on or after the date of publication of this notice is zero. This deposit instruction shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are being published in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22(c)(8).

Dated: September 17, 1994.

**Susan G. Esserman,**

*Assistant Secretary for Import Administration.*

[FR Doc. 94-24273 Filed 9-29-94; 8:45 am]

BILLING CODE 3510-DS-P

## International Trade Administration

### Exporters' Textile Advisory Committee; Notice of Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held on October 20, 1994. The meeting will be from 10 a.m. to 3 p.m. in Room 4830, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

The Committee advises Department of Commerce officials on textile and apparel export issues.

*Agenda:* The agenda for the meeting will include a discussion of the various suggestions received by the Office of Textiles and Apparel from members since the first meeting and other subjects.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact William Dawson (202/482-5155).

Dated: September 26, 1994.

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 94-24205 Filed 9-29-94; 8:45 am]

BILLING CODE 3510-DR-F

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List Proposed Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to procurement list.

**SUMMARY:** The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** October 31, 1994.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 603-7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2-3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

**Commodities**

Hanger, Magnetic
- 5340-00-916-4206
- 5340-00-916-4207
- 5340-00-916-4208
- 5340-00-916-4209
- NPA: Pacesetters, Inc., Cookeville, Tennessee

Tray, Repositional Note Pad
- 7520-01-207-4351
- 7520-01-166-0878
- NPA: Royal Maid Association for the Blind, Inc., Hazlehurst, Mississippi

*Services*

Janitorial/Custodial
- U.S. Border Station, Customs Building and Truck Stop, 406 and 410 Virginia Street, San Diego, California
- NPA: Mental Health Systems, Inc., San Diego, California

Order Processing Service
- General Services Administration, Customer Supply and Industrial Products Center, Springfield, Virginia
- NPA: Virginia Industries for the Blind, Richmond, Virginia

Reproduction Service
- Lawrence Livermore National Laboratory, 7000 East Avenue, Livermore, California
- NPA: PRIDE Industries, Roseville, California

Switchboard Operation
- Veterans Administration Medical Center, San Francisco, California
- NPA: Project Hired, Inc., Sunnyvale, California

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 94-24260 Filed 9-29-94; 8:45 am]

BILLING CODE 6820-33-P

### "Proposed Additions to the Procurement List" Correction

In the document appearing on page 45666, F.R. Doc. 94-21769, in the issue of September 2, 1994, in the third column, the NSN listed as 6508-00-997-8531 should read 6505-00-997-8531.

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 94-24259 Filed 9-29-94; 8:45 am]

BILLING CODE 6820-33-P

## Procurement List, Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to the Procurement List.

**SUMMARY:** This action adds to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**EFFECTIVE DATE:** October 31, 1994.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** On April 22, June 24 and July 22, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 FR 19164, 32688 and 37465) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and service, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Accordingly, the following commodities and service are hereby added to the Procurement List:

**Commodities**

Holder, Soap
4510–00–965–1259
Tool Box, Portable
5140–01–010–4861

*Service*

Janitorial/Custodial
U.S. Army Reserve Center, Santa Rosa, California

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 94–24258 Filed 9–29–94; 8:45 am]

BILLING CODE 6820–33–P

## Procurement List Addition

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Addition to the Procurement List.

**SUMMARY:** This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**EFFECTIVE DATE:** October 31, 1994.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** On August 5, 1994, the committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 FR 40010) of proposed addition to the Procurement List.

Comments were received from the current contractor for this service, which noted that most of the Government grounds maintenance contracts in its area have recently been combined into a small number of large contracts which small grounds maintenance companies are unable to perform. Consequently, the contractor claims its business has been reduced substantially, to the point where loss of the opportunity to provide the grounds maintenance service which is the subject of this Committee action may force the contractor out of business.

This grounds maintenance service constitutes a very small percentage of the contractor total sales. More importantly, the service is a new requirement, and the contractor was given a short-term interim contract to perform it while the Committee processed the service for addition to the Procurement List. Under these circumstances, the contractor could not have become so dependent on the contract that losing it would threaten its continued viability.

Government grounds maintenance services generally, and this one in particular, are not appreciably different from similar services performed for non-Government customers. The contractor has given the Committee no indications why it cannot seek additional opportunities in the commercial grounds maintenance market to replace the ones it believes it will lose because of the consolidation of Government grounds maintenance contracts in its area. As a result, the Committee does not believe the consolidation of Government contracts substantially increases the impact on the contractor of adding this service requirement to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Grounds Maintenance
Admiral Bakerfield U.S. Army Reserve Center
San Diego, California

This action does not affect current contracts awarded prior to the effective

date of this addition or options exercised under those contracts.

E.R. Alley, Jr.

*Deputy Executive Director.*

[FR Doc. 94–24361 Filed 9–29–94; 8:45 am]

BILLING CODE 6820–33–P

## DEPARTMENT OF DEFENSE

### Department of the Army

### Notice of Availability of the Draft Environmental Impact Statement for Disposal and Reuse of Fort Devens, Massachusetts

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of availability.

**SUMMARY:** In compliance with the National Environmental Policy Act and the President's Council on Environmental Quality, the Army has prepared a Draft Environmental Impact Statement (DEIS) for disposal of excess property at Fort Devens, Massachusetts. The DEIS also analyzes impacts on a range of potential reuse alternatives.

Copies of the DEIS have been forwarded to various federal agencies, state and local agencies, and predetermined interested organizations and individuals.

**DATES:** Written public comments and sugguestions received by November 14, 1994 will be considered in preparing the Final Environmental Impact Statement and in preparing a Record of Decision for the Army action.

**ADDRESSES:** Copies of the Draft Environmental Impact Statement can be obtained by writing or calling Ms. Susan E. Brown, New England Division, U.S. Army Corps of Engineers, 424 Trapelo Road, Waltham, MA 02254–9149 or by calling (617) 647–8536. Ms. Brown may also be reached by telefax at (617) 647–8560. Questions about the DEIS and written comments may be sent to the same address.

Dated: September 22, 1994.

**Raymond J. Fatz,**

*Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (IL&E).*

[FR Doc. 94–23995 Filed 9–29–94; 8:45 am]

BILLING CODE 3710–08–M

## DEPARTMENT OF ENERGY

### Conduct of Employees; Waiver Pursuant to Section 602(c) of the Department of Energy Organization Act (Pub. L. No. 95–91)

Section 602(a) of the Department of Energy ("DOE") Organization Act (Pub. L. No. 95–91, hereinafter referred to as the "Act") prohibits a "supervisory employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases where the interest is a pension, insurance, or other similarly vested interest.

Mr. John Tyler Carslon has been appointed as Area Manager in the Phoenix Area Office of the Western Area Power Administration. As a result of his previous employment with Public Service Company of Colorado, Mr. Carlson has a vested pension interest, within the meaning of section 602(c) of the Act, in the Employees' Retirement Plan of Public Service Company of Colorado and Participating Subsidiaries. I have granted Mr. Carlson a waiver of the divestiture requirement of section 602(a) of the Act with respect to this vested pension interest for the duration of his employment with the Department as a supervisory employee.

Dated: September 8, 1994.

**Hazel R. O'Leary,**

*Secretary of Energy.*

[FR Doc. 94–24263 Filed 9–29–94; 8:45 am]

BILLING CODE 6450–01–M

### Secretary of Energy Advisory Board Task Force on Strategic Energy Research and Development

**AGENCY:** Department of Energy.

**ACTION:** Notice of Open Meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

*Name:* Secretary of Energy Advisory Board Task Force on Strategic Energy Research and Development.

*Date and Time:* Wednesday, October 12, 1994, 9:00 am-12:15 pm.

*Place:* The Hotel Washington, The Washington Room, 515 15th Street, NW, Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:**

Peter F. Didisheim, Acting Executive Director, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–7092.

**SUPPLEMENTARY INFORMATION:** Purpose of the Committee: The Secretary of Energy Advisory Board Task Force on Strategic Energy Research and Development assist the Board in its top-level review of the Department's civilian energy research programs. The Board's Task Force will examine the Department's current research and development portfolio against its strategic goals policy priorities and national needs will examine the Departments research and development planning and management Process and the first research, development, demonstration, and commercialization management plan, required biennially by the Energy Policy Act of 1992

**Tentative Agenda**

9:00 AM–9:10 AM Opening Remarks

9:10 AM–10:00 AM Strategic Context Briefing—Department-wide Strategic Plan

10:00 AM–10:20 AM Policy Context Briefing—Energy Policy Act and other Policy Documents

10:20 AM–10:30 AM Break

10:30 AM–12:00 Panel Discussion of Program Strategic goals, priorities, planning process; Energy Efficiency and Renewable Energy; Fossil Energy; Nuclear Energy; and Energy Research

12:00–12:15 PM Public Comment

12:15 PM Adjourn

A final agenda will be available at the meeting.

*Public Participation:* The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. Written comments may be submitted to the Executive Director, Secretary of Energy of Advisory Board, AB–1, 1000 Independence Avenue, SW, Washington, DC 20585. In order to insure that Board members have the opportunity to review written comments prior to the meeting, comments should be received by Friday, October 7, 1993. Due to difficulty in locating a meeting space, this notice will be published less than fifteen days prior to meeting.

*Minutes:* Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 AM and 4:00 PM, Monday through Friday except Federal holidays.

Issued at Washington, DC, on September 7, 1994.

**Marcia Morris,**

*Advisory Committee Management Officer.*

[FR Doc. 94–24264 Filed 9–29–94; 8:45 am]

BILLING CODE 6450–01–M

## Secretary of Energy Advisory Board Task Force on Radioactive Waste Management, Publication of Secretary of Energy Advisory Board Task Force on Radioactive Waste Management; Final Report

Pursuant to the Charter of the Secretary of Energy Advisory Board, notice is hereby given of the publication of the final report of the Secretary of Energy Advisory Board Task Force on Radioactive Waste Management. The report contains the Task Force's recommendations to the Secretary of Energy on measures the Department of Energy might take to strengthen public trust and confidence in its radioactive waste management activities. It is composed of three parts: Volume 1—The Final Report with two Appendices; Volume 2—The Compilation of Papers and Reports Commissioned by the Task Force; and Volume 3—The Responses to Comments on the December 1992 and January 1993 Draft Final Reports.

The final report will be available for review and copying, within 30 days of this announcement, in the Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Single copies of the report will be available by requesting in writing which of the three volumes you would like to receive. Please forward your requests to: U.S. Department of Energy, Secretary of Energy Advisory Board (AB–1), Task Force on Radioactive Waste Management/Document Request, 1000 Independence Avenue, SW., Washington, DC 20585.

*Contact:* The Secretary of Energy Advisory Board, AB–1, 1000 Independence Avenue, SW., Washington DC 20585.

Issued: Washington, DC, on September 27, 1994.

**Marcia Morris,**

*Advisory Committee Management Officer.*

[FR Doc. 94–24265 Filed 9–29–94; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Docket Nos. QF83–333–002 and QF83–333–003]**

## Cal Ban Corp.; Notice of Amendment to Filing

September 26, 1994.

On September 20, 1994, Cal Ban Corp. tendered for filing a supplement to its filing in these dockets.

The supplement pertains to the technical aspects of the facility. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by October 14, 1994, and must be served on the Applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–24179 Filed 9–29–94; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. ER93–462–000, et al.]**

## Portland General Electric Company, et al.; Electric Rate and Corporate Regulation Filings

September 23, 1994.

Take notice that the following filings have been made with the Commission:

### 1. Portland General Electric Company

[Docket Nos. ER93–462–000, ER93–703–000 and ER94–1295–000]

Take notice that on September 16, 1994, Portland General Electric Company (PGE) tendered for filing an amendment to its original filings under Docket Nos. ER93–462–000, ER93–703–000, and ER94–1295–000. The nature of the amendment is a revision of tariff language. Copies of this filing have been served on the parties included in the distribution list contained in the filing letter.

Pursuant to 18 CFR 35.11 PGE requests that the Commission grant waiver of the notice requirements of 18 CFR 35.3 to allow PGE's FERC Electric Tariff, Original Volume No. 1 and the service agreements with Public Utility District No. 1 of Chelan County and City of Vernon to become effective May 20, 1993; to allow the service agreement with Louis Dreyfus Electric Power Incorporated to become effective July 10, 1993; and to allow the service agreements with Enron Power Marketing, Inc., and Electric Clearinghouse, Inc. to become effective May 24, 1994; consistent with the original filings in Docket Nos. ER93–462–000, ER93–703–000, and ER93–1295–000 respectively.

*Comment date:* October 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

### 2. Continental Power Exchange, Inc.

[Docket No. ER94–1156–001]

Take notice that on September 15, 1994, Continental Power Exchange, Inc., tendered for filing its compliance filing in the above-referenced docket.

*Comment date:* October 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

### 3. Louisville Gas and Electric Company

[Docket No. ER94–1380–001]

Take notice that on August 24, 1994, Louisville Gas and Electric Company tendered for filing revisions to LG&E Rate Schedules T and CT in the above-referenced docket number.

*Comment date:* October 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

### 4. ACME Power Marketing, Inc.

[Docket No. ER94–1530–000]

Take notice that on September 7, 1994, Acme Power Marketing, Inc. (ACME) tendered for filing with the Federal Energy Regulatory Commission an amendment to its Application for Order Accepting Blanket Market-Based Rate Schedule and Granting Waivers, Blanket Approvals and Disclaimer of Jurisdiction.

*Comment date:* October 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

### 5. Iowa-Illinois Gas and Electric Company

[Docket No. ER94–1547–000]

Take notice that Iowa-Illinois Gas and Electric Company (Iowa-Illinois) on September 8, 1994, tendered for filing pursuant to § 35.12 of the Regulations under the Federal Power Act an amendment to the initial rate schedules tendered for filing in this proceeding by Iowa-Illinois on August 10, 1994. The

amendment is in the form of a First Amendment, dated August 24, 1994, to Facilities Schedule No. 4 to Service Schedule C to the Interconnection Agreement dated June 13, 1983, between Iowa-Illinois and Central Iowa Power Cooperative (CIPCO).

Iowa-Illinois states that the First Amendment reduces the rate provided in Section 3.02 of Facilities Schedule No. 4 from $2.29/kW-month to $2/26/kW-month. Iowa-Illinois further states that the rate as provided in the Facilities Schedule was developed and agreed to by Iowa-Illinois and CIPCO using preliminary cost data and that actual cost data developed after entering into the Facilities Schedule resulted in the lower rate.

The First Amendment provides that it will become effective upon the later of the effective date of the Facilities Schedule, the effective date of the acceptance for filing of the First Amendment by the Commission or the effective date of the approval of the First Amendment by the Administrator of the Rural Electrification Administration, if such approval is required by law. Iowa-Illinois requests the Commission to accept the Facilities Schedule and the First Amendment for filing by November 30, 1994.

Copies of the amendment to the filing were served upon the Illinois Commerce Commission, the Iowa Utilities Board, CIPCO and all persons whose names appear on the official service list in this proceeding.

*Comment date:* October 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

**6. New England Power Company**

[Docket No. ER94–1550–000]

Take notice that New England Power Company, on September 16, 1994, tendered an amendment to its filing in this proceeding.

*Comment date:* October 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

**7. Wisconsin Electric Power Company**

[Docket No. ER94–1645–000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on September 13, 1994, tendered for filing a Reregulation Agreement between itself and the City of Norway, Michigan (City). The Agreement provides for the City to seek modification of its FERC license in order to regulate the Menominee River at the City's Sturgeon Falls hydro-electric project to reduce the daily fluctuations of water flow downstream from the project. To reimburse the City for the impact of less economic hydro-electric generation stemming from such changes, Wisconsin Electric proposes to reduce its demand charge for partial requirements service it provides to the City.

Wisconsin Electric respectfully requests waiver of the Commission's notice requirements to permit an effective date of July 1, 1994, in order to implement Article 8 of the Reregulation Agreement. In support of its request, Wisconsin Electric states that the Agreement would result in a revenue reduction. Wisconsin Electric is authorized to state that the City joins in the requested effective date.

Copies of the filing have been served on the City and the Michigan Public Service Commission.

*Comment date:* October 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

**8. Maine Public Service Company**

[Docket No. ER94–1646–000]

Take notice that on September 13, 1994, Maine Public Service Company (Maine Public) filed an executed Service Agreement with The United Illuminating Company. Maine Public states that the service agreement is being submitted pursuant to its tariff provision pertaining to the short-term non-firm sale of capacity and energy which establishes a ceiling rate at Maine Public's cost of service for the units available for sale.

Maine Public requests that the service agreement become effective on September 1, 1994, and requests waiver of the Commission's regulations regarding filing.

*Comment date:* October 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

**9. Otter Tail Power Company**

[Docket No. ER94–1650–000]

Take notice that on September 12, 1994, Otter Tail Power Company tendered for filing a Notice of Termination sent to the Municipality of Breckenridge for a contract under Docket No. ER89–137–000. The notice states that the contract will terminate on September 3, 1997.

*Comment date:* October 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

**10. Century Power Corporation**

[Docket No. ES94–39–000]

Take notice that on September 14, 1994, Century Power Corporation (Century) filed an application under § 204 of the Federal Power Act seeking authorization to issue one or more promissory notes in the aggregate principal amount of $10 million, with a maturity date of March 1, 1996. Also, Century requests exemption from the Commission's competitive bidding and negotiated placement regulations.

*Comment date:* October 13, 1994, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–24177 Filed 9–29–94; 8:45 am]

BILLING CODE 6717–01–P

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[Project Nos. 2019–017, et al.]

## Hydroelectric Applications [Pacific Gas and Electric Company, et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. Type of Application: New License.

b. Project No.: 2019–017.

c. Date filed: May 3, 1994.

d. Applicant: Pacific Gas and Electric Company.

e. Name of Project: Utica.

f. Location: On the North Fork Stanislaus River, Silver Creek, Mill Creek, and Angels Creek in Alpine, Calaveras, and Toulumne Counties, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact:

Shan Bhattacharya, Manager, Hydro Generation Department, Pacific Gas and Electric Company, 201 Mission Street, Room 1012, P.O. Box 770000, San Francisco, CA 94177, (415) 973–4603.

Annette Faraglia, Attorney, Law

Department, Pacific Gas and Electric Company, 77 Beale Street, Room 3051, P.O. Box 7442, San Francisco, CA 94120–7442, (415) 973–7145.

Kathryn M. Petersen License Coordinator, Pacific Gas and Electric Company, 201 Mission Street, Room 1012, P.O. Box 770000, Mail P10A, San Francisco, CA 94177, (415) 973–4054.

i. FERC Contact: Héctor M. Pérez at (202) 219–2843.

j. Comment Date: November 25, 1994.

k. Status of Environmental Analysis: This application is not ready for environmental analysis at this time—see attached paragraph E.

l. Description of Project: The existing project consists of: (1) The 49-foot-high and 400-foot-long masonry/rock filled gunite faced Alpine dam; (2) LaKe Alpine with a surface area of 173 acres and a gross storage capacity of 4,117 acre-feet; (3) the 33-foot-high and 1,142-foot-long rock fill Union dam; (4) Union Reservoir with a surface area of 218 acres and gross storage capacity of 3,130 acre-feet; (5) the 59-foot-high and 308-foot-long rock fill concrete faced Utica dam; (6) Utica Reservoir with a surface area of 241 acres and a gross storage capacity of 2,334 acre-feet; (7) the Tunnel Tap which delivers water from the Collierville Tunnel (part of Project No. 2409) to the Upper Utica Conduit; (8) the 0.7-mile-long Upper Utica Conduit (an open channel); (9) the 58.5-foot-high and 389-foot-long concrete arch and gravity Hunters dam; (10) Hunters Reservoir with a surface area of 19 acres and a gross storage capacity of 253 acre-feet; (11) the 13.41-mile-long Lower Utica Conduit (a metal-lined wooden box flume and natural earth, and gunite canal sections); (12) the 2.8-acre surface area and 56.9-acre-feet gross storage capacity Murphys Forebay impounded by a 27-foot-high, 415-foot-long earthfill South dam and a 67-foot-high, 316-foot-long earthfill West dam; (13) the 24-inch to 48-inch and 4,048-foot-long shop welded steel Murphys Penstock; (14) the 33-foot-wide by 36-foot-long concrete Murphys Powerhouse housing a semi-enclosed vertical impulse turbine-generator unit with an installed capacity of 4 MW; (15) Murphys Afterbay with a surface area of 2.7 acres and a gross storage capacity of 31.3 acre-feet impounded by a 42-foot-high, 340-foot-long earthfill dam topped by a concrete parapet wall; and (16) other appurtenances.

m. This notice also consists of the following standard paragraph: B1 and E.

n. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., Room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the address shown in item h above.

2 a. Type of Application: Subsequent License.

b. Project No.: 2699–001.

c. Date filed: December 21, 1993.

d. Applicant: Pacific Gas and Electric Company.

e. Name of Project: Angels Hydroelectric Project.

f. Location: On Angels Creek in Calaveras County California.

g. Filed Pursuant to: Federal Power Act 16, U.S.C. §§ 791(a)–825(r).

h. Applicant Contact:

Shan Bhattacharya, Manager, Hydro Generation Department, Pacific Gas and Electric Company, 201 Mission Street, Room 1012, P.O. Box 770000, San Francisco, CA 94177, (415) 973–4603.

Annette Faraglia, Attorney, Law Department, Pacific Gas and Electric Company, 77 Beale Street, Room 3051, P.O. Box 7442, San Francisco, CA 94120–7442, (415) 973–7145.

Kathryn M. Petersen, License Coordinator, Pacific Gas and Electric Company, 201 Mission Street, Room 1012, P.O. Box 770000, Mail P10A, San Francisco, CA 94177, (415) 973–4054.

i. FERC Contact: Héctor M. Pérez at (202) 219–2843.

j. Comment Date: November 25, 1994.

k. Status of Environmental Analysis: This application is not ready for environmental analysis at this time—see attached paragraph E.

l. Description of Project: The existing project consists of: (1) The 5.6-foot-high, 64-foot-long gunite faced rock-wall and concrete buttress Angels Diversion Dam; (2) the Upper Angels Canal, approximately 2.5 miles long, to Ross Reservoir; (3) the 100-acre-feet gross storage capacity Ross Reservoir and a 44-foot-high and 710-foot-long earthfill, masonry, and rock structure dam; (5) the Lower Angels Canal, approximately 3.3 miles long; (6) the Angels Forebay with a gross storage capacity of 2-acre-feet; (7) the 8,624-foot-long Angels Penstock; (8) a powerhouse with an installed capacity of 1,400 kW; and (9) other appurtenances.

m. This notice also consists of the following standard paragraph: B1 and E.

n. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the address shown in item h above.

3 a. Type of Application: License.

b. Project No.: 11452–000.

c. Date filed: December 28, 1993.

d. Applicant: Northern California Power Agency.

e. Name of Project: Angels.

f. Location: On Angels Creek in Calaveras County California.

g. Filed Pursuant to: Federal Power Act 16, U.S.C. §§ 791(a)–825(r).

h. Competing Application: Project No. 2699–001, filed December 21, 1993.

i. Applicant Contact: James Lynch, Environmental Liaison, Northern California Power Agency, 180 Cirby Way, Roseville, CA 95678, (916) 781–4275.

j. FERC Contact: Héctor M. Pérez at (202) 219–2843.

k. Comment Date: November 25, 1994.

l. Status of Environmental Analysis: This application is not ready for environmental analysis at this time—see attached paragraph E.

m. Description of Project: The existing project consists of: (1) The 5.6-foot-high, 64-foot-long gunite faced rock-wall and concrete buttress Angels Diversion Dam; (2) the Upper Angels Canal, approximately 2.5 miles long, to Ross Reservoir; (3) the 100-acre-feet gross storage capacity Ross Reservoir and a 44-foot-high and 710-foot-long earthfill, masonry, and rock structure dam; (5) the Lower Angels Canal, approximately 3.3 miles long; (6) the Angels Forebay with a gross storage capacity of 2 acre-feet; (7) the 8,624-foot-long Angels Penstock; (8) a powerhouse with an installed capacity of 1,400 kW; and (9) other appurtenances.

The Applicant proposes to remove the Angels Penstock and decommission power generation facilities in the existing powerhouse.

n. This notice also consists of the following standard paragraph: B1 and E.

o. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the address shown in item h above.

4 a. Type of Application: Preliminary Permit.

b. Project No.: 11494–000.

c. Date Filed: August 19, 1994.

d. Applicant: Hydro Matrix Partnership, Ltd.

e. Name of Project: Newburgh Hydropower Project.

f. Location: On the Ohio River, Henderson County, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Mr. James B. Price, W. V. Hydro, Inc., 120 Calumet Ct., Aiken, SC 29803, (803) 642–2749.

i. FERC Contact: Michael Dees (202) 219–2807.

j. Comment Date: November 22, 1994.

k. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Newburgh Locks and Dam and would consist of: (1) A proposed intake; (2) a proposed powerhouse housing two hydropower units with a total capacity of 30,000 kW; (3) a proposed tailrace; (4) a proposed 161 kV transmission line that is two miles long; and (5) appurtenant facilities. The applicant estimates that the annual energy generation would be 122 GWh and that the cost of the studies to be performed under the permit would be $100,000. The energy would be sold to a public utility company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

5 a. Type of Application: Subsequent License.

b. Project No.: P–11496–000.

c. Date Filed: August 29, 1994.

d. Applicant: The City of Oconto Falls, Wisconsin.

e. Name of Project: Oconto Falls Hydro Project.

f. Location: On the Oconto River in Oconto County, near Oconto Falls, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Honorable Lynn V. Heim, Mayor, 104 South Franklin Street, Oconto Falls, WI 54154, (414) 843–4505.

i. FERC Contact: Ed Lee (202) 219–2809.

j. Comment Date: November 14, 1994.

k. Description of Project: The existing run-of river project consists of: (1) a dam and reservoir; (2) a powerhouse containing three generatoring units for a total installed capacity of 1,320 kW; (3) a substation; and (4) appurtenant facilities. The applicant estimates that the total average annual generation would be 7,495 MWh.

l. With this notice, we are initiating consultation with the Wisconsin State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the issuance date of this notice and serve a copy of the request on the applicant.

6 a. Type of Application: Preliminary Permit.

b. Project No.: 11492–000.

c. Date Filed: July 27, 1994.

d. Applicant: Ted S. Sorenson.

e. Name of Project: Owsley Feeder Hydroelectric.

f. Location: On Birch Creek Hydroelectric Outfall Canal, in Clark and Jefferson Counties (about 20 miles Northwest of Terreton), Idaho; partially on U.S. lands administered by the Bureau of Land Management. Sections 1, 2, 6, 7, 18, 19, 20, 21, 25, 26, 34, & 35 in Townships 7 & 8 North, Ranges 31, 32, & 33 South; Boise Meridian.

g. Filed Pursuant to: Federal Power Act, 16 USC §§ 791(a)–825(r).

h. Applicant Contact: Mr. Ted S. Sorenson, 5203 South 11th Street, Idaho Falls, ID 83404, (208) 522–8069.

i. FERC Contact: Surender M. Yepuri, P.E. (202) 218–2847.

j. Comment Date: November 25, 1994.

k. Description of Project: The proposed project would utilize the outfall waters from the applicant's existing Birch Creek Hydroelectric Project (FERC No. 7194), and would consist of: (1) A 40-inch-diameter, 29,700-foot-long steel penstock; (2) a powerhouse containing a turbine generator unit with a rated capacity of 1,000 KW; (3) appurtenant facilities; and (4) a 12.5 kV, 0.5-mile-long transmission line.

The project would generate an estimated 5,500 GWh of energy annually. The estimated cost of the studies to be conducted under the preliminary permit is $35,000. No new roads would be needed for conducting studies under the preliminary permit.

l. Purpose of Project: Project power would be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

7 a. Type of Application: Amendment of License.

b. Project No.: 1051–008.

c. Dated filed: August 22, 1994.

d. Applicant: Alaska Power & Telephone Company.

e. Name of Project: Dewey Lakes.

f. Location: The project is located at the head of the Taiya Inlet in Southeast Alaska approximately ninety miles north of Juneau, Alaska.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. § 791(a)-825(r).

h. Applicant Contact: Robert S. Grimm, President, Alaska Power & Telephone Company, P.O. Box 222, Port Towsend, WA. 98368, Phone: (206)385–1733.

i. FERC Contact: Buu T. Nguyen, (202) 219–2913.

j. Comment Date: November 7, 1994.

k. Description of Amendment: Alaska Power & Telephone Company applied for an amendment of license to exclude the Snyder Creek Concrete Dam, and add an earth fill dam to the project. The Snyder Creek Dam was washed out about 10 years ago. A mud and rock slide created an earth fill diversion dam.

l. This notice also consists of the following standard paragraphs; B, C1, and D2.

8 a. Type of Application: Surrender of License.

b. Project No: 3013–022.

c. Date Filed: August 29, 1994.

d. Applicant: L2W, Inc.

e. Name of Project: Natick Hydro.

f. Location: Patuxent River, Kent County, Rhode Island.

g. Filed Pursuant to: Federal Power Act, 16 USC Sections 791(a)–825(r).

h. Applicant Contact: John N. Webster, Southern New Hampshire Hydroelectric Development Corporation, P.O. Box 178, South Berwick, ME 03908, (207) 384–5334.

i. FERC Contact: Patricia A. Massie, (202) 219–2681.

j. Comment Date: November 7, 1994.

k. Description of Surrender: The licensee states the reason for the surrender is: the current power purchase rates available in New England make this particular project uneconomical. Construction was begun June 25, 1986, but has not been completed.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

9 a. Type of Application: Surrender of License.

b. Project No: 5192–005.

c. Date Filed: August 15, 1994.

d. Applicant: Lind & Associates.

e. Name of Project: Upper Rock Creek.

f. Location: Upper Rock Creek, El Dorado County, near Placeville, California.

g. Filed Pursuant to: Federal Power Act, 16 USC Sections 791(a)–825(r).

h. Applicant Contact: A. A. Lind, PE 15,782, Lind & Associates, P.O. Box 1633, Folsom, CA 95763–1633, (916) 985–0577 (Fax), (916) 768–5177 (Mobile).

i. FERC Contact: Patricia A. Massie, (202) 219–2681.

j. Comment Date: November 7, 1994.

k. Description of Surrender: The licensee states the reason for the surrender is: the project is not currently economically feasible. No ground-disturbing activities occurred at this project.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

10 a. Type of Application: Small Conduit Exemption.

b. Project No.: 11459–001.

c. Date filed: March 18, 1994.

d. Applicant: Washington County Water Conservancy District.

e. Name of Project: Quail Creek No. 2 Hydroelectric Facility.

f. Location: On the existing Quail Creek irrigation and water supply project on the Virgin River and Quail Creek in Washington County, Utah. Section 36, Township 41 South, Range 14 West, Salt Lake Base and Meridian.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Mr. Morgan S. Jensen, Planning and Environmental Coordinator, Washington County Water Conservancy District, 136 North 100 East, Suite 1, St. George, UT 84770, (801) 673–3617.

i. FERC Contact: James Hunter, (202) 219–2839.

j. Comment Date: November 28, 1994.

k. Description of Project: The proposed project would consist of: (1) a new pipeline connecting to the existing Quail Creek Reservoir supply pipeline; (2) a 40-foot-wide, 85-foot-long powerhouse containing two generating units rated at 1.8 MW and producing an average annual output of 3.08 GWH; (3) a tailrace discharging flows to Stratton Regulating pond; and (4) a new outlet from the regulating pond returning flows to the Virgin River at the same point as the existing Quail Creek Reservoir outlet.

l. Purpose of Project: Energy produced would be sold to Dixie/ Escalante Rural Electric Association and the City of Hurricane.

m. This notice also consists of the following standard paragraphs: A2, A9, B, and D4.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 11499–000.

c. Date Filed: September 6, 1994.

d. Applicant: Armstrong Energy Resources.

e. Name of Project: Laurel Branch Pumped Storage.

f. Location: On Laurel Branch and Dry Branch Creek near Dunlap in Bledsoe County, Tennessee.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Mr. R.T. Hunt, Richard Hunt Associates, Inc., 738 Harbour Village Court, Suite 201, Annapolis, MD 21403, (410) 280–2770.

i. FERC Contact: Ms. Julie Bernt, (202) 219–2814.

j. Comment Date: November 28, 1994.

k. Description of Project: The proposed project would consist of: (1) An upper reservoir with a surface area of 587 acres at a maximum pool elevation of 2,040 feet m.s.l. and a reservoir capacity of 23,000 acre-feet; (2) three new embankment type dams, 110 feet, 50 feet, and 40 feet high, respectively, impounding the upper reservoir; (3) a new 180-foot-high embankment dam impounding the lower reservoir; (4) a lower reservoir with a surface area of 390 acres at a maximum pool elevation of 1,020 feet m.s.l. and a reservoir capacity of 23,000 acre-feet; (5) a 10,000-foot-long, 30-foot-diameter, rock-concrete lined water conveyance tunnel; (6) a new powerhouse containing four generating units with a total rated capacity of 1,000 MW; and, (7) a new one-mile-long transmission line. The applicant estimates the average annual energy production to be 1,560 GWh and the cost of the work to be performed under the preliminary permit to be $2,500,000. Limited core drilling will be carried out.

l. Purpose of Project: The power produced would be sold to the Tennessee Valley Authority.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

12 a. Type of Application: Preliminary Permit.

b. Project No.: 11500–000.

c. Date Filed: September 6, 1994.

d. Applicant: Armstrong Energy Resources.

e. Name of Project: Reynolds Creek Pumped Storage.

f. Location: On Reynolds Creek and Big Brush Creek near Dunlap in Sequatchie County, Tennessee.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Mr. R.T. Hunt, Richard Hunt Associates, Inc., 738 Harbour Village Court, Suite 201, Annapolis, MD 21403, (410) 280–2770.

i. FERC Contact: Ms. Julie Bernt, (202) 219–2814.

j. Comment Date: November 28, 1994.

k. Description of Project: The proposed project would consist of: (1) A new 280-foot-high embankment dam impounding the upper reservoir; (2) an upper reservoir with a water surface area of 505 acres, a maximum pool elevation of 1,920 feet m.s.l. and a reservoir capacity of 40,000 acre-feet; (3) a new 340-foot-high embankment dam impounding the lower reservoir; (4) a lower reservoir with a surface area of 350 acres at a maximum pool elevation of 1,200 feet m.s.l. and a reservoir capacity of 38,000 acre-feet; (5) a 12,500-foot-long, 30-foot-diameter, rock-concrete lined water conveyance tunnel; (6) a new powerhouse containing six generating units with a total rated capacity of 1,500 MW; and, (7) a new one-mile-long transmission line. The applicant estimates the average annual energy production to be 1,340 GWh and the cost of the work to be performed under the preliminary permit to be $2,500,000. Limited core drilling will be carried out.

l. Purpose of Project: The power produced would be sold to the Tennessee Valley Authority.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

13 a. Type of Application: Amendment of License.

b. Project No.: 7186–026.

c. Date Filed: February 14, 1994.

d. Applicant: Missisquoi Associates.

e. Name of Project: Sheldon Springs Project.

f. Location: On the Missisquoi River in Franklin County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Applicant Contact: Mr. Wayne E. Nelson, Director, Environmental Affairs, Consolidated Hydro, Inc., RR#2, Box 690H, Industrial Ave., Sanford, ME 04073, (207) 490–1980.

i. FERC Contact: Robert Gwynn, (202) 219–2764.

j. Comment Date: November 10, 1994.

k. Description of Filing: Missisquoi Associates proposes to install a spillway gate at the dam, and construct a 175-foot-long rock spur dike in the river to divert flows to the turbines. The spur dike will reduce the effective width of the river channel from approximately 240 feet at the bridge to approximately 140 feet, and introduce a near 90-degree bend to the flow pattern.

l. This paragraph also consists of the following standard paragraphs: B, C1, and D2.

**Standard Paragraphs**

A2. Development Application—Any qualified applicant desiring to file a

competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's must also be sent to the Applicant's representatives.

D4. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice . All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR

385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

E. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will notify all persons on the service list and affected resource agencies and Indian tribes. If any person wishes to be placed on the service list, a motion to intervene must be filed by the specified deadline date herein for such motions. All resource agencies and Indian tribes that have official responsibilities that may be affected by the issues addressed in this proceeding, and persons on the service list will be able to file comments, terms and conditions, and prescriptions within 60 days of the date the Commission issues a notification letter that the application is ready for an environmental analysis. All reply comments must be filed with the Commission within 105 days from the date of that letter.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: September 26, 1994, Washington, DC.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–24176 Filed 9–29–94; 8:45 am]

BILLING CODE 6717–01–P

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**[Docket No. RP93–36–000]**

## Natural Gas Pipeline Company of America; Notice of Informal Settlement Conference

September 26, 1994.

Take notice that an informal settlement conference will be convened in this proceeding on Monday, October 3, 1994, at 1:00 p.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, DC, for the purpose of exploring the possible settlement of the rate design issues in the above-referenced docket. The conference will continue on Tuesday, October 4, 1994, if necessary.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact David R. Cain (202) 208–0917 or John P. Roddy (202) 208–1176.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–24180 Filed 9–29–94; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. CP94–789–000]**

## Trunkline Gas Co., Notice of Application

September 26, 1994.

Take notice that on September 21, 1994, Trunkline Gas Company (Truckline), P.O. Box 1642, Houston, Texas 77251–1642, filed a request with the Commission in Docket No. CP94–789–000 pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale two 4-inch diameter liquid transmission laterals [1] located in Vermilion Block 26, offshore Louisiana, to Union Oil Company of California (UNOCAL), all as more fully set forth in the request which is open to the public for inspection.

Truckline proposes to sell its Laterals 210B–1700 (approximately 1,390 feet long) and 210B–1800 (approximately 1,540 feet long) in Vermilion Block 26 To UNOCAL. Following abandonment Truckline would permanently disconnect Lateral 210B–1700 (which runs between UNOCAL's Vermilion Block 26 B platform and Trunkline's Vermilion Block T–2 platform) and Lateral 210B–1800 (which runs between UNOCAL's Vermilion Block 26 C platform and Trunkline's Vermilion Block T–2 platform) from its system and connect the two laterals on the T–2 platform. Trunkline states that UNOCAL intends to use the laterals to move low pressure natural gas in conjunction with its production operations. Trunkline proposes to sell the laterals to UNOCAL for $25,000 and would not incur any expenses in connecting the laterals on the T–2 platform. Trunkline also states that it has not used these laterals since 1974.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 17, 1994, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA 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

[1] *See* orders at 21 FPC 704 (1959) and 23 FPC 640 1960).

filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Trunkline to appear or be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–24181 Filed 9–29–94 ; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–5082–4]

### Federal Facilities Environmental Restoration Dialogue Committee; Notice of Renewal

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Renewal of Federal Facilities Environmental Restoration Dialogue Committee Charter.

**SUMMARY:** In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2) and the General Services Administration rule on Federal Advisory Committee Management, 41 CFR part 101–6, and after consultation with GSA, the Administrator of the U.S. Environmental Protection Agency has determined that the renewal of the Federal Facilities Environmental Restoration Dialogue Committee is in the public interest

The Committee was first established in 1992 to advise the federal government on policies to improve the process by which federal facility environmental restoration decisions are made, such that these decisions reflect the priorities and concerns of all stakeholders. In renewing the Committee's charter, the Administrator has established the objective of refining and further developing issues related to environmental restoration activities at federal facilities.

The Committee will consist of 40–50 members to be appointed by the Administrator to assure a balanced representation among all stakeholders involved with federal facilities environmental restoration.

The Committee will function solely as an advisory body, and in compliance with provisions of the Federal Advisory Committee Act. Copies of the Committee's revised charter will be filed with appropriate committees of the Congress and with the Library of Congress.

Inquiries or comments may be directed to Ms. Marilyn Null, Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency, Washington, D.C. 20460 or telephone: 202/260–5686.

Dated: September 22, 1994.

**Timothy Fields, Jr.,**

*Deputy Assistant Administrator, U.S. EPA Office of Solid Waste and Emergency Response.*

[FR Doc. 94–24256 Filed 9–29–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5082–7]

### Clean Water Act; Contractor Access to Confidential Business Information

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

**ACTION:** Notice of intended transfer of confidential business information to contractors.

**SUMMARY:** The Environmental Protection Agency (EPA) intends to transfer to EPA contractors and subcontractors, technical and financial confidential business information (CBI) collected from several metals forming, finishing, and fabricating industries including the metal products and machinery manufacturing, maintenance and rebuilding industry. Transfer of the information will allow the contractors and subcontractors to assist EPA in developing effluent limitations guidelines and standards under the Clean Water Act (CWA) for the metal products and machinery industry. The information being transferred was collected under the authority of section 308 of the Clean Water Act. Interested persons may submit comments on this intended transfer of information to the address noted below.

**DATES:** Comments on the transfer of data are due October 11, 1994.

**ADDRESSES:** Comments may be sent to Janet Goodwin, Engineering and Analysis Division (4303), Environmental Protection Agency, Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Janet Goodwin at the above address or at (202) 260–7152.

**SUPPLEMENTARY INFORMATION:** EPA has previously transferred to its contractor Radian Corporation of Herndon, Virginia (and subcontractors) information, including confidential business information (CBI), concerning the metal products and machinery industry collected under the authority of the Clean Water Act section 308.

The information transferred included: Questionnaire data collected during a two phase survey of the metal products industry; the first phase consisted of the screener questionnaire or the "mini-data collection portfolio (mdcp) which was conducted in 1990 (OMB No. 2040–0148); the second phase was a more detailed questionnaire or data collection portfolio (dcp) that was sent in 1991 to a randomly selected sample identified through the responses to the mdcp (OMB No. 2040–0148). EPA also transferred site visit and field sampling data collected during 1990 through 1993. In addition, Radian has received similar records and data developed in support of the following effluent guidelines regulations:

- Porcelain Enameling (data collection 1977 through 1979),
- Coil Coating (data collection 1977 through 1979),
- Aluminum Forming (data collection 1978 through 1981),
- Battery Manufacturing (data collection 1978 through 1983),
- Copper Forming (data collection 1978 through 1979),
- Electroplating (data collection 1974 through 1979),
- Metal Finishing (data collection 1974 through 1979),
- Metal Molding and Casting (data collection 1977 through 1983),
- Nonferrous Metals Forming and Metal Powders (data collection 1983 through 1985),
- Nonferrous Metals Manufacturing, Phases I and II (data collection 1978 through 1985),
- Plastics Molding and Forming (data collection 1980 through 1987), and
- Hot Dip Coating Subcategory of the Iron and Steel regulation (data collection 1986).

Radian has also received files gathered during studies of the beryllium copper forming industry (data collection during 1986), the platemaking industry (data collection during 1984), and the printing and publishing industry (data collection 1977 through 1979). EPA determined that this transfer was necessary to enable the contractor and subcontractors to perform their work under EPA Contract No. 68–C0–0005 and related subcontracts by assisting EPA in developing effluent limitations guidelines and standards for the metal products and machinery industry. Notice to this effect was provided to the affected companies at the time the data

was collected or through Federal Register notice.

Today, EPA is giving notice that it has entered into a new contract No. 68–C4–0024 with Radian Corporation of Herndon, VA and Radian Corp. has entered into additional contracts with its subcontractors: Westat, Inc. of Rockville, MD; Amendola Engineering, Inc. of Lakewood, OH; CAI Engineering of Oakton, VA; Information Systems Solutions International, Inc. of Vienna, VA and Marasco Newton Group, Inc. of Arlington, VA. to develop effluent limitations guidelines and standards for the metal products and machinery phase I industry. The effective date of the new contract is October 1, 1994. Radian Corp. will provide technical support such as completion of the public docket for the proposed rulemaking and completion of the work on the draft proposed technical development document. The contractor shall also provide support on post proposal efforts, including assisting with public meetings, responding to comments, filling data gaps that arise through comments on the proposed rule, and assisting with the assembly of the rulemaking record for the final rule.

The subcontractors will assist the prime by providing specific expertise. Westat, Inc. will assist with any surveys that may be required in future work, data management and statistical analysis. Amendola Engineering, Inc. will provide assistance in pollution prevention and water pollution control. CAI Engineering provides metal products industrial wastewater and hazardous waste engineering expertise, surface treatment process design and pollution prevention expertise and wastewater treatment system design expertise. Information Systems Solutions International, Inc. offers information and data management services and Marasco Newton Group, Inc. provides information management services.

In accordance with 40 CFR part 2, subpart B, the previously collected information described above (including confidential business information) will be transferred to Radian Corp. EPA has determined that this transfer is necessary to enable the contractor to perform their work under EPA Contract No. 68–C4–0024.

The metal products and machinery manufacturing, rebuilding and maintenance industry financial and economic data that were collected through the dcp survey in 1991 (OMB No. 2040–0148) was transferred to Abt Associates under Contract No. 68–C0–0080, which will expire September 30, 1994. In accordance with 40 CFR part 2, subpart B, the previously collected information described above (including confidential business information) will be transferred to ERG, Contract No. 68–C3–0302. ERG has subcontracted with Abt Associates to conduct the economic analysis for the metal products and machinery industry. EPA has determined that this transfer is necessary to enable the contractor to perform their work under EPA contract No. 68–C3–0302.

Anyone wishing to comment on the above matters must submit comments to the address given above by October 11, 1994.

Dated: September 26, 1994.

**Mark A. Luttner,**

*Acting Deputy Assistant Administrator for Water.*

[FR Doc. 94–24254 Filed 9–29–94; 8:45 am]

BILLING CODE 6560–50–P

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[FRL–5082–3]

## Public Water Supply Supervision Program; Program Revision for the State of Alaska

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the State of Alaska is revising its approved State Public Water Supply Supervision Primacy Program. Alaska has adopted drinking water regulations for total coliforms and the treatment of surface water. EPA has determined that these sets of State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties may request a public hearing. A request for public hearing must be submitted by October 31, 1994 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by October 31, 1994, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective October 31, 1994.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

**ADDRESSES:** All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Department of Environmental Conservation (DEC),410 Willoughby Avenue, suite 105, Juneau, Alaska 99801.

DEC South Central Regional Office, 3601 C Street, suite 1334, Anchorage, Alaska 99503.

DEC Northern Regional Office, 1001 Noble Street, suite 350, Fairbanks, Alaska 99701.

DEC Pipeline Corridor Regional Office, 411 West 4th Avenue, suite 2C, Anchorage, Alaska 99501.

Environmental Protection Agency, Region 10 Library, 1200 Sixth Avenue, Seattle, Washington 98101.

**FOR FURTHER INFORMATION CONTACT:** Wendy Marshall, EPA, Region 10, Ground Water and Drinking Water Branch, at the EPA address provided above, telephone (206) 553–1890.

Dated: September 22, 1994

**Carol Rushin,**

*Acting Regional Administrator.*

[FR Doc. 94–24257 Filed 9–29–94; 8:45 am]

BILLING CODE 6560–50–F

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[ER–FRL–4715–8]

## Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 12, 1994 through September 16, 1994 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(C) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 8, 1994 (59 FR 16807).

### Draft EISs

ERP No. D–AFS–K65163–CA Rating EC2, Oregon Creek Ecosystem Management Project, Implementation, Tahoe National Forest, Downieville

Ranger District, Yuba and Sierra Counties, CA.

*Summary*

EPA expressed environmental concerns regarding potential project impacts to water and air quality, as well as insufficient consideration in the document to mining activities and activities on non-Federal lands. EPA expressed particular concern regarding potential cumulative impacts from the proposed management proposals, mining activities, and actions on non-Federal lands.

ERP No. D–AFS–L65231–ID Rating EC2, Charlie Tyson Ecosystem Management Project, Implementation, Idaho Panhandle National Forests, St. Maries Ranger District, Charlie Creek, Benewah County, ID.

*Summary*

EPA expressed environmental concern about fish habitat and recommended that the preferred alternative adopt a combination of forest health measures proposed in Alternative B and C.

ERP No. D–COE–D28012–VA Rating EC2, Henrico County Water Treatment Plant (WTP), Construction and Operation, James River Water Supply Intake, Henrico, Goochland and Hanover Counties, VA.

*Summary*

EPA expressed environmental concern that the project was being developed prior to the completion of the James River Management Plan and recommended that any permit issued include appropriate conditions that would require the incorporation of the Plan into its design. A more detailed discussion of water needs, cumulative impacts, City of Richmond withdrawals, and canal diversions was requested. Conditions on withdrawals and wetland compensation were recommended.

ERP No. D–COE–K36110–CA Rating EC2, Petaluma River Flood Control Improvements, Implementation, City of Petaluma, Sonoma County, CA.

*Summary*

EPA expressed environmental concerns pertaining to proposed mitigation, potential water quality impacts, hazardous waste management, and cumulative impacts from proposed upstream projects. EPA urged the Army Corps to continue to explore flood control techniques which minimize impacts to the aquatic environment and enhance water quality and river resources.

ERP No. D–DOE–L09805–00 Rating EC1, Business Plan to Operate Electric Utility Market, Transmission Services and Fish and Wildlife Activities, Funding and Implementation, WA, OR, ID, CA, NV, AZ, MT, WY, UT, NM and British Columbia.

*Summary*

EPA recommended that BPA re-visit selection of market-driven alternative as proposed action and further evaluate compatibility of the alternative with conservation resource protection goals and policies.

ERP No. D–FHW–L40193–ID Rating LO, Sandpoint North and South (NH–IR–F–CM–5116(68)) Projects, Construction, US 95 (Milepost 466.8 to Milepost 4786), Funding and COE Section 404 Permit, City of Sandpoint, Bonner County, ID.

*Summary*

EPA agrees that substantial direct and indirect effects were avoided with the rejection of the "West" Alternative, therefore EPA had no objections with the proposed action.

**Final EISs**

ERP No. F–AFS–L65146–ID, Van Camp Timber Sales and Winter Range Improvements, Road Construction/ Reconstruction, Implementation, Clearwater National Forest, Lochsa Ranger District, Idaho County, ID.

*Summary*

EPA provided no formal written comments. EPA had no objection to the preferred alternative as described in the EIS.

ERP No. F–APH–A82124–00, Logs, Lumber and Other Unmanufactured Wood Articles Importation, Improvements to the existing system to Prohibit Introduction of Plant Pests into the United States.

*Summary*

EPA was concerned that the rule, as proposed, does not specifically plan for the development of alternatives to methylbromide, a known ozone depleting substance currently planned to be phased out of use by the EPA.

ERP No. F–BLM–K60023–CA, Rail-Cycle-Bolo Station Class III Nonhazardous Waste Landfill Project, Construction and Operation, Federal Land Exchange and Right-of-Way Grants, San Bernardino County, CA.

*Summary*

The final EIS satisfactorily responded to EPA's prior comments, therefore EPA had no objection to the proposed action.

ERP No. F–DOE–L05205–00, PacifiCorp Capacity Power Sale Contract for 1100 Megawatts (MW) Long-Term Contract for Peaking Capacity, Implementation, WA, OR, ID, MT, WY, UT, CO, CA, NV, AZ, NM and British Columbia.

*Summary*

EPA provided no formal written comments and had no objection to the preferred alternative as described in the EIS.

ERP No. F–FHW–K40201–AZ, Red Mountain Freeway (Loop 202) Transportation Facility, Construction from Salt River between the Price Freeway on the west and AZ–87 on the east, COE Section 404 and NPDES Permits, Phoenix Metropolitan Area, Maricopa County, AZ.

*Summary*

Review of the final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. FS–COE–K32023–HI, Maalaea Harbor Improvements for Light-Draft-Vessels, Entrance Channel Realignment and Breakwater Modification, Updated Information, Island of Maui, Maui County, HI.

*Summary*

Review of the final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. FS–FHW–D40072–VA, VA–234 Bypass Corridor Transportation Improvement, VA–619 at Independent Hill to US 15 at Woolsey, Updated and New Information, Funding, City of Manassas, Prince William County, VA.

*Summary*

EPA expressed environmental concerns regarding traffic estimates and recommended further analysis be done. EPA also, requested additional noise and habitat terrestrial mitigation.

Dated: September 27, 1994.

**Richard E. Sanderson,**

*Director, Office of Federal Activities.*

[FR Doc. 94–24277 Filed 9–29–94; 8:45 am]

BILLING CODE 6560–50–U

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**[ER–FRL–4715–7]**

## Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed September 19, 1994 Through September 23, 1994 Pursuant to 40 CFR 1506.9.

*EIS No. 940388*, Final EIS, FHW, NY, Long Island Expressway (I–495)/ Seaford - Oyster Bay Expressway

(NY–135) Interchange Project, Improvements between Exit 43 South Oyster Bay Road to Exit 46 Sunnyside Boulevard, Funding and NPDES Permit, Town of Oyster Bay, Nassau County, NY, Due: October 31, 1994, Contact: Howard J. Brown (518) 472–3616

*EIS No. 940395*, Final EIS, AFS, CA, Hamm—Hasloe Reforestation Project, Implementation, Stanislaus National Forest, Groveland Ranger District, Tuolume and Mariposa Counties, CA, Due: October 31, 1994, Contact: Herb Hahn (209) 962–7825

*EIS No. 940396*, Draft EIS, DOA, MD, Beltsville Agricultural Research Center, Construction of Office Complex, Site Selection, Prince George's County, MD, Due: November 14, 1994, Contact: Michael Sazonov (202) 720–2804

*EIS No. 940397*, Final Supplement, NOA, NC, VA. FL, Coral and Coral Reefs Fishery Management Plan, Updated Information, Amendment 2 of the Gulf of Mexico and South Atlantic, Due: October 31, 1994, Contact: Rolland A. Schmitten (301) 713–2239

*EIS No. 940398*, Draft EIS, FHA, WV, Spring Hills Subdivision Housing Project, Construction, Funding, Charlestown, WV, Due: November 14, 1994, Contact: Robert D. Lewis (304) 291–4248

*EIS No. 940399*, Draft EIS, FHW, MO, US 160 Improvements, US 60/ Sunshine Street to the James River Freeway, Funding and COE Section 404 Permit, Greene County, MO, Due: November 14, 1994, Contact: Donald Newmann (314) 636–7104

*EIS No. 940400*, Final EIS, AFS/BLM/ NOA, AK, Exxon Valdez Oil Spill Restoration Plan Programmatic EIS, Implementation, Prince William Sound, Gulf of Alaska, AK, Due: October 31, 1994, Contact: Rod Kuhn (907) 278–8012

The US Department of Agriculture's Forest Service, US Department of the Interior's, Bureau of Land Management and the US Department of Commerce's, National Oceanic and Atmospheric Administration are Joint Lead Agencies for this project.

*EIS No. 940401*, Draft EIS, BLM, AZ, Cypus Tohono Open Pit Mine Expansion Project, Plan of Operation Approval and Drilling Permit, Implementation, Tohono O'odham Nation, Papago Indian Reservation, Pinal County, AZ, Due: November 30, 1994, Contact: Paul J. Buff (602) 780–8090

*EIS No. 940402*, Draft EIS, AFS, MT, Running Wolf Timber Sales, Implementation, Lewis and Clark National Forest, Judith Ranger District, Stanford, Judith Basin County, MT, Due: November 14, 1994, Contact: Rick M. Abt (406) 566–2292

*EIS No. 940403*, Final EIS, FHW, WY, US 14/16/20 Highway Improvements, Cody to Yellowstone National Park Highway, Funding and COE Section 404 Permit, Shoshone National Forest, Park County, WY, Due: October 31, 1994, Contact: Galen Hesterberg (307) 772–2101

*EIS No. 940404*, Draft EIS, FHW, PA, PA–0322 (Section B01) Transportation Corridor, Improvements from PA–0655 to Mt. Pleasant, Funding and COE Section 404 Permit, Mifflin County, PA, Due: November 23, 1994, Contact: Manuel A. Mark (717) 782–3461

*EIS No. 940405*, Draft EIS, UAF, MA, Fort Devens Army Installation Disposal and Reuse, Implementation, Worcester and Middlesex Counties, MA, Due: November 14, 1994, Contact: Lewis Walker (703) 695–7824

*EIS No. 940406*, Final EIS, COE, LA, West Bank of the Mississippi River Hurricane Protection Plan, Implementation, east of the Harvey Canal, New Orleans, LA, Due: October 31, 1994, Contact: Brett Herr (504) 862–2495

*EIS No. 940407*, Draft EIS, FTA, CA, South Sacramento Corridor, Transit Improvements, Funding, Sacramento, Yolo, EL Dorado and Placer Counties, CA, Due: November 14, 1994, Contact: Walter W. Strakosch (415) 744–3116

*EIS No. 940408*, Final EIS, AFS, AK, Ushk Bay Timber Sale, Availability of Timber to the Alaska Pulp Long-Term Timber Sale Contract, Timber Sale and Road Construction, Implementation, Tongass National Forest, Chichagof Island, AK, Due: October 31, 1994, Contact: Michael J. Weber (907) 747–6671

*EIS No. 940409*, Final EIS, DOE, NV, Pinon Pine Coal-Fired Power Project, Construction, Operation and Maintenance, Funding, Tracy Power Station, Storey County, NV, Due: October 31, 1994, Contact: Suellen Van Ooteghem (304) 284–5443

**Amended Notices**

*EIS No. 940354*, Draft EIS, COE, MO, ND, SD, NB, IA, KS, Missouri River Master Water Plan Operation, Multipurpose Project, SD, NB, IA, MO, Due: December 01, 1994, Contact: Lawrence Cieslik (402) 221–7360

Published FR—9–2–94—Due Date Correction.

Dated: September 27, 1994.

**Richard E. Sanderson,**

*Director, Office of Federal Activities.*

[FR Doc. 94–24279 Filed 9–29–94; 8:45 am]

BILLING CODE 6560–50–U

[FRL 5082–7]

## Clean Air Act Advisory Committee Notice of Meeting

**SUMMARY:** The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990 to provide independent advice and counsel to EPA on policy issues associated with the implementation of the Clean Air Act of 1990. The Advisory Committee shall be consulted on economic environmental, technical, scientific, and enforcement policy issues.

**OPEN MEETING NOTICE:** Pursuant to 5 U.S.C. 2 Section 10(a)(2), notice is hereby given that the Clean Air Act Advisory Committee will hold its next open meeting on Friday, October 14 from 8:30 a.m. to 3:30 p.m., at the Sheraton Grand Hotel, 2525 West Loop South in Houston, Texas. Seating will be available on a first come, first served basis. The three sub-committees of the CAAAC (Permits/NSR/Toxics Integration, Economic Incentives and Regulatory Innovation and Linking Energy, Transportation and Air Quality Concerns) will be conducting meetings at the Sheraton Grand Hotel on Thursday, October 13, beginning at 4:00 p.m.

The full committee meeting will include reports from the sub-committee meetings, as well as a discussion of EPA's toxics strategy for implementation and discussions on national environmental justice issues. Mayor Bob Lanier will welcome the committee to Houston at 8:45 a.m. on October 14, and Mr. John Hall, Chairman of the Texas Natural Resource Conservation Commission will address the committee at 12:30 p.m. that afternoon.

**INSPECTION OF COMMITTEE DOCUMENTS:** The committee agenda and any documents prepared for the meeting will be publicly available in Houston. Thereafter, these documents, together with the CAAAC meeting minutes will be available for public inspection in EPA Air Docket Number A–94–34 in Room 1500 of EPA Headquarters 401 M Street, S.W., Washington, D.C.

**FOR FURTHER INFORMATION** concerning this meeting of the CAAAC please contact Karen Smith, Office of Air and Radiation, US EPA (202) 260–6379, FAX (202) 260–5155, or by mail at US EPA,

Office of Air and Radiation (Mail Code 6101), Washington, D.C. 20460.

Dated: September 23, 1994.

**Mary D. Nichols,**

*Assistant Administrator for Air and Radiation.*

[FR Doc. 94–24255 Filed 9–29–94; 8:45 am]

BILLING CODE 6560–50–M

[OPP–66201; FRL 4911–9]

## Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

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

**ACTION:** Notice.

**SUMMARY:** In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

**DATES:** Unless a request is withdrawn by December 29, 1994, orders will be issued cancelling all of these registrations.

**FOR FURTHER INFORMATION CONTACT:** By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

### II. Intent to Cancel

This notice announces receipt by the Agency of requests to cancel some 40 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 2. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

| Registration No. | Product Name | Chemical Name |
|---|---|---|
| 000059–00196 | Atroban Insecticide Ear Tag X 20 | Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl- |
| 000100–00627 | Dual 15G Herbicide | 2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-4-methylphenyl)acetamid |
| 000239–02416 | Slug-Geta Snail & Slug Bait | 4-(Methylthio)-3,5-xylyl methylcarbamate |
| 000352–00421 | 1% Hexazinone Liquid Weed Killer | 3-Cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*, 3*H*)-dione |
| 000352–00422 | 1.25% Hexazinone Liquid Weed Killer | 3-Cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*, 3*H*)-dione |
| 000499–00276 | Whitmire Mesurol PT 1700 Total Release Insecticide | 4-(Methylthio)-3,5-xylyl methylcarbamate |
| 000802–00584 | Lilly/Miller Tomato Fruit Set | 4-Chlorophenoxyacetic acid |
| 000875–00160 | Malacorse | *O,O*-Dimethyl phosphorodithioate of diethylmercaptosuccinate |
| 000909–00097 | Cooke Tomato Plus | 4-Chlorophenoxyacetic acid |
| 000935–00060 | Convert-A-Clor Brominating Granules | Sodium bromide<br>Sodium dichloroisocyanurate dihydrate |
| 001624–00003 | 20 Mule Team Concentrated Borascu | Boron sodium oxide (B4Na2O7) (1330–43–4) |
| 001624–00094 | Borax for Fomes Annosus Control | Borax (B4Na2O7.10H2O) (1303–96–4) |
| 001769–00315 | Dual-Cide | (5-Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate |
| 001769–00357 | Drop Dead | 2-Methyl-4-oxo-3-(2-propenyl)-2-cyclopenten-1-yl-*d*-trans-2,2-dimethyl-<br>Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl- |
| 001769–00363 | RF90064A | 5-Bromo-3-sec-butyl-6-methyluracil |
| 001769–00364 | RF90064B | 5-Bromo-3-sec-butyl-6-methyluracil |
| 001769–00366 | RF90358 (Germ Guard) Toilet Seat Disinfectant | Alkyl* dimethyl benzyl ammonium chloride *(60%$C_{14}$,30%$C_{16}$, 5%$C_{18}$, 5%$C_{12}$)<br>Alkyl* dimethyl ethylbenzyl ammonium chloride*(50%$C_{12}$, 30%$C_{14}$, 17%$C_{16}$, 3%$C_{18}$) |
| 001839–00148 | Douglas DC-2200 Bowl Cleaner | Hydrogen chloride<br>Alkyl* dimethyl benzyl ammonium chloride *(50%$C_{14}$, 40%$C_{12}$, 10%$C_{16}$) |
| 001839–00153 | Rolar Brand 34 Iodine Sanitizer | Nonylphenoxypolyethoxyethanol - iodine complex<br>Phosphoric acid |
| 001864–00005 | Cen-Pe-Co Soothing Protective Face Fly Treatment | Dipropyl isocinchomeronate<br>*N*-Octyl bicycloheptene dicarboximide |

TABLE 2. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

| Registration No. | Product Name | Chemical Name |
|---|---|---|
| | | (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%<br>Pyrethrins |
| 001864–00011 | New Cen-Pe-Co Never-Lite Stock Spray | Dipropyl isocinchomeronate<br>*N*-Octyl bicycloheptene dicarboximide<br>(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%<br>Pyrethrins |
| 001864–00012 | Cen-Pe-Co New Cattle Oil | Dipropyl isocinchomeronate<br>*N*-Octyl bicycloheptene dicarboximide<br>*O,O*-Dimethyl phosphorodithioate of diethylmercaptosuccinate |
| 001864–00014 | Cen-Pe-Co Super 100 Bran and Stock Spray | Dipropyl isocinchomeronate<br>*N*-Octyl bicycloheptene dicarboximide<br>(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%<br>Pyrethrins |
| 005664–00018 | Sanipor Porcelain Cleaner and Disinfectant | Hydrogen chloride<br>Alkyl* dimethyl benzyl ammonium chloride *(50%$C_{14}$, 40%$C_{12}$, 10%$C_{16}$) |
| 007001–00292 | Grass & Weed Killer | Sodium metaborate (NaBO2)<br>3-(3,4-Dichlorophenyl)-1,1-dimethylurea<br>Sodium chlorate |
| 007001–00340 | Borocil IV A Granular Grass & Weed Killer | Sodium metaborate (NaBO2)<br>5-Bromo-3-sec-butyl-6-methyluracil |
| 010370–00063 | Ford's Bor-Kill Roach Powder | Boric acid |
| 010370–00238 | Superior Brand Roach & Ant Bait-Gel | Boric acid |
| 010370–00266 | Pharaoh Ant Piper | Boric acid |
| 011694–00027 | Dymon Bowl Kleen 200 | Hydrogen chloride<br>Alkyl* dimethyl benzyl ammonium chloride *(60%$C_{14}$, 30%$C_{16}$, 5%$C_{18}$, 5%$C_{12}$)<br>Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%$C_{12}$, 32%$C_{14}$) |
| 034704–00633 | Butylate 10 G Selective Herbicide for Field, Sweet and | *S*-Ethyl diisobutylthiocarbamate |
| 034704–00702 | Clean Crop Butylate 6.7ec | *S*-Ethyl diisobutylthiocarbamate |
| 044716–00001 | Fearing Insecticide Ear Tags | Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl- |
| 049074–00005 | Michlin Malathion EC | *O,O*-Dimethyl phosphorodithioate of diethylmercaptosuccinate |
| 050534–00040 | Post-Emerge Grass & Weed Killer and Lawn Renovator | Cacodylic acid<br>Cacodylic acid, sodium salt |
| 050534–00123 | Crop Rider 20% Aqua Granular | Acetic acid, (2,4-dichlorophenoxy)-2-ethylhexylester |
| 050534–00124 | Crop Rider "45" | Acetic acid, (2,4-dichlorophenoxy)-2-ethylhexylester |
| 050534–00137 | 2,4-D 20% Terra G | Acetic acid, (2,4-dichlorophenoxy)-2-ethylhexylester |
| 050534 MS–90–0014 | Dacamine 4D Weed Killer | 2,4-Dichlorophenoxyacetic acid<br>*N*-Oleyl-1,3-propylenediamine 2,4-dichlorophenoxyacetate |
| 064745–00001 | Three Elephant Tronabor | Boron sodium oxide (B4Na2O7), pentahydrate |

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90–day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

| EPA Company No. | Company Name and Address |
|---|---|
| 000059 | Coopers Animal Health Inc., Director of Regulatory Affairs, 421 E. Hawley St, Mundelein, IL 60060. |
| 000100 | Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419. |
| 000239 | Solaris Group, The A Div of The Agricultural Group of Monsa, Box 5006, San Ramon, CA 94583. |
| 000352 | E. I. Du Pont De Nemours & Co., Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880. |

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

| EPA Company No. | Company Name and Address |
|---|---|
| 000499 | Whitmire Research Laboratories, Inc., 3568 Tree Ct., Industrial Blvd, St Louis, MO 63122. |
| 000802 | Chas H. Lilly Co., 7737 N.E. Killingsworth, Portland, OR 97218. |
| 000875 | Diversey Corp., 12025 Tech Center Dr, Livonia, MI 48150. |
| 000909 | Cooke Laboratory Products, Subsidiary of The Chas. H. Lilly Co., 7737 N.E. Killingsworth, Portland, OR 97218. |
| 000935 | Occidental Chemical Corp., Development Center, V-81 Box 344, Niagara Falls, NY 14302. |
| 001624 | U.S. Borax Inc., Occupational Health & Product Safety, 26877 Tourney Rd, Valencia, CA 91355. |
| 001769 | NCH Corp., 2727 Chemsearch Blvd., Irving, TX 75062. |
| 001839 | Stepan Co., 22 W. Frontage Rd., Northfield, IL 60093. |
| 001864 | Central Petroleum Co., 1449 W. 117th St, Cleveland, OH 44107. |
| 005664 | Cantol Inc., 2211 N. American Street, Philadelphia, PA 19133. |
| 007001 | J.R. Simplot Co., Box 198, Lathrope, CA 95330. |
| 010370 | Roussel UCLAF Corp., 95 Chestnut Ridge Rd, Montvale, NJ 07645. |
| 011694 | Dymon, Inc., 3401 Kansas Ave., Box 6267, Kansas City, KS 66106. |
| 034704 | Platte Chemical Co. Inc., c/o William M. Mahlburg, Box 667, Greeley, CO 80632. |
| 044716 | Fearing Mfg. Co Inc., 490 Villaume Ave, So., St. Paul, MN 55075. |
| 049074 | Michlin Diazo Products Corp., 10501 Haggerty St., Dearborn, MI 48126. |
| 050534 | ISK Biosciences Corp., 5966 Heisley Rd., Box 8000, Mentor, OH 44061. |
| 064745 | North American Chemical Co, 8300 College Blvd, Overland Park, KS 66210. |

### III. Loss of Active Ingredients

Unless the request for cancellation is withdrawn, one pesticide active ingredient will no longer appear in any registered products. Those who are concerned about the potential loss of this active ingredient for pesticidal use are encouraged to work directly with the registrant to explore the possibility of their withdrawing the request for cancellation. This active ingredient is listed in the following Table 3, with the EPA Company Number.

TABLE 3. — ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANTS' REQUESTS TO CANCEL

| Cas No. | Chemical Name | EPA Company No. |
|---|---|---|
| 2212–59–1 | *N*-Oley-1,3-propylenediamine 2,4-dichlorophenoxyacetate | 050534 |

### IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before December 29, 1994. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

### V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

### List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: September 22, 1994.

**Daniel M. Barolo,**

*Director, Office of Pesticide Programs.*

[FR Doc. 94–24248 Filed 9–29–94; 8:45 am]

Billing Code 6560–50–F

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[OPP–34065; FRL 4912–1]

## Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

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

**ACTION:** Notice.

**SUMMARY:** In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

**DATES:** Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on December 29, 1994.

**FOR FURTHER INFORMATION CONTACT:** By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761.

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

Section 6(f)(1) of FIFRA, provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

## II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 16 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before [*insert date 90 days after date of publication*] to discuss withdrawal of the applications for amendment. This 90–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

| EPA Reg No. | Product Name | Active Ingredient | Delete From Label |
|---|---|---|---|
| 000464–00070 | DOWICIDE 1 Antimicrobial | (*o* - Phenylphenol) | Postharvest use on apples, cantaloupes, carrots, cherries, cucumbers, kiwifruit, kumquats, nectarines, peppers (bell), peaches, pineapples, plums (fresh prunes), sweet potatoes, tomatoes |
| 000829–00203 | Insecticide Bait | (Trichlorfon) | Beans (dry & snap), beans (lima), corn, cowpeas (southern peas, blackeyed peas, crowder), brussel sprouts, cabbage, cauliflower, collards, lettuce, peanuts, pumpkins, table beets, tobacco, tomatoes |
| 001021–01091 | Evergreen Emulsifiable 60–6 | (Pieronyl butoxide) (Pyrethrins) | Tarrow root, bulb vegetables, napa, french beans, boysenberry, subtropical fruits, tree nuts, cereal grains, grass, forage, fodder, hay, non-grass animal feeds, cilantaro, herbs & spices, artichoke, chayhote, coffee, cotton, hops, jojoba, ornamental turf grass, sesame, sunflower (leaves & seed), tea |
| 001021–01110 | Evergreen Growers Spray | (Pyrethrins) | Tarrow root, bulb vegetables, napa, french beans, boysenberry, subtropical fruits, tree nuts, cereal grains, grass, forage, fodder, hay, non-grass animal feeds, cilantaro, herbs & spices, artichoke, chayhote, coffee, cotton, hops, jojoba, ornamental turf grass, sesame, sunflower (leaves & seed), tea |
| 001021–01340 | Formula 7243 | (Piperonyl butoxide) (Pyrethrins) | Tarrow root, bulb vegetables, napa, french beans, boysenberry, subtropical fruits, tree nuts, cereal grains, grass, forage, fodder, hay, non-grass animal feeds, cilantro, herbs & spices, artichoke, chayhote, coffee, cotton, hops, jojoba, ornamental turf grass, sesame, sunflower (leaves & seed), tea |
| 001021–001612 | Evergreen Growers Spray 7405 | (Pyrethrins) | Tarrow root, bulb vegetables, napa french beans, boysenberry, subtropical fruits, tree nuts, cereal grains, grass, forage, fodder, hay, non-grass animal feeds, cilantro, herbs & spices, artichoke, chayhote, coffee, cotton, hops, jojoba, ornamental turf grass, sesame, sunflower (leaves & seed) tea |

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

| EPA Reg No. | Product Name | Active Ingredient | Delete From Label |
|---|---|---|---|
| 005905–00196 | Cythion, The Premium Grade Malathion | (Malathion) | Almonds, apples, asparagus, bulk spray treatment (peanuts into storage), carrots, cranberries, melons, peanuts, peas & pea vines for storage, pears, plums & prunes (dormant and delayed dormant sprays), pumpkins, quinces, residual warehouse spray (before storing peanuts), safflower soybeans, stored grains, sugar beets, tobacco, soil incorporation instructions from strawberries |
| 005905–00250 | Cythion 8 Lb. Emulsion | (Malathion) | Asparagus, sugar beets, carrots, pumpkins, cranberries, safflower, strawberries (soil incorporation only), sorghum, seeds & rice from stored grains, grains (going into storage), grains (after storage), residual spray for bagged flour & packaged cereals, field & garden seed, peanuts, poultry, in buildings |
| 009779–00005 | Malathion 5 | (Malathion) | Apples, grains going into storage, after grains are stored, stored peanuts, livestock and poultry, tobacco, asparagus, carrots (under root crop), stored grain bins, peanuts, soybeans, anise, indoors (in buildings), use in animal bedding, sheds, dairy barns, melons, pumpkins |
| 010163–00200 | Prefar 4-E | (Bensulide) | Cotton, grass seed crops, tomatoes |
| 010404–00066 | Horticultural Oil Insecticide | (Petroleum distillate, oils, solvent, or hydrocarbons) | Apples, pears, pecans, citrus, peaches, plums, prunes, sweet corn, field corn, sugar beets |
| 034704–00003 | Malathion 55 Insecticide Premium Grade | (Malathion) | Wheat, oats, rice, corn, rye, barley, grain sorghum, field and garden seeds, apples, cranberries, melons, pears, plums, prunes, domestic animal uses for beef cattle, non-lactating dairy cattle, hogs, sheep, goats, poultry, indoor animal premise uses for domestic animal & poultry |
| 034704–00108 | Clean Crop Malathion 57 EC | (Malathion) | Almonds, asparagus, apples, carrots, cowpea hay, filberts, melons, peanuts, pears, plums, prunes, pumpkins, quinces, safflower, soybeans, strawberries (as a soil application), sugar beets, tobacco, stored commodity treatment for wheat, oats, rice, corn rye, barley, grain sorghum, almonds, peanuts, field and garden seeds, bagged citrus pulp, domestic animal uses for beef cattle, non- lactating dairy cattle, hogs, sheep, goats, poultry, animal premise uses for poultry houses, pens and manure piles, wineries and processing plants |
| 034704–00544 | Cythion 5-E Insecticide | (Malathion) | Carrots, melons, safflower, pumpkins, sugar beets, hogs, sheep, goats, horses, beef cattle |
| 045385–00021 | Dursban 2E Insecticide | (Chlorpyrifos (ANSI)) | Mosquito uses |
| SLN OR-800050 (Co. No. 000400) | Plantvax 75W | (Oxycarboxin) | Outdoor ornamental, turf |

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

| Company No. | Company Name and Address |
|---|---|
| 000464 | The Dow Chemical Company, 1803 Building, Midland, MI 48674. |
| 000829 | Southern Agricultural Insecticides, P.O. Box 218, Palmetto, FL 34220. |
| 001021 | McLaughlin Gormley King Co., 8810 Tenth Avenue North, Minneapolis, MN 55427. |
| 005905 | Helena Chemical Co., 6075 Poplar Ave., Suite 500, Memphis, TN 38119. |
| 009779 | Riverside/Terra Corp., 600 Fourth Street, Sioux City, IA 51101. |
| 010163 | Gowan, P.O. Box 5695, Yuma, AZ 85366. |
| 010404 | Lesco, Inc., 20005 Lake Road, Rocky River, OH 44116. |
| 037404 | Platte Chemical Co., P.O. Box 667, Greeley, CO 80632. |
| 045385 | Chem-Tox, Inc., 481 Scotland Road, McHenry, IL 60050. |

### III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

### List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: September 22, 1994.

**Daniel M. Barolo,**

*Director, Office of Pesticide Programs.*

[FR Doc. 94-24246 Filed 9-29-94; 8:45 am]

BILLING CODE 6560-50-F

[OPP-66202; FRL 4912-2]

## Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

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

**ACTION:** Notice.

**SUMMARY:** In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

**DATES:** Unless a request is withdrawn by December 29, 1994, orders will be issued cancelling all of these registrations.

**FOR FURTHER INFORMATION CONTACT:** By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305-5761.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

### II. Intent to Cancel

This notice announces receipt by the Agency of requests to cancel some 39 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

| Registration No. | Product Name | Chemical Name |
|---|---|---|
| 000264-00311 | Sevin 20% Bait Carbaryl Insecticide | 1-Naphthyl-*N*-methylcarbamate |
| 000264-00312 | Sevin Carbaryl 10% Bait Insecticide | 1-Naphthyl-*N*-methylcarbamate |
| 000264-00317 | Sevin Brand 5% Granular Insecticide | 1-Naphthyl-*N*-methylcarbamate |
| 000264-00320 | Sevin 5% Bait Carbaryl Insecticide | 1-Naphthyl-*N*-methylcarbamate |
| 000264-00323 | Sevin 4 Oil Carbaryl Insecticide | 1-Naphthyl-*N*-methylcarbamate |
| 000264-00337 | Sevin 4 Oil 41 Carbaryl Insecticide | 1-Naphthyl-*N*-methylcarbamate |
| 000264-00345 | Sevin Fr Carbaryl Insecticide | 1-Naphthyl-*N*-methylcarbamate |
| 000264-00420 | Sevin Brand Carbaryl Insecticide Spray Ready-To-Use | 1-Naphthyl-*N*-methylcarbamate |
| 000264-00423 | Sevin Brand Fl Carbaryl Insecticide | 1-Naphthyl-*N*-methylcarbamate |
| 000264-00428 | Sevin Brand RP4-A Carbaryl Insecticide | 1-Naphthyl-*N*-methylcarbamate |
| 000264-00503 | Sevin Brand RP2-He Carbaryl Insecticide | 1-Naphthyl-*N*-methylcarbamate |
| 000499-00232 | Whitmire PT 263 Knox Out | *O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate |
| 000499-00312 | Whitmire PT 242 Boric Acid Bait | Boric acid |

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

| Registration No. | Product Name | Chemical Name |
|---|---|---|
| 000499–00327 | Whitmire PT 243 Boric Acid Bait | Boric acid |
| 001864–00005 | Cen-Pe-Co Soothing Protective Face Fly Treatment | Dipropyl isocinchomeronate<br>*N*-Octyl bicycloheptene dicarboximide<br>(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%<br>Pyrethrins |
| 001864–00011 | New Cen-Pe-Co Never-Lite Stock Spray | Dipropyl isocinchomeronate<br>*N*-Octyl bicycloheptene dicarboximide<br>(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%<br>Pyrethrins |
| 001864–00012 | Cen-Pe-Co New Cattle Oil | Dipropyl isocinchomeronate<br>*N*-Octyl bicycloheptene dicarboximide<br>*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate |
| 001864–00014 | Cen-Pe-Co Super 100 Bran and Stock Spray | Dipropyl isocinchomeronate<br>*N*-Octyl bicycloheptene dicarboximide<br>(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%<br>Pyrethrins |
| 002935–00087 | Malathion 4 Dust | *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate |
| 002935 OR–84–0033 | Malathion 5 Pyrethrum 0.1 Dust P.B. | *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate<br>(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%<br>Pyrethrins |
| 002935 UT–81–0005 | Red-Top Malathion 5 Pyrethrum 0.1 Dust | *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate<br>Pyrethrins |
| 002935 UT–83–0014 | Malathion 5 Pyrethrum 0.1 Dust. P.B. | *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate<br>Pyrethrins |
| 003125–00234 | Mesurol 2% Bait | 4-(Methylthio)-3,5-xylyl methylcarbamate |
| 003125–00257 | Mesurol 75% Concentrate | 4-(Methylthio)-3,5-xylyl methylcarbamate |
| 003125–00258 | Mesurol Technical Insecticide | 4-(Methylthio)-3,5-xylyl methylcarbamate |
| 003125–00288 | Mesurol 75% Wettable Powder | 4-(Methylthio)-3,5-xylyl methylcarbamate |
| 003125–00387 | Mesurol 2% Bait for Homeowner Use | 4-(Methylthio)-3,5-xylyl methylcarbamate |
| 004822–00080 | Raid Room Guard Vaporizing Strip Insecticide | 2,2-Dichlorovinyl dimethyl phosphate |
| 005905–00324 | 57% Premium Grade Malathion | *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate |
| 008590–00234 | Agway Scale-Rid | *O,O,O',O'*-Tetraethyl *S,S'*-methylene bis(phosphorodithioate)<br>Aliphatic petroleum hydrocarbons |
| 009444–00133 | Borid Turbo | Boric acid |
| 035900–00010 | Sal San 5 S | Phosphoric acid |
| 035900–00011 | Salt Nuggets with Resingard Water Softener Sanitizing F | Phosphoric acid |
| 037425–00009 | Adams Flea and Tick Dip | *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate |
| 044716–00001 | Fearing Insecticide Ear Tags | Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-, |
| 050534–00040 | Post-Emerge Grass & Weed Killer and Lawn Renovator | Cacodylic acid<br>Cacodylic acid, sodium salt |
| 059639–00014 | Dibrom 4 Dust | 1,2-Dibromo-2,2-dichloroethyl dimethyl phosphate |
| 059639–00025 | Dibrom LVC 10 | 1,2-Dibromo-2,2-dichloroethyl dimethyl phosphate |
| 059639–00073 | Technical Naled | 1,2-Dibromo-2,2-dichloroethyl dimethyl phosphate |

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90–day period.

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

| EPA Company No. | Company Name and Address |
|---|---|
| 000264 | Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27709. |
| 000499 | Whitmire Research Laboratories, Inc., 3568 Tree Ct., Industrial Blvd, St Louis, MO 63122. |
| 001864 | Central Petroleum Co., 1449 W. 117th St, Cleveland, OH 44107. |
| 002935 | Wilbur Ellis Co., 191 W. Shaw Ave., Fresno, CA 93704. |
| 003125 | Miles Inc., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120. |
| 004822 | S.C. Johnson & Son Inc., 1525 Howe Street, Racine, WI 53403. |
| 005905 | Helena Chemical Co, 6075 Poplar Ave., Suite 500, Memphis, TN 38119. |
| 008590 | Agway Inc., c/o Universal Cooperatives Inc., Box 460, Minneapolis, MN 55440. |
| 009444 | Waterbury Companies Inc., Box 640, Independence, LA 70443. |
| 035900 | Ionics, Inc., 3039 Washington Pike, Bridgeville, PA 15017. |
| 037425 | Smithkline Beecham Animal Health, 1600 Paoli Pike, West Chester, PA 19380. |
| 044716 | Fearing Mfg. Co Inc., 490 Villaume Ave, So., St. Paul, MN 55075. |
| 050534 | ISK Biosciences Corp., 5966 Heisley Rd., Box 8000, Mentor, OH 44061. |
| 059639 | Valent U.S.A. Corp., 1333 N. California Blvd, Ste 600, Walnut Creek, CA 94596. |

### III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before December 29, 1994. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

### IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1–year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

### List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: September 22, 1994.

**Daniel M. Barolo,**

*Director, Office of Pesticide Programs.*

[FR Doc. 94–24247 Filed 9–29–94; 8:45 am]
BILLING CODE 6560–50–F02

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**[OPPTS–42052P; FRL–4756–5]**

## Notice of Opportunity to Initiate Negotiations for TSCA Section 4 Enforceable Consent Agreements; Solicitation of Testing Proposals for ATSDR Chemicals

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

**ACTION:** Notice.

**SUMMARY:** This notice invites manufacturers and processors of certain chemical substances who wish to participate in testing negotiations for various chemicals to develop and submit testing program proposals to EPA. The chemicals are hazardous substances identified for data needs by the Agency for Toxic Substances and Disease Registry (ATSDR), National Toxicological Program (NTP) and EPA pursuant to section 104(i)(5) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA or Superfund)(42 U.S.C. 9601–9675). These 12 chemical substances are vinyl chloride, benzene, trichloroethylene, tetrachloroethylene, hydrogen cyanide, sodium cyanide, toluene, methylene chloride, chloroethane, mercury, chromium, and beryllium. These substances and associated data needs appear in Table 1 below. The specific forms of the metals mercury, chromium, and beryllium to be tested are yet to be determined; EPA will solicit testing proposals for the specific forms of these metals at a later date. Testing proposals should cover all identified data needs of a substance (or multiple substances) in order to be considered for Enforceable Consent Agreement (ECA) negotiation. If, after receiving testing proposals, EPA elects to pursue negotiations for one or more ECAs applicable to specific chemicals, EPA will solicit requests to be designated an interested party at that point. EPA has authority to require testing for these 12 chemical substances under section 4 of the Toxic Substances

Control Act (TSCA)(15 U.S.C. 2601–2692) and if an ECA-based approach does not prove viable, EPA would proceed with rulemaking to require the needed testing.

**DATES:** Written testing proposals must be received by November 29, 1994. EPA may extend the deadline for receipt of testing proposals upon a showing of good faith efforts to develop testing proposals by the initial deadline.

**ADDRESSEES:** Submit three copies of written testing proposals to TSCA Docket Receipts (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NE B607, 401 M St., SW., Washington, DC 20460. Submissions should bear the document control number (OPPTS–42052P; FRL–4756–5). The public record supporting this action, including comments, is available for public inspection at the above address from 12 noon to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551. For specific information regarding this action or related activities, contact Brian P. Riedel, Project Manager, Chemical Testing and Information Branch (7405), Rm. NE–1606, 401 M St., SW., Washington, DC 20460, (202) 260–0321.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. Solicitation for Testing Proposals*

EPA's procedures for requiring the testing of chemical substances under section 4 of TSCA include the adoption of ECAs and the promulgation of test rules. On numerous occasions, chemical companies have approached EPA to negotiate ECAs for testing chemicals which are likely to become the subject of proposed test rules. EPA will follow the procedures outlined in unit II of this notice to develop ECAs.

### *B. Chemical Data Needs*

The data needs which are the subject of this notice were determined in accordance with the requirements of the Superfund Amendments and Reauthorization Act (SARA) of 1986 which amended and extended CERCLA.

Section 104(i) of CERCLA requires ATSDR and EPA to prepare and revise a list of hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL) and which ATSDR and EPA, in their sole discretion, determine are posing the most significant potential threat to human health. The lists of these 275 hazardous substances were published in the **Federal Register** on April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43615); October 17, 1990 (55 FR 42067); October 17, 1991 (55 FR 52166); October 28, 1992 (57 FR 48801); and October 18, 1993 (58 FR 53739).

Section 104(i) of CERCLA also directs ATSDR to prepare toxicological profiles of each listed hazardous substance. Section 104(i)(3) outlines the content of these profiles. Each profile is required to include an examination, summary and interpretation of available toxicological information and epidemiologic evaluations in order to ascertain the levels of significant human exposure for the substance and the associated health effects. The profiles must also include a determination of whether adequate information on the health effects of each substance is available or in the process of development. ATSDR has prepared 110 toxicological profiles covering 195 substances. (One toxicological profile may cover several related substances).

Under CERCLA, section 104(i)(5), when adequate information is not available on the health effects of each substance, ATSDR, in cooperation with the National Toxicology Program (NTP), is required to assure the initiation of a research program designed to determine such health effects (and techniques for developing methods to determine such health effects).

As the first step in developing its health effects research program, ATSDR identified data needs for each substance in the toxicological profiles. These data needs were reviewed by scientists from ATSDR, NTP, EPA and the Centers for Disease Control, peer reviewed by an external review panel, and made available for public comment. Prior to final publication of the toxicological profiles, ATSDR considered all public comments it received regarding identification of data needs for the substances.

The next step in the development of the health effects research program (or the substance-specific research program) involved the creation of the "Decision Guide for Identifying Substance-Specific Data Needs Related to Toxicological Profiles" (Decision Guide), published in the **Federal Register** on September 11, 1989 (54 FR 37618). Applying the principles discussed in the Decision Guide, ATSDR published the "Identification of Priority Data Needs for 38 Priority Hazardous Substances" in the **Federal Register** on October 17, 1991 (56 FR 52178). As required by CERCLA, section 104(i)(5), ATSDR considered recommendations from the Interagency Testing Committee (ITC), and, with EPA, coordinated development of these priority data needs with NTP and with programs of toxicological testing established under TSCA and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)(7 U.S.C. 136). The purpose of such coordination is to avoid duplication of effort and to assure that the listed hazardous substances are tested thoroughly at the earliest practicable date. ATSDR also considered public comments on identification of the priority data needs. On November 16, 1992, ATSDR published the "Announcement of Final Priority Data Needs for 38 Priority Hazardous Substances" in the **Federal Register** (57 FR 54150). Copies of the FR actions cited above are available in the docket established for this action (OPPTS–42052P; FRL–4756–5).

CERCLA, section 104(i)(5)(C) provides that TSCA authorities may be used to carry out the health effects research program. CERCLA, section 104(i)(5)(D) declares that:

> [i]t is the sense of the Congress that the costs of [conducting health effects research programs] be borne by the manufacturers and processors of the hazardous substances in question, as required in programs of toxicological testing under the Toxic Substances Control Act.

In October 1992, ATSDR requested that EPA test 38 substances using authorities under TSCA and FIFRA. EPA coordinated extensively with other Federal agencies (including the Occupational Safety and Health Administration, National Institute for Occupational Safety and Health, Mine Safety and Health Administration, and the Consumer Product Safety Commission) and among its own programs (including Office of Air and Radiation, Office of Water, Office of Solid Waste and Emergency Response, and Office of Research and Development) to evaluate ATSDR's request for testing. In addition, EPA, ATSDR, and the National Institute of Environmental Health Sciences (NIEHS) met as members of the Tri-Agency Superfund Applied Research Committee (TASARC) to discuss ATSDR's data needs and EPA's response. Copies of the minutes of the TASARC meetings are available in the docket established for this action.

In response to ATSDR's initial request to test 38 substances, EPA deleted substances from the initial list and deleted and added associated data needs based on various factors including, but not limited to, the appropriateness of using TSCA authority to require testing

of certain substances and the needs of other Federal Agencies and EPA programs for certain test data. Relevant correspondence between EPA and ATSDR regarding these selections is available in the docket established for this action. In a letter dated November 9, 1993, EPA informed ATSDR that EPA would pursue testing of ATSDR substances under section 4 of TSCA. The ATSDR list of 38 substances was modified to contain the 12 substances shown in Table 1 below with a summary description of data needs. These substances will be added to the next edition of the Office of Pollution Prevention and Toxics' Master Testing List scheduled for release in FY '95. Further description of the data needs are available in the docket established for this action.

Note that TASARC has set up a workgroup to identify the specific forms of the metals mercury, chromium and beryllium to be tested. This workgroup will consider the needs of other Federal Agencies and EPA programs. In addition, EPA will solicit testing proposals for the specific forms of these metals at a later date. Note also that EPA has not yet developed testing guidelines for certain endpoints indicated in Table 1 below. EPA particularly encourages submission of testing guidelines for these endpoints which may be used as part of a testing proposal.

EPA realizes that under certain circumstances, as outlined below, route-to-route extrapolation based on valid pharmacokinetic (PK) data can offer a useful and less expensive alternative to retesting by another route of exposure to chemical substances that have already been tested by one route. Therefore, EPA will consider entering into ECAs for PK testing under protocols proposed by prospective test sponsors.

EPA will consider route-to-route extrapolation of toxicity data from routes other than those proposed in Table 1 below when it is scientifically reasonable to empirically derive the risk. Derivation of the risk is only reasonable when portal-of-entry effects and first-pass effects can be ruled out or adequately characterized. Regardless of the toxic endpoint considered, EPA's ability to perform quantitative route-to-route extrapolation is critically dependent on the amount and type of data available. The minimum information needed includes both the nature of the toxic effects and a description of the relationship between exposure and the toxic effect.

The preferred method for performing route-to-route extrapolation involves the development of a physiologically-based pharmacokinetic (PBPK) model that describes the disposition (deposition, absorption, distribution, metabolism, and elimination) of the chemical for the routes of interest. PBPK models must be used in conjunction with toxicity and mechanistic studies in order to relate the effective dose associated with an effect for the test species and conditions to other scenerios.

The primary purpose of this ASTDR/EPA health effects testing program is to meet the substance-specific information needs of the public and the scientific community, and, consistent with the guidelines discussed in the Decision Guide, this testing program will supply toxicity and exposure information which will assist in the development of Superfund health assessments by ASTDR. In addition, because of the involvement by other Federal Agencies and EPA offices in reviewing the testing needs identified for these chemicals, this testing program will supply test data which will also meet the needs of other Federal Agencies and EPA programs.

TABLE 1.—DATA NEEDS AND TESTING GUIDELINES

| Chemical and CAS No. | Proposed Testing | Guideline (40 CFR) |
|---|---|---|
| Vinyl chloride (75–01–4) | Reproductive inhalation | R |
| | Developmental inhalation | D |
| | Neurotoxicity inhalation | N |
| Benzene (71–43–2) | Subchronic oral | 798.2650 |
| | Subchronic inhalation | 798.2450 |
| | Neurotoxicity inhalation | N |
| | Functional observational battery | |
| | Motor activity | |
| | Neuropathology | |
| | Reproductive inhalation | R |
| Trichloroethylene (79–01–6) | Acute oral | 798.1175 |
| | Subchronic oral | 798.2650 |
| | Immunotoxicity oral | I |
| Tetrachloroethylene (127–18–4) | Acute inhalation | A |
| | Reproductive inhalation | R |
| | Neurotoxicity subchronic inhalation | N |
| | Functional observational battery | |
| | Motor activity | |
| | Neuropathology | |
| | Developmental inhalation | D |
| | Immunotoxicity inhalation | I |
| Hydrogen cyanide (74–90–8) | Acute inhalation | A |
| | Subchronic inhalation | 798.2450 |

TABLE 1.—DATA NEEDS AND TESTING GUIDELINES—Continued

| Chemical and CAS No. | Proposed Testing | Guideline (40 CFR) |
|---|---|---|
| | Developmental inhalation | D |
| | Neurotoxicity subchronic inhalation | N |
| | Functional observational battery | |
| | Motor activity | |
| | Neuropathology | |
| Sodium cyanide (143–33–9) | Developmental oral | D |
| Toluene (108–88–3) | Comparative pharmacokinetic | PK |
| | Immunotoxicity oral | I |
| Methylene chloride (75–09–2) | Subchronic oral | 798.2650 |
| | Developmental oral | D |
| | Neurotoxicity subchronic oral | N |
| | Functional observational battery | |
| | Motor activity | |
| | Neuropathology | |
| | Immunotoxicity oral | I |
| Chloroethane* (Ethyl chloride) (75–00–3). | Comparative pharmacokinetic | PK |
| Mercury**(TBD) | | |
| Chromium**(TBD) | | |
| Beryllium**(TBD) | | |

**Notes:**

*Note that a soon-to-be-published proposed test rule on hazardous air pollutants (HAPs) will cover chloroethane.

**A workgroup set up by TASARC is in the process of identifying the specific forms of these metals.

TBD -- The Chemical Abstract Service Registry Number(s) for the chemical(s) to be tested is yet to be determined.

R -- Proposed revised EPA guidelines for reproductive toxicity testing are under development and are anticipated to be finalized in the near future. Copies of the latest draft to date are available in the docket established for this action.

D -- Proposed revised EPA guidelines for developmental toxicity testing are under development and are anticipated to be finalized in the near future. Copies of the latest draft to date are available in the docket established for this action.

N -- EPA intends for parties subject to neurotoxicity testing requirements under this rule to follow the 1991 Neurotoxicology Testing Guidelines which are available in the docket established for this action.

I -- A workgroup established by the Tri-Agency Superfund Applied Research Committee (TASARC) is developing immunotoxicity testing guidelines.

A -- Revised EPA guidelines for acute inhalation testing are under development and will soon be published with a proposed test rule on HAPs. Copies of the latest draft to date are available in the docket established for this action.

PK -- EPA has developed testing guidelines which may be used for conducting comparative pharmokinetic testing. These final guidelines are awaiting publication and are available in the docket established for this action.

## II. Procedures for Development of ECAs

EPA will follow the procedures outlined below to develop ECAs for the chemical substances listed in Table 1 above.

1. *Submission of testing proposals for ECA negotiations.* Following publication of this Notice, manufacturers and processors have 60 days to develop testing proposals for the chemical substances listed in Table 1 above that they wish EPA to consider as candidates for ECA negotiations. EPA may extend the deadline for receipt of testing proposals upon a showing of good faith efforts to develop testing proposals by the initial deadline. The testing proposals should describe the testing to be performed in detail (test guideline or protocol, including route of administration, species, etc.) and explain in detail where there are deviations from tests proposed by EPA in Table 1 above. The Agency suggests as a model the testing proposal submitted on *N*-methylpyrrolidone (NMP) by the NMP Producers Group on September 11, 1992 found in the docket established for this action. In order for a testing proposal to be eligible for consideration, the proposal should cover all identified data needs of a substance (or multiple substances).

2. *Agency selection of most likely candidates for the ECA program.* EPA will review the submissions and select the most promising submissions as candidates for negotiation. Submissions which fully address EPA's concerns will have a higher chance of success than those which do not fully address all data needs issues.

3. *Formal solicitation of "interested parties" in the* **Federal Register.** If EPA selects a proposal as a candidate for negotiations, such negotiations will be conducted pursuant to procedures described in 40 CFR 790.28. Accordingly, EPA will publish a notice in the **Federal Register** soliciting persons interested in participating in or monitoring negotiations for the development of an ECA, to so notify the Agency in writing. Those individuals and groups who respond to EPA's notice by the deadline established in the notice will have the status of "interested parties" and will be afforded opportunities to participate in the negotiation process. Designation as an "interested party" will not incur any obligations. Submitters of testing proposals will be considered interested parties with regard to the subject(s) of their proposals and need not respond to the solicitation notice.

4. *Negotiation of testing program and development of an ECA.* Negotiations will be conducted in meetings open to

the public. Notification of meetings will be given only to persons identified as interested parties. The first negotiation meeting will establish the period for negotiation. If agreement is not reached within this prescribed time limit and EPA chooses not to extend the negotiation period, negotiations will be terminated and testing will be required under a rule.

5. *Approval of the ECA by interested parties and EPA and publication of a notice in the* **Federal Register.** After EPA and interested parties have agreed in principle on the terms of the ECA, the ECA text will be sent for approval to interested parties who are actual participants in the negotiation. Subsequent to approval of the ECA, EPA will publish a notice in the **Federal Register** summarizing the testing program and announcing that in lieu of a test rule, the Agency has issued a testing Consent Order that incorporates the ECA.

### III. Public Record

EPA has established a record for this action (docket control number OPPTS–42052P; FRL–4756–5). The record includes basic information considered by EPA in developing this action. EPA will supplement the record with additional information as it is received.

A public version of this record is available in the TSCA Nonconfidential Information Center (NCIC) from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The NCIC is located in Rm. NE–B607, Mail Code 7407, 401 M St., SW., Washington, DC, 20460. Written requests for copies of documents contained in this record may be sent to the above address or faxed to (202) 260–9555.

**Authority:** 15 U.S.C. 2603.

Dated: September 21, 1994.

**Charles M. Auer,**

*Director, Chemical Control Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 94–24250 Filed 9–29–94; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirement Submitted to Office of Management and Budget for Review

September 27, 1994.

The Federal Communications Commission has submitted the following information collection request to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. Section 3507. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, D.C. 20503, (202) 395–3561. For further information, contact Judy Boley, Federal Communications Commission, (202) 418–0214.

Please note: The Commission has requested expedited review of this collection by September 30, 1994, under the provisions of 5 CFR 1320.18.

*Title:* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Second Report and Order and Second Memorandum Opinion and Order, PP Docket No. 93–253.

*OMB Control Number:* 3060–0600.

*Action:* Revised Collections.

*Respondents:* Individuals, State or local governments, Non-profit institutions, Business or other for-profit, including small businesses.

*Frequency of response:* On occasion and recordkeeping requirements

*Estimated Annual Burden:*

| Section/forms | No. of Respondents | Estimated average hrs per response | Estimated annual burden |
|---|---|---|---|
| Section 1.2105 | 13,400 | .50 | 6,700 |
| Section 1.2107 | 10,000 | 1 | 10,000 |
| Section 1.2108 | 2,350 | 20 | 47,000 |
| Section 1.2110 | 1,000 | 2 | 2,000 |
| Section 1.2110* | 1,000 | 1 | 1,000 |
| Section 1.2111 | 100 | .50 | 50 |
| Microfiche | 13,400 | 2 | 26,800 |
| FCC Form 175 | 13,400 | .50 | 6,700 |
| FCC Form 175–S | 6,400 | .25 | 675 |

*Recordkeeping requirement.

Total Annual Burden: 100,925 Hours.

*Needs and Uses:* In the Second Memorandum Opinion and Order the Commission modified and supplemented several of its generic rules governing the auctioning of all licenses subject to competitive bidding. Applicants are required to file certain information so that the Commission can determine whether the applicants are legally, technically and financially qualified to be licensed and also whether applicants are entitled to receive certain benefits. Affected public are any member of the public who wants to become or remain a licensee.

The foregoing estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimates or any other aspect of the collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Branch, Paperwork Reduction Project, Washington, D.C. 20554 and to the Office of Management and Budget Paperwork Reduction Project, Washington, D.C. 20503.

Federal Communications Commission.

**Williams F. Caton,**

*Acting Secretary.*

### Subpart Q—Competitive Bidding Proceedings

**Authority:** 47 U.S.C. 309(j).

General Procedures

*Section 1.2101 Purpose*

The provisions of this subpart implement Section 309(j) of the Communications Act of 1934, as added by the Omnibus Budget Reconciliation Act of 1993 (P.L. 103–66), authorizing the Commission to employ competitive bidding procedures to choose from among two or more mutually exclusive applications for certain initial licenses.

*Section 1.2102 Eligibility of Applications for competitive Bidding*

(a) Mutually exclusive initial applications in the following services or classes of services are subject to competitive bidding:

(1) Interactive Video Data Service (*see* 47 CFR Part 95, Subpart F). This subsection does not apply to applications which were filed prior to July 26, 1993;

(2) Marine Public Coast Stations (*see* 47 CFR Part 80, Subpart J));

(3) Multipoint Distribution Service and Multichannel Multipoint Distribution Service (*see* 47 CFR Part 21, Subpart K). This subsection does not apply to applications which were filed prior to July 26, 1993;

(4) Exclusive Private Carrier Paging above 900 MHz (*see* 47 CFR Part 90, Subpart P and the Private Carrier Paging Exclusivity Report and Order, 8 FCC Rcd 8318, 58 FR 62289 (Nov. 26, 1993));

(5) Public Mobile Services (*see* 47 CFR Part 22), except in the 800 MHz Air-Ground Radiotelephone Service, and in the Rural Radio Service. This subsection does not apply to applications in the cellular radio service, such as cellular unserved area applications, that were filed prior to July 26, 1993;

(6) Specialized Mobile Radio Service (SMR) (*see* 47 CFR Part 90, Subpart S) including applications based on finder's preferences for frequencies allocated to the SMR service (*see* 47 CFR Part 90.173);

(7) Personal Communications Services (PCS) (*see* 47 CFR Part 24); and

Note: To determine the rules that apply to competitive bidding in the foregoing services, specific service rules should be consulted.

(b) The following types of license applications are not subject to competitive bidding procedures;

(1) Applications for renewal of licenses;

(2) Applications for modification of license; provided, however, that the Commission may determine that applications for modification that are mutually exclusive with other applications should be subject to competitive bidding;

(3) Applications for subsidiary communications services. A "subsidiary communications service" is a class of service where the signal for that service is indivisible from that of the main channel signal and that main channel signal is exempt from competitive bidding under other provisions of these rules. *See, e.g.*, § 1.2102(c) (exempting broadcast services). Examples of such subsidiary communications services are those transmitted on subcarriers within the FM baseband signal (*see* 47 CFR § 73.295), and signals transmitted within the Vertical Blanking Interval of a broadcast television signal; and

(4) Applications for frequencies used as an intermediate link or links in the provision of a continuous, end-to-end service where no service is provided directly to subscribers over the frequencies. Examples of such intermediate links are (a) point-to-point microwave facilities used to connect a cellular radio telephone base station with a cellular radio telephone mobile telephone switching office and (b) point-to-point microwave facilities used as part of the service offering in the provision of telephone exchange or interexchange service.

(c) Applications in the following services or classes of services are not subject to competitive bidding:

(1) Alaska-Private Fixed Stations (*see* 47 CFR Part 80, Subpart O);

(2) Broadcast radio (AM and FM) and broadcast television (VHF, UHF, LPTV) under 47 CFR Part 73;

(3) Broadcast Auxiliary and Cable Television Relay Services (*see* 47 CFR Part 74, Subparts D, E, F, G, H and L and Part 73, Subpart B);

(4) Instructional Television Fixed Service (*see* 47 CFR Part 74, Subpart I);

(5) Maritime Support Stations (*see* 47 CFR Part 80, Subpart N);

(6) Marine Operational Fixed Stations (*see* 47 CFR Part 80, Subpart L);

(7) Marine Radiodetermination Stations (*see* 47 CFR Part 80, Subpart M);

(8) Personal Radio Services (*see* 47 CFR Part 95), except applications filed after July 26, 1993, in the Interactive Video Data Service (*see* 47 CFR Part 95, Subpart F);

(9) Public Safety, Industrial/Land Transportation, General and Business Radio categories above 800 MHz, including finder's preference requests for frequencies not allocated to the SMR service (*see* 47 CFR Section 90.173), and including until further notice of the Commission, the Automated Vehicle Monitoring Service (*see* 47 CFR § 90.239);

(10) Private Land Mobile Radio Services between 470–512 Mhz (*see* 47 CFR Part 90, Subparts B–F), including those based on finder's preferences, *see* 47 CFR Section 90.173;

(11) Private Land Mobile Radio Services below 470 MHz (*see* 47 CFR Part 90, Subparts B–F) except in the 220 MHz band (*see* 47 CFR Part 90, Subpart T), including those based on finder's preferences (*see* 47 CFR Section 90.173); and

(12) Private Operational Fixed Services (*see* 47 CFR Part 94).

*Section 1.2103 Competitive Bidding Design Options*

(a) The Commission will select the competitive bidding design(s) to be used in auctioning particular licenses or classes of licenses on a service-specific basis. The choice of competitive bidding design will generally be made pursuant to the criteria set forth in the Second Report and Order in PP Docket No. 93–253, FCC 94–61, 59 FR 22980 (May 4, 1994), adopted March 8, 1994, but the Commission may design and test alternative methodologies. The Commission will choose from one or more of the following types of auction designs for services or classes of services subject to competitive bidding:

(1) Single round sealed bid auctions (either sequential or simultaneous)
(2) Sequential oral auctions
(3) Simultaneous multiple round auctions

(b) The Commission may use combinatorial bidding, which would allow bidders to submit all or nothing bids on combinations of licenses, in addition to bids on individual licenses. The Commission may require that to be declared the high bid, a combinatorial bid must exceed the sum of the individual bids by a specified amount. Combinatorial bidding may be used with any type of auction.

(c) The Commission may use single combined auctions, which combine bidding for two or more substitutable licenses and award licenses to the highest bidders until the available licenses are exhausted. This technique may be used in conjunction with any type of auction.

*Section 1.2104 Competitive Bidding Mechanisms*

(a) *Sequencing.* The Commission will establish the sequence in which multiple licenses will be auctioned.

(b) *Grouping.* In the event the Commission uses either a simultaneous multiple round competitive bidding design or combinatorial bidding, the Commission will determine which licenses will be auctioned simultaneously or in combination.

(c) *Reservation Price.* The Commission may establish a reservation price, either disclosed or undisclosed, below which a license subject to auction will not be awarded.

(d) *Minimum Bid Increments.* The Commission may, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms. The Commission may also establish suggested minimum opening bids on a service-specific basis.

(e) *Stopping Rules.* The Commission may establish stopping rules before or during multiple round auctions in order to terminate the auctions within a reasonable time.

(f) *Activity Rules.* The Commission may establish activity rules which require a minimum amount of bidding activity.

(g) *Withdrawal, Default and Disqualification Penalties.* As specified below, when the Commission conducts a simultaneous multiple round auction pursuant to § 1.2103, the Commission will impose penalties on bidders who withdraw high bids during the course of an auction, or who default on payments due after an auction closes or who are disqualified.

(1) Bid withdrawal prior to close of auction. A bidder who withdraws a high bid during the course of an auction will be subject to a penalty equal to the difference between the amount bid and the amount of the winning bid the next time the license is offered by the Commission. No withdrawal penalty would be assessed if the subsequent winning bid exceeds the withdrawn bid. This penalty amount will be deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission.

(2) Default or disqualification after close of auction. If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the penalty in subsection (1) plus an additional penalty equal to 3 percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent penalty will be calculated based on the defaulting bidder's bid amount. These amounts will be deducted from any upfront payments or down payments that the defaulting or disqualified bidder has deposited with the Commission.

When the Commission conducts single round sealed bid auctions or sequential oral auctions, the Commission may modify the penalties to be paid in the event of bid withdrawal, default or disqualification; provided, however, that such penalties shall not exceed the penalties specified above.

(h) The Commission will generally release information concerning the identities of bidders before each auction but may choose, on an auction-by-auction basis, to withhold the identity of the bidders associated with bidder identification numbers.

(i) The Commission may delay, suspend, or cancel an auction in the event of a natural disaster, technical obstacle, evidence of security breach, unlawful bidding activity, administrative necessity, or for any other reason that affects the fair and efficient conduct of the competitive bidding. The Commission also has the authority, at its sole discretion, to resume the competitive bidding starting from the beginning of the current or some previous round or cancel the competitive bidding in its entirety.

*Section 1.2105 Bidding Application and Certification Procedures; Prohibition of Collusion*

(a) *Submission of Short Form Application (FCC Form 175).* In order to be eligible to bid, an applicant must timely submit a short-form application (FCC Form 175), together with any appropriate filing fee set forth by Public Notice. Unless otherwise provided by Public Notice, the Form 175 need not be accompanied by an upfront payment (*see* Section 1.2106 of this part).

(1) All Form 175s will be due:

(i) On the date(s) specified by Public Notice; or

(ii) In the case of application filing dates which occur automatically by operation of law (*see, e.g.*, 47 CFR Section 22.902), on a date specified by Public Notice after the Commission has reviewed the applications that have been filed on those dates and determined that mutual exclusivity exists.

(2) The Form 175 must contain the following information:

(i) Identification of each license on which the applicant wishes to bid;

(ii) The applicant's name, if the applicant is an individual. If the applicant is a corporation, then the short-form application will require the name and address of the corporate office and the name and title of an officer or director. If the applicant is a partnership, then the application will require the name, citizenship and address of all partners, and, if a partner is not a natural person, then the name and title of a responsible person should be included as well. If the applicant is a trust, then the name and address of the trustee will be required. If the applicant is none of the above, then it must identify and describe itself and its principals or other responsible persons;

(iii) The identity of the person(s) authorized to make or withdraw a bid;

(iv) If the applicant applies as a designated entity pursuant to § 1.2110 of these rules, a statement to that effect and a declaration, under penalty of perjury, that the applicant is qualified as a designated entity under § 1.2110 of the Commission's Rules;

(v) Certification that the applicant is legally, technically, financially and otherwise qualified pursuant to Section 308(b) of the Communications Act of 1934, as amended. The Commission will accept applications certifying that a request for waiver or other relief from the requirements of Section 310 is pending;

(vi) Certification that the applicant is in compliance with the foreign ownership provisions of Section 310 of the Communications Act of 1934, as amended;

(vii) Certification that the applicant is and will, during the pendency of its application(s), remain in compliance with any service-specific qualifications applicable to the licenses on which the applicant intends to bid including, but not limited to, financial qualifications. The Commission may require certification in certain services that the applicant will, following grant of a license, come into compliance with certain service-specific rules, including, but not limited to, ownership eligibility limitations;

(viii) An exhibit, certified as truthful under penalty of perjury, identifying all parties with whom the applicant has entered into partnerships, joint ventures, consortia or other agreements, arrangements or understandings of any kind relating to the licenses being auctioned, including any such agreements relating to the post-auction market structure.

(ix) Certification under penalty of perjury that it has not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties other than those identified pursuant to subsection (viii) regarding the amount of their bids, bidding strategies or the particular licenses on which they will or will not bid;

**Note:** The Commission may also request applicants to submit additional information for informational purposes to aid in its preparation of required reports to Congress.

(b) *Modification and Dismissal of Form 175.* (1) Any Form 175 that is not signed or otherwise does not contain all of the certifications required pursuant to this section is unacceptable for filing and cannot be corrected subsequent to any applicable filing deadline. The application will be dismissed with prejudice and the upfront payment, if paid, will be returned.

(2) The Commission will provide bidders a limited opportunity to cure defects specified herein (except for failure to sign the application and to make certifications) and to resubmit a corrected application. Form 175 may be amended or modified to make minor changes or correct minor errors in the application (such as typographical errors). The Commission will classify all amendments as major or minor, pursuant to rules applicable to specific services. An application will be considered to be a newly filed application if it is amended by a major amendment and may not be resubmitted after applicable filing deadlines.

(3) Applicants who fail to correct defects in their applications in a timely manner as specified by Public Notice will have their applications dismissed with no opportunity for resubmission.

*(c) Prohibition of Collusion.* (1) Except as provided in paragraphs (c)(2) and (c)(3) of this subsection, after the filing of short-form applications, all bidders are prohibited from cooperating, collaborating; discussing or disclosing in any manner the substance of their bids or bidding strategies, or discussing or negotiating settlement agreements, with other bidders until after the high bidder makes the required down payment, unless such bidders are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application pursuant to Section 1.2105(a)(2)(viii).

(2) Applicants may modify their short-form applications to reflect formation of consortia or changes in ownership at any time before or during an auction, provided such changes do not result in a change in control of the applicant, and provided that the parties forming consortia or entering into ownership agreements have not applied for the same license. Such changes will not be considered major modifications of the application.

(3) After the filing of short-form applications, applicants may make agreements to bid jointly for licenses, provided the parties to the agreement have not applied for the same license.

*Section 1.2106 Submission of Upfront Payments*

(a) The Commission may require applicants for licenses subject to competitive bidding to submit an upfront payment. In that event, the amount of the upfront payment and the procedures for submitting it will be set forth in a Public Notice. No interest will be paid on upfront payments.

(b) Upfront payments must be made either by wire transfer or by cashier's check drawn in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission.

(c) If an upfront payment is not in compliance with the Commission's Rule, or if insufficient funds are tendered to constitute a valid upfront payment, the applicant shall have a limited opportunity to correct its submission to bring it up to the minimum valid upfront payment prior to the auction. If the applicant does not submit at least the minimum upfront payment, it will be ineligible to bid, its application will be dismissed and any upfront payment it has made will be returned.

(d) The upfront payment(s) of a bidder will be credited toward any down payment required for licenses on which the bidder is the high bidder. Where the upfront payment amount exceeds the required deposit of a winning bidder, the Commission may refund the excess amount after determining that no bid withdrawal penalties are owed by that bidder.

(e) In accordance with the provisions of subsection (d), in the event a penalty is assessed pursuant to § 1.2104 for bid withdrawal or default, upfront payments or down payments on deposit with the Commission will be used to satisfy the bid withdrawal or default penalty before being applied toward any additional obligations that the high bidder may have.

*Section 1.2107 Submission of Down Payment and Filing of Long-Form Applications*

(a) After bidding has ended, the Commission will identify and notify the high bidder and declare the bidding closed.

Within five (5) business days after being notified that it is a high bidder on a particular license(s), a high bidder must submit to the Commission's lockbox bank such additional funds (the "down payment") as are necessary to bring its total deposits (not including upfront payments applied to satisfy penalties) up to twenty (20) percent of its high bid(s). (In single round sealed bid auctions conducted under § 1.2103, however, bidders may be required to submit their down payment with their bids.) This down payment must be made by wire transfer or cashier's check drawn in U.S. dollars from a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation and must be made payable to the Federal Communications Commission. Winning bidders who are qualified designated entities eligible for installment payments under § 1.2110(d) are only required to bring their total deposits up to ten (10) percent of their winning bid(s). Such designated entities must pay the remainder of the twenty (20) percent down payment within five (5) business days of grant of their application. *See* § 1.2110(e) (1) and (2) of this subpart. Down payments will be held by the Commission until the high bidder has been awarded the license and has paid the remaining balance due on the license, in which case it will not be returned, or until the winning bidder is found unqualified to be a licensee or has defaulted, in which case it will be returned, less applicable penalties. No interest will be paid on any down payment.

(c) A high bidder that meets its down payment obligations in a timely manner must, within ten (10) business days after being notified that it is a high bidder, submit an additional application (the "long-form application") pursuant to the rules governing the service in which the applicant is the high bidder (unless it has already submitted such an application, as contemplated by § 1.2105(a)(1)(b). For example, if the applicant is a high bidder for a license in the Interactive Video Data Service *See* 47 CFR Part 95, Subpart F), the long form application will be submitted on FCC Form 574 in accordance with Section 95.815 of the Rules. Notwithstanding any other provision in Title 47 of the Code of Federal Regulations to the contrary, high bidders need not submit an additional application filing fee with their long-form applications. Notwithstanding any other provision in Title 47 of the Code of Federal Regulations to the contrary, the high bidder's long-form application must be mailed or otherwise delivered to: Office of the Secretary, Federal Communications Commission, Attention: Auction Application Processing Section, 1919 M Street, NW.. Room 222, Washington, DC 20554.

An applicant that fails to submit the required long-form application as required under this subsection, and fails to establish good cause for any late-filed submission, shall be deemed to have defaulted and will be subject to the penalties set forth in § 1.2104 of the Commission's Rules.

(d) As an exhibit to its long-form application, the applicant must provide a detailed explanation of the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement it had entered into relating to the competitive bidding process prior to the time bidding was completed. Such agreements must have been entered into prior to the filing of short-form applications pursuant to § 1.2105.

*Section 1.2108 Procedures for Filing Petitions To Deny Against Long-Form Applications*

(a) Where petitions to deny are otherwise provided for under the Act or the Commission's Rules, and unless other service-specific procedures for the filing of such petitions are provided for elsewhere in the Commission's Rules, the procedures in this section shall apply to the filing of petitions to deny the long-form applications of winning bidders.

(b) Within thirty (30) days after the Commission gives public notice that a long-form applications has been accepted for filing, petitions to deny that application may be filed. Any such petitions must contain allegations of fact supported by affidavit of a person or persons with personal knowledge thereof.

(c) An applicant may file an opposition to any petition to deny, and the petitioner a reply to such opposition. Allegations of fact or denials thereof must be supported by affidavit of a person or persons with personal knowledge thereof. The times for filing such opposition and replies will be those provided in § 1.45 of these Rules.

(d) If the Commission determines that:

(1) An applicant is qualified and there is no substantial and material issue of fact concerning that determination, it will grant the application.

(2) An applicant is not qualified and that there is no substantial issue of fact concerning that determination, the Commission need not hold an evidentiary hearing and will deny the application.

(3) Substantial and material issues of fact require a hearing, it will conduct a hearing. The Commission may permit all or part of the evidence to be submitted in written form and may permit employees other than administrative law judges to preside at the taking of written evidence. Such hearing will be conducted on an expedited basis.

*Section 1.2109 License Grant, Denial, Default, and Disqualification*

(a) Unless otherwise specified in these rules, auction winners are required to pay the balance of their winning bids in a lump sum within five (5) business days following award of the license. Grant of the license will be conditioned on full and timely payment of the winning bid.

(b) If a winning bidder withdraws its bid after the Commission has declared competitive bidding closed or fails to remit the required down payment within five (5) business days after the Commission has declared competitive bidding closed, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for the default penalty specified in § 1.12104(g)(2). In such event, the Commission may either re-auction the license to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids. The down payment obligations set forth in § 1.2107(b) will apply

(c) A winning bidder who is found unqualified to be a licensee, fails to remit the balance of its winning bid in a timely manner, or defaults or is disqualified for any reason after having made the required down payment, will be deemed to have defaulted and will be liable for the penalty set forth in § 1.2104(g)(2). In such event, the Commission will conduct another auction for the license, affording new parties an opportunity to file applications for the license.

(d) Bidders who are found to have violated the antitrust laws or the Commission's rules in connection with their participation in the competitive bidding process may be subject, in addition to any other applicable sanctions, to forfeiture of their upfront payment, down payment of full bid amount, and may be prohibited from participating in future auctions.

*Section 1.2110 Designated Entities*

(a) Designated entities are small businesses, businesses owned by members of minority groups and/or women, and rural telephone companies.

(b) Definitions. (1) Small businesses. The Commission will establish the definition of a small business on a service-specific basis, taking into consideration the characteristics and capital requirements of the particular service.

(2) Businesses owned by member of minority groups and/or women. Unless otherwise provided in rules governing specific services, a business owned by members of minority groups and/or women is one in which minorities and/or women who are U.S. citizens control the applicant, have at least 50.1 percent equity ownership and, in the case of a corporate applicant, a 50.1 percent voting interest. For applicants that are partnerships, every general partner either must be a minority and/or woman (or minorities and/or women) who are U.S. citizens and who individually or together own at least 50.1 percent of the partnership equity, or an entity that is 100 percent owned and controlled by minorities and/or women who are U.S. citizens. The interests of minorities and women are to be calculated on a fully-diluted basis; agreements such as stock options and convertible debentures shall be considered to have a present effect on the power to control an entity and shall be treated as if the rights thereunder already have been fully exercised. However, upon a demonstration that options or conversion rights held by non-controlled principals will not deprive the minority and female principals of a substantial financial stake in the venture or impair their rights to control the designated entity, a designated entity may seek a waiver of the requirement that the equity of the minority and female principals must be calculated on a fully-diluted basis. The term minority includes individuals of African American, Hispanic-surnamed, American Eskimo, Aleut, American Indian and Asian American extraction.

(3) Rural telephone companies. A rural telephone company is any local exchange carrier, including affiliates (as defined in 1.2110(b)(4)), with 100,000 access lines or fewer.

(4) Affiliate. (1) An individual or entity is an affiliate of (a) an applicant or (b) a person holding an attributable interest in an applicant under § 24.709 (both referred to herein as "the applicant") if such individual or entity—

(i) Directly or indirectly controls or has the power to control the applicant, or

(ii) Is directly or indirectly controlled by the applicant, or

(iii) Is directly or indirectly controlled by a third party or parties that also controls or nas the power to control the applicant, or

(v) Has an "identity of interest" with the applicant.

(2) Nature of control in determining affiliation.

(i) Every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

**Example.** An applicant owning 50 percent of the voting stock of another concern would have negative power to control such concern since such party can block any action of the other stockholders. Also, the bylaws of a corporation may permit a stockholder with less than 50 percent of the voting stock to block any actions taken by the other stockholders in the other entity. Affiliation exists when the applicant has the power to control a concern while at the same time another person, or persons, are in control of the concern at the will of the party or parties with the power to control.

(ii) Control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors. A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

(iii) Control can arise through management positions where a concern's voting stock is so widely distributed that no effective control can be established.

**Example.** In a corporation where the officers and directors own various size blocks of stock totaling 40 percent of the corporation's voting stock, but no officer or director has a block sufficient to give him or her control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control. If persons with such management control of the other entity are persons with attributable interests in the applicant, the other entity will be deemed an affiliate of the applicant.

(3) Identity of interest between and among persons. Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments. In determining if the applicant controls or has the power to control a concern, persons with an identity of interest will be treated as though they were one person.

**Example.** Two shareholders in Corporation Y each have attributable interests in the same PCS application. While neither shareholder has enough shares to individually control Corporation Y, together they have the power to control Corporation Y. The two shareholders with these common investments (or identity in interest) are treated as though they are one person and Corporation Y would be deemed an affiliate of the applicant.

(i) Spousal Affiliation. Both spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation recognized by a court of competent jurisdiction in the United States. In calculating their net worth, investors who are legally separated must include their share of interests in property held jointly with a spouse.

(ii) Kinship Affiliation. Immediate family members will be presumed to own or control or have the power to control interests owned or controlled by other immediate family members. In this context "immediate family member" means father, mother, husband, wife, son, daughter, brother, sister, father- or mother-in-law, son- or daughter-in-law, brother- or sister-in-law, step-father or -mother, step-brother or -sister, step-son or -daughter, half brother or sister. This presumption may be rebutted by showing that (A) the family members are estranged, (B) the family ties are remote, or (C) the family members are not closely involved with each other in business matters. Example: A owns a controlling interest in Corporation X. A's sister-in-law, B, has an attributable interest in a PCS application. Because A and B have a presumptive kinship affiliation, A's interest in Corporation X is attributable to B, and thus to the applicant, unless B rebuts the presumption with the necessary sowing.

(4) Affiliation through stock ownership.

(i) An applicant is presumed to control or have the power to control a concern if he or she owns or controls or has the power to control 50 percent or more of its voting stock.

(ii) An applicant is presumed to control or have the power to control a concern even though he or she owns, controls or has the power to control less than 50 percent of the concern's voting stock, if the block of stock he or she owns, controls or has the power to control is large as compared with any other outstanding block of stock.

(iii) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each one of these persons individually controls or has the power to control the concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(5) Affiliation arising under stock options, convertible debentures, and agreements to merge. Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are generally treated as though the rights held thereunder had been exercised. However, an affiliate cannot use such options and debentures to appear to terminate its control over another concern before it actually does so.

**Example 1.** If company B holds an option to purchase a controlling interest in company A, who holds an attributable interest in a PCS application, the situation is treated as though company B had exercised its rights and had become owner of a controlling interest in company A. The gross revenues of company B must be taken into account in determining the size of the applicant.

**Example 2.** If a large company, BigCo, holds 70% (70 of 100 outstanding shares) of the voting stock of company A, who holds an attributable interest in a PCS application, and gives a third party, SmallCo, and option to purchase 50 of the 70 shares owned by BigCo, BigCo will be deemed to be an affiliate of company A, and thus the applicant, until SmallCo actually exercises its option to purchase such shares. In order to prevent BigCo from circumventing the intent of the rule which requires such options to be considered on a fully diluted basis, the option is not considered to have present effective in this case.

**Example 3.** If company A has entered into an agreement to merge with company B in the future, the situation is treated as though the merger has taken place.

(6) Affiliation under voting trusts.

(i) Stock interests held in trust shall be deemed controlled by any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will.

(ii) If a trustee has a familial, personal or extra-trust business relationship to the grantor of the beneficiary, the stock interests held in trust will be deemed controlled by the grantor or beneficiary, as appropriate.

(iii) If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may meet the Commission's size standards, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction.

(7) Affiliation through common management. Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another entity.

(8) Affiliation through common facilities. Affiliation generally arises where one concern shares office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of

operations, or where such concerns were formerly affiliated, and through these sharing arrangements one concern has control, or potential control, of the other concern.

(9) Affiliation through contractual relationships. Affiliation generally arises where one concern is dependent upon another concern for contracts and business to such a degree that one concern has control, or potential control, of the other concern.

(10) Affiliation under joint venture arrangements.

(i) A joint venture for size determination purposes is an association of concerns and/or individuals, with interests in any degree or proportion, formed by contract, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business operation is a joint venture.

(ii) The parties to a joint venture are considered to be affiliated with each other.

(c) The Commission may set aside specific licenses for which only eligible designated entities, as specified by the Commission, may bid.

(d) The Commission may permit partitioning of service areas in particular services for eligible designated entities.

(e) The Commission may permit small businesses (including small business owned by women, minorities, or rural telephone companies that qualify as small businesses) and other entities determined to be eligible on a service-specific basis, which are high bidders for licenses specified by the Commission, to pay the full amount of their high bids in installments over the term of their licenses pursuant to the following:

(1) Unless otherwise specified, each eligible applicant paying for its license(s) on an installment basis must deposit by wire transfer or cashier's check in the manner specified in § 1.2107(b) sufficient additional funds as are necessary to bring its total deposits to ten (10) percent of its winning bid(s) within five (5) business days after the Commission has declared it the winning bidder and closed the bidding. Failure to remit the required payment will make the bidder liable to pay penalties pursuant to § 1.2104(g)(2).

(2) Within five (5) business days of the grant of the license application of a winning bidder eligible for installment payments, the licensee shall pay another ten (10) percent of the high bid, thereby commencing the eligible licensee's installment payment plan. Failure to remit the required payment will make the bidder liable to pay penalties pursuant to § 1.2104(g)(2).

(3) Upon grant of the license, the Commission will notify each eligible licensee of the terms of its installment payment plan. Unless other terms are specified in the rules of particular services, such plans will:

(i) Impose interest based on the rate of U.S. Treasury obligations (with maturities closest to the duration of the license term) at the time of licensing;

(ii) Allow installment payments for the full license term;

(iii) Begin with interest-only payments for the first two years; and

(iv) Amortize principal and interest over the remaining term of the license.

(4) A license granted to an eligible entity that elects installment payments shall be conditioned upon the full and timely performance of the licensee's payment obligations under the installment plan.

(i) If an eligible entity making installment payments is more than ninety (90) days delinquent in any payment, it shall be in default.

(ii) Upon default or in anticipation of default of one or more installment payments, a licensee may request that the Commission permit a three to six month grace period, during which no installment payments need be made. In considering whether to grant a request for a grace period, the Commission may consider, among other things, the licensee's payment history, including whether the licensee has defaulted before, how far into the license term the default occurs, the reasons for default, whether the licensee has met construction build-out requirements, the licensee's financial condition, and whether the licensee is seeking a buyer under an authorized distress sale policy. If the Commission grants a request for a grace period, or otherwise approves a restructured payment schedule, interest will continue to accrue and will be amortized over the remaining term of the license.

(iii) Following expiration of any grace period without successful resumption of payment or upon denial of a grace period request, or upon default with no such request submitted, the license will automatically cancel and the Commission will initiate debt collection procedures pursuant to Part 1, Subpart O of the Commission's Rules.

(e) The Commission may award bidding credits (*et seq.*, payments discounts) to eligible designated entities. Competitive bidding rules applicable to individual services will specify the designated entities eligible for bidding credits, the licenses for which bidding credits are available, the amounts of bidding credits and other procedures.

(f) The Commission may establish different upfront payment requirement for categories of designated entities in competitive bidding rules of particular auctionable services.

(g) The Commission may offer designated entities a combination of the available preferences or additional preferences.

(h) Designated entities must describe on their long-form applications how they satisfy the requirements for eligibility for designated entity status, and must list and summarize on their long-form applications all agreements that effect designated entity status, such as partnership agreements, shareholder agreements, management agreements and other agreements, including oral agreements, which establish that the designated entity will have both *de facto* and *de jure* control of the entity. Such information must be maintained at the licensees' facilities or by their designated agents for the term of the license in order to enable the Commission to audit designated entity eligibility on an ongoing basis.

(i) The Commission may, on a service-specific basis, permit consortia, each member of which individually meets the eligibility requirements, to qualify for any designated entity provisions.

(j) The Commission may, on a service-specific basis, permit publicly-traded companies that are owned by members of minority groups or women to qualify for any designated entity provisions.

*Section 1.2111 Assignment or Transfer of Control: Unjust Enrichment*

(a) *Reporting requirement.* An applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's Rules) of a license within three years of receiving a new license through a competitive bidding procedure must, together with its application for transfer of control or assignment, file with the Commission a statement indicating that its license was obtained through competitive bidding. Such applicant must also file with the Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the total consideration that the applicant would receive in return for the transfer or assignment of its license. This information should include not only a monetary purchase price, but also any future, contingent, in-kind, or other consideration (*e.g.*, management or consulting contracts either with or without an option to purchase, below market financing).

(b) *Unjust enrichment payment: set-asides.* As specified in this subsection, an applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's Rules) of a license acquired by the transferor or assignor pursuant to a set-aside for eligible designated entities under § 1.2110(c) of the Commission's Rules, or who proposes to take any other action relating to ownership or control that will result in loss of status as an eligible designated entity, must seek Commission approval and may be required to make an unjust enrichment payment (Payment) to the Commission by cashier's check or wire transfer before consent will be granted. The Payment will be based upon a schedule that will take account of the term of the license, any applicable construction benchmarks, and the estimated value of the set-aside benefit, which will be calculated as the difference between the amount paid by the designated entity for the license and the value of a comparable non-set-aside license in the free market at the time of the auction. The Commission will establish the amount of the Payment and the burden will be on the applicants to disprove this amount. No Payment will be required if:

(1) The license is transferred or assigned more than five years after its initial issuance, unless otherwise specified; or

(2) The proposed transferee or assignee is an eligible designated entity under

§ 1.2110(c) of the Commission's Rules or the service-specific competitive bidding rules of the particular service, and so certifies.

(c) *Unjust enrichment payment: installment financing.* An applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's rules) of a license acquired by the transferor or assignor through a competitive bidding procedure utilizing installment financing available to designated entities under § 1.2110(d) of the Rules will be required to pay the full amount of the remaining principal balance as a condition of the license transfer. No payment will be required if the proposed transferee or assignee assumes the installment payment obligations of the transferor or assignor, and if the proposed transferee or assignee is itself qualified to obtain installment financing under § 1.2110(d) of the Rules or the service-specific competitive bidding rules of the particular service, and so certifies.

(d) *Unjust enrichment payment: bidding credits.* An applicant seeking approval for a transfer of control or assignment (otherwise permitted under the Commission's Rules) of a license acquired by the transferor or assignor through a competitive bidding procedure utilizing bidding credits available to eligible designated entities under § 1.2110(e) of the Rules, or who proposes to take any other action relating to ownership or control that will result in loss of status as an eligible designated entity, must seek Commission approval and will be required to make an unjust enrichment payment (Payment) to the government by wire transfer or cashier's check before consent will be granted. The Payment will be the sum of the amount of the bidding credit plus interest at the rate applicable for installment financing in effect at the time the license was awarded. *See* § 1.2110(e). No payment will be required if the proposed transferee or assignee is an eligible designated entity under § 1.2110(e) of the Commission's Rules or the service-specific competitive bidding rules of the particular service, and so certifies.

[FR Doc. 94-24303 Filed 9-29-94; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL MARITIME COMMISSION

### Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Newport (U.S.A.) Shipping, Inc., 3232 Kennicott Ave., Arlington Heights, IL 60004
Officers: Helen Chung, President, In Thak Chung, Secretary

Janise Kae Disbrow, 10518 73rd Ave. East, Puyallup, WA 98373
Sole Proprietor

Worldwide Logistics, Inc., 2700 Broening Highway, #211, Dunmar Bldg., South, Baltimore, MD 21222
Officer: Joseph L. Amoriello, President

William Hom, 18 Oceanside Drive, Daly City, CA 94015
Sole Proprietor

Reymon Freight Corporation, 5567 NW 72nd Avenue, Miami, FL 33166
Officer: Alejandro Reyna, President

Caraval, Inc., 1120 SW 86th Court, Miami, FL 33144
Officers: Leslie Marie Diaz, President

Export of International Appliances, Inc., 8820 Monard Drive, Silver Spring, MD 20910
Officers: Mr. N. C. Jain, President, Bhadresh R. Dhila, Vice President, Santosh Jain, Secretary

Shippers, Inc., 10626 SW. 148th Avenue-Drive, Miami, FL 33196
Officer: Pablo R. Vinent, President

Antonio J. Pulido-Morales, 4705 NW. 7th Street, Apt. 405, Miami, FL 33126
Sole Proprietor

Edward M. Jones & Company, Inc., 7804 N.E. Airport Way, Portland, Oregon 97218
Officers: Edward M. Jones, President, Thomas M. Stanton, Vice President, Sharon Jones, Secretary

Sterling Cargo International, Inc., 3010 N. Airfield Dr., Bldg. 1, Ste. 2, DFW Airport, TX 75261
Officers: Charles R. Green, President, Patricia P. Chilton, Vice President, V. Ann Dodson

Bok Kun Chung dba, Exxel Express Line, 6 Latina, Irvine, CA 92714
Sole Proprietor

Indigo International, Inc., 1331 Wannamaker Drive, Summerville, SC 29485
Officer: Joe T. Owens, President

George H. Matthes, 1025 Dewitt Terrace, Linden, NJ 07036
Sole Proprietor

Flamingo Freight Forwarders, Inc., 9820 NW., #6-N, Hialeah Gardens, FL 33016
Officers: Norma O. Mesias, President, Manuel Mesias, Vice President

Blue Sky, Blue Sea Company dba, International Shipping Company (USA) 169 Frelinghuysen Avenue, Newark, New Jersey 07114
Officers: Asad Ferasat, President, Ali Aelaei, Vice President, Jalal Boloorchi, Treasurer

By the Federal Maritime Commission.

Dated: September 26, 1994.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 94-24186 Filed 9-29-94; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### PNC Bank Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 24, 1994.

**A. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

*1. PNC Bank Corp.*, Pittsburgh, Pennsylvania; to acquire Indian River Federal Savings Bank, Vero Beach, Florida, and thereby engage in permissible savings association activities pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 26, 1994.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 94-24204 Filed 9-29-94; 8:45 am]

BILLING CODE 6210-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panels (SEPs) meetings:

*Purpose/Agenda:* To review individual grant applications
Name of SEP: Microbiological and Immunological Sciences
Date: October 11, 1994
Time: 3:00 p.m.
Place: NIH, Westwood Building, Room A19 Telephone Conference
Contact Person: Dr. Howard Berman, Scientific Review Admin., 5333 Westbard Ave., Room A19, Bethesda, MD 20892, (301) 594-7234

Name of SEP: Chemistry and Related Sciences
Date: October 27-28, 1994
Time: 1:00 p.m.
Place: Crowne Plaza, Rockville, MD
Contact Person: Dr. Marcia Litwack, Scientific Review Admin., 5333 Westbard Ave., Room 339A, Bethesda, MD 20892, (301) 594-7366

Name of SEP: Chemistry and Related Sciences
Date: October 27, 1994
Time: 1:00 p.m.
Place: NIH, Westwood Building, Room 326, Telephone Conference
Contact Person: Dr. Nancy Lamontagne, Scientific Review Admin., 5333 Westbard Ave., Room 326, Bethesda, MD 20892, (301) 594-7147

Name of SEP: Multidisciplinary Sciences
Date: November 7-9, 1994
Time: 7:30 p.m.
Place: Pittsburgh Airport Hotel, Pittsburgh, PA
Contact Person: Dr. Nabeeh Mourad, Scientific Review Admin., 5333 Westbard Ave., Room 2A04, Bethesda, MD 20892, (301) 594-7213

Name of SEP: Multidisciplinary Sciences
Date: November 30-December 2, 1994
Time: 6:00 p.m.
Place: Cold Spring Harbor, NY
Contact Person: Dr. Bill Bunnag, Scientific Review Administrator, 5333 Westbard Ave., Room 2A07A, Bethesda, MD 20892, (301) 594-7360

The meetings will be closed in accordance with the provisions set forth in sec. 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: September 26, 1994.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

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### Centers for Disease Control and Prevention

**[Announcement 502]**

### Cooperative Agreement for National Organizations' HIV/AIDS Prevention and Health Communications Programs; Health Communications/ Behavioral and Social Science Evaluation; and Technical Assistance Efforts in Support of Social Marketing and Health Communications

#### Introduction

The Centers for Disease Control and Prevention (CDC) announces the anticipated availability of fiscal year (FY) 1995 funds for a cooperative agreement program with national organizations to support HIV/AIDS prevention and health communications programs; health communications/ behavioral and social science evaluation; and technical assistance efforts—all in support of social marketing and health communications. These activities should be designed to increase the reach, effectiveness, and impact of HIV prevention efforts.

This announcement continues the HIV/AIDS prevention collaboration between CDC and national organizations that was initiated in 1989 under Announcement 904, Cooperative Agreements for National Organizations and Consortiums to Develop and Implement Effective AIDS Information, Education, and Programs among Constituents.

A cooperative agreement is a legal agreement between CDC and the recipient in which CDC provides financial and other assistance to, and has significant Federal programmatic involvement with, the recipient throughout the project.

For the Nation's HIV/AIDS prevention efforts to succeed, they must be focused on preventing and reducing behaviors that place individuals at risk for HIV infection. Among the significant behavioral objectives necessary for preventing HIV transmission, CDC has adopted the following three related to sexual behavior:

- Young people who are not engaging in any form of sexual activity will maintain this behavior.
- Sexually active people who use condoms consistently and correctly or are in a relationship with a mutually faithful relationship with an uninfected partner will maintain these behaviors.
- Sexually active people who are not in a mutually faithful relationship with an uninfected partner will refrain from sexual activity, choose nonpenetrative sex, or use condoms consistently and correctly.

These objectives cannot be met without the understanding, participation, and support of key sectors of the American public. Coordination, collaboration, and communication between and among all sectors are crucial for successful HIV prevention. These sectors include:

1. *Public* (e.g., health, social services, and education agencies);
2. *Voluntary* (e.g., civic, social, health and health services, and youth-serving organizations that deliver education and community services to the public);
3. *Professional and academic*, the health communications/behavioral and social science and social marketing disciplines that must provide a scientific basis for developing, implementing, refining, and evaluating HIV prevention efforts to ensure effective, behavior-focused HIV interventions.
4. *Religious;*
5. *Business and labor;* and
6. *Media*, including print, radio, television, and entertainment media.

CDC has initiated a number of programs that are intended to focus on, and assist in, the development and implementation of successful HIV prevention strategies for promoting healthy behavior reducing or eliminating individual risky behaviors, and strengthening social norms that contribute to the prevention of HIV. These include the Prevention Marketing Initiative (PMI) and the Business and Labor Workplace HIV/AIDS Programs. Specific information regarding these two initiatives is included within the application package. To support these and other initiatives there is a need to build the capacity of the sectors

addressed in this program announcement to strengthen HIV prevention efforts.

CDC has a number of other HIV-related grant programs. This cooperative agreement targeting national organizations is intended to complement these other programs and to include organizations essential for the development of a comprehensive national HIV prevention program.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of HIV infection. (To order a copy of Healthy People 2000, see the section entitled WHERE TO OBTAIN ADDITIONAL INFORMATION.)

**Authority**

This program is authorized under sections 301(a) and 317(a) of the Public Health Service Act, 42 U.S.C. 241(a) and 247b(a), as amended.

**Smoke-Free Workplace**

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

**Eligible Applicants**

Eligible applicants are national organizations (NOs), including national minority organizations (NMOs). All applicants must provide documentation proving that they meet the following criteria:

A. Be an established national (defined by charter or bylaws to operate nationally), nonprofit organization (a nongovernmental, nonprofit corporation or association whose net earnings in no part accrue to the benefit of private shareholders or individuals). Bylaws and/or charter must be furnished with the application. The following is acceptable evidence of nonprofit status:

*A copy of a currently valid Internal Revenue Service (IRS) tax exemption certificate.

B. A national minority organization must furnish a written statement that more than 50 percent of the board of directors of said organization are racial or ethnic minority members. Groups recognized as racial and ethnic populations are: African Americans, Alaskan Natives, American Indians, Asian Americans, Caribbean Americans, Latinos/Hispanics, and Pacific Islanders.

Proof of nonprofit and organizational status and other eligibility criteria *must* be submitted with the application for determination of eligibility. No application will be accepted without proof of nonprofit status.

Assistance will be provided only to national organizations and national minority organizations as described above. To help prevent the spread of HIV infection, CDC proposes to support such organizations which have existing networks and constituents and the capacity to serve communities across the nation. This ensures that all communities—urban, suburban, and rural—have both public and private sector resources to assist them in their prevention efforts.

**Availability of Funds**

Approximately $5 million is expected to be available in FY 1995 to fund approximately 20 awards. It is expected that the average award will be $125,000 per year, ranging from $100,000 to $200,000 per year. Awards to fund programs planned for national minority organizations may range between $250,000 and $300,000 per year. In addition, one award of up to $1,000,000 can be made to support a local condom availability social marketing demonstration project in three communities. It is expected that the awards will begin on or about March 1, 1995. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds. Grantees will be asked to submit yearly continuation applications, including verification of eligibility requirements.

Programmatic and budget justification are required for all applications. Applicants requesting funding as national minority organizations will be considered separately from non-minority applicants.

Subject to the availability of funds and the receipt of technically acceptable, fundable applications, at least twelve awards are expected to be made to national organizations that target business, and labor, religious, voluntary, media and other appropriate sectors (ranging from 2–5 awards per sector); at least two awards are expected to be made to national professional or academic organizations, specific to health communications and/or behavior and social sciences evaluation; at least one award is expected to be made to a national organization representing public health; at least one award to a national organization that is qualified to effectively reach and impact gay, bisexual, and lesbian audiences; at least two awards to national minority organizations for health communications; and at least one award to a national organization to develop and implement a condom accessibility demonstration project in at least three communities.

Awards will be made for a 12-month budget period within a 3-year project period. (*Budget period* is the interval of time into which the project period is divided for funding and reporting purposes. *Project period* is the total time for which a project has been programmatically approved.) Continuation awards for years 2 and 3 within an approved project period are made on the basis of satisfactory performance and the availability of funds.

These funds may not supplant or duplicate existing funding from any other public or private source. Although contracts with other organizations are allowable under these cooperative agreement awards, applicants themselves must perform a substantial portion of the activities for which funds are requested.

No funds will be provided for patient medical care or purchase of drugs or vaccines.

**Purpose**

The purpose of this cooperative agreement is to develop partnerships with and among national organizations to effectively extend the reach of CDC's HIV Prevention strategies (Prevention Marketing Initiative and the Business and Labor Workplace HIV/AIDS Program) into communities to strengthen social norms that contribute to the prevention of HIV.

**Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities under B. (CDC Activities).

*A. Recipient Activities*

Applicant must develop a program plan based on realistic, specific, time-phased, and measurable objectives for proposed activities and services, including technical assistance, for their affiliates, constituents or members.

The most successful comprehensive social marketing/health communications programs make individual-level behaviors the central communications focus while addressing both the individual and the social

systems and networks that influence (predispose, enable, and reinforce) the behaviors of individuals. Applicant may choose to conduct one, several, or all of the three Priority Activities listed below.

Programs developed under any Priority Activity area must be implemented at the national level, and must be designed to have an impact, ultimately, at the local level. All programs must be coordinated with CDC, national, regional, State, and existing social marketing/health communications programs to prevent duplication of efforts, i.e., the Prevention Marketing Initiative and the Business and Labor Workplace HIV/AIDS Program. In addition CDC is currently working with its national, State, and local HIV prevention partners to implement the HIV Prevention Community Planning Initiative. An outcome of this initiative is that each health department recipient of an HIV prevention cooperative agreement is to develop a comprehensive HIV prevention plan for its jurisdiction. Programs funded under Announcement 502 should be consistent with these State and local comprehensive HIV prevention plans.

This announcement includes provisions to fund national minority organizations to develop, produce, disseminate, and market health communications messages on HIV prevention. All such efforts must be culturally competent and linguistically appropriate for the intended audience segments.

Priority Activity 1

Participate in a comprehensive prevention marketing program targeted initially to persons 18 to 25 years of age designed to decrease HIV risk behaviors, and/or to the social systems and networks, including communities, that influence, support, and reinforce their sexual behaviors. Such efforts, including training and technical assistance, must be undertaken in direct support of, and coordinated with, CDC's existing Prevention Marketing Initiative.

Program activities may include the creation or utilization of systems, activities, and interventions that directly influence individual behavior (these behaviors are those that place individuals at risk for HIV transmission). They may also include activities designed to change or sustain individual behaviors by influencing social systems and networks in relevant sectors of society that will affect individual behavior. These programs should strengthen the abilities of public and private national, regional, State, and local organizations and consortia to provide information, training, and/or technical assistance to their members, affiliates, or constituencies, and to apply available resources creatively and effectively to reduce risk behaviors which contribute to the further spread of HIV.

A national program to demonstrate and evaluate the effectiveness of an established social marketing program relevant to CDC's Prevention Marketing Initiative may be undertaken. This program, must be undertaken in not less than three communities across the country and must be based upon an already established, on-going, or recently completed social marketing program.

An example of such a program would be one that uses proven methods for community engagement and collaboration to involve critical social/civic community leaders in promoting awareness of condom effectiveness in preventing disease.

Priority Activity 2

Build the capacity within relevant social systems and/or networks within a sector of society, and ultimately coordinate with these systems, to participate in HIV prevention efforts. This can be done by providing technical assistance, training, and/or information to organizations representing key sectors of society addressed in this program announcement (e.g., business and labor, religious, voluntary, and media).

Execution of this activity would involve the development and operation of HIV/AIDS technical assistance and training programs to assist national, regional, State, and/or local organizations within defined social systems to implement comprehensive, effective HIV prevention efforts.

Examples of Priority 2 activities would be participation in one or more of the following programs: (1) the Business and Labor Workplace HIV/AIDS Program, designed to assist the business and labor sector in developing and implementing comprehensive workplace HIV/AIDS programs and to assist business and labor leaders in supporting and participating in community HIV prevention efforts; (2) a broad effort to engage and develop the capacity of religious institutions to participate in HIV prevention and services at the community level; or (3) a broad effort by a national voluntary or media organization to educate its constituents, affiliates, and volunteers to participate in local HIV community planning, education, and service activities.

Priority Activity 3

Support national professional and academic organizations in transferring technology and information specific to health communications, social, and behavioral science research and evaluation to assist governmental and nongovernmental organizations in effective HIV prevention planning, intervention design, or evaluation.

Priority consideration will be given to applications which propose to collect, "translate," and disseminate research and evaluation findings for organizations and constituencies involved in HIV prevention efforts, including HIV Prevention Community Planning, social marketing, changing or influencing behaviors or social norms, and other types of HIV prevention interventions.

Examples of this type of program would include those which (a) systematically retrieve, analyze, and "translate" relevant (published and/or unpublished) research and evaluation findings for persons involved in planning programs and designing interventions; or (b) develop and implement systems for providing technical assistance and training on behavioral and communications science, and on programmatic interventions conducted by national, State, and community organizations (public and private); or (c) is an effort by a national professional organization of behavioral and social scientists to train and mobilize its membership to assist local organizations or communities in planning for HIV prevention and evaluating their local HIV community interventions.

*B. CDC Activities*

The Centers for Disease Control and Prevention (CDC) shall undertake the following activities in support of this announcement:

1. Provide information to, and collaborate with, funded organizations in developing and implementing short- and long-term plans for social marketing and health communications for HIV prevention.

2. Provide consultation, assistance, and guidance in planning and implementing program activities under this announcement including promotion and publicity related to the project.

3. Assist in identifying, acquiring, or developing appropriate educational materials to be used in programs.

4. To the extent that CDC has this information, provide up-to-date scientific information on the following:

- Risk factors for HIV/STD transmission

- Current HIV infection trends and behavioral practices, including trends among populations of a specific age, sex, or race/ethnicity
- Prevention and program strategies that have been shown to be successful in preventing HIV infection
- Current knowledge, attitudes, beliefs, and behaviors related to HIV transmission
- Documented determinants of behavior and underlying factors influencing determinants

5. Provide technical assistance in developing and implementing evaluation strategies for the program.

6. Facilitate collaboration with other public and private sector agencies involved in HIV prevention efforts at the national, regional, State, and community levels.

7. Facilitate the exchange of program information and technical assistance among other public and private agencies at all levels.

8. Monitor the successful applicants' program activities and compliance with all programmatic, administrative, and budgetary requirements.

**Evaluation Criteria**

Applications will be reviewed and evaluated according to the following criteria:

*I. Review and Evaluation of Application*

A. Organizational Capability (30%)

The extent to which the applicant documents: (1) recent experience of at least 12 months in operating and centrally administering a coordinated health, health-related, or community-related program which is national in scope; (2) expertise about social marketing and health communications, and/or social and behavioral science and/or the extent to which the applicant documents other relevant expertise in conducting these types of programs; and (3) ability to access and influence a particular sector (public, voluntary, religious, business, labor, media) through a network of affiliates, chapters or constituents/members to provide HIV-related technical assistance and training on public health, or related social issues other than HIV, on a national level (throughout the U.S.) to appropriate target audiences (e.g., racial and ethnic minority populations, gay men, sexual partners of intravenous drug users, and youth).

B. Understanding of the Problem (15%)

The extent to which the applicant demonstrates and documents its understanding of the types, magnitude, and priority of the unmet prevention needs of the target audiences, organizations, and agencies that the proposed program will address.

C. Program Objectives (10%)

The extent to which the proposed objectives are specific, measurable, time-phased, and consistent with the program purpose, the proposed activities, and the applicant organization's overall mission.

D. Quality of Plan (25%)

The quality of the applicant's plan for conducting program activities and the likelihood that the proposed methods will be successful in achieving proposed objectives.

E. Organizational Experience (10%)

The extent to which the applicant demonstrates support of, and intended collaboration on, the program plan and activities from Community Based Organizations (CBOs), health or education agencies, and other organizations and agencies serving target populations.

F. Evaluation Plan (10%)

The extent to which the evaluation plan measures the achievement of program objectives and monitors the implementation of proposed activities or the commitment to implement a collaboratively developed evaluation plan.

G. Budget Justification and Adequacy of Facilities (not scored)

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

*II. Pre-decisional Site Visits*

A. Site visits may be conducted before CDC makes final funding decisions. Only the organizations with high-ranking applications may be visited. During the visit, CDC staff will meet with project staff, a representative of the board of directors, and other applicant principals to assess the applicant's ability to implement the proposed program, review the application and program plans for current or planned activities, and determine the special programmatic conditions and technical assistance requirements of the applicant.

B. Site visits may also include a recipient capability assessment by CDC staff, the HHS Inspector General, or an outside CPA audit firm to ascertain whether existing financial and management systems and controls are adequate to receive and administer Federal funds.

**Funding Priorities**

Priority consideration will be given to applications supporting CDC's HIV/AIDS initiatives in social marketing (i.e., prevention marketing); health communications; health education/risk reduction; business and labor, religious, voluntary, and media sector capacity building and technical assistance programs. These programs are intended to increase the effectiveness of HIV prevention efforts delivered by national, State, and local organizations to change the behavior of specific segments of target audiences.

Public comments are not being solicited regarding the funding priority because time does not permit solicitation and review prior to the funding date.

**Executive Order 12372 Review**

This program is not subject to the Executive Order 12372 review.

**Public Health System Reporting Requirements**

This program is not subject to the Public Health System Reporting Requirements.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance Number is 93.939, *HIV Prevention Activities—Non-governmental Organization Based.*

**Other Requirements**

A. Recipients must comply with the document entitled *Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control (CDC) Assistance Programs* (June 1992). To meet the requirements for a program review panel, recipients are encouraged to use an existing program review panel, such as the one created by the State health department's HIV/AIDS prevention program. If the recipient forms its own program review panel, at least one member must be an employee (or a designated representative) of a State or local health department. The names of review panel members must be listed on the Assurance of Compliance Form CDC 0.1113, which is also included in the application kit. The recipient must submit the program review panel's report that indicates all materials have been reviewed and approved.

B. Requirement for a Certified Public Accountant (CPA): The services of a CPA licensed by the State Board of

Accountancy or equivalent must be retained throughout the budget period as a part of the recipient's staff or as a consultant to the recipient's accounting personnel. These services may include the design, implementation, and maintenance of an accounting system to record receipts and expenditures of Federal funds, in accordance with accounting principles, Federal regulations, and cooperative agreement terms.

Funds claimed by the recipient for reimbursement under this cooperative agreement must be audited by an independent CPA. This CPA for audit must be separate and independent of the consulting CPA in the above paragraph. This audit must be performed within 90 days after the budget period, or at the close of an organization's fiscal year. The audit must be performed in accordance with generally accepted auditing standards (established by the American Institute of Certified Public Accountants), governmental auditing standards (established by the General Accounting Office), applicable Office of Management and Budget (OMB) Circulars, and any other applicable Federal requirements.

C. Confidentiality of Records: All identifying information obtained in connection with the provision of services to any person in any program that is being carried out through a cooperative agreement made under this announcement shall not be disclosed unless required by a law of a State or political subdivision or unless written, voluntary informed consent is provided by persons who receive services.

D. OMB Review: Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

**Application and Submission Deadline**

The original and two copies of the application PHS Form 5161–1 must be submitted to Clara M. Jenkins, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 320, Mailstop E–15, Atlanta, GA 30305, on or before December 22, 1994.

1. *Deadline:* Applications meet the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

**Where to Obtain Additional Information**

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and phone number and will need to refer to Announcement Number 502. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of the documents, business management technical assistance may be obtained from Ron Van Duyne, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 320, Mailstop E–15, Atlanta, GA 30305, telephone (404) 842–6575. Programmatic technical assistance may be obtained from Pom Sinnock or Bob Kohmescher, Office of the Associate Director for HIV/AIDS, Centers for Disease Control and Prevention (CDC), CDC Headquarters, 1600 Clifton Road, NE., Mailstop E–25, Atlanta, GA 30333, telephone (404) 639–0975.

Please refer to Announcement Number 502 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the INTRODUCTION through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: September 26, 1994.

**Deborah L. Jones,**

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 94–24192 Filed 9–29–94; 8:45 am]

BILLING CODE 4163–18–P

**[Announcement Number 503]**

## Public Health Conference Support Cooperative Agreement Program for Human Immunodeficiency Virus (HIV) Prevention

**Introduction**

The Centers for Disease Control and Prevention (CDC) announces the anticipated availability of fiscal year (FY) 1995 funds for the Public Health Conference Support Cooperative Agreement Program for Human Immunodeficiency Virus (HIV) Prevention. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of HIV Infection. (To order a copy of Healthy People 2000 or CDC's Strategic Plan for Preventing Human Immunodeficiency Virus (HIV) Infection (July 8, 1992), see the Section Where to Obtain Additional Information.)

**Authority**

This program is authorized under Sections 301 [42 U.S.C. 241] and 310 [42 U.S.C. 242n] of the Public Health Service Act, as amended.

**Smoke-Free Workplace**

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

**Eligible Applicants**

Eligible applicants are non-governmental, nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private (e.g., national, regional) organizations, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority- or women-owned businesses are eligible for these cooperative agreements. Current recipients of CDC HIV funding must provide the award number and title of the funded program (see the Section Program Requirements, C. Letter of Intent).

**Availability of Funds**

Approximately $250,000 is expected to be available in FY 1995 to fund approximately 10 to 15 awards. The awards will average $20,000 and will be

funded for a 12-month budget and project period. The funding estimate may vary and is subject to change, based on availability of funds. Awards will initially be made on a contingency basis as described in the Purpose section.

The following are examples of the most frequently encountered costs that may or may not be charged to the cooperative agreement:

1. As approved, CDC funds may be used for direct cost expenditures: salaries, speaker fees, rental of conference related equipment, registration fees, and transportation cost (not to exceed economy class fares) for non-Federal employees.

2. CDC funds may not be used for the purchase of equipment, payments of honoraria, organizational dues, entertainment or personal expenses, cost of travel and payment of a full-time Federal employee, or per diem or expenses, other than mileage, for local participants.

3. CDC funds may not be used for reimbursement of indirect costs.

4. Although the practice of handing out novelty items at meetings is often employed in the private sector to provide participants with souvenirs, Federal funds cannot be used for this purpose.

5. CDC funds may be used for only those parts of the conference specifically supported by CDC as documented in the Notice of Cooperative Agreement (award document).

**Recipient Financial Participation**

CDC will not fund 100% of any conference proposed under this announcement.

**Purpose**

The purpose of the HIV-related conference support cooperative agreement is to provide partial support for non-Federal conferences to stimulate efforts to prevent the transmission of HIV. CDC will collaborate on conferences that specifically focus on preventing HIV transmission. Because conference support by CDC creates the appearance of CDC co-sponsorship, there will be active participation by CDC in the development and approval of those portions of the agenda supported by CDC funds. CDC funds may not be expended for unsupported portions of conferences. Contingency awards will be made allowing usage of only 25% of the total amount to be awarded until a final full agenda is approved by CDC. This will provide funds for costs associated with preparation of the agenda. The remainder of funds will be released only upon acceptance of the final full agenda. CDC reserves the right to terminate co-sponsorship if it does not approve the final agenda.

**Program Requirements**

CDC will provide support for conferences that are: (1) regional (more than one State), national, or international in scope and target professionals contributing to HIV prevention efforts; and (2) focused on the transfer of HIV prevention research and evaluation findings to intervention efforts or the application of these prevention efforts to service providers and health professional who provide service to individuals whose behaviors place them at increased risk for HIV infection.

Topics concerned with issues and areas other than HIV prevention should be directed to other public health agencies or in accordance with current **Federal Register** Notices (see **Federal Register** Notice 501 published on April 19, 1994, 59 FR 18561). Current recipients of CDC HIV funding must provide the award number and title of the funded program (see the Section Program Requirements, C. Letter of Intent).

The activities related to the development of HIV prevention conferences require substantial CDC collaboration and involvement. In conducting activities to achieve the purpose of the program, the recipient shall be responsible for conducting activities listed in section A, and CDC will be responsible for conducting activities listed in section B:

*A. Recipient Activities*

1. Manage all activities related to program content (e.g., objectives, topics, attenders, session design, workshops, special exhibits, speakers, fees, agenda composition, and printing). Many of these items may be developed in concert with assigned CDC project personnel.

2. Provide draft copies of the agenda and proposed ancillary activities to CDC for acceptance. Submit a copy of the final agenda and proposed ancillary activities to CDC for acceptance.

3. Determine and manage all promotional activities (e.g., title, logo, announcements, mailers, press). CDC must review and approve the use of any materials with reference to CDC involvement or support.

4. Manage all registration processes with participants, invitees, and registrants (e.g., travel, reservations, correspondence, conference materials and hand-outs, badges, registration procedures).

5. Plan, negotiate, and manage conference site arrangements, including all audio-visual needs.

6. Develop and conduct education and training programs on HIV prevention.

7. Collaborate with CDC staff in reporting and disseminating results and relevant HIV prevention education and training information to appropriate Federal, State, and local agencies, health-care providers, HIV/AIDS prevention and service organizations, and the general public.

*B. CDC Activities*

1. Provide technical assistance through telephone calls, correspondence, and site visits in the areas of program agenda development, implementation, and priority setting related to the cooperative agreement.

2. Provide scientific collaboration for appropriate aspects of the program, including selection of speakers, pertinent scientific information on risk factors for HIV infection, preventive measures, and program strategies for the prevention of HIV infection.

3. Review draft agendas and approve the final agenda and proposed ancillary activities prior to release of restricted funds.

4. Assist in the reporting and dissemination of research results and relevant HIV prevention education and training information to appropriate Federal, State, and local agencies, health-care providers, the scientific community, and HIV/AIDS prevention and service organizations, and the general public.

*C. Letter of Intent*

Potential applicants must submit a one-page, typewritten letter of intent (LOI) that briefly describes the title, location, and purpose of the meeting, its relationship to the CDC Funding Priorities (see the section Funding Priorities), the date of the proposed conference, and the intended audience (number and description). No attachments, booklets, or other documents accompanying the LOI will be considered. The letter should also include the estimated total cost of the conference and the percentage of the total cost (which must be less than 100%) being requested from CDC. Current recipients of CDC HIV funding must provide the award number and title of the funded program. LOIs will be reviewed by CDC program staff, and an invitation to submit a final application will be made based on the proposed conference's relationship to the CDC Funding Priorities and the availability of funds. An invitation to submit an

application does not constitute a commitment by CDC to fund the applicant.

**Note:** To provide for adequate time to collaborate on the meeting agenda and content, applicants should allow a minimum of 3 months from the scheduled application due date to the planned date of the conference. (See the section Letter of Intent and Application Submission and Deadline.) Meetings which are scheduled to begin earlier than April 1, 1995, would not be routinely considered for funding.

**Evaluation Criteria**

LOIs will be reviewed by CDC program staff for consistency with CDC's HIV prevention goals and priorities and the purpose of this program. An invitation to submit a final application will be made on the basis of the proposed conference's relationship to the CDC topics of special interest, the timing of the meeting or conference that would allow for CDC input, and on the availability of funds. Applications will be reviewed and evaluated according to the following criteria (TOTAL POINTS AVAILABLE IS 100):

*A. Proposed Program and Technical Approach: (50 Points)*

Evaluation will be based on:

1. The applicant's description of the proposed conference as it relates to HIV prevention and education, including the public health need of the proposed conference and the degree to which the conference can be expected to influence public health practices, and the extent of the applicant's collaboration with other agencies serving the intended audience, including local health and education agencies concerned with HIV prevention.

2. The applicant's description of conference objectives in terms of quality and specificity and the feasibility of the conference based on the operational plan, and the extent to which evaluation mechanisms for the conference will be able to adequately assess increased knowledge, attitudes, and behaviors of the target attenders.

3. The quality of the proposed agenda in addressing the chosen HIV prevention/education topic.

4. The degree to which conference activities proposed for CDC funding strictly adhere to the prevention of HIV transmission.

*B. APPLICANT CAPABILITY: (25 Points)*

Evaluation will be based on:

1. The adequacy and commitment of institutional resources to administer the program.

2. The adequacy of existing and proposed facilities and resources for conducting conference activities.

3. The degree to which the applicant has established and used critical linkages with health and education agencies with the mandate for HIV prevention (letters of support from such agencies should demonstrate the linkages specific to the conference).

*C. Qualifications of Program Personnel: (25 Points)*

Evaluation will be based on:

1. The qualifications, experience, and commitment of the principal staff person, and his/her ability to devote adequate time and effort to provide effective leadership.

2. The competence of associate staff persons, discussion leaders, and speakers to accomplish conference objectives.

3. The degree to which the application demonstrates an appropriate knowledge level of all key personnel about the transmission of HIV, as well as nationwide information and education efforts currently underway that may affect, and be affected by, the proposed conference.

*D. Budget Justification and Adequacy of Facilities: (Not Scored)*

The proposed budget will be evaluated on the basis of its reasonableness, concise and clear justification, consistency with the intended use of cooperative agreement funds, and the extent to which the applicant documents financial support from other sources.

**Funding Priorities**

Funding priorities are established to ensure a balance of CDC HIV prevention funding and to address at risk populations that are underserved. CDC is especially interested in supporting meetings and conferences on the following topics:

1. Prevention of HIV infection among: (A) underserved populations (e.g., women of reproductive age, racial and ethnic minorities), (B) high risk populations, including both in-and out-of-school youth, or (C) populations in special settings (e.g., racial and ethnic minorities, out-of-school youth, incarcerated persons, men who have sex with men, and migrant workers). Particular interest will be given to populations who may be affiliated with multiple groups (e.g., gay men of color).

2. HIV prevention in health-care settings.

3. Development of HIV prevention strategies with a broad range of community partners including those who have not traditionally been involved with public health programs (e.g., business, religious leaders).

4. Development of prevention marketing strategies, including various behavior modification messages related to sexual practices (e.g., abstinence, condom use).

Public comments are not being solicited regarding funding priority because time does not permit solicitation and review prior to the funding date.

**Executive Order 12372 Review**

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

**Public Health System Reporting Requirements**

This program is not subject to the Public Health System Reporting Requirements.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance number is 93.118, Acquired Immunodeficiency Syndrome (AIDS) activities.

**Other Requirements**

HIV/AIDS Requirements

Recipients must comply with the document entitled "Content of HIV/AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Education Sessions in Centers for Disease Control Assistance Programs (June 15, 1992)," a copy is included in the application kit. In complying with the Program Review Panel requirements contained in this document, recipients are encouraged to use an existing Program Review Panel such as the one created by the State health department's AIDS/HIV prevention program. If the recipient forms its own Program Review Panel, at least one member must also be an employee (or a designated representative) of an appropriate health or education agency, consistent with the revised Content Guidelines. The names of review panel members must be listed on the Assurance of Compliance form (CDC Form 0.1113) which is also included in the application kit.

**Letter of Intent and Application Submission and Deadline**

The original and two copies of the LOI must be postmarked by the November 1, 1994, deadline date to be considered.

Following submission of a LOI, applications may be submitted only after CDC staff have reviewed the LOI

and the applicant has received a written invitation to submit an application for funding. An invitation to submit an application does not constitute a commitment to fund the applicant. Availability of funds may limit the number of LOIs, regardless of merit, that receive an invitation to submit an application.

The original and two copies of the invited application must be submitted on PHS Form 5161–1 by January 15, 1995. The earliest possible award date is March 1, 1995, and the earliest possible conference date is April 1, 1995.

Invited applications must be postmarked on or before the deadline date to Clara M. Jenkins, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 320, Atlanta, GA 30305.

*Deadline*

Invited applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

**Where to Obtain Additional Information**

To receive additional written information, call (404) 332–4561. You will be asked to leave your name, address, and phone number, and will need to refer to Announcement Number 503. You will receive a complete program description, a list of the relevant Healthy People 2000 HIV objectives, and the addresses and phone numbers for the CDC contact personnel.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Mr. Kevin Moore, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 320, Atlanta, GA 30305, telephone (404) 842–6550. Programmatic technical assistance may be obtained from Mr. Dave Brownell, Program Analyst, Office of the Associate Director for HIV AIDS, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E40, Atlanta, GA 30333, telephone (404) 639–2918. Please refer to Announcement Number 503 when requesting information and when submitting your application in response to the announcement.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238. Single copies of CDC's Strategic Plan for Preventing Human Immunodeficiency Virus (HIV) Infection (July 8, 1992) can be obtained by calling the CDC National AIDS Clearinghouse at 800–458–5231.

Dated: September 26, 1994.

**Deborah L. Jones,**

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 94–24191 Filed 9–29–94; 8:45 am]

BILLING CODE 4163–18–P

## Public Health Service

### Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, September 2, 1994.

(Call PHS Reports Clearance Office on 202–690–7100 for copies of request).

1. 1994 and 1996 Updates of a National Survey of Prescription Drug Information Provided to Patients—0910–0279 (Reinstatement)—To provide information for HHS and the Food and Drug Administration policy initiatives and potential regulations, national surveys of adults will assess the nature and extent of prescription drug information received by patients from health professionals and other sources. These are a continuation of a tracking survey conducted in 1982, 1984, and 1992. *Respondents:* Individuals or households; *Number of Respondents:* 9,142; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .05 hour; *Estimated Annual Burden:* 467 hours.

2. A Study of Caregiving in Aging and Dementia: Honolulu Heart Program Cohort—0925-0374 (Revision)—The purpose of the project is to describe predictors and outcomes of caregiver burden and quality of life in caregivers of elderly men with dementia. Standard questionnaires will be used in an interview format to obtain information from caregivers and control groups. This revision will permit continuation of the project to include additional respondents, thereby increasing statistical power for longitudinal analyses and theoretical model testing. *Respondent:* Individuals or households; *Number of Respondents:* 200; *Number of Responses per Respondent:* 3; *Average Burden per Response:* .75 hour; *Estinmated Annual Burden:* 450 hours.

3. Screener Round, National Nursing Home Expenditure Survey: National Medical Expenditure Survey—Pretest—New—This is the pretest of the Screener Round of the National Nursing Home Expenditure Survey (NNHES) National Medical Expenditure Survey (NMES 3). It will test procedures for screening and recruiting facilities eligible as nursing homes. *Respondents:* Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations; *Number of Respondents:* 130; Number *of Responses per Respondent:* 1.1; *Average Burden per Response:* .084 hour; *Estimated Annual Burden:* 12 hours.

4. Cancer Prevention Awareness: The Black college as a Resource; Medical and Other Health Professional Schools—0925-0402—(Extension, no change)—This data collection will aid the National Cancer Institutes efforts to effectively utilize historically black institutions in health promotion activities, especially focusing on cancer prevention, developing further cancer prevention intervention research appropriate to the target population. *Respondent:* Individuals or households; Small businesses or organizations. *Number of Respondents:* 18,885; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .1765 hour; *Estimated Annual Burden:* 4661 hours.

5. Organ Procurement and Transplantation Network, (OPTN) Regulations—42 CFR Part 121—NPRM—New—This notice of proposed rulemaking provides a basis for establishing final policies governing the OPTN. These rules will regulate the operation of the OPTN in four major areas: membership requirements, patient listings, organ allocation and record maintenance. *Respondents:* Businesses or other for-profit, Non-

profit institutions, Small business or organizations.

Recordkeeping: Consultation with transplant hospitals and OPO's established that the recordkeeping specified in these 3 requirements is integral to their operation and is not impacted by this regulation. Accordingly, no burden is considered to be imposed by this information collection language:

Organ refusal documentation—42 CFR 121.7(b)(3)

Documentation to accompany transported organs—42 CFR 121.7(c)(2)

OPO and hospital records on donors, organs retrieved and recipients transplanted—42 CFR 121.12(a)(2)

| Title | Number of respondents | Number of responses per respondent | Average burden per response (hour) |
|---|---|---|---|
| Reporting: | | | |
| Final policies, procedures and issuances—42 CFR 121.3(a)(6)(ii) | 1 | 4 | .5 |
| Membership application requirements—42 CFR 121.4(d)(1)* | 2,774 | 1 | .5 |
| Copies of proposed and proposed final policies—42 CFR 121.7(b)(1) & (3) | 1 | 4 | 1 |
| Report of transplant to prevent wastage—42 CFR 121.7(e) | 266 | 4 | 1 |
| Transplant program application—42 CFR 121.8(b): | | | |
| a. Medicare/Medicaid approved program & eligible VA hos | 308 | 1 | .5 |
| *Burden hours—154 | | | |
| b. Other transplant programs | 350 | 1 | 2 |
| *Burden hours—700 | | | |
| Information on transplant candidates, recipients & donors—42 CFR 121.12(b)(2) | 721 | 352 | .14 |
| **Burden hours—35,070 | | | |

*This burden is expected to occur almost entirely in the first year; burden for years 2 and 3 is expected to be 36 hours per year.
**This burden is separately approved under OMB control number 0915–0157.
Estimated Annual Total Burden: 1 hour at NPRM stage.

6. Drug Abuse Treatment Outcome Study (DATOS)—0925–0393—(Extension, no change)—DATOS is needed to compile information on individuals entering drug abuse treatment programs to investigate treatment environments and to study the behavior and characteristics of drug abusers prior to, during and following treatment. Researchers, policy makers, and service providers will use the findings of DATOS to address drug treatment issues and to better understand treatment effectiveness and the rehabilitation of the drug abuser into the community. *Respondents:* Individuals or households, Businesses or other for-profit, Non-profit institutions; *Number of Respondents:* 5,265; *Number of Responses per Respondent:* 4.64; *Average Burden per Response:* 1.04 hours; *Estimated Annual Burden:* 25,407 hours.

7. NCHS Laboratory-based Questionnaire Research—0920–0222 Revision—Questionnaires for use in NCHS, CDC, and other Federal surveys developed using laboratory methods which combine the techniques of cognitive psychology and survey methodology to reduce measurement error. *Respondents:* Individuals or households; *Number of Respondents:* 500; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 1 hour; *Estimated Annual Burden:* 500 hours.

8. Nurse Education Loan Repayment Program Application—0915–0140 (Revision)—Nurses with education loans use the application to apply for repayment of the loans in return for service accepted into the program, their lenders must confirm the purpose and amount of the loans to be repaid. *Respondents:* Individuals or households, Businesses or other for-profit, Small businesses or organizations.

| Title | Number of respondents | Number of responses per respondent | Average burden per response (hour) |
|---|---|---|---|
| Nurses Application | 1000 | 1 | 1 |
| Lender's Confirmation of the Loan | 400 | 1 | .25 |

Estimated Total Annual Burden: 1100 hours.

9. Reliability and Validity Assessment of the Use of Scales of Stressful Life Events in Black Women of Reproductive Age—New—The purpose of this study is to evaluate the reliability and validity of measurements of stressful life events among reproductive age black women, including pregnant black women. The data collected will help plan prevention and intervention strategies to reduce the incidence of poor pregnancy outcomes among black women. *Respondents:* Individuals or households; *Number of Respondents:* 600; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 3.33 hours; *Estimated Annual Burden:* 2028 hours.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: September 23, 1994.

**James Scanlon,**

*Director, Division of Data Policy; Office of Health Planning and Evaluation.*

[FR Doc. 94–24097 Filed 9–29–94; 8:45 am]

BILLING CODE 4160–17–M

[GN# 2274]

## Announcement of Cooperative Agreements to the Minority Health Professions Foundation

The Public Health Service announces that certain of its components will enter into umbrella cooperative agreements with the Minority Health Professions Foundation (MHPF), the education arm of the Association of Minority Health Professions Schools (AMHPS). It is anticipated that the components of PHS listed below will negotiate an umbrella cooperative agreement with MHPF. These cooperative agreements will establish the broad programmatic framework within which specific projects can be funded as they are identified during the project period. The PHS components are: the Substance Abuse and Mental Health Services Administration; the Office of Minority Health, Office of the Assistant Secretary for Health; the Health Resources and Services Administration; and the Agency for Health Care Policy and Research.

The purpose of these cooperative agreements is to (1) foster cooperation and collaboration among the Minority Health Professions schools and (2) to assist the AMHPS member institutions in expanding and enhancing their educational and research opportunities, with the ultimate goal of improving the health status of minorities and disadvantaged people.

### Eligible Applicant

Assistance will be provided only to MHPF. No other applications are solicited. MHPF is the only organization capable of administering these cooperative agreements because it is the only organization that has:

1. Established a comprehensive database related to teaching and other activities of all African-American medical, dental, pharmacy and veterinary schools;
2. Developed and evaluated an inventory of essential disease prevention and health promotion skills needed by all medical and health profession students;
3. Assessed the current education, research and disease prevention and health promotion activities for students and its member institutions;
4. Developed a national organization whose member institutions are all predominately minority health professions institutions with excellent professional performance records;
5. Developed an inventory of critical knowledge, skills and abilities related to instruction in medical and health professional preparation. Through the collective efforts of its member institutions, the MHPF has demonstrated (1) the ability to work with academic institutions and official health agencies on mutual education, service, and research endeavors and (2) the leadership necessary to attract minority health professionals into public health careers.

These cooperative agreements will be awarded in FY 1995 for a 12-month budget period within a project period of five years. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

### Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please contact Mr. Stuart Feldsott, Public Health Service, Parklawn Building, Room 17A–45, 5600 Fishers Lane, Rockville, MD 20857, telephone (310) 443–1832.

Dated: September 22, 1994.

**Wilford J. Forbush,**

*Director, Office of Management, Office of the Assistant Secretary for Health.*

[FR Doc. 94–24215 Filed 9–29–94; 8:45 am]

BILLING CODE 4160–17–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–3819; FR–3783–N–01]

## Notice of Extension of CDBG Direct Homeownership Assistance Eligibility

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice of extension of eligibility.

**SUMMARY:** This Notice extends the termination date for the direct homeownership assistance provision at section 105(a)(25) of the Housing and Community Development Act of 1974.

**DATES:** This Notice extends the termination date from October 1, 1994, to October 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Gordon McKay, Director, Office of Affordable Housing Programs, U.S. Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–2685, TDD (202) 708–2565. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:**

### I. Extension of Termination Date

In accordance with title IX, section 907(b)(2) of the National Affordable Housing Act of 1990 (NAHA), as amended by the Housing and Community Development Act of 1992, the Department has determined that extension of the termination date for the direct homeownership provision at section 105(a)(25) of the Housing and Community Development Act of 1974, as amended, is necessary to continue to provide homeownership assistance until homeownership assistance is available under title II of NAHA, the HOME Investment Partnerships Program. Therefore, the termination date is hereby extended from October 1, 1994, to October 1, 1995.

For CDBG entitlement communities, HUD-administered Small Cities grantees in Hawaii, and for Insular Area grantees, no CDBG funds may be expended for any activity eligible under the direct homeownership provision unless the funds are obligated to a homebuyer before October 1, 1995. For the State CDBG program, HUD-administered Small Cities program in New York, and the Indian CDBG program, no funds for homeowner assistance may be expended unless a grant for such activities was made by the State or by HUD, as appropriate, before October 1, 1995 to a unit of general local government, and then only for such amounts as are specifically approved.

### II. Basis for Determination

The basis for the extension is the Department's determination that assistance to homebuyers would not be fully available under the HOME Investment Partnerships Program by October 1, 1994. The first-time homebuyer and resale restriction provisions of the HOME program have proven difficult for many participating jurisdictions (PJs) to implement. Recent amendments to the HOME regulations intended to facilitate funding homebuyer assistance under the HOME program have not yet been in effect long enough to be fully implemented by HOME PJs. Funding homebuyer assistance under the HOME program is especially difficult for CDBG grantees that are not HOME PJs.

The recent changes to the HOME homebuyer provisions are both statutory and regulatory. Statutory changes to the definition of eligible homebuyers and to the recapture provisions were enacted in section 203 of the Multifamily Housing Property Disposition Reform Act of 1994 (Pub. L. 102–233, approved April 11, 1994). These changes were implemented by a memorandum dated May 10, 1994 and a rule published on August 26, 1994 (59 FR 44258), but PJs have not yet had time to redesign their HOME programs to reflect the

amendments. Similarly, the April 19, 1994, interim rule for the HOME program (59 FR 18626) offers additional flexibility by changing the basis for determining the affordability period applicable to homebuyer units and provides additional guidance on recapture provisions. PJs have not yet had time to incorporate these changes into their programs. The Department is also still in the process of developing model documents that may be used by PJs for such activities.

The lack of time to implement the HOME program changes and the resulting limits on the availability of funds is especially problematic for CDBG entitlements that are not HOME PJs. Without CDBG funds available for direct homeownership assistance, these communities would have to wait for the next State HOME program funding rounds to get funding for this purpose. In most States, the next funding round following the above-referenced statutory and regulatory changes will not be until after October 31, 1994. This extension will allow smaller CDBG communities to provide continuous funding for direct homeownership activities until such CDBG entitlements have a reasonable chance of receiving State HOME funds.

In making this determination to extend the CDBG homeownership provision, the Department is acting in accord with its national initiative to increase homebuyer assistance, particularly for lower-income families. This initiative includes Departmental proposals to extend permanently the CDBG direct homeownership provision, bolster the HOPE programs, expand the Single Family Property Disposition Initiative, and develop additional homebuyer program models under the HOME program.

Dated: September 26, 1994.

**Andrew Cuomo,**

*Assistant Secretary for Community Planning and Development*

[FR Doc. 94–24190 Filed 9–29–94; 8:45 am]

BILLING CODE 4210–29–P

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[Docket No. N–94–1917; FR–3778–N–04]

## Federal Property Suitable as Facilities to Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**ADDRESSES:** For further information, contact William Molster, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to William Molster at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: Elaine Sims, CECPW–FP, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22310–3862; (703) 355–3475; (This is not a toll-free number).

Dated: September 23, 1994.

**Jacquie M. Lawing,**

*Deputy Assistant Secretary for Economic Development.*

**TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM Federal Register REPORT FOR 09/30/94**

**Suitable/Available Properties**

*Buildings (by State)*

Alabama

Bldg. 8913, Fort Rucker
7th Avenue
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219140025
Status: Unutilized
Comment: 3100 sq. ft., 1 story wood, most recent use—chaplain's conference room, off-site use only.

Bldg. 8914, Fort Rucker

7th Avenue
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219140026
Status: Unutilized
Comment: 2250 sq. ft., 1 story wood, most recent use chaplain's headquarters, off-site use only.

Bldgs. TO3202–TO3203, TO3206–TO3208, TO3211, TO3213, TO3216
Cowboy & Crusader Street
Fort Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Numbers: 219210001–219210008
Status: Unutilized
Comment: 5310 sq. ft. each, two story wood structure, most recent use—barracks, presence of asbestos, offsite use only.

Bldg. T03214, Fort Rucker
Cowboy & Crusader Streets
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219230001
Status: Unutilized
Comment: 3306 sq. ft., 1-story wood structure, most recent use—storehouse, presence of asbestos, off-site use only.

Bldg. T03215, Fort Rucker
Cowboy & Crusader Streets
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219230002
Status: Unutilized
Comment: 3452 sq. ft., 1-story wood structure, most recent use—storehouse, presence of asbestos, off-site use only.

Bldgs. 3502, 3702–3704, 3707–3708, 3714, 3717, 3803
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Numbers: 219340181, 219340183–219340185, 219340188–219340192
Status: Unutilized
Comment: 5310 sq. ft. ea., 2 story wood frame, needs rehab, presence of asbestos, most recent use—instruction bldgs., off-site use only.

Bldg. 3507
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340182
Status: Unutilized
Comment: 2677 sq. ft., 1 story wood frame, needs rehab, most recent use—instruction bldgs., off-site use only.

Bldgs. 3705–3706
Ft. Rucker Co: Dale AL 36392–5138
Landholding Agency: Army
Property Numbers: 219340186–219340187
Status: Unutilized
Comment: 2975 sq. ft. ea., 1 story wood frame, needs rehab, most recent use—general purpose, off-site use only.

Bldg. 3822
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340193
Status: Unutilized
Comment: 2677 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—admin/ supply, off-site use only.

Arizona

Bldgs. 70117–70120
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Numbers: 219120306–219120309
Status: Excess
Comment: 3434 sq. ft. each, 1 story wood structures, presence of asbestos, most recent use—general instructional.

Bldg. 70225—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120310
Status: Excess
Comment: 3813 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose.

Bldg. 83006—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120311
Status: Excess
Comment: 2062 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose.

Bldg. 83007—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120312
Status: Excess Comment: 2000 sq. ft., 2 story wood structure, presence of asbestos, most recent use—admin. gen. purpose.

Bldg. 83008—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120313
Status: Excess
Comment: 2192 sq. ft., 2 story wood structure, presence of asbestos, most recent use—admin. gen. purpose.

Bldg. 83015—Fort Huachuca Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120314
Status: Excess
Comment: 2325 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose.

Bldg. 81001
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240720
Status: Unutilized
Comment: 4386 sq. ft., 2 story wood frame, possible asbestos, most recent use—administrative, scheduled to become vacant in 6 months, off-site use only.

Bldg. 81020, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240722
Status: Unutilized
Comment: 4386 sq. ft., 2 story wood frame, possible asbestos, most recent use—administrative, scheduled to become vacant in 6 months, off-site use only.

Bldg. 67204, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219240723
Status: Unutilized
Comment: 4332 sq. ft., 2 story wood frame, possible asbestos, most recent use—administration, off-site use only.

Bldg. 66151
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240728
Status: Unutilized
Comment: 4194 sq. ft., 2 story wood frame, possible asbestos, most recent use—barracks, scheduled to become vacant in 6 months, off-site use only.

Bldg. 72219
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240729
Status: Unutilized
Comment: 2730 sq. ft., 1 story wood frame, possible asbestos, most recent use—barracks, scheduled to become vacant in 6 months, off-site use only.

Bldg. 72220
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240730
Status: Unutilized
Comment: 2879 sq. ft., 1 story wood frame, possible asbestos, most recent use—barracks, scheduled to become vacant in 6 months, off-site use only.

Bldg. 72221
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240731
Status: Unutilized
Comment: 3736 sq. ft., 1 story wood frame, possible asbestos, most recent use—barracks, scheduled to become vacant in 6 months, off-site use only.

Bldg. 67108
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240733
Status: Unutilized
Comment: 2403 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only.

Bldg. 70226
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240734
Status: Unutilized
Comment: 1868 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only.

Bldg. 71116
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240735
Status: Unutilized
Comment: 3470 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only.

Bldg. 71215
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240736

Status: Unutilized
Comment: 4854 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only.

Bldg. 70110
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240739
Status: Unutilized
Comment: 2675 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70111
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240740
Status: Unutilized
Comment: 2800 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70113
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240741
Status: Unutilized
Comment: 2800 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70114
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240742
Status: Unutilized
Comment: 2544 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70115
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240743
Status: Unutilized
Comment: 2544 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70123
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240744
Status: Unutilized
Comment: 3298 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70124
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240745
Status: Unutilized
Comment: 3298 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70126
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240746
Status: Unutilized
Comment: 3343 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70210
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240747
Status: Unutilized
Comment: 3258 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70211
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240748
Status: Unutilized
Comment: 2966 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70221
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240749
Status: Unutilized
Comment: 2526 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70222
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240750
Status: Unutilized
Comment: 1627 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 71214
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240751
Status: Unutilized
Comment: 3779 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 82013
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240752
Status: Unutilized
Comment: 2193 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 90327
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240753
Status: Unutilized
Comment: 279 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 71213
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240754
Status: Unutilized
Comment: 3779 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—storehouse, off-site use only.

Bldg. 82007
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240755
Status: Unutilized
Comment: 4386 sq. ft., 2 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—storehouse, off-site use only.

Bldg. 82009
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240756
Status: Unutilized
Comment: 2444 sq. ft., 2 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—storehouse, off-site use only.

Bldg. 70216, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310287
Status: Excess
Comment: 3725 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 70215, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310288
Status: Excess
Comment: 3706 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 70214, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army.
Property Number: 219310289
Status: Excess
Comment: 3142 sq. ft., 1-story wood structure, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 70212, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310290
Status: Excess
Comment: 3534 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 70220, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310291
Status: Excess
Comment: 1249 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 70218, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310292
Status: Excess
Comment: 3475 sq. ft., 1-story wood, presence of asbestos, most recent use—classroom, off-site use only.

Bldg. 70217, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310293
Status: Excess
Comment: 304 sq. ft., 1-story concrete block, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 80010, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310294
Status: Excess
Comment: 2318 sq. ft., 1-story wood, presence of asbestos, most recent use—admin.

Bldg. 84103, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310296
Status: Excess
Comment: 984 sq. ft., 1-story, presence of asbestos and lead paint, most recent use—admin.

Bldg. 67101, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310297
Status: Excess
Comment: 2216 sq. ft., 1-story wood, presence of asbestos and lead paint, most recent use—classroom.

Bldg. 30012, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310298
Status: Excess
Comment: 237 sq. ft., 1-story block, most recent use—storage.

Bldg. 90328, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310299
Status: Excess
Comment: 144 sq. ft., 1-story wood, most recent use—storage.

Bldg. S–120
Yuma Proving Ground
Yuma Co: Yuma/LaPaz AZ 85365–9104
Landholding Agency: Army
Property Number: 219320202
Status: Underutilized
Comment: 6845 sq. ft., 1 story wood frame, presence of asbestos, most recent use—bowling center.

Bldg. 67221
U.S. Army Intelligence Center
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219330235
Status: Unutilized
Comment: 1068 sq. ft., 1 story wood, presence of asbestos, most recent use—office, off-site use only.

Bldg. 83102
U.S. Army Intelligence Center
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219330236
Status: Unutilized
Comment: 984 sq. ft., 1 story wood, presence of asbestos, most recent use—office, off-site use only.

Bldg. 84010
U.S. Army Intelligence Center
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219330237
Status: Unutilized
Comment: 2147 sq. ft., 1 story wood, presence of asbestos, most recent use—office, off-site use only.

Bldg. S–1005
Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85365–9104
Landholding Agency: Army
Property Number: 219340198
Status: Unutilized
Comment: 176 sq. ft., 1 story, cold storage bldgs., need repairs, off-site use only.

Bldg. 67116, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635
Landholding Agency: Army
Property Number: 219410243
Status: Unutilized
Comment: 1784 sq. ft., 1 story, wood frame, most recent use administratioin, off-site use only.

Bldgs. 67205, 67207 Fort Huachuca
Sierra Vista Co: Cochise AZ 85635
Landholding Agency: Army
Property Numbers: 219410244–219410245
Status: Unutilized
Comment: 2166 sq. ft. ea., 2 story, wood frame, most recent use—administration, off-site use only.

Bldg. 67213 Fort Huachuca
Sierra Vista Co: Cochise AZ 85635
Landholding Agency: Army
Property Number: 219410246
Status: Unutilized
Comment: 2594 sq. ft., 1 story, wood frame, most recent use—administration, off-site use only.

Bldg. 73913 Fort Huachuca
Sierra Vista Co: Cochise AZ 85635
Landholding Agency: Army
Property Number: 219410247
Status: Unutilized
Comment: 910 sq. ft., 2 story, wood frame, most recent use—administration, off-site use only.

Bldg. 80001 Fort Huachuca
Sierra Vista Co: Cochise AZ 85635
Landholding Agency: Army
Property Number: 219410248
Status: Unutilized
Comment: 1958 sq. ft., 2 story, wood frame, most recent use—administration, off-site use only.

Bldg. 83027 Fort Huachuca
Sierra Vista Co: Cochise AZ 85635
Landholding Agency: Army
Property Number: 219410249
Status: Unutilized
Comment: 1993 sq. ft., 2 story, wood frame, most recent use—administration, off-site use only.

Bldg. 84007 Fort Huachuca
Sierra Vista Co: Cochise AZ 85635
Landholding Agency: Army
Property Number: 219410250
Status: Unutilized
Comment: 2000 sq. ft., 2 story, wood frame, most recent use—administration, off-site use only.

Bldg. 68320 Fort Huachuca
Sierra Vista Co: Cochise AZ 85635
Landholding Agency: Army
Property Number: 219410251
Status: Unutilized
Comment: 1531 sq. ft., 1 story wood frame, most recent use—recreation center, off-site use only.

Bldg. 30126 Fort Huachuca
Sierra Vista Co: Cochise AZ 85635
Landholding Agency: Army
Property Number: 219410252
Status: Unutilized
Comment: 9324 sq. ft., 1 story, wood frame, most recent use—maintenance, off-site use only.

Bldg. 84014 Fort Huachuca
Sierra Vista Co: Cochise AZ 85635
Landholding Agency: Army
Property Number: 219410253
Status: Unutilized
Comment: 2260 sq. ft., 1 story, wood frame, most recent use—maintenance, off-site use only.

Bldg. S–106 Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85365
Landholding Agency: Army
Property Number: 219420345
Status: Unutilized
Comment: 1101 sq. ft., 1 story, cold storage bldg., needs repair.

Bldg. S–306 Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85365
Landholding Agency: Army
Property Number: 219420346
Status: Unutilized
Comment: 4103 sq. ft., 2 story, needs major rehab, sched. to be vacated on or about 2/95.

Bldg. 67210, 67217 Fort Huachuca
Sierra Vista Co: Cochise AZ 85365
Landholding Agency: Army
Property Number: 219420347
Status: Unutilized
Comment: 1165 sq. ft., 1 story wood frame, presence of asbestos, most recent use—office, off-site use only.

Colorado

Bldg. T–3449, Fort Carson
Colorado Springs Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 219320205
Status: Unutilized
Comment: 7528 sq. ft., 1 story wood frame, needs rehab, off-site removal only, most recent use—storage.

Bldg. T–740, Fort Carson
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 219410254
Status: Unutilized
Comment: 2382 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. T–741, Fort Carson
Colorado Springs Co: El Paso CO 80913

Landholding Agency: Army
Property Number: 219410255
Status: Unutilized
Comment: 7528 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. T–1817, Fort Carson
Colorado Springs Co: El Paso CO 80913
Bldg. T–2740, Fort Carson
Landholding Agency: Army
Property Number: 219410256
Status: Unutilized
Comment: 5310 sq. ft., 2 story wood frame, needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. T–2740, Fort Carson
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 219410257
Status: Unutilized
Comment: 1916 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—admin., off-site use only.

Bldg. T–106, Fort Carson
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 219410259
Status: Unutilized
Comment: 25749 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—storage, off-site use only.

Bldg. S–6275, Fort Carson
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 219410262
Status: Unutilized
Comment: 679 sq. ft., 1 story concrete block, needs rehab, most recent use—storage, off-site use only.

Georgia

Bldgs. 5390, 5392, 5391
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219010137, 219010151, 219010152
Status: Unutilized
Comment: 2432 sq. ft. ea; most recent use—dining room; needs rehab.

Bldg. 5362
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219010147
Status: Unutilized
Comment: 5559 sq. ft.; most recent use—service club; needs rehab.

Bldg. 4605
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011493
Status: Unutilized
Comment: 915 sq ft., building in poor condition, major construction needed to be made habitable.

Bldg. 4487
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011681
Status: Unutilized
Comment: 1868 sq. ft.; most recent use—telephone exchange bldg.; needs substantial rehabilitation; 1 floor.

Bldg. 4319
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011683
Status: Unutilized
Comment: 2584 sq. ft.; most recent use—vehicle maintenance shop; needs substantial rehabilitation; 1 floor.

Bldg. 3400
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011694
Status: Unutilized
Comment:
2570 sq. ft.; most recent use—fire station; needs substantial rehabilitation; 1 floor.

Bldg. 2285
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011704
Status: Unutilized
Comment: 4574 sq. ft.; most recent use—clinic; needs substantial rehabilitation; 1 floor.

Bldg. 4092
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011709
Status: Unutilized
Comment: 336 sq. ft.; most recent use—inflammable materials storage; needs substantial rehabilitation; 1 floor.

Bldg. 4089
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011710
Status: Unutilized
Comment: 176 sq. ft.; most recent use—gas station; needs substantial rehabilitation; 1 floor.

Bldgs. 1235, 1236
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Numbers: 219014887–219014888
Status: Unutilized
Comment: 9367 sq. ft.; 1 story building; needs rehab; most recent use—General Storehouse.

Bldg. 1251
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014889
Status: Unutilized
Comment: 18385 sq. ft.; 1 story building; needs rehab; most recent use—Arms Repair Shop.

Bldg. 4491
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014916
Status: Unutilized
Comment: 18240 sq. ft.; 1 story building; needs rehab; most recent use—Vehicle maintenance shop.

Bldg. 4633
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014919
Status: Unutilized
Comment: 5069 sq. ft.; 1 story building; needs rehab; most recent use—Training Building.

Bldg. 4649
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014922
Status: Unutilized
Comment: 2250 sq. ft.; 1 story building; needs rehab; most recent use—Headquarters Building.

Bldg. 2150
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120258
Status: Unutilized
Comment: 3909 sq. ft., 1 story, needs rehab, most recent use—general inst. bldg.

Bldg. 2409
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120263
Status: Unutilized
Comment: 9348 sq. ft., 1 story, needs rehab, most recent use—general purpose warehouse.

Bldg. 2590
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120265
Status: Unutilized
Comment: 3132 sq. ft., 1 story, needs rehab, most recent use—vehicle maintenance shop.

Bldg. 3828
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120266
Status: Unutilized
Comment: 628 sq. ft., 1 story, needs rehab, most recent use—general storehouse.

Bldgs. 3086, 3089, 3092
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219220688–219220690
Status: Unutilized
Comment: 4720 sq. ft. ea., 2 story, most recent use—barracks. needs major rehab. off-site removal only.

Bldg. 1252, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220694
Status: Unutilized
Comment: 583 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 1678, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220697
Status: Unutilized
Comment: 9342 sq. ft.; 1 story; most recent use—storehouse; needs major rehab, off-site removal only.

Bldg. 1733, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220698
Status: Unutilized
Comment: 9375 Sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 3083, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220699
Status: Unutilized

Comment: 1372 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 3856, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220703
Status: Unutilized
Comment: 4111 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 4881, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220707
Status: Unutilized
Comment: 2449 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 4963, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220710
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storehouse, needs repair, off-site removal only.

Bldg. 2396, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220712
Status: Unutilized
Comment: 9786 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.

Bldgs. 3085, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220715
Status: Unutilized
Comment: 2253 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.

Bldg. 2537, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220726
Status: Unutilized
Comment: 820 sq. ft., 1 story, most recent use—storage, needs major rehab, off-site removal only.

Bldgs. 4882, 4967, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220727–219220728
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, needs repair, off-site removal only.

Bldg. 5396 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220734
Status: Unutilized
Comment: 10944 sq. ft., 1 story, most recent use—general instruction bldg., needs major rehab, off-site removal only.

Bldg. 247, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220735
Status: Unutilized
Comment: 1144 sq. ft., 1 story, most recent use—offices, needs major rehab, off-site removal only.

Bldgs. 4977, 4978 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219220736–219220737
Status: Unutilized
Comment: 192 sq. ft. ea., 1 story, most recent use—offices, need repairs, off-site removal only.

Bldg. 4944, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220747
Status: Unutilized
Comment: 6400 sq. ft., 1 story, most recent use—vehicle maintenance shop, need repairs, off-site removal only.

Bldg. 4960, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220752
Status: Unutilized
Comment: 3335 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only.

Bldg. 4969, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220753
Status: Unutilized
Comment: 8416 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only.

Bldg. 1758, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220755
Status: Unutilized
Comment: 7817 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldg. 1680, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220756
Status: Unutilized
Comment: 9243 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldg. 3817, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220758
Status: Unutilized
Comment: 4000 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldgs. 4884, 4964, 4966 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219220762–219220764
Status: Unutilized
Comment: 2000 sq. ft. ea., 1 story, most recent use—headquarters bldgs., need repairs, off-site removal only.

Bldg. 4679, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220767
Status: Unutilized
Comment: 8657 sq. ft., 1 story, most recent use—supply bldg., needs major rehab, off-site removal only.

Bldg. 4883, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220768
Status: Unutilized
Comment: 2600 sq. ft., 1 story, most recent use—supply bldg.,
need repairs, off-site removal only.

Bldg. 4965, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220769
Status: Unutilized
Comment: 7713 sq. ft., 1 story, most recent use—supply bldg.,
need repairs, off-site removal only.

Bldg. 2513, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220770
Status: Unutilized
Comment: 9483 sq. ft., 1 story, most recent use—training center, needs major rehab, off-site removal only.

Bldg. 2526, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905
Landholding Agency: Army
Property Number: 219220771
Status: Unutilized
Comment: 11855 sq. ft., 1 story, most recent use—training center,
needs major rehab, off-site removal only.

Bldg. 2589, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220772
Status: Unutilized
Comment: 146 sq. ft., 1 story, most recent use—training bldg.,
needs major rehab, off-site removal only.

Bldg. 4976, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220778
Status: Unutilized
Comment: 192 sq. ft., 1 story, most recent use—gas station,
need repairs, off-site removal only.

Bldg. 4945, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220779
Status: Unutilized
Comment: 220 sq. ft., 1 story, most recent use—gas station,
needs major rehab, off-site removal only.

Bldg. 4979, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220780
Status: Unutilized
Comment: 400 sq. ft., 1 story, most recent use—oil house,
need repairs, off-site removal only.

Bldg. 4627, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220786
Status: Unutilized
Comment: 1676 sq. ft., 1 story, most recent use—sentry station,
needs major rehab, off-site removal only.

Bldgs. 4114, 4117–4118, 4125–4126, 4129–4130, 4137–4138, 4140 Fort Benning

Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310407–219310416
Status: Unutilized
Comment: 4425 sq. ft. ea., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldgs. 4002, 4004, 4008–4010, 4012, 4015, 4020, 4106, 4115–4116, 4127–4128, 4139, 4149–4150
Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310417–219310432
Status: Unutilized
Comment: 4720 sq. ft. ea., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4017, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310435
Status: Unutilized
Comment: 7700 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldgs. 4112, 4119, 4124, 4141, 4136, 4131 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310436–219310441
Status: Unutilized
Comment: 1144 sq. ft. ea., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4108, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310442
Status: Unutilized
Comment: 1171 sq. ft., 1-story, needs rehab, most recent use—day
room, off-site use only.

Bldg. 1835, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310443
Status: Unutilized
Comment: 1712 sq. ft., 1-story, needs rehab, most recent use—day
room, off-site use only.

Bldgs. 4013, 4007 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310444
Status: Unutilized
Comment: 1884 sq. ft. ea., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4107, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310446
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—day
room, off-site use only.

Bldg. 3072, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310447
Status: Unutilized
Comment: 479 sq. ft., 1-story, needs rehab, most recent use—hdqtrs. bldg., off-site use only.

Bldgs. 4001, 4103 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310448–219310449
Status: Unutilized
Comment: 1635 sq. ft. ea., 1-story, needs rehab, most recent use—hdqtrs bldg., off-site use only.

Bldg. 3004, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310450
Status: Unutilized
Comment: 2794 sq. ft., 1-story, needs rehab, most recent use—hdqtrs bldg., off-site use only.

Bldgs. 4019, 4018, 3003, 3002 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310451–219310454
Status: Unutilized
Comment: 3270 sq. ft., 2-story, needs rehab, most recent use—hdqtrs bldg., off-site use only.

Bldg. 4109, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310455
Status: Unutilized
Comment: 2253 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4014, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310456
Status: Unutilized
Comment: 2794 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4006, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310457
Status: Unutilized
Comment: 3023 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldgs. 4135, 4123, 4111 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310458–219310460
Status: Unutilized
Comment: 3755 sq. ft. ea., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4023, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310461
Status: Unutilized
Comment: 2269 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only.

Bldg. 4024, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310462
Status: Unutilized
Comment: 3281 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only.

Bldg. 4040, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310463
Status: Unutilized
Comment: 1815 sq. ft., 1-story, needs rehab, most recent use admin., off-site use only.

Bldg. 4026, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310464
Status: Unutilized
Comment: 2330 sq. ft., 1-story, needs rehab, most recent use admin., off-site use only.

Bldg. 4067, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310465
Status: Unutilized
Comment: 4406 sq. ft., 1-story, needs rehab, most recent use admin., off-site use only.

Bldg. 4025, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310466
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use admin., off-site use only.

Bldgs. 4110, 4122, 4134 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310467–219310469
Status: Unutilized
Comment: 1017 sq. ft. ea., 1-story, needs rehab, most recent use storehouse, off-site use only.

Bldg. 4021, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310470
Status: Unutilized
Comment: 1416 sq. ft., 1-story, needs rehab, most recent use storehouse, off-site use only.

Bldg. 4113, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310473
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use storage, off-site use only.

Bldg. 10439, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310474
Status: Unutilized
Comment: 1010 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 10304, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310475
Status: Unutilized
Comment: 1040 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 10847, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310476
Status: Unutilized
Comment: 1056 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 10768, Fort Benning

Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310477
Status: Unutilized
Comment: 1230 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 2683, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310478
Status: Unutilized
Comment: 1816 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 2504, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310479
Status: Unutilized
Comment: 729 sq. ft., 1-story, needs rehab, most recent use—snack bar, off-site use only.

Bldgs. 4121, 4133, 4143 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310487–219310489
Status: Unutilized
Comment: 1017 sq. ft. ea., 1-story, needs rehab, most recent use arms bldgs., off-site use only.

Bldgs. 4105, 4005 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310490–219310491
Status: Unutilized
Comment: 1416 sq. ft. ea., 1-story, needs rehab, most recent use arms bldgs., off-site use only.

Bldgs. 13503, 14502
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320209–219320210
Status: Unutilized
Comment: 7036 sq. ft., 2 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use residential.

Bldg. 481
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320211
Status: Unutilized
Comment: 1325 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use—offices.

Bldg. 10417
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320212
Status: Unutilized
Comment: 2668 sq. ft., 1 story wood frame, presence of asbestos, need repairs, off-site use only, most recent use—offices.

Bldg. 10502
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320213
Status: Unutilized
Comment: 1580 sq. ft., 1 story wood frame, presence of asbestos, need repairs, off-site use only, most recent use—offices.

Bldg. 10503
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320214
Status: Unutilized
Comment: 2516 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use—offices.

Bldg. 10602
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320215
Status: Unutilized
Comment: 2000 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use—offices.

Bldg. 14503
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320216
Status: Unutilized
Comment: 1075 sq. ft., 1 story wood frame, presence of asbestos, off-site use only, most recent use—offices.

Bldg. 25304
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320223
Status: Unutilized
Comment: 2788 sq. ft., 1 story wood frame, presence of asbestos, off-site use only, most recent use—office/storage.

Bldg. 26306
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320225
Status: Unutilized
Comment: 1272 sq. ft., 1 story wood frame, possible asbestos, need repairs, off-site use only, most recent use—storage.

Bldg. 29503
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320226
Status: Unutilized
Comment: 2456 sq. ft., 1 story wood frame, presence of asbestos, off-site use only, most recent use—offices.

Bldg. 33406
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320227
Status: Unutilized
Comment: 3456 sq. ft., 1 story wood frame, presence of asbestos, needs roof repairs, off-site use only, most recent use offices.

Bldg. 33436
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320228
Status: Unutilized
Comment: 2632 sq. ft., 1 story wood frame, presence of asbestos, need repairs, off-site use only, most recent use offices.

Bldg. 33438
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320229
Status: Unutilized
Comment: 2668 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use storage.

Bldg. 39502
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320230
Status: Unutilized
Comment: 1316 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use—offices.

Bldg. 45308
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320231
Status: Unutilized
Comment: 6044 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use—community center.

Bldgs. 26301, 27301
Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219320234–219320235
Status: Unutilized
Comment: 2788 sq. ft., 1 story wood frame, presence of asbestos, needs roof repairs, off-site use only, most recent use storage.

Bldgs. 354–356, 376 Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330259–219330262
Status: Unutilized
Comment: 4237 sq. ft., 1-story wood, possible termite damage, needs repair, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 377, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330263
Status: Unutilized
Comment: 4768 sq. ft., 1-story wood, needs repair, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 13501, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330264
Status: Unutilized
Comment: 2516 sq. ft., 1-story wood, needs rehab, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 18704, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330265
Status: Unutilized
Comment: 4524 sq. ft., 2-story wood, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 18717, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330266
Status: Unutilized

Comment: 2468 sq. ft., 1-story wood, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 19601, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330268
Status: Unutilized
Comment: 2132 sq. ft., 1-story wood, possible termite damage, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 19602, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330269
Status: Unutilized
Comment: 1555 sq. ft., 1-story wood, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 24501, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330270
Status: Unutilized
Comment: 3580 sq. ft., 1-story wood, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 25103, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330271
Status: Unutilized
Comment: 2100 sq. ft., 1-story wood, needs rehab, most recent use—offices, off-site use only.

Bldg. 25105, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330272
Status: Unutilized
Comment: 1025 sq. ft., 1-story wood, needs rehab, most recent use—offices, off-site use only.

Bldg. 25503, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330273
Status: Unutilized
Comment: 6816 sq. ft., 1-story wood, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 31504, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330274
Status: Unutilized
Comment: 7036 sq. ft., 2-story wood, needs repair, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 33415, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905
Landholding Agency: Army
Property Number: 219330275
Status: Unutilized
Comment: 2036 sq. ft., 1-story wood, needs rehab, presence of asbestos, most recent use—offices, off-site use only.

Bldg. 34502, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330276
Status: Unutilized
Comment: 7036 sq. ft., 2-story wood, needs rehab, most recent use—offices, off-site use only.

Bldg. 35503, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330277
Status: Unutilized
Comment: 2500 sq. ft., 1-story wood, needs rehab, most recent use offices, off-site use only.

Bldg. 37505, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330278
Status: Unutilized
Comment: 17370 sq. ft., 2-story wood, needs rehab, possible asbestos, most recent use—offices, off-site use only.

Bldg. 39503, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330279
Status: Unutilized
Comment: 1316 sq. ft., 1-story wood, needs rehab, possible asbestos, most recent use—offices, off-site use only.

Bldg. 18707, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330280
Status: Unutilized
Comment: 2468 sq. ft., 1-story wood, presence of asbestos, most recent use—classrooms, off-site use only.

Bldg. 18708, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330281
Status: Unutilized
Comment: 3772 sq. ft., 1-story wood, presence of asbestos, most recent use—classrooms, off-site use only.

Bldg. 18718, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330282
Status: Unutilized
Comment: 2468 sq. ft., 1-story wood, presence of asbestos, most recent use—classrooms, off-site use only.

Bldg. 18720, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330283
Status: Unutilized
Comment: 2632 sq. ft., 1-story wood, presence of asbestos, most recent use—classrooms, off-site use only.

Bldgs. 18721–18724, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330284–219330287
Status: Unutilized
Comment: 4524 sq. ft., 2-story wood, presence of asbestos, most recent use—classrooms, off-site use only.

Bldg. 12712, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330288
Status: Unutilized
Comment: 15500 sq. ft., 1-story concrete block, needs rehab, presence of asbestos, most recent use—gymnasium, off-site use only.

Bldgs. 332–333, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330289–219330290
Status: Unutilized
Comment: 5340 sq. ft., 1-story wood, needs repair, presence of asbestos, most recent use—laboratory, off-site use only.

Bldg. 334, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330291
Status: Unutilized
Comment: 4279 sq. ft., 1-story wood, possible termite damage, presence of asbestos, most recent use—medical admin., off-site use only.

Bldg. 335, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330292
Status: Unutilized
Comment: 4300 sq. ft., 1-story wood, possible termite damage, needs repair, presence of asbestos, most recent use—laboratory, off-site use only.

Bldg. 353, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330293
Status: Unutilized
Comment: 5157 sq. ft., 1-story wood, presence of asbestos, most recent use—laboratory, off-site use only.

Bldg. 352, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330294
Status: Unutilized
Comment: 560 sq. ft., 1-story metal, presence of asbestos, most recent use—equip. storage, off-site use only.

Bldg. 18703, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219330295
Status: Unutilized
Comment: 4524 sq. ft., 2-story wood, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 18705, Fort Gordon
Ft. Gordon, GA, Richmond, Zip: 30905
Landholding Agency: Army
Property Number: 219330296
Status: Unutilized
Comment: 2632 sq. ft., 1-story wood, presence of asbestos, off-site use only.

Bldg. 10501
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410264
Status: Unutilized
Comment: 2516 sq. ft.; 1 story; wood; needs rehab.; most recent use—office; off-site use only.

Bldg. 10601
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410265
Status: Unutilized

Comment: 1334 sq. ft.; 1 story; wood; most recent use—office; offsite use only.

Bldg. 20303
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410266
Status: Unutilized
Comment: 2376 sq. ft.; 1 story; wood; needs rehab.; most recent use—office; off-site use only.

Bldg. 41504
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410267
Status: Unutilized
Comment: 2516 sq. ft.; 1 story; wood; needs rehab.; most recent use—store; off-site use only.

Bldg. 963
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410268
Status: Unutilized
Comment: 18,471 sq. ft.; 1 story; wood; needs rehab.; most recent use—warehouse; off-site use only.

Bldg. 11813
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410269
Status: Unutilized
Comment: 70 sq. ft.; 1 story; metal; needs rehab.; most recent use storage; off-site use only.

Bldg. 21314
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410270
Status: Unutilized
Comment: 85 sq. ft.; 1 story; needs rehab.; most recent use storage; off-site use only.

Bldg. 951
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410271
Status: Unutilized
Comment: 17,825 sq. ft.; 1 story; wood; needs rehab.; most recent use—workshop; off-site use only.

Bldg. 12809
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410272
Status: Unutilized
Comment: 2788 sq. ft.; 1 story; wood; needs rehab.; most recent use—maintenance shop; off-site use only.

Bldg. 10306
Fort Gordon
Fort Gordon, GA, Richmond, Zip: 30905–
Landholding Agency: Army
Property Number: 219410273
Status: Unutilized
Comment: 195 sq. ft.; 1 story; wood; most recent use—oil storage shed; off-site use only.

Bldg. T–226
Hunter Army Airfield
Savannah, GA, Chatham, Zip: 31409–
Landholding Agency: Army
Property Number: 219420348
Status: Unutilized
Comment: 1842 sq. ft., 1-story, wood frame, needs major repair, most recent use—offices, off-site use only.

Bldg. T–419
Hunter Army Airfield
Savannah, GA, Chatham, Zip: 31409–
Landholding Agency: Army
Property Number: 219420349
Status: Unutilized
Comment: 3061 sq. ft., 1-story, wood frame, needs major repair, most recent use—offices, off-site use only.

Bldg. T–1008
Hunter Army Airfield
Savannah, GA, Chatham, Zip: 31409–
Landholding Agency: Army
Property Number: 219420350
Status: Unutilized
Comment: 1296 sq. ft., 1-story, wood frame, needs major repair, most recent use—offices, off-site use only.

Bldg. T–1263
Hunter Army Airfield
Savannah, GA, Chatham, Zip: 31409–
Landholding Agency: Army
Property Number: 219420351
Status: Unutilized
Comment: 2000 sq. ft., 1-story, wood frame, needs major repairs, most recent use—offices, off-site use only.

Bldg. T–417
Hunter Army Airfield
Savannah, GA, Chatham, Zip: 31409–
Landholding Agency: Army
Property Number: 219420352
Status: Unutilized
Comment: 1730 sq. ft., 1-story, wood frame, needs major repair, most recent use—admin., off-site use only.

Bldg. T–1022
Hunter Army Airfield
Savannah, GA, Chatham, Zip: 31409–
Landholding Agency: Army
Property Number: 219420353
Status: Unutilized
Comment: 5870 sq. ft., 1-story, wood frame, needs major repairs, most recent use—admin., off-site use only.

Bldg. T–1155A
Hunter Army Airfield
Savannah, GA, Chatham, Zip: 31409–
Landholding Agency: Army
Property Number: 219420354
Status: Unutilized
Comment: 660 sq. ft., 1-story, wood frame, needs major repairs, most recent use—storage, off-site use only.

Bldg. P–8582
Hunter Army Airfield
Savannah, GA, Chatham, Zip: 31409–
Landholding Agency: Army
Property Number: 219420355
Status: Unutilized
Comment: 5892 sq. ft., 2-story, steel, needs major repairs, most recent use—radar tower, off-site use only.

Bldg. T829, Fort Stewart
Hinesville, GA, Liberty, Zip: 31314–
Landholding Agency: Army
Property Number: 219420358
Status: Unutilized
Comment: 324 sq. ft., 1-story wood frame, needs repair, most recent use—storage, off-site use only.

Bldg. T901, Fort Stewart
Hinesville, GA, Liberty, Zip: 31314–
Landholding Agency: Army
Property Number: 219420359
Status: Unutilized
Comment: 2340 sq. ft., 1-story wood frame, needs repair, most recent use—offices, off-site use only.

Bldg. T–902, Fort Stewart
Hinesville, GA, Liberty, Zip: 31314–
Landholding Agency: Army
Property Number: 219420360
Status: Unutilized
Comment: 2990 sq. ft., 1-story wood frame, needs repair, most recent use—offices, off-site use only.

Bldg. T–948, Fort Stewart
Hinesville, GA, Liberty, Zip: 31314–
Landholding Agency: Army
Property Number: 219420361
Status: Unutilized
Comment: 1890 sq. ft., 1-story wood frame, needs repair, most recent use—storage, off-site use only.

Bldg. T–7713, Fort Stewart
Hinesville, GA, Liberty, Zip: 31314–
Landholding Agency: Army
Property Number: 219420362
Status: Unutilized
Comment: 2288 sq. ft., 1-story wood frame, needs repair, most recent use—admin., off-site use only.

Bldg. S–9982, Fort Stewart
Hinesville, GA, Liberty, Zip: 31314–
Landholding Agency: Army
Property Number: 219420363
Status: Unutilized
Comment: 704 sq. ft., 1-story concrete block, needs repair, most recent use—arms bldgs.

Hawaii

P–88
Aliamanu Military Reservation
Honolulu Co: Honolulu HI 96818
Location: Approx. 600 feet from Main Gate on Aliamanu Drive
Landholding Agency: Army
Property Number: 219030324
Status: Unutilized
Comment: 45216 sq. ft. underground tunnel complex, pres. of asbestos, clean-up required of contamination, use of respirator required by those entering property, use limitations.

Bldg. 302
Fort Shafter
Honolulu Co: Honolulu HI 96818
Landholding Agency: Army
Property Number: 219320236
Status: Unutilized
Comment: 39 sq. ft., most recent use—sentry station, off-site use only.

Indiana

Bldg. 703–1C
Indiana Army Ammunition Plant
Charlestown Co: Clark IN
Location: Gate 22 off Highway 22
Landholding Agency: Army
Property Number: 219013761
Status: Underutilized

Comment: 4000 sq. ft.; 2 story brick frame; possible asbestos; most recent use—exercise area.

Bldg. 1011 (Portion of)
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111
Location: East of State Highway 62 at Gate 3
Landholding Agency: Army
Property Number: 219013762
Status: Underutilized
Comment: 4040 sq. ft.; 1 story concrete block frame; possible asbestos; secured area with alternate access; most recent use—office.

Bldg. 1001 (Portion of)
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111
Location: South end of 3rd Street, East of Highway 62 at entrance gate.
Landholding Agency: Army
Property Number: 219013763
Status: Underutilized
Comment: 55630 sq. ft.; 1 story concrete block; possible asbestos; secured area with alternate access; most recent use—cloth bag manufacturing.

Bldg. 2542
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111
Landholding Agency: Army
Property Number: 219240717
Status: Unutilized
Comment: 1954 sq. ft., 1 story concrete block, secured area w/alternate access, asbestos, most recent use—heating facility.

Bldg. 2531
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111
Landholding Agency: Army
Property Number: 219240718
Status: Unutilized
Comment: 119746 sq. ft., 1 story concrete block, secured area w/alternate access, asbestos, most recent use—storage.

Bldgs. 7215, 7216
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111
Landholding Agency: Army
Property Number: 219330297
Status: Unutilized
Comment: roadside shelters, no utilities, located on Indiana State Highway Right of Way.

Kansas

Bldg. T–2549, Fort Riley
Ft. Riley, KS, Geary, Zip: 66442–
Landholding Agency: Army
Property Number: 219310251
Status: Unutilized
Comment: 3082 sq. ft., 1-story wood frame, needs rehab, presence of asbestos, most recent use—storage.

Bldg. 166, Fort Riley
Ft. Riley Co: Geary KS 66442
Landholding Agency: Army
Property Number: 219410325
Status: Unutilized
Comment: 3803 sq. ft., 3 story brick residence, needs rehab, presence of asbestos, located within National Registered Historic District.

Kentucky

Bldg. 103
Fort Campbell
Fort Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410281
Status: Unutilized
Comment: 8962 sq. ft.; most recent use—barracks; off-site use only.

Bldg. 105
Fort Campbell
Fort Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410282
Status: Unutilized
Comment: 18,015 sq. ft.; most recent use—barracks; off-site use only.

Bldg. 5410
Fort Campbell
Fort Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410299
Status: Unutilized
Comment: 1000 sq. ft.; needs rehab.; most recent use—storage; offsite use only.

Bldg. 6550
Fort Campbell
Fort Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410300
Status: Unutilized
Comment: 25,701 sq. ft.; most recent use—storage; off-site use only.

Bldg. 7162
Fort Campbell
Fort Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410301
Status: Unutilized
Comment: 1256 sq. ft.; most recent use—storage; off-site use only.

Bldgs. 5406, 5413, 5417
Fort Campbell
Fort Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Numbers: 219410304, 219410307
Status: Unutilized
Comment: 8208 sq. ft. each; 1 story; presence of asbestos; needs rehab; most recent use—vehicle maintenance shop; off-site use only.

Bldgs. 5408, 5411, 5415
Fort Campbell
Fort Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Numbers: 219410305–219410306, 219410308
Status: Unutilized
Comment: 1350 sq. ft. each; 1 story; presence of asbestos; needs rehab; most recent use—vehicle maintenance shop; off-site use only.

Bldgs. 5418, 5419, 05624–05625, 05823, 5422–5423, 5426–5427, 5712, 5724
Fort Campbell
Fort Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Numbers: 219410310–219410311, 219410338–219410339, 219410347, 219410349–219410352, 219410354, 219410360
Status: Unutilized
Comment: 2732 sq. ft. each; 1 story; needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop; off-site use only.

Bldg. 05451, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410337
Status: Unutilized
Comment: 200 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—military vehicle gas station.

Bldg. 05711, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410340
Status: Unutilized
Comment: 10944 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop.

Bldg. 05713, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410341
Status: Unutilized
Comment: 10944 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop.

Bldg. 05811, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410342
Status: Unutilized
Comment: 1010 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—dispatch bldg.

Bldg. 05813, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410343
Status: Unutilized
Comment: 2700 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—vehicle shop.

Bldg. 05815, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410344
Status: Unutilized
Comment: 1350 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop.

Bldg. 05817, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410345
Status: Unutilized
Comment: 3108 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop.

Bldg. 05819, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410346
Status: Unutilized
Comment: 3376 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop.

Bldg. 05829, Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410348
Status: Unutilized
Comment: 3376 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—maintenance shop.

Bldgs. 5715, 5717, 5723, 5725, 5727
Fort Campbell
Fort Campbell, KY, Christian, Zip: 422233
Landholding Agency: Army

Property Numbers: 219410355, 219410357, 219410359, 219410361–219410362
Status: Unutilized
Comment: 10,944 sq. ft.; 1 story; needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop; off-site use only.

Bldg. 5728
Fort Campbell
Fort Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410363
Status: Unutilized
Comment: 3108 sq. ft.; 1 story; needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop; off-site use only

Bldg. 5730
Fort Campbell
Fort Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219410364
Status: Unutilized
Comment: 9000 sq. ft.; 1 story; needs rehab.; presence of asbestos; most recent use—vehicle maintenance shop; off-site use only.

50 Bldgs.
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420365
Status: Unutilized
Location: #2750, 2752, 2754, 2758, 2943, 2945, 2947, 2970, 2972, 2974, 2976, 2978, 2980, 2982, 2984, 2986, 2988, 3111, 3113, 3115, 3119, 3121, 3123, 3125, 3127, 3129, 3138, 3140, 3150–3169, 3178, 3188
Comment: 5310 sq. ft. each, 2-story, presence of asbestos, most recent use—barracks and training, off-site use only.

13 Bldgs.
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420367
Status: Unutilized
Location: #2776, 2946, 3130–3131, 3136–3137, 3139, 3144–3147, 3176, 3186
Comment: 2750 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only.

Bldgs. 2778, 2786, 2939
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420368
Status: Unutilized
Comment: 3250 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only.

Bldg. 2941
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420369
Status: Unutilized
Comment: 2950 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only.

Bldg. 2944
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420370
Status: Unutilized
Comment: 3000 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only.

Bldgs. 2957, 2959
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Numbers: 219420371, 219420372
Status: Unutilized
Comment: 2500 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only.

Bldg. 2965
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420373
Status: Unutilized
Comment: 2505 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only.

Bldg. 2967
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223
Landholding Agency: Army
Property Number: 219420374
Status: Unutilized
Comment: 3000 sq. ft., 1-story, presence of asbestos, most recent use—admin. and supply, off-site use only.

Bldgs. 2774, 2940
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420375
Status: Unutilized
Comment: 2950 sq. ft., 1-story, presence of asbestos, most recent use—dining facilities, off-site use only.

Bldgs. 3134, 3148
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420376
Status: Unutilized
Comment: 2350 sq. ft., 1-story, presence of asbestos, most recent use—dining facilities, off-site use only.

Bldg. 2969
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420377
Status: Unutilized
Comment: 3340 sq. ft., 1-story, presence of asbestos, most recent use—dining facility, off-site use only.

Bldg. 3132
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420378
Status: Unutilized
Comment: 2200 sq. ft., 1-story, presence of asbestos, most recent use—dining facility, off-site use only.

Bldg. 3142
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420379
Status: Unutilized
Comment: 2310 sq. ft., 1-story, presence of asbestos, most recent use—dining facility, off-site use only.

Bldg. 3143
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420380
Status: Unutilized
Comment: 2750 sq. ft., 1-story, presence of asbestos, most recent use—dining facility, off-site use only.

Bldg. 3149
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420381
Status: Unutilized
Comment: 2365 sq. ft., 1-story, presence of asbestos, most recent use—dining facility, off-site use only.

Bldg. 2782
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420382
Status: Unutilized
Comment: 2950 sq. ft., 1-story, presence of asbestos, most recent use—training, off-site use only.

Bldgs. 2907–2908
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420383
Status: Unutilized
Comment: 4800 sq. ft., 2-story, presence of asbestos, most recent use—training, off-site use only.

Bldg. 2938
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420384
Status: Unutilized
Comment: 3250 sq. ft., 1-story, presence of asbestos, most recent use—training, off-site use only.

Bldg. 2942
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420385
Status: Unutilized
Comment: 2950 sq. ft., 1-story, presence of asbestos, most recent use—training, off-site use only.

Bldg. 2953
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420386
Status: Unutilized
Comment: 1900 sq. ft., 1-story, presence of asbestos, most recent use—training, off-site use only.

Bldg. 3182
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420387
Status: Unutilized
Comment: 2550 sq. ft., 1-story, presence of asbestos, most recent use—training, off-site use only.

Bldg. 2948
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420388
Status: Unutilized
Comment: 2350 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 2961
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420389
Status: Unutilized
Comment: 1800 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 2955
Fort Campbell
Ft. Campbell, KY, Christian, Zip: 42223–
Landholding Agency: Army
Property Number: 219420390
Status: Unutilized
Comment: 1890 sq. ft., 1-story, presence of asbestos, most recent use—conf. room, off-site use only.

Maryland

Bldgs. E5878, E5879
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Numbers: 219012652, 219012653
Status: Unutilized
Comment: 213 sq. ft. each; structural deficiencies; possible abestos; and contamination.

Bldg. 10302
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012666
Status: Unutilized
Comment: 42 sq. ft.; possible asbestos; most recent use—pumping station.

Bldg. E5975
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012677
Status: Unutilized
Comment: 650 sq. ft.; possible contamination; structural deficiencies; most recent use—training exercises/chemicals and explosives; potential use—storage.

Bldg. 6687
Fort George G. Meade
Mapes and Zimborski Roads
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219220446
Status: Unutilized
Comment: 1150 sq. ft., presence of asbestos, wood frame, most recent use—veterinarian clinic, off-site removal only.

Bldgs. 303–308, 323–328, 333–337
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320293
Status: Unutilized
Comment: 4720 sq. ft. ea., 2 story wood frame, possible asbestos, most recent use—barracks/classrooms, fair to good condition, off-site use only.

Bldg. 309
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320294
Status: Unutilized
Comment: 2324 sq. ft., 1 story wood frame, possible asbestos, fair to good condition, off-site use only.

Bldgs. 312, 319
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320295
Status: Unutilized
Comment: 2594 sq. ft., 1 story wood frame, possible asbestos, most recent use—storage, fair condition, offsite use only.

Bldgs. 313–314, 317–318
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320296
Status: Unutilized
Comment: 1144 sq. ft., 1 story wood frame, possible asbestos, most recent use—storage, fair to good condition, off-site use only.

Bldgs. 302, 329, 332, 339
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320297
Status: Unutilized
Comment: 2208 sq. ft., 1 story wood frame, possible asbestos, most recent use—storage, fair condition, off-site use only.

Bldg. 2239
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320298
Status: Unutilized
Comment: 24528 sq. ft., 1 story concrete, poss. asbestos, most recent use—mess hall, needs rehab, off-site use only.

Bldg. 3036
Aberdeen Proving Ground
Harford County MD 21005–5001
Landholding Agency: Army
Property Number: 219320302
Status: Unutilized
Comment: 11016 sq. ft., 1 story, needs rehab, most recent use—gym, presence of asbestos.

Bldg. E4890
Aberdeen Proving Ground
Harford County MD 21005–5001
Landholding Agency: Army
Property Number: 219330434
Status: Unutilized
Comment: 6250 sq. ft., 1 story, needs rehab, presence of asbestos.

Michigan

Bldg. 300, Arsenal Acres
24140 Mound Road
Warren, MI 48091
Landholding Agency: Army
Property Number: 219220448
Status: Unutilized
Comment: 52 sq. ft., sentry station, secured area w/alternate access.

Bldg. 301, Arsenal Acres
24140 Mound Road
Warren, MI 48091
Landholding Agency: Army
Property Number: 219220449
Status: Unutilized
Comment: 3125 sq. ft., 2-story colonial style home, secured area w/alternate access.

Bldgs. 302, 303
24140 Mound Road
Warren, MI 48091
Landholding Agency: Army
Property Numbers: 219220450–219220451
Status: Unutilized
Comment: 2619 sq. ft. ea., 2-story colonial style home, secured area w/alternate access.

Bldgs. 304, 305
24140 Mound Road
Warren, MI 48091
Landholding Agency: Army
Property Numbers: 219220452–219220787
Status: Unutilized
Comment: 2443 sq. ft. ea., 2-story colonial style home, secured area w/alternate access.

Bldgs. 306, 307
Arsenal Acres
24140 Mound Road
Warren MI 48091
Landholding Agency: Army
Property Numbers: 219410326–219410327
Status: Unutilized
Comment: 2443 sq. ft., 2 story colonial style homes, secured area with alternate access.

Bldg. 308
Arsenal Acres
24140 Mound Road
Warren MI 48091
Landholding Agency: Army
Property Number: 219410328
Status: Unutilized
Comment: 205 sq. ft., 1 story brick, secured area w/alternate access.

Mississippi

Bldg. VB201
Vicksburg Reserve Center
Vicksburg MS 39180–0055
Landholding Agency: Army
Property Number: 219330308
Status: Unutilized
Comment: 15444 sq. ft., 1 story metal frame, most recent use—army reserve center, off-site use only.

Bldg. VB202
Vicksburg Reserve Center
Vicksburg MS 39180–0055
Landholding Agency: Army
Property Number: 219330309
Status: Unutilized
Comment: 800 sq. ft., 1 story metal frame, most recent use—admin., off-site use only.

Bldg. VB213
Vicksburg Reserve Center
Vicksburg MS 39180–0055
Landholding Agency: Army
Property Number: 219330310
Status: Unutilized
Comment: 180 sq. ft., 1 story concrete block, most recent use—storehouse, off-site use only.

Missouri

Bldg. T3057
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219220580
Status: Underutilized
Comment: 2650 sq. ft., 1 story wood frame, presence of asbestos, off-site use only, not handicapped accessible, most recent use—admin/general purpose.

Bldg. T2383
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219230228
Status: Underutilized
Comment: 9267 sq. ft., 1 story, presence of asbestos, off-site use only, most recent use—general purpose.

Bldg. T1376
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219230237
Landholding Agency: Army
Status: Underutilized
Comment: 1296 sq. ft., 1 story, presence of asbestos, off-site use only, most recent use—Hdqtrs building.

Bldg. T599
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219230260
Status: Underutilized
Comment: 18270 sq. ft., 1 story, presence of asbestos, off-site use only, most recent use—storehouse.

Bldg. T1311
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219230261
Status: Underutilized
Comment: 2740 sq. ft., 1 story, presence of asbestos, off-site use only, most recent use—storehouse.

Bldg. T1333
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219230263
Status: Underutilized
Comment: 1144 sq. ft., 1 story, presence of asbestos, off-site use only, most recent use—storehouse.

Bldgs. T1270, T1329
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Numbers: 219320307, 219330300
Status: Unutilized
Comment: 1296 sq. ft., 1 story, most recent use—admin., possible asbestos, off-site use only.

Bldg. T427
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219330299
Status: Underutilized
Comment: 10245 sq. ft., 1 story, presence of asbestos, most recent use—post office, off-site use only.

Bldg. T1688
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219330301
Status: Unutilized
Comment: 4720 sq. ft., 2 story, presence of asbestos, most recent use—admin., off-site use only.

Bldg. T2206
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219330302
Status: Unutilized
Comment: 1440 sq. ft., 1 story, presence of asbestos and contamination, most recent use—storage, offsite use only.

Bldg. T2209
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219330303
Status: Unutilized
Comment: 288 sq. ft., 1 story, presence of asbestos, most recent use—storage, off-site use only.

Bldg. T2357
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219330304
Status: Underutilized
Comment: 1296 sq. ft., 1 story, presence of asbestos, most recent use—hdqtrs bldg., off-site use only.

Bldgs. T2360, T2364
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219330305
Status: Underutilized
Comment: 1144 sq. ft. each, 1 story, presence of asbestos, most recent use—admin., off-site use only.

Bldg. T2368
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219330306
Status: Underutilized
Comment: 3663 sq. ft., 1 story, presence of asbestos, offsite use only.

Bldg. T3005
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219330307
Status: Underutilized
Comment: 2220 sq. ft., 1 story, presence of asbestos, most recent use—motor repair shop, off-site use only.

Bldgs. T1338, T413, T1699, T1697
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Property Numbers: 219340207–219340208, 219340210, 219340216
Status: Unutilized
Comment: 4720 sq. ft. ea., 2 story wood frame, no handicap fixtures, off-site use only, most recent use—enlisted barracks or administration.

Bldg. T465
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219340209
Status: Unutilized
Comment: 5310 sq. ft., 2 story wood frame, no handicap fixtures, lead based paint, possible asbestos, off-site use only, most recent use—administration.

Bldg. T2110
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219340211
Status: Unutilized
Comment: 1600 sq. ft., 1 story wood frame, no handicap fixtures, lead based paint, off-site use only, most recent use—administration.

Bldg. T2171
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219340212
Status: Unutilized
Comment: 1296 sq. ft., 1 story wood frame, no handicap fixtures, lead based paint, off-site use only, most recent use—

Bldgs. T1258, T1369, T1478
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Property Numbers: 219340213–219340215
Status: Underutilized
Comment: 2360 sq. ft. ea., 1 story wood frame, no handicap fixtures, possible asbestos, lead based paint, off-site use only, most recent use—warehouses.

Bldg. T2312
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219340217
Status: Underutilized
Comment: 1403 sq. ft., 1 story wood frame, lead based paint, no handicap fixtures, off-site use only, most recent use—paint shop.

Bldg. T2370
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 2193402218
Status: Underutilized
Comment: 2284 sq. ft., 1 story wood frame, lead based paint, no handicap fixtures, off-site use only, most recent use—storehouse.

Bldg. T6822
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000

Landholding Agency: Army
Property Number: 219340219
Status: Underutilized
Comment: 4000 sq. ft., 1 story wood frame, no handicap fixtures, off-site use only, most recent use—storage.

Bldg. T1363
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420392
Status: Underutilized
Comment: 1296 sq. ft., 1-story, presence of lead base paint, most recent use—storage, off-site use only.

Bldg. T1364
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420393
Status: Underutilized
Comment: 1144 sq. ft., 1-story, presence of lead base paint, most recent use—storage, off-site use only.

Bldg. T1686
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420394
Status: Underutilized
Comment: 3012 sq. ft., 1-story, presence of lead base paint, most recent use—storage, off-site use only.

Bldg. T1687
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420395
Status: Underutilized
Comment: 2646 sq. ft., 1-story, presence of lead base paint, most recent use—storage, off-site use only.

Bldg. T2550
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420396
Status: Underutilized
Comment: 224 sq. ft., 1-story, presence of lead base paint, most recent use—storage, off-site use only.

Bldg. T281
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420397
Status: Underutilized
Comment: 4230 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T282
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420398
Status: Underutilized
Comment: 15923 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T283
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420431
Status: Underutilized
Comment: 6163 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T407
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420432
Status: Underutilized
Comment: 2265 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T408
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420433
Status: Underutilized
Comment: 10296 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T409
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420434
Status: Underutilized
Comment: 2450 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T410
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420435
Status: Underutilized
Comment: 2664 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T411
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420436
Status: Underutilized
Comment: 4720 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T412
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420437
Status: Underutilized
Comment: 1296 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T415
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420438
Status: Underutilized
Comment: 1144 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T429
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420439
Status: Underutilized
Comment: 2475 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T1100
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420440
Status: Underutilized
Comment: 3236 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T1497
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420441
Status: Underutilized
Comment: 4720 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T2056
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420442
Status: Underutilized
Comment: 3600 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T2057
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420443
Status: Underutilized
Comment: 3200 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T2066
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420444
Status: Underutilized
Comment: 3307 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Bldg. T2138
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420445

Status: Underutilized
Comment: 1676 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.
Bldg. T2139
Fort Leonard Wood
Ft. Leonard Wood, MO, Pulaski, Zip: 65473–5000
Landholding Agency: Army
Property Number: 219420446
Status: Underutilized
Comment: 3663 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only.

Montana

USARC Bozeman Reserve Center
Bozeman Co: Gallatin MT
Landholding Agency: Army
Property Number: 219420391
Status: Unutilized
Comment: 15236 sq. ft., 3 story reserve center on .54 acres.
Bldg. on National Register of Historic Places. secured area w/alternate access.

Nebraska

Bldg. RG–1
Cornhusker Army Ammunition Plant
Old Potash Hwy
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219210292
Status: Unutilized
Comment: 1080 sq. ft., 1 story garage, possible asbestos, secured area with alternate access.
Bldg. RG–2
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219210293
Status: Unutilized
Comment: 576 sq. ft., 1 story garage, secured area with alternate access.
Bldg. RG–3
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219210294
Status: Unutilized
Comment: 936 sq. ft., 1 story garage, possible asbestos, secured area with alternate access.
Bldg. RG–4
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219210295
Status: Unutilized
Comment: 1040 sq. ft., 1 story garage, possible asbestos, secured area with alternate access.
Bldg. RG–5
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219210296
Status: Unutilized
Comment: 490 sq. ft., 1 story garage, possible asbestos, secured area with alternate access.
Bldg. RG–6
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219210297
Status: Unutilized
Comment: 510 sq. ft., 1 story garage, possible asbestos, secured area with alternate access.

Nevada

Bldgs. 00425–00449
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Numbers: 219011946–219011952, 219011954, 219011956, 219011959, 219011961, 219011964, 219011968, 219011970, 219011974, 219011976–219011978, 219011980, 219011982, 219011984, 219011987, 219011990, 219011994, 219011996
Status: Unutilized
Comment: 1310–1640 sq. ft. each, one floor residential, semi/wood construction, good condition.

New Jersey

Bldg. 421, Fort Monmouth
Ft. Monmouth Co: Monmouth NJ 07703–
Landholding Agency: Army
Property Number: 219330435
Status: Unutilized
Comment: 4720 sq. ft., 2 story, most recent use—office.
Bldg. 2529, Fort Monmouth
Charles Wood Area
Landholding Agency: Army
Property Number: 219330436
Status: Unutilized
Comment: 4413 sq. ft., 2 story, needs rehab, most recent use—administration.

New Mexico

Bldgs. 108–109, 118–119
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Numbers: 219330327–219330328, 219330330–219330331
Status: Unutilized
Comment: 3561 sq. ft. ea., 2-story, presence of asbestos, most recent use—admin., off-site use only.
Bldg. 117
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330329
Status: Unutilized
Comment: 1688 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only.
Bldgs. 148–150
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Numbers: 219330332–219330334
Status: Unutilized
Comment: 3570 sq. ft. ea., 2-story, needs rehab, presence of asbestos, most recent use—admin., off-site use only.
Bldg. 357
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330335
Status: Unutilized
Comment: 3600 sq. ft., 2-story, presence of asbestos, most recent use—admin., off-site use only.
Bldg. 1758
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330336
Status: Unutilized
Comment: 1620 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only.
Bldg. 1768
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330337
Status: Unutilized
Comment: 15333 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only.
Bldg. 28281
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330338
Status: Unutilized
Comment: 1856 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only.
Bldg. 28282
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330339
Status: Unutilized
Comment: 1850 sq. ft., 3-story, needs rehab, presence of asbestos, most recent use—admin., off-site use only.
Bldg. 32980
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330340
Status: Unutilized
Comment: 451 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only.
Bldg. 34252
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330341
Status: Unutilized
Comment: 720 sq. ft., 1-story, presence of asbestos, most recent use—admin., off-site use only.
Bldg. 418
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330342
Status: Unutilized
Comment: 3690 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.
Bldg. 420
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330343
Status: Unutilized
Comment: 2407 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 890
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330344
Status: Unutilized
Comment: 9011 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 1348
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330345
Status: Unutilized
Comment: 720 sq. ft., 1-story, needs rehab, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 1738
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330346
Status: Unutilized
Comment: 1500 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 1765
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330347
Status: Unutilized
Comment: 600 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 21542
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330348
Status: Unutilized
Comment: 945 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 22118
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330349
Status: Unutilized
Comment: 1341 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 22253
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330350
Status: Unutilized
Comment: 216 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 28267
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330351
Status: Unutilized
Comment: 617 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 29195
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330352
Status: Unutilized
Comment: 56 sq. ft., 1-story, presence of asbestos, most recent use—storage, off-site use only.

Bldgs. 34219, 34221
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Numbers: 219330353–219330354
Status: Unutilized
Comment: 720 sq. ft. ea., 1-story, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 145
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330355
Status: Unutilized
Comment: 2954 sq. ft., 1-story, presence of asbestos, most recent use—chapel, off-site use only.

Bldg. 1754
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330356
Status: Unutilized
Comment: 6974 sq. ft., 1-story, presence of asbestos, most recent use—maintenance shop, off-site use only.

Bldg. 19242
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330357
Status: Unutilized
Comment: 450 sq. ft., 1-story, presence of asbestos, most recent use—maintenance shop, off-site use only.

Bldg. 34227
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330358
Status: Unutilized
Comment: 675 sq. ft., 1-story, presence of asbestos, most recent use—maintenance shop, off-site use only.

Bldg. 34244
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330359
Status: Unutilized
Comment: 720 sq. ft., 1-story, presence of asbestos, most recent use—maintenance shop, off-site use only.

Bldg. 21105
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330360
Status: Unutilized
Comment: 239 sq. ft., presence of asbestos, most recent use—veterinarian facility, off-site use only.

Bldg. 21106
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330361
Status: Unutilized
Comment: 405 sq. ft., 1-story, presence of asbesetos, most recent use—veterinarian facility, off-site use only.

Bldg. 21310
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330362
Status: Unutilized
Comment: 1006 sq. ft., 1-story, presence of asbestos, most recent use—transmitter bldg., off-site use only.

Bldg. 29890
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330363
Status: Unutilized
Comment: 450 sq. ft., 1-story, presence of asbestos, most recent use—frequency monitoring station, off-site use only.

Bldg. 1868
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330364
Status: Unutilized
Comment: 41 sq. ft., 1-story, presence of asbestos, most recent use—scale house, off-site use only.

Bldg. 528
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330365
Status: Unutilized
Comment: 225 sq. ft., 1-story, presence of asbestos, most recent use—decontamination shelter, off-site use only.

Bldg. 1834
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330366
Status: Unutilized
Comment: 150 sq. ft., 1-story, presence of asbestos, most recent use—animal kennel, off-site use only.

Bldg. 1300
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330367
Status: Unutilized
Comment: 1500 sq. ft., 1-story, presence of asbestos, most recent use—indoor small arms range, off-site use only.

Bldg. 23100
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002
Landholding Agency: Army
Property Number: 219330368
Status: Unutilized
Comment: 40 sq. ft., 1-story, presence of asbestos, most recent use—sentry station, off-site use only.

Bldg. 29196
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330369
Status: Unutilized

Comment: 38 sq. ft., 1-story, presence of asbestos, most recent use—power plant bldg., off-site use only.

Bldg. 30774
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330370
Status: Unutilized
Comment: 176 sq. ft., 1-story, presence of asbestos, off-site use only.

Bldg. 33136
White Sands Missile Range
White Sands, NM, Dona Ana, Zip: 88002–
Landholding Agency: Army
Property Number: 219330371
Status: Unutilized
Comment: 18 sq. ft., off-site use only.

New York

Bldg. 323
Fort Totten
Story Avenue
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012567
Status: Underutilized
Comment: 30000 sq ft., 3 floors, most recent use-barracks & mess facility, needs major rehab.

Bldg. 304
Fort Totten
Shore Road
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012570
Status: Underutilized
Comment: 9610 sq ft., 3 floors, most recent use-hospital, needs major rehab/utilities disconnected.

Bldg. 211
Fort Totten
211 Totten Avenue
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012573
Status: Underutilized
Comment: 6329 sq ft., 3 floors, most recent use-family housing, needs major rehab, utilities disconnected.

Bldg. 332
Fort Totten
Theater Road
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012578
Status: Underutilized
Comment: 6288 sq ft., 1 floor, most recent use-theater w/stage, needs major rehab, utilities disconnected.

Bldg. 322
Fort Totten
322 Story Avenue
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012583
Status: Underutilized
Comment: 30000 sq ft., 3 floors, most recent use-barracks, mess & administration, utilities disconnected, needs rehab.

Bldg. 326
Fort Totten
326 Pratt Avenue
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012586
Status: Underutilized
Comment: 6000 sq ft., 2 floors, most recent use-storage, offices & residential, utilities disconnected/needs rehab.

23 Residential Apartment Bldgs
Stewart Gardens, Stewart Army Subpost
Army Wherry Family Housing
New Windsor Co: Orange NY 12553
Location: Y and Garden Loop Streets
Landholding Agency: Army
Property Number: 219330315
Status: Unutilized
Comment: 2 story family housing, concrete block/wood, needs rehab, off-site use only.

5 Detached Garages
Stewart Gardens, Stewart Army Subpost
Army Wherry Family Housing
New Windsor Co: Orange NY 12553
Property Number: 219330316
Status: Unutilized
Comment: 1 story garages, concrete block/wood, needs rehab, off-site use only.

30 Storage Sheds
Stewart Gardens, Stewart Army Subpost
Army Wherry Family Housing
New Windsor Co: Orange NY 12553
Property Number: 219330317
Status: Unutilized
Comment: 1 story aluminum/wood storage she ', good condition, off-site use only.

North Carolina

Bldg. O–9710
Fort Bragg Co: Cumberland NC 28307
Landholding Agency: Army
Property Number: 219330312
Status: Unutilized
Comment: 974 sq. ft., metal trailer, need repairs, most recent use—living quarters, off-site use only.

Bldg. 4–2402, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307
Landholding Agency: Army
Property Number: 219420447
Status: Unutilized
Comment: 1532 sq. ft., 1 story masonry block, needs rehab, possible asbestos, most recent use—auto rental facility, off-site use only.

Bldg. 8–4139, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307
Landholding Agency: Army
Property Number: 219420448
Status: Unutilized
Comment: 3154 sq. ft., 1 story wood, needs repair, possible asbestos, most recent use—carpentry shop, educ. center, off-site use only.

Bldgs. 8–4343, 8–4546, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307
Landholding Agency: Army
Property Number: 219420449–219420450
Status: Unutilized
Comment: 4720 sq. ft. ea., 2 story wood, needs repair, possible asbestos, off-site use only.

Bldg. M–5351, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307
Landholding Agency: Army
Property Number: 219420452
Status: Unutilized
Comment: 4141 sq. ft., 1 story wood, needs repair, possible asbestos, most recent use—storage, off-site use only.

Bldg. 0–9025
Ft. Bragg Co: Cumberland NC 28307
Landholding Agency: Army
Property Number: 219420454
Status: Unutilized
Comment: 1964 sq. ft., metal, needs rehab, possible asbestos, most recent use—admin., off-site use only.

Ohio

15 Units—Military Family Housing
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219230354
Status: Excess
Comment: 3 bedroom (7 units)—1824 sq. ft. each, 4 bedroom (8 units)—2430 sq. ft. each, 2 story wood frame, presence of asbestos, off-site use only.

7 Units—Military Family Housing
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219230355
Status: Excess
Comment: 1 4-stall-garage and 6 3-stall garages, presence of asbestos, off-site use only.

Bldg. P–3
Doan U.S. Army Reserve Center
Portmonth Co: Scioto OH 45662
Landholding Agency: Army
Property Number: 219320311
Status: Unutilized
Coment: 10752 sq. ft., 1 story brick, most recent use—office, possible asbestos.

Bldg. P–4
Doan U.S. Army Reserve Center
Portmonth Co: Scioto OH 45662
Landholding Agency: Army
Property Number: 219320312
Status: Unutilized
Comment: 2508 sq. ft., 1 story brick, most recent use—vehicle maintenance shop.

Bldg. P–2
Hayes U.S. Army Reserve Center
Fremont Co: Sandusky OH 43420
Landholding Agency: Army
Property Number: 219320314
Status: Unutilized
Comment: 3956 sq. ft., 1 story brick, most recent use—office, possible asbestos.

Bldg. P–3
Hayes U.S. Army Reserve Center
Fremont Co: Sandusky OH 43420
Landholding Agency: Army
Property Number: 219320315
Status: Untilized
Comment: 1259 sq. ft., 1 story brick, most recent use—vehicle maintenance shop, possible asbestos.

Oklahoma

Bldg. T–2545, Fort Sill
2544 Sheridan Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219011255
Status: Unutilized
Comment: 1994 sq. ft.; asbestos; wood frame; 2 floors, no operating sanitary facilities; most recent use—barracks.

Bldg. T–2606
Fort Sill
2606 Currie Road

Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219011273
Status: Unutilized
Comment: 2722 sq. ft.; possible asbestos, one floor wood frame; most recent use—Headquarters Bldg.

Bldg. T–3507
Fort Sill
3507 Sheridan Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219011315
Status: Unutilized
Comment: 2904 sq. ft.; possible asbestos; potential heavy metal contamination; wood frame; most recent use—chapel.

Bldg. T–4919
Fort Sill
4919 Post Road
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219014842
Status: Unutilized
Comment: 603 sq. ft.; 1 story mobile home trailer; possible asbestos; needs rehab.

Bldg. T–4523, Fort Sill
4523 Wilson Road
Lawton Co: Comanche OK 73503
Landholding Agency: Army
Property Number: 219014933
Status: Unutilized
Comment: 1639 sq. ft., 1 story wood frame, needs rehab, possible asbestos, most recent use—storage.

Bldg. T–838, Fort Sill
838 Macomb Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219220609
Status: Unutilized
Comment: 151 sq. ft., wood frame, 1 story, off-site removal only, most recent use—vet facility (quarantine stable).

Bldg. T–2702, Fort Sill
2702 Thomas Street
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240655
Status: Unutilized
Comment: 5520 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—admin.

Bldg. T–3311, Fort Sill
3311 Naylor Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240656
Status: Unutilized
Comment: 1468 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—admin.

Bldg. T–954, Fort Sill
954 Quinette Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240659
Status: Unutilized
Comment: 3571 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—motor repair shop.

Bldg. T–1050, T–1051 Fort Sill
1050 Quinette Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Numbers: 219240660–219240661
Status: Unutilized
Comment: 6240 sq. ft. ea., 2 story wood frame, needs rehab, off-site use only, most recent use—barracks.

Bldgs. T–2703, T–2704 Fort Sill
2703 Thomas Street
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Numbers: 219240667–219240668
Status: Unutilized
Comment: 5520 sq. ft. ea., 2 story wood frame, needs rehab, off-site use only, most recent use—enlisted barracks.

Bldg. T–2740, Fort Sill
2740 Miner Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240669
Status: Unutilized
Comment: 8210 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—enlisted barracks.

Bldg. T–2745, Fort Sill
2745 Miner Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240670
Status: Unutilized
Comment: 8288 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—enlisted barracks.

Bldg. T–2633, Fort Sill
2633 Miner Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240672
Status: Unutilized
Comment: 19455 sq. ft., 1 story wood frame, neds rehab, offsite use only, most recent use—enlisted mess.

Bldg. T–2701, Fort Sill
2701 Thomas Street
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240673
Status: Unutilized
Comment: 5520 sq. ft., 2 story wood frame, needs rehab., offsite use only, most recent use—storage.

Bldg. T–2907, Fort Sill
2907 Marcy Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240674
Status: Unutilized
Comment: 3861 sq. ft., 1 story wood frame, needs rehab, offsite use only, most recent use—storage.

Bldg. T–2928, Fort Sill
2928 Custer Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240675
Status: Unutilized
Comment: 2315 sq. ft., 1 story wood frame, needs rehab, offsite use only, most recent use—storage.

Bldg. T–4050, Fort Sill
4050 Pitman Street
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240676
Status: Unutilized
Comment: 3177 sq. ft., 1 story wood frame, needs rehab, offsite use only, most recent use—storage.

Bldg. P–3032, Fort Sill
3032 Haskins Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240678
Status: Unutilized
Comment: 101 sq. ft., 1 story wood frame, needs rehab, offsite use only, most recent use—general storehouse.

Bldg. T–3325, Fort Sill
3325 Naylor Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240681
Status: Unutilized
Comment: 8832 sq. ft., 1 story wood frame, needs rehab, offsite use only, most recent use—warehouse.

Bldg. T–260, Fort Sill
260 Corral Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240776
Status: Unutilized
Comment: 4838 sq. ft., 2 story wood frame, off-site use only, possible asbestos, most recent use—administration.

Bldg. T–3641, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 219320324
Status: Unutilized
Comment: 1255 sq. ft., 1 story wood frame, possible asbestos, off-site use only, needs rehab, most recent use day room.

Bldg. T–3644, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 2193320327
Status: Unutilized
Comment: 1-story wood frame, possible asbestos, off-site use only.

Bldg. T–5122, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Status: Unutilized
Comment:

Bldg. P–6220, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 219320335
Status: Unutilized
Comment: 848 sq. ft., 1 story wood frame, possible asbestos, most recent use—construction bldg., off-site use only.

Bldg. S–6228, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 219320336
Status: Unutilized
Comment: 352 sq. ft., 1 story wood frame, possible asbestos, most recent use—range house, off-site use only.

Bldg. P–2610, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219330372
Status: Unutilized
Comment: 512 sq. ft., 1 story, possible asbestos, most recent use—classroom, off-site use only.

Bldg. 4722, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219330373
Status: Unutilized
Comment: 3375 sq. ft., 2 story, possible asbestos, most recent use—administration, off-site use only.

Bldg. T5015, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219330374
Status: Unutilized
Comment: 1412 sq. ft., 1 story wood, possible asbestos, most recent use—administration/supply, off-site use only.

Bldg. T232, T236 Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Numbers: 219330377–219330378
Status: Unutilized
Comment: 2868 sq. ft. ea., 1 story wood, possible asbestos, most recent use—storage, off-site use only.

Bldg. T312, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219330379
Status: Unutilized
Comment: 1970 sq. ft., 2 story wood, possible asbestos, most recent use—storage, off-site use only.

Bldg. T1652, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330380
Status: Unutilized
Comment: 1505 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only.

Bldg. T1665, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330381
Status: Unutilized
Comment: 1305 sq. ft., 1-story wood, possible asbestos, most recent
use—storage, off-site use only.

Bldg. T2034, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330383
Status: Unutilized
Comment: 401 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only.

Bldg. T2705, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330384
Status: Unutilized
Comment: 1601 sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only.

Bldg. T2706, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330385
Status: Unutilized
Comment: 2156 sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only.

Bldg. T2707, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330386
Status: Unutilized
Comment: 2148 sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only.

Bldg. T2708, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330387
Status: Unutilized
Comment: 2153 sq. ft., 2-story, possible asbestos, most recent use—storage, off-site use only.

Bldg. T2709, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330388
Status: Unutilized
Comment: 2112 sq. ft., 2-story wood, possible asbestos, most recent use—storage, off-site use only.

Bldg. T2713, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330389
Status: Unutilized
Comment: 114 sq. ft., iron/metal bldg., possible asbestos, most recent use—storage, off-site use only.

Bldgs. T2756, T2757 Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Numbers: 219330390–219330391
Status: Unutilized
Comment: 5172 sq. ft. ea., 1-story wood, possible asbestos, most recent use—storage, off-site use only.

Bldg. T3026, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330392
Status: Unutilized
Comment: 2454 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.

Bldg. T3651, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330393
Status: Unutilized
Comment: 2770 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.

Bldg. T3706, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330394
Status: Unutilized
Comment: 1947 sq. ft., 2-story, possible asbestos, most recent use—storage, off-site use only.

Bldg. T3710, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330396
Status: Unutilized
Comment: 1176 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.

Bldg. T3712, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330397
Status: Unutilized
Comment: 1021 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.

Bldg. T3713, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330398
Status: Unutilized
Comment: 1013 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.

Bldg. T3714, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330399
Status: Unutilized
Comment: 1159 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.

Bldg. T3718, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330400
Status: Unutilized
Comment: 1195 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.

Bldg. T4035, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330401
Status: Unutilized
Comment: 867 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.

Bldg. T4474, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330402
Status: Unutilized
Comment: 1159 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.

Bldg. T5011, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330403
Status: Unutilized
Comment: 1556 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.

Bldg. T5120, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330405
Status: Unutilized
Comment: 1471 sq. ft., 1-story, possible asbestos, most recent use—storage, off-site use only.

Bldg. T5123, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330406
Status: Unutilized
Comment: 1 story, possible asbestos, most recent use—storage, off-site use only.

Bldg. T5124, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330407
Status: Unutilized
Comment: 1287 sq. ft, 1 story, possible asbestos, most recent use—storage, off-site use only.

Bldg. T5125, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330408
Status: Unutilized
Comment: 2101 sq. ft., 1 story, possible asbestos, most recent use—storage, off-site use only.

Bldg. T5126, Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330409
Status: Unutilized
Comment: 1108 sq. ft., 1 story, possible asbestos, most recent use—storage, off-site use only.

Bldgs. T5245 thru T5248, T5252 Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Numbers: 219330410–219330413, 219330417
Status: Unutilized
Comment: 3081 sq. ft. ea., 1 story, possible asbestos, most recent use—storage, off-site use only.

Bldg. T5249 Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330414
Status: Unutilized
Comment: 2920 sq. ft., 1 story, possible asbestos, most recent use—storage, off-site use only.

Bldgs. T5250 thru T5251 Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Numbers: 219330415–219330416
Status: Unutilized
Comment: 3257 sq. ft. ea., 1 story, possible asbestos, most recent use—storage, site use only.

Bldg. T5628 Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330418
Status: Unutilized
Comment: 2016 sq. ft., 1 story, possible asbestos, most recent use—storage, off-site use only.

Bldg. T5637 Fort Sill
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219330419
Status: Unutilized
Comment: 1606 sq. ft., 1 story, possible asbestos, most recent use—storage, off-site use only.

Bldg. T–282, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 219410236
Status: Unutilized
Comment: 2420 sq. ft., 2 story wood frame, most recent use—admin., off-site use only.

Bldg. T–2937, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 219410237
Status: Unutilized
Comment: 3740 sq. ft., 1 story, wood frame, most recent use—admin., off-site use only.

Bldg. T–2908, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 219410238
Status: Unutilized
Comment: 3745 sq. ft., 1 story, wood frame, most recent use—classroom, off-site use only.

Pennsylvania

Bldgs. T–1–10, T–1–15, T–1–18
Fort Indiantown Gap Pine Grove Street
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Numbers: 219420010–219420012
Status: Excess
Comment: 4503 sq. ft., 2 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—barracks.

Bldgs. T–14–402, T–14–406, T–14–408, T–14–410, T–14–412, T–14–414
Fort Indiantown Gap Hospital Road & Clements Avenue Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Numbers: 219420013–219420018
Status: Excess
Comment: 4247 sq. ft., 2 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—barracks.

Bldgs. 4–71, 4–72, T–4–94
Fort Indiantown Gap Hospital Road & Clements Avenue Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Numbers: 219420019–219420021
Status: Excess
Comment: 1220 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration bldgs.

Bldg. T–14–100
Fort Indiantown Gap Hospital Road & Clements Avenue Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420022
Status: Excess
Comment: 3070 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–102
Fort Indiantown Gap Hospital Road & Clements Avenue Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420023
Status: Excess
Comment: 1075 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–110
Fort Indiantown Gap Hospital Road & Clements Avenue Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420024
Status: Excess
Comment: 3700 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–112
Fort Indiantown Gap Hospital Road & Clements Avenue Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420025
Status: Excess
Comment: 3848 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–114
Fort Indiantown Gap Hospital Road & Clements Avenue Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420026
Status: Excess
Comment: 3848 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–117
Fort Indiantown Gap Hospital Road & Clements Avenue Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420027
Status: Excess
Comment: 3320 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldgs. T–14–202, T–14–204, T–14–214, T–14–216
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Numbers: 219420028–219420029, 219420034, 219420036
Status: Excess
Comment: 3840 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration bldgs.

Bldg. T–14–206
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420030
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldgs. T–14–206, T–14–208, T–14–210, T–14–212, T–14–215,
T–14–305, T–14–308
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Numbers: 219420030–219420033, 219420035, 219420040, 219420042
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration bldgs.

Bldg. T–14–300
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army

Property Number: 219420037
Status: Excess
Comment: 6445 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–302
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420038
Status: Excess
Comment: 1512 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–303
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420039
Status: Excess
Comment: 3340 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–307
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420041
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–310
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420043
Status: Excess
Comment: 3848 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–415
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420044
Status: Excess
Comment: 3650 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldg. T–14–416
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420045
Status: Excess
Comment: 4172 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—administration.

Bldgs. T–1–11, T–1–19, T–1–21, T–14–400
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Numbers: 219420046–219420049
Status: Excess
Comment: 2242 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—enlisted personnel dining.

Bldg. T–1–8
Fort Indiantown Gap
Pine Grove Street
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420050
Status: Excess
Comment: 1075 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage.

Bldg. T–1–12
Fort Indiantown Gap
Pine Grove Street
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420051
Status: Excess
Comment: 1075 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage.

Bldg. T–4–124
Fort Indiantown Gap
Fisher Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420052
Status: Excess
Comment: 214 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage.

Bldg. T–14–122
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420053
Status: Excess
Comment: 2277 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (vehicle).

Bldg. T–14–200
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420054
Status: Excess
Comment: 3898 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–201
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420055
Status: Excess
Comment: 3630 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–203
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420056
Status: Excess
Comment: 3630 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldgs. T–14–205, T–14–207, T–14–209
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Numbers: 219420057–219420059
Status: Excess
Comment: 3638 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldgs. T–14–211, T–14–213, T–14–217, T–14–309, T–14–311, T–14–314
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Numbers: 219420060–219420062, 219420064–219420066
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–301
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420063
Status: Excess
Comment: 9662 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general storehouse).

Bldg. T–14–315
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420067
Status: Excess
Comment: 3624 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (medical supply warehouse).

Bldg. T–14–401
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420068
Status: Excess
Comment: 782 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general storehouse).

Bldg. T–14–403
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420069
Status: Excess
Comment: 2685 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint,

off-site removal only, most recent use—storage.

Bldg. T–14–404
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420070
Status: Excess
Comment: 4247 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–405
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420071
Status: Excess
Comment: 480 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage.

Bldg. T–14–411
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420072
Status: Excess
Comment: 3045 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–413
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420073
Status: Excess
Comment: 3000 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–417
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420074
Status: Excess
Comment: 3633 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–419
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420075
Status: Excess
Comment: 3576 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–424
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420076
Status: Excess
Comment: 63 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general storehouse).

Bldg. T–14–500
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420077
Status: Excess
Comment: 1071 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general storehouse).

Bldgs. T–14–503, T–14–505, T–14–507
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Numbers: 219420078–219420080
Status: Excess
Comment: 5217 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–508
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420081
Status: Excess
Comment: 1071 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general storehouse).

Bldg. T–14–509
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420082
Status: Excess
Comment: 2638 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldg. T–14–511
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420083
Status: Excess
Comment: 2638 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—storage (general purpose warehouse).

Bldgs. T–14–113, T–14–115
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Numbers: 219420084–219420085
Status: Excess
Comment: 3848 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—medical supply warehouse.

Bldg. T–14–312
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420086
Status: Excess
Comment: 3848 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital.

Bldg. T–14–313
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420087
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital.

Bldg. T–14–316
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420088
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital.

Bldg. T–14–317
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420089
Status: Excess
Comment: 3623 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital.

Bldg. T–14–407
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420090
Status: Excess
Comment: 3635 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital.

Bldg. T–14–409
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420091
Status: Excess
Comment: 3635 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital.

Bldg. T–14–502
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420092
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospital.

Bldgs. T–14–504, T–14–506
Fort Indiantown Gap
Hospital Road & Clements Avenue

Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Numbers: 219420093–219420094
Status: Excess
Comment: 3633 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—hospitals.

Bldg. T–14–304
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420095
Status: Excess
Comment: 4212 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—ADP bldg.

Bldg. T–14–306
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420096
Status: Excess
Comment: 3637 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—ADP bldg.

Bldg. T–1–16
Fort Indiantown Gap
Pine Grove Street
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420097
Status: Excess
Comment: 1075 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—arms bldg.

Bldg. T–1–20
Fort Indiantown Gap
Pine Grove Street
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420098
Status: Excess
Comment: 1075 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—day room.

Bldg. 4–73
Fort Indiantown Gap
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420099
Status: Excess
Comment: 1075 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—day room.

Bldg. T–9–1
Fort Indiantown Gap
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420100
Status: Excess
Comment: 2170 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—credit union.

Bldg. T–13–64
Fort Indiantown Gap
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420101
Status: Excess
Comment: 5747 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—maintenance shop.

Bldg. T–14–421
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420102
Status: Excess
Comment: 287 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—maintenance shop.

Bldg. T–14–423
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420103
Status: Excess
Comment: 1681 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—maintenance shop.

Bldg. T–16–149
Fort Indiantown Gap
Fisher Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420104
Status: Excess
Comment: 18045 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—vehicle maintenance shop.

Bldgs. T–14–561 thru T–14–572
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Numbers: 219420105–219420116
Status: Excess
Comment: 35 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—water supply bldgs.

Bldg. T–14–819
Fort Indiantown Gap
Hospital Road & Clements Avenue
Annville, PA, Lebanon, Zip: 17003–5011
Landholding Agency: Army
Property Number: 219420117
Status: Excess
Comment: 6122 sq. ft., 1 story, wood frame, needs rehab, possible asbestos/lead paint, off-site removal only, most recent use—covered walkway.

South Carolina

Bldg. 9608, Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Number: 219410200
Status: Unutilized
Comment: 4720 sq. ft., wood frame, 2 story, needs rehab, off-site use only, utilities upgrade, most recent use—enlisted quarters.

Bldg. 5492, Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Number: 219410207
Status: Unutilized
Comment: 2379 sq. ft., wood frame, 1 story, off-site use only, utilities upgrade, most recent use—information management office.

Bldg. 10–436, Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Number: 219410217
Status: Unutilized
Comment: 100 sq. ft., wood frame, 1 story, off-site use only, limited utilities, needs rehab, most recent use—shed.

Texas

Harlingen USARC
1920 East Washington
Harlingen, TX, Cameron, Zip: 78550–
Landholding Agency: Army
Property Number: 219120304
Status: Excess
Comment: 19440 sq. ft., 1 story brick, needs rehab, with approx. 6 acres including parking areas, most recent use—Army Reserve Training Center.

Bldg. P–3824,
Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220398
Status: Unutilized
Comment: 2232 sq. ft., 1-story concrete structure, within National Landmark Historic District, off-site removal only.

Bldg. 4168, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544-
Landholding Agency: Army
Property Number: 219320350
Status: Unutilized
Comment: 2100 sq. ft., 1-story teel frame, most recent use—vehicle wash platform, needs rehab, off-site use only.

Bldg. 440, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219320355
Status: Unutilized
Comment: 1651 sq. ft., 1-story brick, most recent use—education facility, off-site use only.

Bldg. 1164, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219330420
Status: Unutilized
Comment: 2054 net sq. ft., 1 story wood, most recent use—admin. bldg., needs rehab, off-site use only.

Bldg. 512, Fort Hood
Ft. Hood, TX, Coryell, Zip: 76544–
Landholding Agency: Army
Property Number: 219330421
Status: Unutilized
Comment: 6733 sq. ft., 1 story wood, most recent use- commissary, off-site use only.

Bldg. P–293
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330441
Status: Unutilized

Comment: 442 sq. ft., 1 story brick, needs rehab, within National Landmark Historic District, off-site use only.

Bldg. P–298
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330442
Status: Unutilized
Comment: 3200 sq. ft., 1 story hollow tile, needs rehab, within National Landmark Historic District, off-site use only.

Bldg. P–371
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330443
Status: Unutilized
Comment: 18387 sq. ft., 2 story structural tile, off-site use only, most recent use—vehicle maintenance shop.

Bldg. P–377
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330444
Status: Unutilized
Comment: 74 sq. ft., 1 story brick, needs rehab, location in National Historic District, off-site use only, most recent use—scale house.

Bldg. S–1164
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330445
Status: Unutilized
Comment: 8629 sq. ft., 1 story wood frame, needs rehab, located in National Historic District, off-site use only.

Bldg. T–374
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330480
Status: Unutilized
Comment: 8640 sq. ft., 1 story wood frame, needs rehab, located in National Historic District, off-site use only.

Bldgs. T–1170, T–1468
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Numbers: 219330481–219330482
Status: Unutilized
Comment: 1144 sq. ft. ea., 1 story wood frame, needs rehab, off-site use only, most recent use—administration.

Bldg. T–1492
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330483
Status: Unutilized
Comment: 2284 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—administration.

Bldg. T–2066
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330484
Status: Unutilized
Comment: 4720 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—administration.

Bldg. T–2509
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330485
Status: Unutilized
Comment: 3147 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—administration.

Bldg. T–5901
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330486
Status: Unutilized
Comment: 742 sq. ft., 1 story wood frame, off-site use only, most recent use—administration.

Bldg. T–1464
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330487
Status: Unutilized
Comment: 3778 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—t-shirts and frame shop.

Bldg. T–1874
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330488
Status: Unutilized
Comment: 3108 sq. ft., 1 story wood frame, needs rehab, off-site use only.

Bldg. T–2011
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330489
Status: Unutilized
Comment: 150 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storehouse.

Bldg. T–2193
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330490
Status: Unutilized
Comment: 1800 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage shed.

Bldg. T–2507
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330491
Status: Unutilized
Comment: 224 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage.

Bldg. T–2510
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330492
Status: Unutilized
Comment: 3210 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage.

Bldg. T–4044
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330493
Status: Unutilized
Comment: 263 sq. ft., 1 story brick frame, needs rehab, off-site use only, most recent use—storage.

Bldgs. T–2511, T–2512
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Numbers: 219330494–219330495
Status: Unutilized
Comment: 18260 sq. ft. ea., 1 story wood frame, needs rehab, off-site use only, most recent use—vehicle maintenance shop.

Bldg. T–2513
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330496
Status: Unutilized
Comment: 13603 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—repair shop.

Bldg. S–2516
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330497
Status: Unutilized
Comment: 3008 sq. ft., 1 story steel, lead contaminants present, off-site use only, most recent use paint stripping plant

Bldg. T–2520
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330498
Status: Unutilized
Comment: 31296 sq. ft., 1 story wood frame, needs rehab, offsite use only, most recent use—physical fitness

Bldg. T–2183
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330499
Status: Unutilized
Comment: 3000 sq. ft., 1 story wood frame, needs rehab, offsite use only, most recent use—stable

Bldg. T–6231
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330500
Status: Unutilized
Comment: 600 sq. ft., 1 story wood frame, off-site use only, most recent use—firing range

Bldgs. T–6232, T–6236
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Numbers: 219330501–219330502
Status: Unutilized
Comment: 401 sq. ft. ea., 1 story wood frame, off-site use only, most recent use—firing range

Bldg. T–2508
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000

Landholding Agency: Army
Property Number: 219330503
Status: Unutilized
Comment: 224 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use storage

Bldg. T–211
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219340194
Status: Unutilized
Comment: 2284 sq. ft., 1-story wood frame, off-site use only, most recent use—instruction bldg.

Bldg. T–1031
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219340195
Status: Unutilized
Comment: 4720 sq. ft., 2 story wood frame, off-site use only, most recent use—photo lab

Bldg. T–1126
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219340196
Status: Unutilized
Comment: 4720 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—blood donor center

Bldg. P–5902
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219340197
Status: Unutilized
Comment: 1157 sq. ft., 1 story wood frame, off-site use only, most recent use—warehouse

Bldg. 871, Fort Bliss
El Paso, TX, El Paso, Zip: 79916
Landholding Agency: Army
Property Number: 219420455
Status: Unutilized
Comment: 3540 sq. ft., 1-story wood, needs repair, most recent use—storage, off-site use only

Bldg. 1165, Fort Bliss
El Paso, TX, El Paso, Zip: 79916
Landholding Agency: Army
Property Number: 219420456
Status: Unutilized
Comment: 5263 sq. ft., 1-story wood, needs repair, most recent use—office, off-site use only

Bldg. 1675, Fort Bliss
El Paso, TX, El Paso, Zip: 79916
Landholding Agency: Army
Property Number: 219420457
Status: Unutilized
Comment: 3674 sq. ft., 1-story wood, needs repair, most recent use—office, off-site use only

Bldg. 4717, Fort Bliss
El Paso, TX, El Paso, Zip: 79916
Landholding Agency: Army
Property Number: 219420458
Status: Unutilized
Comment: 1081 sq. ft., 1-story wood, needs repair, most recent use—office, off-site use only

Bldg. 4718, Fort Bliss
El Paso, TX, El Paso, Zip: 79916
Landholding Agency: Army
Property Number: 219420459
Status: Unutilized
Comment: 899 sq. ft., 1-story wood, needs repair, most recent use—storage, off-site use only

Bldg. 4719, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219420460
Status: Unutilized
Comment: 519 sq. ft., 1-story wood, needs repair, most recent use—storage, off-site use only.

Bldg. 4105, Fort Hood
Ft. Hood, TX, Coryell, Zip: 76544–
Landholding Agency: Army
Property Number: 219420463
Status: Unutilized
Comment: 2535 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 128, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410312
Status: Unutilized
Comment: 2000 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 132, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410313
Status: Unutilized
Comment: 2000 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 240, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410314
Status: Unutilized
Comment: 2000 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 315, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410315
Status: Unutilized
Comment: 2400 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 316, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410316
Status: Unutilized
Comment: 1500 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 317, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410317
Status: Unutilized
Comment: 2000 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 3436, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410320
Status: Unutilized
Comment: 1080 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 3437, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410321
Status: Unutilized
Comment: 1080 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 4480, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410322
Status: Unutilized
Comment: 2160 sq. ft., 1-story, most recent use—storage, off-site use only.

Bldg. 57028, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410323
Status: Unutilized
Comment: 2798 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 57029, Fort Hood
Ft. Hood, TX, Bell, Zip: 76544–
Landholding Agency: Army
Property Number: 219410324
Status: Unutilized
Comment: 2798 sq. ft., 1-story, needs rehab, most recent use—

Virginia

Bldg. T–6015
U.S. Army Logistics Center & Fort Lee Shop Road
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219012376
Status: Unutilized
Comment: 2124 sq. ft.; 2 story; most recent use—barracks; poor condition; needs major rehab.

Washington

Reserve Center, Longview
14 Port Way
Longview Co: Cowlitz WA 98632
Landholding Agency: Army
Property Number: 219320368
Status: Unutilized
Comment: 17304 sq. ft., 1 story training facility.

Wisconsin

Bldg. 7174, Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219320372
Status: Underutilized
Comment: 8466 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—gen. purpose warehouse.

Bldg. 7176, Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219320373
Status: Underutilized
Comment: 5415 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—gen. purpose warehouse.

Bldg. 7261, Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219320374
Status: Unutilized
Comment: 4800 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—gen. purpose warehouse.

Bldg. 556 Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219320386
Status: Underutilized
Comment: 3748 sq. ft. ea., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—unit chapel.

Bldg. 455, Fort McCoy
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219320390
Status: Underutilized
Comment: 2750 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use—admin/supply.

*Land (by State)*

Kansas

Parcel 1
Fort Leavenworth
Combined Arms Center
Fort Leavenworth Co: Leavenworth KS 66027–5020
Landholding Agency: Army
Property Number: 219012333
Status: Underutilized
Comment: 14.4+ acres.

Parcel 3
Fort Leavenworth
Combined Arms Center
Fort Leavenworth Co: Leavenworth KS 66027–5020
Landholding Agency: Army
Property Number: 219012336
Status: Underutilized
Comment: 261+ acres; heavily forrested; no access to a public right-of-way; selected periods are reserved for military/training exercises.

Parcel 4
Fort Leavenworth
Combined Arms Center
Fort Leavenworth Co: Leavenworth KS 66027–5020
Landholding Agency: Army
Property Number: 219012339
Status: Underutilized
Comment: 24.1+ acres; selected periods are reserved for military/ training exercises; steep/wooded area.

Parcel 6
Fort Leavenworth
Combined Arms Center
Fort Leavenworth Co: Leavenworth KS 66027–5020
Location: Extreme north east corner of installation in Flood Plain of the Missouri River.
Landholding Agency: Army
Property Number: 219012340
Status: Underutilized
Comment: 1280 acres; selected periods are reserved for military/ training exercises.

Parcel F
Fort Leavenworth
Combined Arms Center
Fort Leavenworth Co: Leavenworth KS 66027–5020
Landholding Agency: Army
Property Number: 219012552
Status: Unutilized
Comment: 33.4 acres; area is land locked; heavily wooded; periodic flooding.

Minnesota

Land
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219120269
Status: Underutilized
Comment: Approx. 25 acres, possible contamination, secured area with alternate access.

Montana

U.S. Army Reserve Center
Marcella Avenue
Lewistown Co: Fergus MT
Landholding Agency: Army
Property Number: 219420009
Status: Unutilized
Comment: 4.16 acres of bare land.

Nebraska

60 acres & bldgs.
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219340220
Status: Unutilized
Comment: 60 acres of land and structures (Bldg. A14), potential utilities.

Nevada

Parcel A
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: At Foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane.
Landholding Agency: Army
Property Number: 219012049
Status: Unutilized
Comment: 160 acres, road and utility easements, no utility hookup, possible flooding problem.

Parcel B
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: At foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane.
Landholding Agency: Army
Property Number: 219012056
Status: Unutilized
Comment: 1920 acres; road and utility easements; no utility hookup; possible flooding problem.

Parcel C
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: South-southwest of Hawthorne along HWAAP's South Magazine Area at Western edge of State Route 359.
Landholding Agency: Army
Property Number: 219012057
Status: Unutilized
Comment: 85 acres; road & utility easements; no utility hookup.

Parcel D
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: South-southwest of Hawthorne along HWAAP's South Magazine Area at western edge of State Route 359.
Landholding Agency: Army
Property Number: 219012058
Status: Unutilized
Comment: 955 acres; road & utility easements; no utility hookup.

Ohio

5 acres
Doan U.S. Army Reserve Center
Portmonth Co: Scioto OH 45662
Landholding Agency: Army
Property Number: 219320313
Status: Unutilized
Comment: 5 acres including paved roads, parking, sidewalks, etc.

3 acres
Hayes U.S. Army Reserve Center
Fremont Co: Sandusky OH 43420
Landholding Agency: Army
Property Number: 219320316
Status: Unutilized
Comment: 3 acres including paved roads, parking, sidewalks, etc.

Tennessee

Milan Army Ammunition Plant
Milan Co: Carroll TN 38358–
Location: Plant boundary in the northeast corner of the plant & housing area
Landholding Agency: Army
Property Number: 219010547
Status: Excess
Comment: 17.2 acres; right of entry legal constraint.

Holston Army Ammunition Plant
Kingsport Co: Hawkins TN 61299–6000
Landholding Agency: Army
Property Number: 219012338
Status: Unutilized
Comment: 8 acres; unimproved; could provide access; 2 acres unusable; near explosives.

Land
Milan Army Ammunition Plant
NE corner of plant & housing area
Milan Co: Carroll TN 38358
Landholding Agency: Army
Property Number: 219240780
Status: Unutilized
Comment: 17.2 acres, secured area w/ alternate access, most recent use—buffer zone.

Texas

Vacant Land, Fort Sam Houston
All of Block 1800, Portions of Blocks 1900, 3100 and 3200
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219220438
Status: Unutilized
Comment: 250.33 acres, 85% located in floodplain, possibility of unexploded ordnance.

Old Camp Bullis Road
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219420461
Status: Unutilized
Comment: 7.16 acres, rural gravel road.

Camp Bullis, Tract 9
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219420462
Comment: 01.07 acres of undeveloped land.

**Suitable/Unavailable Properties**

*Buildings (by State)*

Georgia

Bldg. T201, Fort Stewart
Hinesville Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 219420357
Status: Unutilized
Comment: 2929 sq. ft., 1 story wood frame, needs repair, most recent use—offices, off-site use only.

Bldg. 704, Fort Stewart
Hinesville Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 219420364
Status: Unutilized
Comment: 2028 sq. ft., 1 story, needs major repair, most recent use—admin.

Maryland

Bldgs. TMA4, TMA5, TMA8, TMA9
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219320292
Status: Unutilized
Comment: approx. 800 sq. ft. steel plate, gravel base ammunition storage area, fair condition.

Nevada

U.S. Army Reserve Center
685 East Plumb Lane
Reno Co: Washoe NV 89502
Landholding Agency: Army
Property Number: 2.9340180
Status: Unutilized
Comment: 11457 sq. ft., Reserve Center & 2611 sq. ft. vehicle repair shop on 4.29 acres, presence of asbestos, 1 story each, perpetual easement for road right of way 50 ft. from property.

Texas

Bldg. P–2000, Fort Sam Houston
San Antonio Co: Bexar TX 78234
Landholding Agency: Army
Property Number: 219220389
Status: Underutilized
Comment: 49542 sq. ft., 3 story brick structure, within National Landmark Historic District.

Bldg. P–2001, Fort Sam Houston
San Antonio Co: Bexar TX 78234
Landholding Agency: Army
Property Number: 219220390
Status: Underutilized
Comment: 16539 sq. ft., 4 story brick structure, within National Landmark Historic District.

Bldg. P–2007, Fort Sam Houston
San Antonio Co: Bexar TX 78234
Landholding Agency: Army
Property Number: 219220391
Status: Underutilized
Comment: 13058 sq. ft., 4 story brick structure, within National Landmark Historic District.

Bldg. T–189, Fort Sam Houston
San Antonio Co: Bexar TX 78234
Landholding Agency: Army
Property Number: 219220402
Status: Underutilized
Comment: 11949 sq. ft., 4 story brick structure, within National Landmark Historic District, possible lead contamination.

Bldg. T–2066, Fort Sam Houston
San Antonio Co: Bexar TX 78234
Landholding Agency: Army
Property Number: 219220424
Status: Underutilized
Comment: 4720 sq. ft., 1 story wood structure, within National Landmark Historic District, possible asbestos.

Virginia

Bldg. T3004, Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Number: 219310317
Status: Unutilized
Comment: 2350 sq. ft., 1-story wood frame, needs repair, most recent use—clinic.

Bldgs. T3022—T3024 Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Numbers: 219310318–219310320
Status: Unutilized
Comment: 5310 sq. ft. each, 2-story wood frame, needs repair, most recent use—barracks.

Bldg. T3026, Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Number: 219310321
Status: Unutilized
Comment: 3550 sq. ft., 1-story wood frame, needs repair, most recent use—dining room.

Bldg. T3025, T3040–T3041, T3049–T3050 Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Numbers: 219310322–219310326
Status: Unutilized
Comment: 2950 sq. ft. each, 1-story wood frame, needs repair, most recent use—dining room.

Bldgs. T3029–T3030, T3037–T3039, T3042–T3048, T3051–T3054, T3027–T3028 Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Numbers: 219310327–219310344
Status: Unutilized
Comment: 5310 sq. ft. each, 2-story wood frame, needs repair, most recent use—barracks.

Bldgs. T3031–T3036, T3057 Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Numbers: 219310345–219310351
Status: Unutilized
Comment: 2987 sq. ft. each, 1-story wood frame, needs repair, most recent use—admin./supply.

Bldg. T3055, Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824
Landholding Agency: Army
Property Number: 219310352
Status: Unutilized
Comment: 2488 sq. ft., 1-story wood frame, needs repair, most recent use—admin./supply.

Bldg. TT3001, Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Number: 219310353
Status: Unutilized
Comment: 3302 sq. ft., 1-story wood frame, most recent use—chapel.

Bldg. TA3002, Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Number: 219310354
Status: Unutilized
Comment: 360 sq. ft., 1-story wood frame, most recent use—clinic.

Bldg. 178, Fort Monroe
Ft. Monroe, VA 23651
Landholding Agency: Army
Property Number: 219320357
Status: Unutilized
Comment: 1470 sq. ft., 1 story, need repairs, most recent use entomology facility, off-site use only.

Quarters 19201 & 19209
Fort Lee Co: Prince George VA 23801
Landholding Agency: Army
Property Number: 219410365
Status: Unutilized
Comment: 8370 sq. ft. ea., 2 story family quarters with 6 units each, off-site use only.

Quarters 19202, 19204, 19206, 19208, 19211 & 19213
Fort Lee Co: Prince George VA 23801
Landholding Agency: Army
Property Number: 219410366
Status: Unutilized
Comment: 8404 sq. ft. ea., 2 story family quarters with 6 units each, off-site use only.

Quarters 19203, 19205, 19207
Fort Lee Co: Prince George VA 23801
Landholding Agency: Army
Property Number: 219410367
Status: Unutilized
Comment: 9416 sq. ft. ea., 2 story family quarters with 8 units each, off-site use only.

Quarters 19210, 19214
Fort Lee Co: Prince George VA 23801
Landholding Agency: Army
Property Number: 219410368
Status: Unutilized
Comment: 7084 sq. ft. ea., 2 story family quarters with 6 units each, off-site use only.

Quarters 19212
Fort Lee Co: Prince George VA 23801
Landholding Agency: Army
Property Number: 219410369
Status: Unutilized
Comment: 14098 sq. ft., 2 story family quarters with 12 units, off-site use only.

*Land (by State)*

New Jersey

Land—Camp Kilmer
Plainfield Avenue
Edison Co: Middlesex NJ 08817
Landholding Agency: Army
Property number: 219230358
Status: Underutilized
Comment: approx. 10 acres in the southwest corner of site, most recent use—reserve training, wooded area.

**Suitable/To Be Excessed**

*Buildings (by State)*

Maryland

Bldg. 101
Walter Reed Army Medical Center
Forest Glen Section

Silver Spring Co: Montgomery MD 20910–
Landholding Agency: Army
Property Number: 219012678
Status: Underutilized
Comment: 18438 sq. ft.; needs rehab; possible asbestos; building listed on National Historic Register.

Bldg. 104
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring Co: Montgomery MD 20910–
Landholding Agency: Army
Property Number: 219012679
Status: Underutilized
Comment: 12495 sq. ft.; needs rehab; possible asbestos; building listed on National Historic Register.

Bldg. 107
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring Co: Montgomery MD 20910–
Landholding Agency: Army
Property Number: 219012680
Status: Unutilized
Comment: 4107 sq. ft.; possible structural deficiencies; possible asbestos; historic property.

Bldg. 120
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring Co: Montgomery MD 20910–
Landholding Agency: Army
Property Number: 219012681
Status: Underutilized
Comment: 2442 sq. ft.; possible structural deficiencies; possible asbestos; historic property.

*Land (by State)*

Texas

Land-Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76070
Landholding Agency: Army
Property Number: 219014814
Status: Unutilized
Comment: 43.08 acres, includes buildings/structures/parking and air strip.

**Unsuitable Properties**

*Buildings (by State)*

Alabama

77 Bldgs.
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 219014000, 219014009, 219014012, 219014015–219014051, 219014057, 219014060, 219014292, 219110109, 219120247–219120250, 219230190, 219330001–219330002, 219430265–219430290
Status: Unutilized
Reason: Secured Area.

Bldg. T00862
Fort McClellan
Off 21st Street between 2nd & 3rd Avenue
Fort McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219130019
Status: Unutilized
Reason: Extensive deterioration.

Two Bedroom Apt.
Anniston Army Depot
Wherry Housing—Terrace Homes Apt
Anniston Co: Calhoun AL 36201–
Landholding Agency: Army
Property Number: 219130108
Status: Excess
Reason: Extensive deterioration.

30 Bldgs., Fort Rucker
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219220341–219220344, 219310016, 219320001, 219330003–219330010, 219340114, 219340116–219340118, 219340120, 219340122–219340126, 219410016–219410019, 219410022–219410023, 219430260–219430264
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 25203, 25205–25207, 25209, 25501, 25503, 25505, 25507, 25510, 29101, 29103–29109
Fort Rucker
Stagefield Areas
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219410020–219410021, 219410024
Status: Unutilized
Reason: Secured area
27 Bldgs.
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220789–219220815
Status: Unutilized
Reason: Extensive deterioration.

14 Bldgs., Fort McClellan
Ft. McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219410001, 219410003–219410004, 219410011–219410014, 219420125–219420131
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 402–C
Alabama Army Ammunition Plant
Childersburg Co: Talladega AL 35044
Landholding Agency: Army
Property Number: 219420124
Status: Unutilized
Reason: Secured Area.

Alaska

16 Bldgs.
Fort Greely
Ft. Greely AK 99790–
Landholding Agency: Army
Property Number: 219210124–219210125, 219220319–219220332
Status: Unutilized
Reason: Extensive deterioration.

10 Bldgs., Fort Wainwright
Ft. Wainwright Co: Fairbanks AK 99505
Landholding Agency: Army
Property Number: 219230183–219230184, 219410025–219410032
Status: Unutilized
Reason: Extensive deterioration.(Some are in a secured area.)

Bldg. 1144, Fort Wainwright
Ft. Wainwright Co: Fairbanks/North AK 99703
Landholding Agency: Army
Property Number: 219240273
Status: Unutilized
Reason: Secured Area, Within airport runway clear zone.

Bldgs. 5001, 5002, Fort Wainwright
Ft. Wainwright Co: Fairbanks/North AK 99703
Landholding Agency: Army
Property Number: 219240274–219240275
Status: Unutilized
Reason: Secured area, Floodway.

Bldg. 1501, Fort Greely
Ft. Greely AK 99505
Landholding Agency: Army
Property Number: 219240327
Status: Unutilized
Reason: Secured Area.

Sullivan Roadhouse, Fort Greely
Ft. Greely AK
Landholding Agency: Army
Property Number: 219430291
Status: Unutilized
Reason: Extensive deterioration.

Arizona

32 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–
Location: 12 miles west of Flagstaff, Arizona on I–40.
Landholding Agency: Army
Property Number: 219014560–219014591
Status: Underutilized
Reason: Secured Area.

10 properties: 753 earth covered igloos; above ground standard magazines
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–
Location: 12 miles west of Flagstaff, Arizona on I–40.
Landholding Agency: Army
Property Number: 219014592–219014601
Status: Underutilized
Reason: Secured Area.

9 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–5000
Location: 12 miles west of Flagstaff on I–40
Landholding Agency: Army
Property Number: 219030273–219030274, 219120175–219120181
Status: Unutilized
Reason: Secured Area.

Bldgs. 84001, 68054
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635Landholding Agency: Army
Property Number: 219210017, 219430315
Status: Excess
Reason: Extensive deterioration.

Bldgs. T–2005, T–2006, S–2085, S–6078
Yuma Proving Ground
Yuma Co: Yuma/LaPaz AZ 85365–9104
Landholding Agency: Army
Property Number: 219320009–219320010, 219330020–219330021
Status: Unutilized
Reason: Extensive deterioration. (Some are in a secured area.)

Arkansas

Fort Smith USAR Center
Fort Smith
1218 South A Street
Fort Smith Co: Sebastian AR 72901–
Landholding Agency: Army
Property Number: 219014928
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Army Reserve Center
Hwy 79 North
Camden Co: Calhoun AR 71701–3415
Landholding Agency: Army
Property Number: 219220345
Status: Unutilized
Reason: Extensive deterioration.

97 Bldgs. Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340023–219340090, 219420132–219420137, 219430292–219430314
Status: Unutilized
Reason: Secured area. (Most are extensively deteriorated.)

5 Bldgs.
Pine Bluff Arsenal
Pine Bluff Co: Jefferson AR 71602–9500
Landholding Agency: Army
Property Number: 219420138–219420142
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

California

Bldgs. P–177, P–178, 325, S–308, S–308A, T–308B
Fort Hunter Liggett
Jolon Co: Monterey CA 93928–
Landholding Agency: Army
Property Number: 219012414–219012415, 219012600, 219240284–219240285, 219240287
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. (Some are in a secured area.)

Bldg. 18
Riverbank Army Ammunition Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219012554
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

11 Bldgs., Nos. 2–8, 156, 1, 120, 181
Riverbank Army Ammunition Plant
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219013582–219013588, 219013590, 219240444–219240446
Status: Underutilized
Reason: Secured Area.

9 Bldgs.
Oakland Army Base
Oakland Co: Alameda CA 94626–5000
Landholding Agency: Army
Property Number: 219013903–219013906, 219120051, 219340008–219340011
Status: Unutilized
Reason: Secured Area. (Some are extensively deteriorated.)

Bldgs. S–108, S–290
Sharpe Army Depot
Lathrop Co: San Joaquin CA 95331–
Landholding Agency: Army
Property Number: 219014290, 219230179
Status: Underutilized
Reason: Secured Area.

Bldg. S–184
Fort Hunter Liggett
Ft. Hunter Liggett Co: Monterey CA 93928–
Landholding Agency: Army
Property Number: 219014602
Status: Underutilized
Reason: Secured Area.

12 Bldgs.
Sierra Army Depot
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 219014713–219014717, 219014719–219014721, 219230181, 219320012
Status: Unutilized
Reason: Secured Area.

Bldg. P–88
Sierra Army Depot
Road Oil Storage
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 219014707
Status: Unutilized
Reason: Oil Storage Tank.

Bldgs. 173, 177
Roth Road—Sharpe Army Depot
Lathrop Co: San Joaquin CA
Landholding Agency: Army
Property Number: 219014940–219014941
Status: Unutilized
Reason: Secured Area.

Bldgs. 13, 171, 178 Riverbank Ammun Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219120162–219120164
Status: Underutilized
Reason: Secured Area.

4 Bldgs., Sharpe Site
Lathrop Co: San Joaquin CA 95331–
Landholding Agency: Army
Property Number: 219240152–219240155
Status: Unutilized
Reason: Secured Area.

Bldg. T–187, Fort Hunter Liggett
Ft. Hunter Liggett Co: Monterey CA 93928
Landholding Agency: Army
Property Number: 219240321
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldgs. 25, 36, 224, 257, Tracy Facility
Tracy Co: San Joaquin CA 95376
Landholding Agency: Army
Property Number: 219330022–219330025
Status: Unutilized
Reason: Secured Area.

10 Bldgs., Fort Irwin
Ft. Irwin Co: San Bernardino CA 92310
Landholding Agency: Army
Property Number: 219330026–219330035
Status: Unutilized
Reason: Secured Area, Extensive Deterioration.

23 Bldgs.
DDDRW Sharpe Facility
Tracy Co: San Joaquin CA 95331
Landholding Agency: Army
Property Number: 219430017–219430039, 219430317
Status: Unutilized
Reason: Secured Area.

US Army Reserve Center
Rio Vista Co: Sonoma CA 94571
Landholding Agency: Army
Property Number: 219430316
Status: Unutilized
Reason: Floodway.

Colorado

70 Bldgs.
Pueblo Army Depot
Pueblo Co: Pueblo CO 81001–
Location: 14 miles East of Pueblo City on Highway 50
Landholding Agency: Army
Property Number: 219012209, 219012211, 219012214, 219012216, 219012221, 219012223–219012224, 219012226–219012228, 219012230–219012231, 219012233, 219012235–219012237, 219012239–219012257, 219012260–219012275, 219012287, 219012290–219012298, 219012300, 219012743, 219012745, 219012747–219012748, 219120058–219120061
Status: Unutilized
Reason: Secured Area.

26 Bldgs., Pueblo Depot Activity
Pueblo CO 81001
Landholding Agency: Army
Property Number: 219240466–219240482
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldgs. T–317, T–412, 431, 433
Rocky Mountain Arsenal
Commerce Co: Adams CO 80022–2180
Landholding Agency: Army
Property Number: 219320013–219320016
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area. Extensive deterioration.

Bldg. 230
Fitzsimons Army Medical Center
Aurora Co: Adams CO 80045–5001
Landholding Agency: Army
Property Number: 219330036
Status: Unutilized
Reason: Secured Area

Bldgs. T–2741, T–2742, T–2743, T–2744, T–2745, T–200
Fort Carson
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 219410033–219410037, 219420143
Status: Unutilized
Reason: Extensive deterioration.

Georgia

Fort Stewart
Sewage Treatment Plant
Ft. Stewart Co: Hinesville GA 31314–
Landholding Agency: Army
Property Number: 219013922
Status: Unutilized
Reason: Sewage treatment.

Facility 12304
Fort Gordon
Augusta Co: Richmond GA 30905–
Location: Located off Lane Avenue
Landholding Agency: Army
Property Number: 219014787
Status: Unutilized
Reason: Wheeled vehicle grease/inspection rack.

116 Bldgs.
Fort Gordon
Augusta Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219220269, 219220279, 219220281, 219220293, 219320020,

219320026–219320029, 219330050–219330060, 219410038–219410131, 219420144–219420145
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 11726–11727
Fort Gordon
Augusta Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219210138–219210139
Status: Unutilized
Reason: Secured Area.

4 Bldgs., Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220334–219220337
Status: Unutilized
Reason: Detached lavatory.

Bldg. 1673, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220742
Status: Unutilized
Reason: Extensive deterioration.

9 Bldgs.
Fort Gillem
Forest Park Co: Clayton GA 30050
Landholding Agency: Army
Property Number: 219310091, 219310093–219310094, 219310098–219310099, 219310105, 219310107, 219320030, 219320033
Status: Unutilized
Reason: Extensive deterioration.

18 Bldgs., Fort Stewart
Hinesville Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 219330041–219330043, 219420155–219420169
Status: Unutilized
Reason: Extensive Deterioration.

16 Bldgs., Hunter Army Airfield
Savannah Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 219420146–219420153, 219430318–219430325
Status: Unutilized
Reason: Extensive deterioration.

Hawaii

PU–01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11
Schofield Barracks
Kolekole Pass Road
Wahiawa Co: Wahiawa HI 96786
Landholding Agency: Army
Property Number: 219014836–219014837
Status: Unutilized
Reason: Secured Area.

P–3384 East Range
Schofield Barracks
East Range Road
Wahiawa Co: Wahiawa HI 96786
Landholding Agency: Army
Property Number: 219030361
Status: Unutilized
Reason: Secured Area.

Bldg. T–1510, Fort Shafter
Honolulu Co: Honolulu HI 96819
Landholding Agency: Army
Property Number: 219320035
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 754–C, P–1519 A/B Schofield Barracks
Wahiawa Co: Wahiawa HI 96786
Landholding Agency: Army
Property Number: 219320034, 219420154
Status: Unutilized
Reason: Extensive deterioration.

Illinois

609 Bldgs. and Groups
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436
Landholding Agency: Army
Property Number: 219010153–219010317, 219010319–219010407, 219010409–219010413, 219010415–219010439, 219011750–219011879, 219011881–219011908, 219012331, 219013076–219013138, 219014722–219014781, 219030277–219030278, 219040354, 219140441–219140446, 219210146, 219240457–219240465, 219330062–219330094
Status: Unutilized
Reason: Secured Area; many within 2000 ft. of flammable or explosive materials; some within floodway.

Bldg. 725
Fort Sheridan
Highwood Co: Lake IL 60037–5000
Landholding Agency: Army
Property Number: 219013769
Status: Underutilized
Reason: Secured Area.

Bldgs. 58, 59 and 72, 69, 64, 105
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–5000
Landholding Agency: Army
Property Number: 219110104–219110108
Status: Unutilized
Reason: Secured Area.

Bldg. 133, Rock Island Arsenal
Gillespie Avenue
Rock Island Co: Rock Island IL 61299
Landholding Agency: Army
Property Number: 219210100
Status: Underutilized
Reason: Extensive deterioration.

13 Bldgs. Savanna Army Depot Activity
Savanna Co: Carroll IL 61074
Landholding Agency: Army
Property Number: 219230126–219230127, 219430326–219430335, 219430397
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 103, 114, 417
Charles Melvin Price Support Center
Granite City Co: Madison IL 62040
Landholding Agency: Army
Property Number: 219420182–219420184
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Indiana

258 Bldgs.
Indiana Army Ammunition Plant (INAAP)
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219010913–219010920, 219010924–219010936, 219010952, 219010955, 219010957, 219010959–219010960, 219010962–219010964, 219010966–219010967, 219010969–219010970, 219011449, 219011454, 219011456–219011457, 219011459–219011464, 219013764, 219013848, 219014608–219014653, 219014655–219014661, 219014663– 219014683, 219030315, 219120168–219120171, 219140425–219140440, 219210152–219210155, 219230034–219230037, 219320036–219320111, 219420170–219420181
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. (Most are within a secured area.)

61 Bldgs.
Newport Army Ammunition Plant
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219011584, 219011586–219011587, 219011589– 219011590, 219011592–219011627, 219011629–219011636, 219011638– 219011641, 219210149–219210151, 219220220, 219230032–219230033, 219430336–219430338
Status: Unutilized
Reason: Secured Area.

2 Bldgs.
Atterbury Reserve Forces Training Area
Edinburgh Co: Johnson IN 46124–1096
Landholding Agency: Army
Property Number: 219230030–219230031
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2635, Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111
Landholding Agency: Army
Property Number: 219240322
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Iowa

46 Bldgs.
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219012605–219012607, 219012609, 219012611, 219012613, 219012615, 219012620, 219012622, 219012624, 219013706–219013738, 219120172–219120174
Status: Unutilized
Reason: Secured Area. (Some are within 2000 ft. of flammable or explosive material.)

28 Bldgs., Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638
Landholding Agency: Army
Property Number: 219230005–219230029, 219310017, 219330061, 219340091
Status: Unutilized
Reason: Extensive deterioration.

Kansas

37 Bldgs.
Kansas Army Ammunition Plant
Production Area
Parsons Co: Labette KS 67357–
Landholding Agency: Army
Property Number: 219011909–219011945
Status: Unutilized
Reason: Secured Area. (Most are within 2000 ft. of flammable or explosive material.)

222 Bldgs.
Sunflower Army Ammunition Plant
35425 W. 103rd Street
DeSoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Number: 219040039, 219040045, 219040048–219040051, 219040053, 219040055, 219040063–219040067, 219040072–219040080, 219040086–

219040099, 219040102, 219040111–219040112, 219040118–219040119, 219040121–219040124, 219040126, 219040128–219040133, 219040136–219040137, 219040139–219040140, 219040143, 219040149–219040154, 219040156, 219040160–219040165, 219040168–219040170, 219040180, 219040182–219040185, 219040190–219040191, 219040202, 219040205–219040207, 219040208, 219040210–219040221, 219040234–219040239, 219040241–219040254, 219040256–219040257, 219040260, 219040262–219040267, 219040270–219040279, 219040282–219040319, 219040321–219040323, 219040325–219040327, 219040330–219040335, 219040349, 219040353, 219110073, 219140569–219140577, 219140580–219140591, 219140594, 219140599–219140601, 219140606–219140612, 219420185–219420187
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Floodway, Secured Area.

21 Bldgs.
Sunflower Army Ammunition Plant
35425 W. 103rd Street
DeSoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Number: 219040007–219040008, 219040010–219040012, 219040014–219040027, 219040030–219040031
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Floodway.

9 Bldgs.
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 219240032, 219240080, 219310207, 219410132, 219420188–219420191, 219430040–219430041
Status: Unutilized
Reason: Extensive deterioration.

11 Latrines
Sunflower Army Ammunition Plant
35425 West 103rd
Desoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Number: 219140578–219140579, 219140593, 219140595–219140598, 219140602–219140605
Status: Unutilized
Reason: Detached Latrine.

226 Bldgs., Sunflower Army Ammunition Plant
DeSoto Co: Johnson KS 66018
Landholding Agency: Army
Property Number: 219240333–219240437, 219340001–219340007
Status: Unutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material, Extensive deterioration.

Kentucky

Bldg. 126
Lexington-Blue Grass Army Depot
Lexington Co: Fayette KY 40511–
Location: 12 miles northeast of Lexington, Kentucky.
Landholding Agency: Army
Property Number: 219011661
Status: Unutilized
Reason: Secured Area, Sewage treatment facility.

Bldg. 12
Lexington—Blue Grass Army Depot
Lexington Co: Fayette KY 40511–
Location: 12 miles Northeast of Lexington Kentucky.
Landholding Agency: Army
Property Number: 219011663
Status: Unutilized
Reason: Industrial waste treatment plant.

7 Bldgs., Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219320113–219320115, 219320121, 219320132–219320133, 219410146
Status: Unutilized
Reason: Extensive deterioration.

44 Bldgs., Fort Campbell
Ft. Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219320138, 219340242–219340253, 219410133–219410144, 219420192, 219420194, 219430042–219430058
Status: Unutilized
Reason: Extensive deterioration. (Some are in a secured area.)

Louisiana

42 Bldgs.
Louisiana Army Ammunition Plant
Doylin Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219011668–219011670, 219011700, 219011714–219011716, 219011735–219011737, 219012112, 219013571–219013572, 219013863–219013869, 219110124, 219110127, 219110131, 219110135–219110136, 219120290, 219240137–219240150, 219420330–219420332
Status: Unutilized
Reason: Secured Area. (Most are within 2000 ft. of flammable or explosive material) (Some are extensively deteriorated)

Staff Residences
Louisiana Army Ammunition Plant
Doyline Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219120284–219120286
Status: Excess
Reason: Secured Area.

10 Bldgs., Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219320282, 219340105–219340111, 219430339–219430340
Status: Unutilized
Reason: Extensive deterioration.

Maryland

56 Bldgs.
Aberdeen Proving Ground
Aberdeen City Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219011406–219011417, 219012608, 219012610, 219012612, 219012614, 219012616–219012617, 219012619, 219012623, 219012625–219012629, 219012631, 219012633–219012635, 219012637–219012642, 219012645–219012651, 219012655–219012664, 219013773, 219014711–219014712, 219030316, 219110140, 219240329
Status: Unutilized
Reason: Most are in a secured area. (Some are within 2000 ft. of flammable or explosive material) (Some are in a floodway)

Bldg. 1958
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 219014789
Status: Unutilized
Reason: Secured Area.

Bldg. 10401
Aberdeen Proving Ground
Aberdeen Area
Harford Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219110138
Status: Unutilized
Reason: Sewage treatment plant.

Bldg. 10402
Aberdeen Proving Ground
Aberdeen Area
Aberdeen City Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219110139
Status: Unutilized
Reason: Sewage pumping station.

36 Bldgs. Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 219130059, 219140458, 219140460–219140461, 219140465, 219140467, 219140510, 219210123, 219220142, 219220146, 219220153, 219220171–219220173, 219220190–219220192, 219220195–219220197, 219240121, 219310022, 219310026–219310027, 219310031–219310033, 219320144, 219330114– 219330118, 219340013, 219420333–219420334
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 132, 135 Fort Ritchie
Ft. Ritchie Co: Washington MD 21719–5010
Landholding Agency: Army
Property Number: 219330109–219330110
Status: Underutilized
Reason: Secured Area.

Bldg. T–116, Fort Detrick
Frederick Co: Frederick MD 21762–5000
Landholding Agency: Army
Property Number: 219340012
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 4900, Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219230089
Status: Unutilized
Reason: Within airport runway clear zone.

Massachusetts

Material Technology Lab
405 Arsenal Street
Watertown Co: Middlesex MA 02132–
Landholding Agency: Army
Property Number: 219120161
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Floodway, Secured Area.

Bldgs. T–102, T–110, T–111, Hudson Family Hsg

Natick RD&E Center
Bruen Road
Hudson Co: Middlesex MA 01749
Landholding Agency: Army
Property Number: 219220105–219220107
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 3462, Camp Edwards
Massachusetts Military Reservation
Bourne Co: Barnstable MA 024620–5003
Landholding Agency: Army
Property Number: 219230095
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldgs. 3596, 1209–1211 Camp Edwards
Massachusetts Military Reservation
Bourne Co: Barnstable MA 02462–5003
Landholding Agency: Army
Property Number: 219230096, 219310018–219310020
Status: Unutilized
Reason: Secured Area.

Michigan

Bldgs. 602, 604
US Army Garrison Selfridge
Mt. Clemens Co: Macomb MI 48043–
Landholding Agency: Army
Property Number: 219012355–219012356
Status: Unutilized
Reason: Within airport runway clear zone, Floodway, Secured Area.

Detroit Arsenal Tank Plant
28251 Van Dyke Avenue
Warren Co: Macomb MI 48090–
Landholding Agency: Army
Property Number: 219014605
Status: Underutilized
Reason: Secured Area.

Bldgs. 5755–5756
Newport Weekend Training Site
Carleton Co: Monroe MI 48166
Landholding Agency: Army
Property Number: 219310060–219310061
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

25 Bldgs.
Fort Custer Training Center
2501 26th Street
Augusta Co: Kalamazoo MI 49102–9205
Landholding Agency: Army
Property Number: 219014947–219014963, 219140447–219140454
Status: Unutilized
Reason: Secured Area.

Minnesota

170 Bldgs.
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219120165–219120167, 219210014–219210015, 219220227–219220235, 219240328, 219310055–219310056, 219320145- 219320156, 219330096–219330108, 219340015, 219410159–219410189, 219420195–219420284, 219430059–219430064
Status: Unutilized
Reason: Secured Area. (Most are within 2000 ft. of flammable or explosive material.) (Some are extensively deteriorated)

Mississippi

Bldgs. 8301, 8303–8305, 9158
Mississippi Army Ammunition Plant
Stennis Space Center Co: Hancock MS 39529–7000
Landholding Agency: Army
Property Number: 219040438–219040442
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Missouri

Lake City Army Ammo. Plant
59, 59A, 59C, 59B
Independence Co: Jackson MO 64050–
Landholding Agency: Army
Property Number: 219013666–219013669
Status: Unutilized
Reason: Secured Area.

Bldg #1, 2, 3
St. Louis Army Ammunition Plant
4800 Goodfellow Blvd.
St. Louis Co: St. Louis MO 63120–1798
Landholding Agency: Army
Property Number: 219120067–219120069
Status: Unutilized
Reason: Secured Area.

19 Bldgs.
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219140422–219140423, 219430065–219430081
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material.

Nebraska

13 Bldgs.
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68802–
Location: 4 miles west (Potash Road)
Landholding Agency: Army
Property Number: 219013849–219013861
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

9 Bldgs.
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219230092–219230094, 219310238–219310239, 219340129–219340131, 219430003
Status: Unutilized
Reason: Extensive deterioration.

Bldg. A0002
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219310240
Status: Unutilized
Reason: Standby Generator Bldg.

Nevada

7 Bldgs.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Poperty Number: 219011953, 219011955, 219012061–219012062, 219012106, 219013614, 219230090
Status: Unutilized
Reason: Secured Area.

Bldg. 396
Hawthorne Army Ammunition Plant
Bachelor Enlisted Qtrs W/Dining Facilities
Hawthorne Co: Mineral NV 89415–
Location: East side of Decatur Street-North of Maine Avenue
Landholding Agency: Army
Number: 219011997
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area.

57 Bldgs.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219012009, 219012013, 219012021, 219012044, 219013615–219013651, 219013653–219013656, 219013658–219013661, 219013663, 219013665, 219340016–219340021
Status: Underutilized
Reason: Secured Area. (Some within airport runway clear zone; many within 2000 ft. of flammable or explosive material).

62 Concrete Explo. Mag. Stor.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: North Mag. Area
Landholding Agency: Army
Property Number: 219120150
Status: Unutilized
Reason: Secured Area.

259 Concrete Explo. Mag. Stor.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: South & Central Mag. Areas
Landholding Agency: Army
Property Number: 219120151
Status: Unutilized
Reason: Secured Area.

Facility No. 00169, 00A38
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219240276, 219330119
Status: Unutilized
Reason: Extensive deterioration.

New Jersey

201 Bldgs.
Armament Res. Dev. & Eng. Ctr.
Picatinny Arsenal Co: Morris NJ 07806–5000
Location: Route 15 north
Landholding Agency: Army
Property Number: 219010440–219010474, 219010476, 219010478, 219010639–219010667, 219010669–219010721, 219012423–219012424, 219012426–219012428, 219012430–219012431, 219012433–219012466, 219012469–219012472, 219012474–219012475, 219012756–219012760, 219012763–219012767, 219013787, 219014306–219014307, 219014311, 219014313–219014321, 219030269, 219140617, 219230118–219230125
Status: Excess
Reason: Secured Area. (Most are within 2000 ft. of flammable or explosive material.)

24 Bldgs.
Fort Monmouth
Wall Co: Monmouth NJ 07719–
Landholding Agency: Army
Property Number: 219012829–219012833, 219012837, 219012841- 219012842, 219013786, 219230177,219320157, 219330129- 219330140, 219420335
Status: Unutilized

Reason: Secured Area. (Some are extensively deteriorated).

11 Bldgs., Military Ocean Terminal
Bayonne Co: Hudson NJ 07002–
Location: Foot of 32nd Street and Route 169.
Landholding Agency: Army
Property Number: 219013890–219013896, 219330141–219330143, 219430001
Status: Unutilized
Reason: Floodway, Secured Area.

Bldgs. 820C, 3598
Armament Research, Dev & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219240315–219240316
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

8 Bldgs.
Armament Research, Development & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219420001–219420008
Status: Underutilized
Reason: (Some are within 2000 ft. of flammable or explosive material). (Some are in the floodway). (Some are in secured area). (Some are extensively deteriorated).

9 Bldgs., Fort Dix
Ft. Dix Co: Burlington NJ 08640–
Landholding Agency: Army
Property Number: 219430087–219430092, 219430256–219430258
Status: Unutilized
Reason: Extensive deterioration.

New Mexico

Bldgs. 21384, 28356, 32010, 32984, 28730, 28830
White Sands Missile Range
White Sands Co: Dona Ana NM 88802–
Landholding Agency: Army
Property Number: 219330144–219330147, 219430126–219430127
Status: Unutilized
Reason: Extensive Deterioration.

New York

7 Bldgs. Fort Totten
Bayside Co: Queens NY 11357–
Landholding Agency: Army
Property Number: 219210130–219210131, 219430082–219430086
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 110, 143, 2084, 2105, 2110
Seneca Army Depot
Romulus Co: Seneca NY 14541–5001
Landholding Agency: Army
Property Number: 219240439, 219240440–219240443
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Bldg. 124
U.S. Military Academy
West Point Co: Orange NY 10996–
Landholding Agency: Army
Property Number: 219330148
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 3008, Stewart Gardens
Stewart Army Subpost
New Windsor Co: Orange NY 12553–
Landholding Agency: Army
Property Number: 219420285
Status: Unutilized
Reason: Extensive deterioration.

Bldg. P–4370, Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219430004
Status: Unutilized
Reason: Sewage pumping station.

9 Bldgs., Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219430005–219430012, 219430014
Status: Unutilized
Reason: (Some are within airport runway clear zone). (Some are extensively deteriorated).

5 Field Range Latrines
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Location: Bldgs. S–2565, S–2703, S–2714, S–2802, S–2822
Landholding Agency: Army
Property Number: 219430013
Status: Unutilized
Reason: Detached latrines.

North Carolina

18 Bldgs. Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219420286–219420303
Status: Unutilized
Reason: Extensive deterioration.

Ohio

63 Bldgs.
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219012476–219012507, 219012509–219012513, 219012515, 219012517–219012518, 219012520, 219012522–219012523, 219012525–219012528, 219012530–219012532, 219012534–219012535, 219012537, 219013670–219013677, 219013781, 219210148
Status: Unutilized
Reason:
Secured Area.

Bldgs. T–401, T–78, T–79, T–97, T–80, 309, 317 Page: 177
Defense Construction Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 219240331, 219310034–219310039
Status: Unutilized
Reason: Secured Area. (Some are extensively deteriorated.)

12 Bldgs., Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219320399–219320410
Status: Unutilized
Reason: Extensive deterioration.

Oklahoma

547 Bldgs.
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501–5000
Landholding Agency: Army
Property Number: 219011674, 219011680, 219011684, 219011687, 219012113, 219013792, 219013981–219013991, 219013994, 219014081–219014102, 219014104, 219014107–219014137, 219014141–219014159, 219014162, 219014165–219014216, 219014218–219014274, 219014336–219014559, 219030007–219030127, 219040004
Status: Underutilized
Reason: Secured Area. (Some are within 2000 ft. of flammable or explosive material)

14 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219130060, 219140524–219140525, 219140528–219140529, 219140535, 219140545–219140548, 219140550–219140551, 219320168, 219320337
Status: Unutilized
Reason: Extensive deterioration.

22 Bldgs.
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501–
Landholding Agency: Army
Property Number: 219310050–219310053, 219320170–219320171, 219330149–219330160, 219430122–219430125
Status: Unutilized
Reason: Secured Area.(Some are extensively deteriorated)

Oregon

11 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012174–219012176, 219012178–219012179, 219012190–219012191, 219012197–219012198, 219012217, 219012229
Status: Underutilized
Reason: Secured Area.

24 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012177, 219012185–219012186, 219012189, 219012195–219012196, 219012199–219012205, 219012207–219012208, 219012225, 219012279, 219014304–219014305, 219014782, 219030362–219030363, 219120032, 219320201
Status: Unutilized
Reason: Secured Area.

Pennsylvania

Hays Army Ammunition Plant
300 Miffin Road
Pittsburgh Co: Allegheny PA 15207–
Landholding Agency: Army
Property Number: 219011666
Status: Excess
Reason: Secured Area.

79 Bldgs.
Fort Indiantown GAP
Annville Co: Lebanon PA 17003–5011
Landholding Agency: Army
Property Number: 219140267–219140324, 219420118, 219420120–219420123, 219430106–219430121
Status: Unutilized
Reason: Extensive deterioration. (Some are detached latrines)

Bldg. 82001, Reading USARC
Reading Co: Berks PA 19604–1528
Landholding Agency: Army
Property Number: 219320173
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. P640, T–664
Carlisle Barracks
Carlisle Co: Cumberland PA 17013–5002
Landholding Agency: Army
Property Number: 219420344, 219430132
Status: Unutilized
Reason: Extensive deterioration.

33 Bldgs.
Letterkenny Army Depot
Chambersburg Co: Franklin PA 17201–
Landholding Agency: Army
Property Number: 219420399–219420430, 219430098
Status: Unutilized
Reason: Secured Area. Extensive deterioration.

South Carolina

Bldgs. L7272, L7286, Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219410157–219410158
Status: Unutilized
Reason: Extensive deterioration.

Tennessee

45 Bldgs.
Volunteer Army Ammo. Plant
Chattanooga Co: Hamilton TN 37422–
Landholding Agency: Army
Property Number: 219010475, 219010477, 219010479–219010500, 219240127–219240136, 219420304–219420307, 219430099–219430105
Status: Unutilized/Underutilized
Reason: Secured Area. (Some are within 2000 ft. of flammable or explosive material) (Some are extensively deteriorated).

24 Bldgs.
Holston Army Ammunition Plant
Kingsport Co: Hawkins TN 61299–6000
Landholding Agency: Army
Property Number: 219012304–219012309, 219012311–219012312, 219012314, 219012316–219012317, 219012319, 219012325, 219012328, 219012330, 219012332, 219012334–219012335, 219012337, 219013789–219013790, 219030266, 219140613, 219330178
Status: Unutilized
Reason: Secured Area. (Some are within 2000 ft. of flammable or explosive material).

8 Bldgs.
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358–
Landholding Agency: Army
Property Number: 219240447–219240449, 219320182–219320184, 219330176–219330177
Status: Unutilized
Reason: Secured Area.

Bldg. Z–183A
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358–
Landholding Agency: Army
Property Number: 219240783
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Texas

Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76079–
Landholding Agency: Army
Property Number: 219011665
Status: Unutilized
Reason: Easement to city of Saginaw for sewer pipeline ending 5/15/2023.

18 Bldgs.
Lone Star Army Ammunition Plant
Highway 82 West
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219012524, 219012529, 219012533, 219012536, 219012539–219012540, 219012542, 219012544–219012545, 219030337–219030345
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area.

Bldgs. 0021A, 0027A
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75661–
Location: State highway 43 north
Landholding Agency: Army
Property Number: 219012546, 219012548
Status: Underutilized
Reason: Secured Area.

32 Bldgs., Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number: 219120064, 219130002, 219140255, 219230109–219230115, 219320193–219320194, 219330163, 219420314–219420327, 219430093–219430097
Status: Unutilized
Reason: Secured Area. (Some are extensively deteriorated).

Bldg. T–5000
Camp Bullis
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219220100
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material.

Swimming Pools
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219230108
Status: Unutilized
Reason: Extensive deterioration.

6 Bldgs., Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 219340022, 219340238, 219410149–219410151, 219430131
Status: Unutilized
Reason: Extensive deterioration.

13 Bldgs., Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330161–219330162, 219330473–219330474, 219340095–219340098, 219420309–219420313
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–2514
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330475
Status: Unutilized
Reason: Pump house.

Bldgs. T–2916, T–3180, T–3192, T–3398
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330476–219330479
Status: Unutilized
Reason: Detached latrines.

Utah

3 Bldgs.
Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219012153, 219012166, 219030366,
Status: Unutilized
Reason: Secured Area.

11 Bldgs.
Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219012143–219012144, 219012148–219012149, 219012152, 219012155, 219012156, 219012158, 219012742, 219012751, 219240267
Status: Underutilized
Reason: Secured Area.

12 Bldgs.
Dugway Proving Ground
Dugway Co: Toole UT 84022–
Landholding Agency: Army
Property Number: 219013996–219013999, 219130008, 219130011- 219130013, 219130015–219130018
Status: Underutilized
Reason: Secured Area.

17 Bldgs.
Dugway Proving Ground
Dugway Co: Toole UT 84022–
Landholding Agency: Army
Property Number: 219014693, 219130009–219130010, 219130014, 219220204–219220207, 219330179–219330185, 219420328–219420329
Status: Unutilized
Reason: Secured Area.

Bldg. 4520
Tooele Army Depot, South Area
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219240268
Status: Unutilized
Reason: Extensive deterioration.

164 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–
Location: State Highway 114
Landholding Agency: Army
Property Number: 219010833, 219010836, 219010839, 219010842, 219010844, 219010847–219010890, 219010892–219010912, 219011521- 219011577, 219011581–219011583, 219011585, 219011588, 219011591, 219013559–219013570, 219110142–219110143, 219120071, 219140618–219140633
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

13 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–
Location: State Highway 114

Landholding Agency: Army
Property Number: 219010834–219010835, 219010837–219010838, 219010840–219010841, 219010843, 219010845–219010846, 219010891, 219011578–219011580
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Comment: Latrine, detached structure.

60 Bldgs.
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219240084, 219240096, 219240103–219240105, 219240107–219240118, 219330191–219330228, 219340092–219340094, 219420340–219420342
Status: Unutilized
Reason: Extensive deterioration (Some are in a secured Area.)

13 Bldgs.
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219220210–219220218, 219230100–219230103
Status: Unutilized
Reason: Secured Area.

2 Bldgs.
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801
Landholding Agency: Army
Property Number: 219220312, 219220314
Status: Underutilized
Reason: Extensive deterioration

2 Bldgs.,
Fort A.P. Hill
Bowling Co: Caroline VA 22427
Landholding Agency: Army
Property Number: 219240313–219240314
Status: Underutilized
Reason: Detached latrines

Bldg. B7103–01, Motor House
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219240324
Status: Unutilized
Reason: Secured Area Within 2000 ft. of flammable or explosive material Extensive deterioration

8 Bldgs., Fort Pickett
Blackstone Co: Nottoway VA 23824
Landholding Agency: Army
Property Number: 219310136, 219310138–219310139, 219310141–219310145
Status: Unutilized
Reason: Extensive deterioration

Bldg. 106, Fort Monroe
Ft. Monroe VA 23651
Landholding Agency: Army
Property Number: 219330186
Status: Unutilized
Reason: Extensive deterioration

Bldg. 919, Fort Story
Ft. Story Co: Princess Ann VA 23459
Landholding Agency: Army
Property Number: 219430015
Status: Unutilized
Reason: Floodway

Bldgs. 1058, 1061, Fort Story
Ft. Story Co: Princess Ann VA 23459
Landholding Agency: Army
Property Number: 219430016
Status: Unutilized
Reason: Extensive deterioration

56 Bldgs.
Red Water Field Office
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219430341–219430396
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Washington

24 Training Facilities
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–5000
Landholding Agency: Army
Property Number: 219430128
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 7518, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–5000
Landholding Agency: Army
Property Number: 219430129
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldgs. 524, 538, 539
Ft. Lawton
Seattle Co: King WA 98199
Landholding Agency: Army
Property Number: 219430130
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Wisconsin

6 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011094, 219011209–219011212, 219011217
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area
Comment: friable asbestos

154 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011104, 219011106, 219011108–219011113, 219011115–219011117, 219011119–219011120, 219011122–219011139, 219011141–219011142, 219011144, 219011148–219011208, 219011213–219011216, 219011218–219011234, 219011236, 219011238, 219011240, 219011242, 219011244, 219011247, 219011249, 219011251, 219011254, 219011256, 219011259, 219011263, 219011265, 219011268, 219011270, 219011275, 219011277, 219011280, 219011282, 219011284, 219011286, 219011290, 219011293, 219011295, 219011297, 219011300, 219011302, 219011304–219011311, 219011317, 219011319–219011321, 219011323
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Other environmental, Secured Area
Comment: friable asbestos

4 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013871–219013873, 219013875
Status: Underutilized
Reason: Secured Area

3 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013876–219013878
Status: Unutilized
Reason: Secured Area

Bldgs. 6513–27, 6823–2, 6861–4
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219210097–219210099
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

76 Bldgs., Fort McCoy
US Hwy. 21
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 219210115, 219240206–219240262, 219310208–219310225
Status: Unutilized
Reason: Extensive deterioration.

17 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219220295–219220311
Status: Unutilized
Reason: Secured Area.

Bldgs. 2845, 2860, Fort McCoy
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 219430002
Status: Unutilized
Reason: Detached latrines.

*Land (by State)*

Alabama

23 acres and 2284 acres
Alabama Army Ammunition Plant
110 Hwy. 235
Childersburg Co: Talladega AL 35044–
Landholding Agency: Army
Property Number: 219210095–219210096
Status: Excess
Reason: Secured Area.

Alaska

Campbell Creek Range
Fort Richardson
Anchorage Co: Greater Anchorage AK 99507–
Landholding Agency: Army
Property Number: 219230188
Status: Unutilized
Reason: Inaccessible.

Illinois

Group 66A
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Landholding Agency: Army
Property Number: 219010414

Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Parcel 1
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Location: South of the 811 Magazine Area, adjacent to the River Road.
Landholding Agency: Army
Property Number: 219012810
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, Floodway.

Parcel No. 2, 3
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Landholding Agency: Army
Property Number: 219013796–219013797
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Floodway.

Parcel No. 4, 5, 6
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Landholding Agency: Army
Property Number: 219013798–219013800
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Floodway.

Homewood USAR Center
18760 S. Halsted Street
Homewood Co: Cook IL 60430–
Landholding Agency: Army
Property Number: 219014067
Status: Underutilized
Reason: Secured Area.

38,000 sq. ft. & 4,000 sq. ft. of Land Rock Island Arsenal
South Shore Moline Pool Miss. River
Moline Co: Rock Island IL 61299–5000
Landholding Agency: Army
Property Number: 219240317–219240318
Status: Unutilized
Reason: Floodway.

Indiana

Newport Army Ammunition Plant
East of 14th St. & North of S. Blvd.
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219012360
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Land—Plant 2
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219330095
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Maryland

Carroll Island, Graces Quarters
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012630, 219012632
Status: Underutilized
Reason: Floodway, Secured Area.

Nebraska

Land
Cornhusker Army Ammunition Plant
Potash Road
Grand Island Co: Hall NE 68802–
Location: 4 miles west of Grand Island.
Landholding Agency: Army
Property Number: 219013785
Status: Underutilized
Reason: Floodway.

New Jersey

Land
Armament Research Development & Eng. Center
Route 15 North
Picatinny Arsenal Co: Morris NJ 07806
Landholding Agency: Army
Property Number: 219013788
Status: Unutilized
Reason: Secured Area.

Oklahoma

McAlester Army Ammo. Plant
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501
Landholding Agency: Army
Property Number: 219014603
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material.

Pennsylvania

Lickdale Railhead
Fort Indiantown Gap
Lickdale Co: Lebanon PA 17038
Landholding Agency: Army
Property Number: 219012359
Status: Excess
Reason: Floodway.

Tennessee

Land
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN
Landholding Agency: Army
Property Number: 219013791
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Volunteer Army Ammo. Plant
Chattanooga Co: Hamilton TN
Location: Area around VAAP—outside fence in buffer zone.
Landholding Agency: Army
Property Number: 219013880
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Texas

Land—Approx. 50 acres
Lone Star Army Ammunition Plant
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219420308
Status: Unutilized
Reason: Secured Area.

Virginia

Fort Belvoir Military Reservation-5.6 Acres
South Post located West of Pohick Road
Fort Belvoir Co: Fairfax VA 22060–
Location: Rightside of King Road
Landholding Agency: Army
Property Number: 219012550
Status: Unutilized
Reason: Within airport runway clear zone Secured Area.

Wisconsin

Land
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Location: Vacant land within plant boundaries.
Landholding Agency: Army
Property Number: 219013783
Status: Unutilized
Reason: Secured Area.

[FR Doc. 94–24058 Filed 9–29–94; 8:45 am]
BILLING CODE 4210–29–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Receipt of Applications(s) for Permit

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, ET SEQ.)

**PRT–794593**

*Applicant:* John B. Hendricks, Texas State Aquarium, Corpus Christi, TX.

The applicant requests a permit to take/receive salvaged specimens of endangered/threatened sea turtles that may occur along the Texas coast for scientific research and recovery purposes, rehabilitation and release back into the wild, and to permanently hold nonreleasable specimens for future scientific research aimed at enhancement of propagation or survival of the species. Species include Kemp's ridley (*Lepidochelys kempii*), Green (*Chelonia mydas*), and Hawksbill (*Eretmochelys imbricata*).

**ADDRESSES:** Written data or comments should be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and must be received by the Assistant Regional Director within 30 days for the date of this publication.

Persons wishing to review the documents and other information submitted with this application may obtain a copy by submitting a written request within 30 days of the date of publication of this notice. (See **ADDRESS** above.)

**James A. Young,**

*Acting Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.*

[FR Doc. 94–24197 Filed 9–29–94; 8:45 am]
BILLING CODE 4310–55–M

50 CFR Part 17

## Availability of Draft Recovery Plan for the Kauai Plant Cluster for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft Kauai Plant Cluster Recovery Plan. There are 37 taxa of plants included in this plan. All but seven of the taxa are or were endemic to the Hawaiian island of Kauai. The plants that are not endemic to Kauai are or were also found on the islands of Niihau, Oahu, Molokai, Maui, and/or Hawaii.

**DATES:** Comments on the draft recovery plan must be received on or before November 29, 1994, to receive consideration by the Service.

**ADDRESSES:** Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, room 6307, 300 Ala Moana Blvd., P.O. Box 50167, Honolulu, Hawaii 96850 (phone 808/541–2749); U.S. Fish and Wildlife Service, Regional Office, Ecological Services, 911 N.E. 11th Ave., Eastside Federal Complex, Portland, Oregon 97232–4181 (phone 503/231–6131); the Kauai Public Library, 4344 Hardy Street, Lihue, Kauai 96766; and, the Wailuku Public Library, 251 High Street, Wailuku, Maui 96793. Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Brooks Harper, Field Supervisor, at the above Honolulu address.

**FOR FURTHER INFORMATION CONTACT:** Karen W. Rosa, Fish and Wildlife Biologist, at the above Honolulu address.

**SUPPLEMENTARY INFORMATION:**

### Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised Recovery Plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The 37 plant taxa being considered in the draft Kauai Plant Cluster Recovery Plan are: *Brighamia insignis* ('olulu), *Chamaesyce halemanui* (no common name (NCN)), *Cyanea asarifolia* (haha), *Cyrtandra limahuliensis* (ha'iwale), *Delissea rhytidosperma* (NCN), *Diellia pallida* (NCN), *Dubautia latifolia* (NCN), *Exocarpos luteolus* (heau), *Hedyotis cookiana* ('awiwi), *Hedyotis st.-johnii* (na Pali beach hedyotis), *Hibiscus clayi* (Clay's hibiscus), *Lipochaeta fauriei* (nehe), *Lipochaeta micrantha* var. *exigua* (nehe), *Lipochaeta micrantha* var. *micrantha* (nehe), *Lipochaeta waimeaensis* (nehe), *Lysimachia filifolia* (NCN), Melicope haupuensis (alani), *Melicope knudsenii* (alani), *Melicope pallida* (alani), *Melicope quadrangularis* (alani), *Munroidendron racemosum* (NCN), *Nothocestrum peltatum* ('aiea), *Peucedanum sandwicense* (makou), *Phyllotegia waimeae* (NCN), *Poa mannii* (Mann's bluegrass), *Poa sandvicensis* (Hawaiian bluegrass), *Poa siphonoglossa* (NCN); *Pteralyxia kauaiensis* (kaulu), *Remya kauaienis* (NCN), *Remya montgomeryi* (NCN), *Schiedea apokremnos* (Ma'oli'oli), *Schiedea spergulina* var. *leiopoda* (NCN), *Schiedea spergulina* var. *spergulina* (NCN), *Solanum sandwicense* (popolo' aiakeakua), *Stenogyne campanulata* (NCN), *Wilkesia hobdyi* (Dwarf 'ili' au) and *Xylosma crentaum* (NCN).

All but seven of the taxa are or were endemic to the Hawaiian island of Kauai; the exceptions are or were found on the Hawaiian islands of Niihau, Oahu, Molokai, Maui, and/or the island of Hawaii as well as Kauai. The 37 plant taxa and their habitats have been variously affected or are currently threatened by one or more of the following: habitat degradation by feral and domestic animals (goats, pigs, axis and mule deer, cattle, and red jungle fowl); competition for space, light, water, and nutrients by introduced vegetation; erosion of substrate produced by human- or animal-caused disturbance; recreational and agricultural activities; habitat loss from fires; disease; loss of pollinators; and predation by animals (goats, rats and mice). Due to the small number of existing individuals and their very narrow distributions, these taxa and most of their populations are subject to an increased likelihood of extinction and/or reduced reproductive vigor from stochastic events.

The taxa included in this plan were historically distributed throughout the island of Kauai and grow in a variety of vegetation communities (grassland, shrubland, and forests), elevational zones (coastal to montane), and moisture regimes (dry to wet). Most of the taxa included in this plan persist on steep slopes, precipitous cliffs, valley headwalls, and other regions where unsuitable topography has prevented agricultural development or where inaccessibility has limited encroachment by alien animal and plant taxa.

The objective of this plan is to provide a framework for the recovery of these 37 taxa so that their protection by the Endangered Species Act (ESA) is no longer necessary. Immediate actions necessary for the prevention of extinction of these taxa include fencing for exclusion of ungulates, alien plant control, protection from fire, population and plant community monitoring and management, *ex situ* propagation, and augmentation of populations, as appropriate. Long-term activities necessary for the perpetuation of these taxa in their natural habitats additionally include baseline and long-term research regarding growth requirements, public education, maintenance of fenced areas, long-term monitoring and management of populations and communities, and re-establishment of populations within the historic ranges of some taxa. Further research current range, reproduction and reproductive status, pollinators, life history, limiting factors, habitat requirements, and minimum viable population sizes is needed to facilitate appropriate management decisions regarding the long-term perpetuation of each of these taxa.

### Public Comments Solicited

The Service solicits written comments on the recovery plan described. All

comments received by the date specified above will be considered prior to approval of these plans.

### Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 26, 1994.

**Michael J. Spear,**

*Regional Director, U.S. Fish and Wildlife Service, Region 1.*

[FR Doc. 94–24195 Filed 9–29–94; 8:45 am]

BILLING CODE 4310–55–M

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**50 CFR Part 17**

## Availability of Draft Recovery Plan for the Waianae Plant Cluster for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft Waianae Plant Cluster Recovery Plan. There are 31 taxa of plants included in this plan. Twenty-six taxa are either endemic to, or have their largest or best known populations in, the Waianae Mountain Range on the western side of the island of Oahu, Hawaii.

**DATES:** Comments on the draft recovery plan must be received on or before November 29, 1994, to receive consideration by the Service.

**ADDRESSES:** Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, room 6307, 300 Ala Moana Blvd., P.O. Box 50167, Honolulu, Hawaii 96850 (phone 808/541–2749); U.S. Fish and Wildlife Service, Regional Office, Ecological Services, 911 N.E. 11th Ave., Eastside Federal Complex, Portland, Oregon 97232–4181 (phone 503/231–6131). Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Brooks Harper, Field Supervisor, at the above Honolulu address.

**FOR FURTHER INFORMATION CONTACT:** Karen W. Rosa, Fish and Wildlife Biologist, at the above Honolulu address.

**SUPPLEMENTARY INFORMATION:**

### Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised Recovery Plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The draft Wainae Plant Cluster Recovery Plan addresses 31 plant taxa that have been listed as endangered under the Endangered Species Act of 1973, as amended (Act), in four listing actions between September 1991 and June 1994: *Abutilon sandwicense, Alsinidendron obovatum, Alsinidendron trinerve, Centaurium sebaeoides* ('awiwi), *Chamaesyce celastroides* var. *Kaenana* ('akoko), *Chamaesyce kuwaleana* ('akoko), *Cyanea grimesiana* ssp. *obatae* (haha), *Cyanea pinnatifida* (haha), *Cyanea superba, Diellia falcata, Diellia unisora, Dubautia herbstobatae* (na'ena'e), *Gouania meyenii, Gouania vitifolia, Hedyotis degeneri, Hedyotis parvula, Hesperomannia arbuscula, Lipochaeta lobata* var. *leptophylla* (nehe), *Lipochaeta tenuifolia* (nehe), *Lobelia niihauensis, Neraudia angulata, Nototrichium humile* (kulu'i), *Phyllostegia mollis, Sanicula mariversa, Schiedea kaalae, Silene perlmanii, Stenogyne kanehoana, Tetramolopium filiforme, Tetramolopium lepidotum* ssp. *lepidotum Urera kaalae* (opuhe), and *Viola chamissoniana* ssp. *chamissoniana* (pamakani). Twenty-six taxa are either endemic to, or have their largest or best known populations in, the Waianae Mountain Range on the western side of the island of Oahu, Hawaii.

The 31 plant tasa and their habitats have been adversely threatened in various degrees by one or more of the following: trampling and predation by introduced ungulates (pigs, cattle, goats); habitat degradation and competition for space, light, water, and nutrients by naturalized, alien vegetation; and habitat loss from fires. A few of these taxa may have been subjected to overcollection and are subject to trampling by human beings along trails. Because of the small number of extant individuals and severely restricted distributions, populations of these tasa are subject to an increased likelihood of extinction from stochastic events.

The ultimate objective of this plan is to provide a framework for the eventual recovery of these 31 taxa, preferably so that their protection by the Endangered Species Act (ESA) is no longer necessary. Immediate actions necessary for the prevention of extinction of these taxa include fencing for exclusion of ungulates, alien plant control, protection from fire, population and plant community monitoring and management, *ex situ* propagation, and augmentation of populations, as appropriate. Long-term activities necessary for the perpetuation of these taxa in their natural habitats additionally include baseline and long-term research regarding growth requirements, public education, maintenance of fenced areas, long-term monitoring and management of populations and communities, and re-establishment of populations within the historic ranges of some taxa. Further research regarding current range, reproduction and reproductive status, pollinators, life history, limiting factors, habitat requirements, and minimum viable population sizes is needed to facilitate appropriate management decisions regarding the long-term perpetuation of each of these taxa.

### Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of these plans.

### Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 26, 1994.

**Michael J. Spear,**

*Regional Director, U.S. Fish and Wildlife Service, Region 1.*

[FR Doc. 94–24196 Filed 9–29–94; 8:45 am]

BILLING CODE 4310–55–M

## Marine Mammal Annual Report Availability, Calendar Year 1991

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability of calendar year 1991 marine mammal annual report.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) has issued its 1991 annual report on administration of the marine mammals under its jurisdiction, as required by section 103(f) of the Marine Mammal Protection Act of 1972. The report covers the period January 1 to December 31, 1991, and was submitted to the Congress on August 25, 1994. By this notice, the public is informed that the 1991 report is available and that interested individuals may obtain a copy by written request to the Service.

**ADDRESSES:** Written requests for copies should be addressed to: Publications Unit, U.S. Fish and Wildlife Service, Mail Stop 130-Webb, 1849 C Street, NW, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey L. Horwath, Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Mail Stop 820—Arlington Square, 1849 C Street, NW, Washington, DC 20240. (703) 358–1718.

**SUPPLEMENTARY INFORMATION:** The Service is responsible for eight species of marine mammals under the jurisdiction of the Department of the Interior, as assigned by the Marine Mammal Protection Act of 1972. These species are polar bear, sea and marine otters, walrus, manatees (three species) and dugong. The report reviews the Service's marine mammal-related activities during the report period. Administrative actions discussed include appropriations, marine mammals in Alaska, endangered and threatened marine mammal species, law enforcement activities, scientific research and public display permits, certificates of registration, research, Outer Continental Shelf environmental studies and international activities.

Dated: September 22, 1994.

**Bruce Blanchard,**

*Deputy Director.*

[FR Doc. 94–24226 Filed 9–29–94; 8:45 am]

BILLING CODE 4310–55–M

## Klamath Fishery Management Council; Notice of Meeting

**AGENCY:** Fish and Wildlife, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act. The meeting is open to the public.

**DATES:** The Klamath Fishery Management Council will meet from 10 a.m. to 5 p.m. on Thursday, October 20, 1994; and from 8:30 a.m. to 12 noon on Friday, October 21, 1994.

**ADDRESSES:** The meeting will be held at the Redwood National Park Hiouchi Visitor Center, Highway 199 (across from Jedediah Smith Camp Ground), Hiouchi, California.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main, Suite 212), Yreka, California 96097–1006, telephone (916) 842–5763.

**SUPPLEMENTARY INFORMATION:** The principal agenda items at this meeting will be a report on the 1994 salmon fishing season, a report on Klamath River flows and temperature, and a proposal from the National Biological Survey for estimating the economic benefits of restoring Klamath fish and fisheries. The Council will also consider actions that could be taken in 1995 to manage salmon ocean harvest and protect Klamath River salmon stocks.

For background information on the Management Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: September 23, 1994.

**Thomas Dwyer,**

*Acting Regional Director, U.S. Fish and Wildlife Service.*

[FR Doc. 94–24198 Filed 9–29–94; 8:45 am]

BILLING CODE 4310–55–M

## Minerals Management Service

## Minerals Management Advisory Board, Outer Continental Shelf (OCS), Scientific Committee (SC); Announcement of Plenary Session Meeting

This Notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C. Appendix I, and the Office of Management and Budget Circular A–63, Revised.

The Minerals Management Advisory Board OCS SC will meet in subcommittee session on Wednesday, November 9, 1994, and in plenary session on Thursday, November 10, 1994, at the Marriott Dulles Suites, 13101 Worldgate Drive, Herndon, Virginia 22070, telephone (703) 709–0400.

The OCS SC is an outside group of scientists which advises the Director, MMS, on the feasibility, appropriateness, and scientific value of the MMS' OCS Environmental Studies Program.

Below is a schedule of meetings that will occur.

The OCS SC will meet in subcommittee session on Wednesday, November 9, from 9 a.m. to 5 p.m., and in plenary session on Thursday, November 10, from 8:30 a.m. to 5 p.m.

Discussion will include the following subjects:

- Committee Business and Resolutions
- Environmental Studies Program Status Review
- MMS Goals and Objectives

The meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis at the plenary session.

A copy of the agenda may be requested from the MMS by writing Ms. Phyllis Clark at the address below.

Other inquiries concerning the OCS SC meeting should be addressed to Dr. Ken Turgeon, Executive Secretary to the OCS Scientific Committee, Minerals Management Service, 381 Elden Street, Mail Stop 4310, Herndon, Virginia 22070. He may be reached by telephone at (703) 787–1717.

Dated: September 22, 1994.

**Thomas A. Readinger,**

*Associate Director for Offshore Minerals Management.*

[FR Doc. 94–24227 Filed 9–29–94; 8:45 am]

BILLING CODE 4310–MR–M

## National Park Service

## Native American Graves Protection and Repatriation Review Committee: Meeting

**AGENCY:** National Park Service, Department of the Interior

**ACTION:** Notice of meeting of the Native American Graves Protection and Repatriation Review Committee.

Notice is hereby given in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1988), that a meeting of the Native American Graves Protection and Repatriation Act

Review Committee will be held on November 17, 18, and 19, 1994, in Albany, N.Y.

On Thursday and Friday The Committee will meet at the New York State Museum, Clark Auditorium, Madison Avenue, Albany, New York. On Saturday the meeting will be held in the New York State Museum's Members Lounge. Meetings will begin each day at 8:30 a.m. and conclude not later than 5:00 p.m.

The Native American Graves Protection and Repatriation Act Review Committee was established by Public Law 101–601 to monitor, review, and assist in implementation of the inventory and identification process and repatriation activities required under the statute.

The Committee is soliciting comments from members of the public regarding: 1) the disposition of culturally unidentifiable human remains in museum or Federal collections; and 2) the disposition of unclaimed human remains and cultural items from Federal or tribal lands.

Culturally unidentifiable human remains are those in museum or Federal agency collections for which, following the completion of inventories by November 16, 1995, no lineal descendants or culturally affiliated Indian tribe has been determined. Unclaimed human remains and cultural items are those intentionally excavated or inadvertently discovered on Federal or tribal lands after November 16, 1990, for which, after following the process outlined in section 3 of the statute (25 U.S.C. 3002), no lineal descendant or Indian tribe has made a claim. The Committee is responsible for recommending specific actions for developing a process for disposition of unidentified human remains and unclaimed human remains and cultural items.

The Committee may also review written evidence regarding a dispute referred to the Committee by the United States Marine Corps in Hawaii.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with Dr. Francis P. McManamon, Departmental Consulting Archeologist.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Dr. Francis P. McManamon, Departmental Consulting Archeologist, Archeological Assistance Division, National Park Service, P.O. Box 37127–Suite 210, Washington, D.C. 20013–7127, Telephone (202) 343–4101. Draft summary minutes of the meeting will be available for public inspection about eight weeks after the meeting at the office of the Departmental Consulting Archeologist, room 210, 800 North Capital Street, Washington, D.C.

Dated: September 26, 1994

**Francis P. McManamon,**

*Departmental Consulting Archeologist and Chief, Archeological Assistance Division.*

[FR Doc. 24182 Filed 9–29–94; 8:45 pm]

BILLING CODE 4310–70–F

## National Park Service

### Keeper of the National Register of Historic Places

September 23, 1994.

The title of Keeper of the National Register of Historic Places is hereby assigned to the Chief of Registration, National Register of Historic Places effective as of September 23, 1994. Under 36 CFR 60 and 63 the Keeper is the individual who has been delegated the authority by the National Park Service to list properties and determine their eligibility for the National Register. The Keeper may further delegate this authority as he or she deems appropriate. Under 36 CFR 60 and 63 the decision of the Keeper is the final administrative action on listings and removals from the National Register and on determinations of eligibility. The authority to resolve appeals of decisions in which the Chief of Registration has already participated will remain with the Associate Director, Cultural Resources.

Sincerely,

**Jerry L. Rogers,**

*Associate Director, Cultural Resources and Keeper of the National Register of Historic Places, National Park Service.*

[FR Doc. 94–24214 Filed 9–29–94; 8:45 am]

BILLING CODE 4310–70–M

## INTERSTATE COMMERCE COMMISSION

### Agricultural Cooperative Notices to the Commission of Intent to Perform Interstate Transportation for Certain Nonmembers

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. The rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP–102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquires and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) MFA Incorporated.

(2) 615 Locust Street, Columbia, MO 65201.

(3) 615 Locust Street, Columbia, MO 65201.

(4) Ann Simpson, 615 Locust Street, Columbia, MO 65201.

**Vernon A. Williams,**

*Acting Secretary.*

[FR Doc. 94–24240 Filed 9–29–94; 8:45 am]

BILLING CODE 7035–01–P

### Notice of Intent To Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Supervalu Inc. P.O. Box 990 Minneapolis, MN 55440.

2. Wholly-owned subsidiaries which will participate in the operations, and state(s) of corporation:

| | State of incorporation. |
|---|---|
| Hazelwood Farms Bakeries, Inc., Hazelwood, MO. | Missouri. |
| Max Club, Inc., Hunting Beach, CA. | Minnesota. |
| Moran Foods, Inc. Dba Sav A Lot, St. Louis, MO. | Missouri. |
| Preferred Products, Inc., Chaska, MN. | Minnesota. |
| Scott's Food Stores, Inc., Ft. Wayne, IN. | Indiana. |
| Shop 'N Save Warehouse Foods, Inc., Kirkwood, MO. | Missouri. |

| | State of incorporation. |
|---|---|
| Springfield Sugar and Products Co. Dba Sweetlife, Northboro, MA. | Massachusetts. |
| Supervalu Holdings, Inc., Eden Prairie, MN. | Minnesota. |
| Supervalu Operations, Inc., Eden Prarie, MN. | Minnesota. |
| Supermarket Operations of American, Inc., Eden Prairie, MN. | Minnesota. |
| Supervalu Transportation Inc., Eden Prairie, MN. | Minnesota. |
| Twin Value Stores, Inc., Cuyahoga Falls, OH. | Minnesota. |

**Vernon A. Williams,**

*Acting Secretary.*

[FR Doc. 94–24238 Filed 9–29–94; 8:45 am]

BILLING CODE 7035–01–M

## DEPARTMENT OF JUSTICE

### Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) the title of the form/collection;

(2) the agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) how often the form must be filled out or the information is collected;

(4) who will be asked or required to respond, as well as a brief abstract;

(5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) an estimate of the total public burden (in hours) associated with the collection; and,

(7) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

*Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.*

(1) Report of Theft or Loss of Controlled Substances. DEA Form 106.

(2) DEA Form 106. Drug Enforcement Administration.

(3) On occasion.

(4) Individuals or households, Businesses or other for-profit, Federal agencies or employees. The Code of Federal Regulations 21 CFR 1301.74(c) and 1301.76(b) require DEA registrants to complete and submit DEA Form 106 upon discovery of a theft or loss of controlled substances. Purpose: accurate accountability; monitor substances diverted into illicit markets and develop leads for criminal investigations.

(5) 6,460 annual respondents at .5 hours per response.

(6) 4,199 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: September 26, 1994.

**Robert B. Briggs,**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 94–24176 Filed 9–29–94; 8:45 am]

BILLING CODE 4410–09–M

### Antitrust Division

### United States and State of Florida v. Morton Plant Health System, Inc. and Trustees of Mease Hospital, Inc.; Public Comments and Response on Proposed Final Consent Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States publishes below the comments received on the proposed Final Consent Judgment in United States and State of Florida v. Morton Plant Health System, Inc., and Trustees of Mease Hospital, Inc. Civil No. 94–748–CIV–T–23E, United States District Court for the Middle District of Florida, together with the United States' response to the comments.

Copies of the public comments and the response are available on request for inspection and copying in Room 3235 of the Antitrust Division, U.S. Department of Justice, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530, and at the Office of the Clerk of the United States District Court for the Middle District of Florida, United States Courthouse, 611 North Florida Avenue, Room B–100, Tampa, Florida 33602.

**Joseph H. Widmar,**

*Deputy Assistant Attorney General, Antitrust Division.*

#### The United States' Response To Public Comments

Pursuant to Section 2(d) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (the "APPA"), the United States hereby submits and responds to the public comments it has received regarding the proposed Final Consent Judgment ("Judgment") in this civil antitrust proceeding.

This action began on May 5, 1994, when the United States and the State of Florida filed a Verified Complaint alleging that the proposed consolidation of Morton Plant Health System, Inc. and Trustees of Mease Hospital, Inc. would tend to substantially lessen competition in the provision of acute inpatient hospital services in North Pinellas County, Florida in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. On June 17, 1994, the parties filed a Stipulation and a proposed Judgment, and on July 1, the United States filed a Competitive Impact Statement regarding the proposed Judgment.

As explained in the Competitive Impact Statement, the proposed Judgment permits Morton Plant and Mease to achieve cost savings by consolidating some hospital and administrative services, but it enjoins the proposed consolidation and requires Morton Plant and Mease to continue competing in the provision of inpatient hospital services as separate corporate entities, thus preserving that competition upon which consumers have relied to reduce the cost of hospital care.

The APPA requires a sixty-day period for the submission of public comments on the proposed Judgment [15 U.S.C. 16(b)]. The sixty-day comment period expired on September 12, 1994. The United States received two comments. The comments and the United States' response to these comments are being published with this notice.[1] What

[1] The comments and the individual responses are attached as Exhibit 1.

follows is a brief summary of the comments and the United States' response.

1. The Textile Rental Services Association criticized language in the proposed Judgment that, the Association claims, would authorize Morton Plant and Mease to establish a tax-exempt joint venture to provide hospital laundry services. Currently, such a venture would not be tax-exempt. The United States' response to this comment points out that, in drafting the proposed Judgment, the parties did not intend to create any new federal or state tax exemption. Morton Plant and Mease confirmed in writing that they neither intend, nor will they interpret, the proposed Judgment to provide them with any such tax-exemption.

In our view, the parties' written commitment that they will not interpret the proposed Judgment as creating or providing any new federal or state tax exemption fully meets the Textile Rental Services Association's concern that the Judgment could be read to provide such tax relief. A key point, however, is that the criticism about the tax consequences of the proposed Judgment is entirely unrelated to the key issue before the Court: the effectiveness of the Judgment in remedying the antitrust violation alleged in the Complaint.

2. Ms. Ann E. Castro, who represents an employment agency for temporary nurses, criticized provisions of the proposed Judgment that would permit Morton Plant and Mease to combine their purchases of temporary nursing services. She believes that the hospitals' joint venture might decide to purchase nursing services from foreign-born nurses, who, she claims, typically charge less than the nurses her client represents.

In response, the United States pointed out that purchasing nursing services at lower prices is a legitimate, pro-competitive goal. A reduction in Morton Plant's and Mease's costs for nursing services would likely translate into lower charges for hospital care, and hence, benefit health care consumers. Consequently, this criticism does not warrant rejecting the proposed Judgment, but instead underscores its salutory effect.

Dated: September 23, 1994.

Respectfully submitted,

Anthony E. Harris, Attorney, Antitrust Division U.S. Department of Justice, Washington, D.C. 20001 (202) 307–0951

**Exhibit 1**

Galland, Kharasch Morse & Garfinkle, P.C.
Canal Square
1054 Thirty-First Street, NW.
Washington, DC. 20007–4496
(202) 342–5200
Telecopy: (202)342–5219, (202) 337–8787

August 9, 1994

*VIA HAND DELIVERY*

Ms. Gail Kursh
Chief, Professions and Intellectual Property Section
U.S. Department of Justice
Antitrust Division
555 4th Street, NW., Rm 9903
Washington, DC. 20001

Re: Public Comment on Proposed Final Consent Judgment, Stipulation and Competitive Impact Statement in the matter of *United States and State of Florida* v. *Morton Plant Health System, Inc. and Trustees of Mease Hospital, Inc.*, No. 94–748–CIV–T–23E (M.D. Fla., Filed May 5, 1994).

Dear Ms. Kursh:

This letter is filed on behalf of this firm's client, the Textile Rental Services Association ("TRSA") with respect to the above-captioned action (the "Stipulation"), in partial objection to the terms of the Stipulation.

TRSA is a nonprofit trade association. Its mission is to protect, promote, and professionalize the industry of its members, which are companies engaged in textile maintenance and provision of rental services to commercial, industrial and institutional accounts. Members of TRSA account for about 90 percent of the annual sales of the linen supply industry and about 75 percent of the sales of the industrial laundering industry. The combined textile rental industry had estimated 1993 sales of about $6 billion. Linen supply and industrial laundering companies employ 110,000 people.

Article II, paragraph (G), and Article V, paragraph (B) of the Stipulation, as published in the Wednesday, July 13, 1994 Federal Register (59 Fed. Reg. 35,752, 35754) provide that Morton Plant Health System ("Morton Plant") and Trustees of Mease Hospital ("Mease") may form a "nonprofit, tax-exempt organization" which "may own and operate any . . . Eligible Partnership Administrative Service and may provide such service to Morton Plan and Mease." The Stipulation defines "Eligible Partnership Administrative Service" to include, among other things, "housekeeping and laundry" services and "all miscellaneous services not related to patient care and not exceeding an expenditure of $250,000.00 annually."

As is discussed in greater detail below, the implication in the Stipulation that a tax-exempt organization may perform laundry services is *directly* contrary to law, and the open-ended grant of authority to perform "miscellaneous services" may be interpreted in a manner which is inconsistent with law. TRSA objects to the content and potential effect of these provisions.

The Supreme Court specifically ruled in *HCSC–Laundry* v. *United States*, 450 U.S. 1,101 S.Ct. 836, 67 L.ED.2d 1 (1981) that a "cooperative hospital service organization" formed for the express purpose of providing laundry services for two or more hospitals (which were themselves tax-exempt organizations under § 501(c)(3) of the Internal Revenue Code) was not eligible for tax *exempt status*. Section 501(e) of the Internal Revenue Code directly addresses the capacity of a hospital service organization to qualify for tax exempt status, and provides a list of services which such qualified organizations can perform. Laundry services are not expressly nor implicitly included in that list.[1]

The petitioner in *HCSC Laundry* asserted that the list of services in § 501(e) was not intended as an exclusive list, and that the service entity providing laundry services could qualify for tax-exempt status under the general qualification standards of § 501(c)(3) applied to other companies. The Supreme Court rejected the petitioner's argument, and upheld the Third Circuit's ruling that compliance with § 501(e) was, in fact, the only way for a hospital service organization to attain tax-exempt status. The Court noted that the omission of laundry services from § 501(e) by lawmakers in 1968 was not inadvertent, and that the inclusion of laundry services was expressly considered and rejected in 1968 (during original legislative action), and 1976 (when an effort was made to amend the law to include laundry services). 101 S. Ct. at 839.

We acknowledge that the issues before the District Court and the Department of Justice, and the compromises contained in the Stipulation, focus on antitrust and anticompetitive concerns and that the Stipulation is not necessarily cognizant of federal income tax implications. Nevertheless, the Stipulation implies a range of authority which is inconsistent with current law, and we urge you to revise the Stipulation to reflect current law on permissible tax-exempt activities for hospital service organizations.

TRSA requests the opportunity to submit further comments or to otherwise participate in any other proceeding concerning this subject. Please contact the undersigned if you have any questions regarding the foregoing, or if you need any further information.

Sincerely,

Steven John Fellman,

*Counsel to the Textile Rental Services Association.*

cc: Mr. John Burke,
Employee Plans and Exempt Organizations
Mr. J.C. Contney
Executive Director, Textile Rental Services Assn.

[1] Section 501(e) provides, in pertinent part, as follows (emphasis added):

For purposes of this title, an organization shall be treated as an organization organized and operated exclusively for charitable purposes if—(1) such organization is organized and operated solely—(A) to perform, on a centralized basis, one or more of the following services which, if performed on its own behalf by a hospital which is an organization described in [§ 501(c)(3)] and exempt from taxation under subsection (a), would constitute activities in exercising or performing the purpose or function constituting the basis for its exemption: *data processing, purchasing, warehousing, billing and collection, food, clinical, industrial, engineering, laboratory, printing, communications, record center and personnel (including selection, testing, training, and education of personnel)*

September 23, 1994

*BY FACSIMILE AND U.S. MAIL*

Steven John Fellman, Esquire
Galland, Kharasch, Morse & Garfinkle, P.C.
Canal Square
1054 31st Street, N.W.
Washington, D.C. 20007–4492

Re: Public Comment on Proposed Consent Decree in United States and State of Florida v. Morton Plant Health Systems, Inc., et al., No. 94–748–CIV–T–23E (M.D. Fla., filed May 5, 1994)

Dear Mr. Fellman:

This letter responds to your recent letter, submitted on behalf of the Textile Rental Service Association, commenting on the possible tax ramifications of the joint venture that Morton Plant Health System, Inc. and Trustees of Mease Hospital, Inc. are permitted to establish under the terms of the proposed consent decree in this case.

In your letter, your correctly point out that the proposed decree authorizes Morton Plant and Mease to form a "nonprofit, tax-exempt organization" that "may own and operate [and provide to Morton Plant and Mease] any * * * Eligible Partnership Administrative Service," and that such services may include *inter alia*, "housekeeping and laundry" services and "all miscellaneous services not related to patient care and not exceeding an expenditure of $250,000 annually." Final Consent Judgment ¶¶ II (G) and V(B). This language could be read to imply that the partnership organized under the decree can perform laundry services and other unspecified miscellaneous services and remain a "nonprofit, tax-exempt organization" under federal tax laws.

However, current federal tax statutes and court decisions interpreting them indicate that a "cooperative hospitals service organization" formed to provide laundry services for two or more non-profit hospital is *not* eligible for tax exempt status. *HCSC-Laundry v. United States*, 450 U.S. 1, 6–8 (1981). It is also quite possible that a joint venture formed by the hospitals to provide other "miscellaneous services not related to patient care"—and not specifically listed as a tax-exempt service in Section 501(e) of the Internal Revenue Code—would not be entitled to tax-exempt status.

The United States certainly does not view this consent decree as affording Morton Plant or Mease a new exemption from federal (or state) taxes. Moreover, Morton Plant and Mease have provided written assurances that they do not intend to interpret the consent decree as providing an amendment to or exemption under any tax law. (A copy of that written assurance from the hospitals' trial counsel is enclosed.)

In short, the proposed consent decree is clearly not intended, and should not be read, to alter or amend tax laws, rules, or regulations, or to create any new tax exemptions or loopholes. In order to qualify for tax-exempt status, the hospitals' joint venture must satisfy any applicable tax regulations, not simply rely upon the language of the proposed decree.

I trust that this responds to the concerns you have expressed. Thank you for your keen interest in the enforcement of our federal antitrust and tax laws.

Sincerely yours,

Anthony E. Harris,

*Attorney, Professions & Intellectual Property Section.*

Enclosure

cc: Mr. John Burke
Assistant Commissioner,
Employee Plans and Exempt Organizations
Internal Revenue Service.

Macfarlane Ausley Ferguson & McMullen
Attorneys and Counselors At Law

September 21, 1994
in reply refer to: Clearwater
ALSO SENT VIA FAX 1–202–514–1517

Anthony E. Harris, Esq.
Trial Counsel
U.S. Department of Justice
Antitrust Division
555–4th Street, N.W., Room 9901
Washington, DC 20001

Re: USA v. Morton Plant and Mease

Dear Tony:

It is my understanding that you requested written assurances in reference to one of the comments received in relation to the Consent Decree. In that regard, please accept this correspondence as my clients' written assurance that they do not intend to violate the tax laws in relation to implementation of this Consent Decree, nor do they intend to claim any exemption to which they are not entitled, nor did they intend, nor do they interpret the Consent Decree to give them any additional exemptions not provided for in the tax codes, federal or state. This matter has been reviewed by appropriate tax counsel who are advising the entities accordingly. If you have additional questions, please do not hesitate to call.

Sincerely,

James A. Martin, Jr.

JAM:knk

cc:
Mr. Frank V. Murphy
Mr. Phil Beauchamp
John P. Frazer, Esq.
Emil C. Marquardt, Jr., Esq.
Steve Kiess, Esq.

H:/DATA/ATY/JAM/MPH/MEASE/HARRIS LTR

Law Offices
Ann Elaine Castro P.A.

September 12, 1994

Ms. Gail Kursh
Chief, Professions and Intellectual Property Section
U.S. Department of Justice
Antitrust Division
555 4th Street, N.W.
Room 9903
Washington D.C. 20001

In Re: United States and State of Florida v. Morton Plant Health System, Inc. and Trustees of Mease Hospital, Inc. No. 94–748–CIV–T–23E (M.D., Fla., Filed May 5, 1994)

On behalf of my client, a nursing contractor doing business in Pinellas County Florida, this public comment is being submitted as there is considerable concern that the combination of Morton Plant and Mease may substantially lessen competition in the provision of health care services in North Pinellas County in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

Specifically, the gravamen of my client's concern lies in the suspicion that should the merger go forward, staff relief nurses and other health care professionals will be injured. At 59 Fed. Reg. 357555 (July 13, 1994), Part VI (B) Independent Activities, the Final Consent Judgment reads as follows:

Morton Plant and Mease shall each price and sell its services, both those owned and operated and operated separately and those purchased from the Partnership, in active competition with each other. Morton Plant and Mease shall each exercise its own independent judgment on how to market and price its patient care services and shall not discuss, communicate, or exchange with each other or any other hospital information relating to the marketing, pricing, negotiating, or contracting of any patient care services, including those purchased from the Partnership.

On information and belief Morton Plant has participated in predatory pricing. Morton Plant together with nineteen of twenty-three major hospitals in the Tampa Bay area previously engaged in activities which set forth a federal anti-trust investigation. This investigation was conducted in 1988–9 to look into alleged abuses by the hospitals. An organization by the name of SASSA alleged that the nineteen hospitals were acting in concert to attempt to eliminate competition in the staff relief nurse industry throughout the Tampa Bay area, and to drive prices below community standards for the relief nurses.

Although the federal investigation of the anti-trust activities ended when the hospitals dropped their plan, the hospitals have continued to act in concert to try to eliminate competition in the staff relief nurse industry and to drive prices below community standards for the relief nurses. A new alliance was formed after the 1988–9 investigation called the Bay Area Hospital Council. (BAHC). BAHC has actively recruited foreign nurses to supply area hospitals with cheaper temporary nurses, and this collective activity has further damaged the nursing contractor that this firm represents, as the foreign relief nurses have been working for wages well below community standards for temporary nurses.

Although Morton Plant has engaged in utilizing relief nurses on H–1A nurses, Mease has not. The nursing contractor this firm represents has been doing business with Mease, but had been doing no business at all with Morton Plant, until the contractor would agree to do business with Morton Plant at rates below community standards for relief workers. This demand for cheaper rates commanded by Morton Plant has still not translated into significant return of business to the contractor who had historically provided Morton Plant with a large portion of its staff relief nurses.

Should the merger go forward, there will certainly be an adverse affect on staff relief nurses desiring to work in north Pinellas County, in that their ability to work at Mease Hospital will be uncertain, should Mease be influenced by the practices that Morton Plant has adopted.

Further information has been supplied to Jerome Hoffman of the Florida Attorney General's Office in Tallahassee, Florida.

Sincerely,

Ann Elaine Castro P.A.

September 23, 1994

*BY FACSIMILE AND U.S. MAIL*
Ann Elaine Castro, Esquire
Griffin Professional Building
1455 Court Street
Clearwater, Florida 34616

Re: Public Comment on Proposed Consent Decree in United States and State of Florida v. Morton Plant Health System, Inc., et al., No. 94–748–CIV–T–23E (M.D. Fla., filed May 5, 1994)

Dear Ms. Castro:

This letter responds to your September 12, 1994 letter regarding the potential impact of the proposed consent decree on competition in the provision of temporary nursing services to Tampa Bay area hospitals.

As I understand your concerns, your client is an employment agency that supplies temporary nurses to hospitals in the Tampa Bay area, including Mease. Apparently, your client has had difficulty competing in the provision of nursing services because Morton Plant and 19 other area hospitals, acting through a trade association, Bay Area Hospital Association, actively recruit foreign-born nurses, who, you say, are willing to work at temporary positions at much cheaper rates than the nurses your client employs. You believe that if Morton Plant and Mease combine their purchases of nursing services, as they are permitted to do under the proposed consent decree, their joint venture may elect to purchase the services of foreign-born nurses, rather than continue doing business with your client.

In our view, the concerns you have expressed provide no justification for reconsidering the merits of the proposed decree. First, the factual premise of your argument—that Morton Plant favors the use of foreign-born temporary nurses—is suspect. There is no evidence that Morton Plant, in fact, routinely fills temporary nursing positions at its hospitals with lower-paid foreign-born nationals. The materials you submitted to the Florida Attorney General's Office in support of your complaint indicate that, as recently as 1992, Morton Plant did not hire a single foreign national as a temporary nurse.

Second, neither hospital is today precluded from hiring foreign-born nurses to fill temporary positions, and there is no proper basis for restricting the joint venture's hiring of foreign-born nurses. Indeed, such employment discrimination is likely unlawful.

Finally, even if Morton Plant routinely fills temporary nursing positions with lower-paid foreign nationals, and the hospital joint venture organized pursuant to the decree adopts that practice and expands it to Mease, paying less expensive rates for nursing services is likely to have significant procompetitive effects. This practice promises to reduce the cost of nursing care at these hospitals, and it has not been suggested that that will lead to any diminution in the quality of care. The reduction in nursing costs will likely lead to a reduction in prices paid for hospital-related services, precisely the pro-consumer result the parties anticipated when they agreed to the settlement now pending before the Court.

I trust this information will help you to understand the basis for the Department's action and the proposed settlement in this matter. Thank you for sharing your views with us.

Sincerely yours,

Anthony E. Harris,

*Attorney, Professions & Intellectual Property Section.*

[FR Doc. 94–24213 Filed 9–29–94; 8:45 am]
BILLING CODE 4410–01–M

## Pursuant to the National Cooperative Research and Production Act of 1993—the Frame Relay Forum

Notice is hereby given that, on June 23, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Frame Relay Forum ("FRF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notificaitons were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the additional members of FRF are: Advanced Computer Communications, Cupertino, CA; Advanced Compression Technology, Camarillo, CA; and Concert, Reston, VA. The following are no longer members of FRF: Digital Equipment; Cray Communications; Netcomm Limited; NEC; Telia; Financial Paradigms; BT North America; Bull; and Multi-Access.

No other changes have been made in either the membership or planned activities of FRF. Membership remains open, and FRF intends to file additional written notifications disclosing all changes in membership.

On April 10, 1992, FRF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 2, 1992 (57 FR 29537).

The last notification was filed with the Department on March 25, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 5, 1994 (59 FR 23234).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 94–24158 Filed 9–29–94; 8:45 am]
BILLING CODE 4410–01–M

## Pursuant to the National Cooperative Research and Production Act of 1993—Network Management Forum

Notice is hereby given that, on August 12, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Network Management Forum ("the Forum") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The additional notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members to the venture are as follows: Cincinnati Bell Information Systems, Cincinnati, OH; and NEC Corporation, Tokyo, Japan are Corporate Members. Oracle Corporation, Bracknell, Berkshire, United Kingdom; Prism Systems, Inc., Richmond, British Columbia, Canada; Sprint International, Overland Park, KS; Sterling Software, Reston, VA; Telefonica Sistemas, S.A., Madrid, Spain; Telefonos de Mexico, c/o Southwestern Bell Co., San Antonio, TX; and Unisource Business Networks, Ltd., Ittigen, Switzerland are Associate Members. Australian Department of Administrative Services, Canberra Act, Australia; The Coca-Cola Company, Atlanta, GA; DHL Systems, Inc., Burlingame, CA; EDS, Plano, TX; European Space Agency, Rome, Italy; Frensham Communications, Reading, England; ITCAL, Courbevoie, France; Japan Airlines Co., Ltd., Tokyo, Japan; McCaw Communications, Kirkland, WA; National Westminster Bank PLC, Kegworth, Derby, England; NIST, Gaithersburg, MD; Philips Research, Aachem, Germany; Royal Hong Kong Jockey Club, Happy Valley, Hong Kong; Shell Oil, Houston, TX; and SITA, Neuilly-sur-Seine, France are Affiliate Members.

No other changes have been made, since the last notification filed with the Department, in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on June 6, 1994. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on July 21, 1994 (59 FR 37266).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 94–24159 Filed 9–29–94; 8:45 am]

BILLING CODE 4410–01–M

## Pursuant to the National Cooperative Research and Production Act of 1993—The SQL Access Group, Inc.

Notice is hereby given that, on June 6, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the SQL Access Group, Inc. ("the Group"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following parties are no longer members of the Group: Apple Computer; Boeing Computer Services; British Telecom Research; Concom Systems; E.I. Dupont de Nemours & Co., Inc.; Hewlett Packard; Lotus Development Corp., Micro Decisionware; Novell; Retix; DB Access; Jyacc; Locus Computing; and Revelation Technologies. The following parties have become members of the Group: Svenska Handelsbanken, Stockholm, Sweden; and Samsung Advanced Institute, Kyung Ki-Do, Korea. The following companies have changed their names: Computer Corporation of America is now Praxis; and NCR/Teradata is now AT&T/Global Information Solutions.

On March 1, 1990, the Group filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on April 5, 1990 (55 Fed. Reg. 12,750).

The last notification was filed with the Department on April 6, 1993. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on June 30, 1994 (59 FR 33,783).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 94–24160 Filed 9–29–94; 8:45 am]

BILLING CODE 4410–01–M

## Drug Enforcement Administration

### Manufacturer of Controlled Substances; Registration

By Notice dated August 5, 1994, and published in the Federal Register on August 15, 1994, (59 FR 41785), Ciba-Geigy Corporation, Pharmaceutical Division, Regulatory Compliance, 556 Morris Avenue, Summit, New Jersey 07901, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, Section 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: September 22, 1994.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 94–24161 Filed 9–29–94; 8:45 am]

BILLING CODE 4410–09–M

**[Docket No. 94–17]**

### Jovencio Raneses, M.D.; Revocation of Registration

On August 12, 1993, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Jovencio Raneses, M.D. The Order to Show Cause sought to revoke Dr. Raneses' (Respondent) DEA Certificate of Registration, AR2526171, and deny any pending applications for registration as a practitioner. The Order to Show Cause alleged that revocation of Respondent's DEA Certificate of Registration was proper pursuant to 21 U.S.C. 824(a) (1), (2), and (4).

In particular, the Order to Show Cause alleged that Respondent's continued registration was inconsistent with the public interest in light of his prescribing of controlled substances to individuals in the absence of a legitimate medical purpose, his felony conviction for issuance of a controlled substance prescription in violation of California law, and his material falsification of a new application for registration with the DEA. On that application, Respondent failed to acknowledge that he had been convicted of a crime in connection with controlled substances.

On December 13, 1993, Respondent requested a hearing on the issues raised in the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was scheduled for June 9, 1994. On June 3, 1994, Government counsel filed a motion for summary disposition alleging that Respondent was without state authority to handle controlled substances.

In support of its motion, Government counsel produced a copy of the decision of the Division of Medical Quality, Medical Board of California (Board) dated November 16, 1993. Paragraph two of the decision provides that Respondent shall surrender his DEA Certificate of Registration and not reapply for a new DEA permit "without prior written consent of the [Board]." Government counsel also attached to its motion a statement from a Board Probation Officer who indicated that Respondent had not obtained written consent from the Board to reapply for his DEA Certificate.

On June 20, 1994, Respondent filed a letter which was treated by the administrative law judge as a cross-motion for summary disposition. Respondent's submission, however, failed to address the issue of state authorization raised in Government counsel's motion for summary disposition. The submission, rather, addressed the merits of the case. Government counsel filed a response to Respondent's letter on June 23, 1994, again urging the administrative law judge to revoke Respondent's registration and deny his application based on lack of state authorization.

On June 29, 1994, the administrative law judge granted the Government's motion for summary disposition and recommended that Respondent's DEA Certificate of Registration be revoked and that pending applications be denied. No exceptions were filed and on August 2, 1994, the administrative law judge transmitted the record to the Deputy Administrator. The Deputy Administrator now enters his final order in this matter pursuant to 21 CFR 1316.67.

It is well established that the Drug Enforcement Administration cannot register a practitioner who is not duly authorized to handle controlled substances in the state in which he does business. *See* 21 U.S.C. 823(f). DEA has consistently held that practitioners who lack state authorization to handle

controlled substances cannot be registered with the Drug Enforcement Administration. *See Ramon Pla, M.D.*, 51 FR 41168 (1986); *George S. Heath, M.D.*, 51 FR 26610 (1986); *Dale D. Shahan, D.D.S.*, 51 FR 23481 (1986).

Consequently, the Deputy Administrator adopts the administrative law judge's opinion and decision recommending that Respondent's registration be revoked and his pending applications denied. This decision is appropriate in light of Respondent's lack of authorization to handle controlled substances in the State of California. The Deputy Administrator has determined that due to Respondent's lack of state authorization to handle controlled substances, it is not necessary to address whether Respondent's continued registration is inconsistent with the public interest pursuant to 21 U.S.C. 823(f) and 824(a)(4).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104 (59 FR 23637), hereby orders that DEA Certificate of Registration, AR2526171, issued to Jovencio Raneses, M.D., be, and it hereby is, revoked, and that all pending applications for registration be, and they hereby are, denied. This order is effective October 31, 1994.

Dated: September 23, 1994.

**Stephen H. Green,**

*Deputy Administrator.*

[FR Doc. 94–24164 Filed 9–29–94; 8:45 am]

BILLING CODE 4410–09–M

## Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on August 26, 1994, Sanofi Winthrop Inc., formerly Sanofi Winthrop L.P., DBA Sanofi Winthrop Pharmaceutical, 200 East Oakton Street, Des Plaines, Illinois 60018, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Codeine (9050) | II |
| Hydromorphone (9150) | II |
| Meperidine (9230) | II |
| Morphine (9300) | II |

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 31, 1994.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: September 22, 1994.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 94–24162 Filed 9–29–94; 8:45 am]

BILLING CODE 4410–09–M

## Importer of Controlled Substances; Registration

By Notice dated August 5, 1994, and published in the **Federal Register** on August 15, 1994, (59 FR 41791), Sigma Chemical Company, 3500 Dekalb Street, St. Louis, Missouri 63118, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| 4-Bromo-2,5-dimethoxyphenethylamine (7392) | I |
| N-Hydroxy-3,4-methylenedioxyamphetamine (7401) | I |

No comments or objections have been received. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: September 22, 1994.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 94–24163 Filed 9–29–94; 8:45 am]

BILLING CODE 4410–09–M

# DEPARTMENT OF LABOR

## Employment and Training Administration

## Job Training Partnership Act: Indian and Native American Employment and Training Programs; Final Designation Procedures for Grantees for Program Years 1995–96

**AGENCY:** Employment and Training Administration, Department of Labor.

**ACTION:** Notice of final designation procedures for grantees.

**SUMMARY:** This document contains the procedures by which the Department of Labor (DOL) will designate potential grantees to receive two-year grants for Indian and Native American Employment and Training Programs under the Job Training Partnership Act (JTPA), and to provide waivers from competition for current successful programs. The designations will be for JTPA Programs Years (PYs) 1995 and 1996 (July 1, 1995 through June 30, 1997). This notice provides necessary information to prospective grant applicants to enable them to submit appropriate requests for designation.

**DATES:** Optional Advance Notices of Intent must be postmarked no later than October 15, 1994. Final Notices of Intent must be postmarked no later than January 1, 1995.

**ADDRESSES:** Send an original and two copies of the Advance and Final Notices of Intent to Mr. Thomas Dowd, Chief, Division of Indian and Native American Programs, ATTN: Designation Desk,

U.S. Department of Labor, Room N–4641 FPB, 200 Constitution Avenue, NW., Washington, DC 20210.

**SUPPLEMENTARY INFORMATION:** The procedures are basically the same as the previous procedure used for PYs 1993 and 1994. Current successful grantees may receive waivers from competition, and all designations will be for a two-year grant. JTPA section 401 grantees who are presently operating under Pub. L. 102–477, Indian Employment, Training, and Related Services Demonstration Act of 1992, must apply for redesignation under this procedure in order to maintain their service area designation and eligibility for funds under this title, including any requests for a waiver under JTPA section 401(l).

**Job Training Partnership Act: Indian and Native American Programs; Final Designation Procedures for Program Years 1995–96**

*Table of Contents*



**Introduction: Scope and Purpose of Notice**

Section 401 of the Job Training Partnership Act (JTPA) authorizes programs to serve the employment and training needs of Indians and Native Americans.

Requirements for these programs are set forth in the JTPA and in the regulations at 20 CFR Part 632. The specific organization eligibility and application requirements for designation are set forth at 20 CFR 632.10 and 632.11. Pursuant to these requirements, the Department of Labor (DOL) selects entities for funding under section 401. It designates such entities as potential Native American section 401 grantees which will be awarded grant funds contingent upon all other grant award requirements being met. This notice describes how DOL will designate potential grantees who may apply for grants for Program Years 1995 and 1996. A designated entity may apply for grant funds for PY 1995 and PY 1996 without further competition.

The designation process has two parts. The Advance Notice of Intent (see Part III, below) is optional although strongly recommended. The final Notice of Intent (see Part IV, below) is mandatory for all applicants. Any organization interested in being designated as a Native American section 401 grantee should be aware of and comply with the procedures in these parts.

The amount of JTPA section 401 funds to be awarded to designated Native American section 401 grantees is determined under procedures described at 20 CFR 632.171 and not through this designation process. The grant application process is described at 20 CFR 632.18 through 632.20.

**I. General Designation Principles**

Based on JTPA and applicable regulations, the following general principles are intrinsic to the designation process:

(1) All applicants for designation shall comply with the requirements found at 20 CFR Part 632, Subpart B, regardless of their apparent standing in the preferential hierarchy (see Part V, Preferential Hierarchy For Determining Designations, below). The basic eligibility, application and designation requirements are found in 20 CFR Part 632, Subpart B.

(2) The nature of this program is such that Indians and Native Americans in an area are entitled to program services and are best served by a responsible organization directly representing them and designated pursuant to the applicable regulations. The JTPA and the governing regulations give clear preference to Native American-controlled organizations. That preference is the basis for the steps which will be followed in designating grantees.

(3) A State or federally recognized tribe, band or group *on its reservation* is given absolute preference over any other organization if it has the capability to administer the program and meets all regulatory requirements. This preference applies only to the area within the reservation boundaries. Such "reservation" organization which may have its service area given to another organization will be given a future opportunity to reestablish itself as the "preference" grantee.

In the event that such a tribe, band or group (including an Alaskan Native entity) is not designated to serve its reservation or geographic service area, the DOL will consult with the governing body of such entities when designating alternative service deliverers, as provided at 20 CFR 632.10(e). Such consultation may be accomplished in writing, in person, or by telephone, as time and circumstances permit. When it is necessary to select alternative service deliveries, the Grant Officer will continue to utilize input and recommendations from the Division of Indian and Native American Programs (DINAP).

(4) In designating Native American section 401 grantees for off-reservation areas, DOL will provide preference to Indian and Native American-controlled organizations as described in 20 CFR 632.10(f) and as further clarified in Part IX (1) *Indian or Native American-Controlled Organization* of this notice. As noted in (3) above, when vacancies occur, the Grant Officer will continue to utilize input and recommendations from DINAP when designating alternative service deliverers.

(5) Incumbent and non-incumbent applicants not granted waivers or seeking additional areas must submit evidence of significant support from other Native American-controlled organizations within the communities (geographic service areas) which they are currently serving or requesting to serve. See Part IV, Notice of Intent, below, for more details.

(6) The Grant Officer will make the designations using a two-part process:

(a) Those applicants described in Part V (1) of the Preferential Hierarchy For Determining Designations will be designated on a noncompetitive basis *if* all preaward clearances, responsibility reviews, and regulatory requirements are met.

(b) All applicants described in Part V, (2), (3), and (4) of the Preferential Hierarchy For Determining Designations will be *considered on a competitive basis* for such areas, unless a waiver is granted, and only information submitted with the Notice of Intent, as well as preaward clearances, responsibility reviews, and all regulatory requirements will be considered.

(7) Special employment and training services for Indian and Native American people have been provided through an established service delivery network for the past 18 years under the authority of JTPA section 401 and its predecessor, section 302 of the repealed Comprehensive employment and Training Act (CETA). The DOL intends to exercise its designation authority to preserve the continuity of such services and to prevent the undue fragmentation of existing geographic service areas. Consistent with the present regulations and other provisions of this notice, this will include preference for those Native American organizations with an existing capability to deliver employment and training services within an established geographic service area. Such preference will be determined through input and recommendations from the Chief of

DOL's Division of Indian and Native American Programs (DINAP) and the Director of DOL's Office of Special Targeted Programs (OSTP), and through the use of the rating system described in this Notice. Unless a non-incumbent applicant in the same preferential hierarchy as an incumbent applicant grantee can demonstrate that it is significantly superior overall to the incumbent, the incumbent will be designated, if it otherwise meets all of the requirements for redesignation.

(8) In preparing application for designation, applicants should bear in mind that the purpose of JTPA, as amended, is "to establish programs to prepare youth and adults facing serious barriers to employment for participation in the labor force by providing job training and other services that will result in increased employment and earnings, increased education and occupational skills, and decreased welfare dependency, thereby improving the quality of the work force and enhancing the productivity and competitiveness of the Nation."

**II. Waiver Provision**

In accordance with the JTPA Amendments of 1992, section 401(1) (designation to receive a 2-year grant) states:

> The competition for grants under this section shall be conducted every 2 years, except that if a recipient of such a grant has performed satisfactorily under the terms of the existing grant agreement, the Secretary may waive the requirement for such competition on receipt from the recipient of a satisfactory 2-year program plan for the succeeding 2-year grant period.

The Department is implementing this waiver provision for the next two-year designation period (PY 1995–96).

All incumbent grantees who have performed "satisfactorily" both programmatically and administratively under their present grant may receive a waiver for the next two-year designation period. The responsibility review criteria at 20 CFR 632.11(d) of the current regulations serves as the baseline instrument to determine "satisfactory" performance.

A waiver may be requested by submitting an Advance Notice of Intent (ANOI) by October 15, 1994. A list of grantees granted waivers will be published no later than November 15, 1994. Grantees, including tribes serving areas in addition to their reservations, NOT meeting the waiver requirements set forth in the above paragraph will be subject to the competitive process published in this solicitation.

Incumbent grantees receiving a waiver will be required to submit only a Standard Form (SF) 424 "Application for Federal Assistance" for currently designated service area(s) by January 1, 1995.

Nonincumbent applicants who qualify for Preferential Hierarchy Status 1 may apply by January 1, 1995 for and may be designated to serve their Hierarchy 1 service area(s).

Tribes and organizations participating in the employment and training demonstration project under Pub. L. 102–477 qualify for waiver consideration.

This is an initial approach to the waiver process. It is subject to change in the future resulting from experience and the Department's desire to make the process equitable.

**III. Advance Notice of Intent**

The purpose of the Advance Notice of Intent process is to provide section 401 applicants, prior to the submission of a final Notice of Intent, with information relative to potential competition. While DOL encourages the resolution of competitive request at the local level prior to final submission, the Advance Notice of Intent process also serves to alert those whose differences cannot be resolved of the need to submit a compete final Notice of Intent.

Although the Advance Notice of Intent process is not mandated by the regulations, participation in the advance process by prospective section 401 applicants is strongly recommended. The Advance Notice of Intent process allows the applicant to identify potential incumbent and non-incumbent competitors, to resolve conflicts if possible and to prepare a final Notice of Intent with advance knowledge of potential competing requests.

It should be emphasized, however, that the Advance Notice of Intent process does not ensure that all potential competitors have been identified. Some applicants may opt not to submit an Advance Notice of Intent; others may change geographic service area request in the final Notice of Intent. Therefore, as noted above, final submissions should be prepared with these possibilities in mind, unless a waiver has been granted. Although the regulations permit incumbents to submit no more than a Standard Form 424 "Application for Federal Assistance" (SF 424) for their existing geographic service areas, this choice may not be in the incumbent's best interests in the event of unanticipated competition.

The SF 424 is not to be used for the advance notification process. As in the PY 1993–1994 designation process, DOL will utilize the Advance Notice of Intent to expedite the identification of potentially competitive applicants in situations where waivers have NOT been granted.

All organizations interested in being designated as section 401 grantees should submit an original and two copies of an Advance Notice of Intent. The Advance Notice is to be postmarked no later than October 15, 1994, or 15 calendar days after the date of publication of this **Federal Register** Notice. An organization may submit only one Advance Notice of Intent for any and all areas for which it wants to be considered. The Advance Notice of Intent is to be sent to the Chief, Division of Indian and Native American Programs, at the address cited above.

Complete instructions for the Advance Notice of Intent process will be mailed to all current grantees on or about October 1, 1994. Incumbents will also receive a description of their present geographic service area at this time. New applicants may request copies of the Advance Notice of Intent instructions by writing to the Chief, Division of Indian and Native American Programs, at the address cited above.

DOL's first step in the designation process is to determine which areas have more than one potential applicant for designation, and whether any waivers have been granted. For those areas for which more than one organization submits an Advance Notice of Intent, each such organization will be notified of the situation, and will be apprised of the identity of the other organization(s) applying for that area. Such notification will consist of providing affected applicants (including incumbents who have not submitted Advance Notices of Intent) with copies of all Advance Notices submitted for their requested areas. The notification will state that organizations are encouraged to work out any conflicting requests among themselves, and that a final Notice of Intent should be submitted by the required postmark of January 1, 1995, deadline (see Part IV, Notice of Intent, below).

Under the Advance Notice of Intent process, it is DOL policy that, to the extent possible within the regulations, a geographic service area and the applicant that will operate a section 401 program in that area are to be determined by the Native American community to be served by the program. In the event the Native American community cannot resolve differences, applicants should take special care with their final Notices of Intent to ensure that they are complete and fully responsive to all matters covered by the

preferential hierarchy and rating systems discussed in this notice.

Information provided in the Advance Notice of Intent process shall not be considered as a final submission as referenced at 20 CFR 632.11. The Advance Notice of Intent is a procedural mechanism to facilitate the designation process. The regulations do not provide for formal application for designation through the Advance Notice of Intent.

**IV. Notice of Intent**

Even though an ANOI has been submitted, all applicants must submit an original and two copies of a final Notice of Intent, postmarked not later than January 1, 1995, consistent with the regulations at 20 CFR 632.11. Final Notices of Intent may also be delivered in person not later than the close of business on the first business day of the designation year. Exclusive of charts of graphs and letters or support, the Notice of Intent should not exceed 75 pages of double-space unreduced type.

Final Notice of Intent are to be sent to the Chief, Division of Indian and Native American Programs (DINAP), at the address cited above.

*Final Notice of Intent Contents:* (as outlined at 20 CFR 632.11)

- A completed and signed SF–424, "Application for Federal Assistance";
- An indication of the applicant's legal status, including articles of incorporation or consortium agreement as appropriate;
- A clear indication of the territory being applied for, in the same format as the ANOI;
- Evidence of community support from Native American-controlled organizations; and
- Other relevant information relating to capability, such as service plans and previous experience which the applicant feels will strengthen its case, including information on any unresolved or outstanding administrative problems.

Final Notice of Intent must contain evidence of community support. Incumbent and non-incumbent State and Federally-recognized tribes need not submit such evidence regarding their own reservations. However, such entities are required to provide such evidence for any area which they wish to serve beyond their reservation boundaries.

The regulations permit current grantees requesting their existing geographic service areas to submit an SF 424 in lieu of a complete application, whether or not a waiver has been granted. As noted earlier in this notice, current grantees, other than tribes, bands or groups (including Alaskan Native entities) requesting their existing areas and NOT granted a waiver, are encouraged to consider submitting a full Notice of Intent (even if their geographic service area request has not changed) in the event that competition occurs. Tribes, bands or groups (including Alaskan Native entities) should consider submitting a full Notice of Intent if they currently serve areas beyond their reservation boundaries and have NOT been granted a waiver for these areas.

Applicants are encouraged to modify the geographic service area requests identified in their Advance Notice of Intent to avoid competition with other applicants. Applicants should not add territory to the geographic service area requests identified in the Advance Notice of Intent. Any organization applying by January 1, 1995, for non-contiguous geographic service areas shall prepare a separate, complete Notice of Intent for each such area unless currently designated for such areas.

It is DOL's policy that no information affecting the panel review process will be solicited or accepted past the regulatory postmarked or hand delivered deadlines (see Part VI, Use of Panel Review Procedure, below). All information provided before the deadline must be in writing.

This policy does not preclude the Grant Officer from requesting additional information independent of the panel review process.

**V. Preferential Hierarchy for Determining Designation**

In cases in which only one organization is applying for a clearly identified geographic service area and the organization meets the requirements at 20 CFR 632.10(b) and 632.11(d), DOL shall designate the applying organization as the grantee for the area. In cases in which two or more organizations apply for the same area (in whole or in part), and no waivers have been granted, DOL will utilize the order of designation preference described in the hierarchy below. The organization will be designated, assuming all other requirements are met. The preferential hierarchy is:

(1) Indian tribes, bands or groups on Federal or State reservations for their reservation; Oklahoma Indians only as specified in Part VIII, Special Designation Situations, below; and Alaskan Native entities only specified in Part VIII, Special Designation Situations, below.

(2) Native American-controlled, community-based organizations as defined in Part IX (1) of the glossary in this notice, with significant support from other Native American-controlled organizations within the service community. This includes tribes applying for geographic service areas other than their own reservations.

When a non-incumbent can demonstrate in its application, by verifiable information, that it is potentially significantly superior overall to the incumbent, and the incumbent has not been granted a waiver, a formal competitive process will be utilized which may include a panel review. Such potential will be determined by the consideration of such factors a the following: completeness of the application and quality of the contents; documentation of past experience, Native American-controlled organizational support; understanding of area training and employment needs and approach to addressing such needs; and the capability of the incumbent. If there is no incumbent, and therefore no waivers granted, new applicants qualified for this category would complete against each other.

(3) Organizations (private nonprofit or units of State or local governments) having a significant Native American advisory process, such as a governing body chaired by a Native American and having a majority membership of Native Americans.

(4) Non-Native American-controlled organizations without a Native American advisory process. In the event such an organization is designated, it must develop a Native American advisory process as a condition for the award of a grant.

The Chief, DINAP, will make determinations regarding hierarchy, geographic service areas, eligibility of new applicants and the timeliness of submissions. He may convene a task force to assist in making such determinations. The role of the task force is that of a technical advisory body.

The Chief, DINAP, will ultimately advise the Grant Officer in reference to which position an organization holds in the designation hierarchy. Within the regulatory time constraints of the designated process, the Chief, DINAP, will utilize whatever information is available.

*The applying organization must supply sufficient information to permit the determination to be made. Organizations must indicate the category which they assume is appropriate and must adequately support that assertion.*

**VI. Use of Panel Review Procedure**

A formal competitive process may be utilized under the following circumstances:

(1) The Chief, DINAP, advises that a new applicant qualified for the second category of the hierarchy appears to be potentially significantly superior overall to an incumbent Native American-controlled, community-based organization with significant local Native American community support, and the incumbent has not been granted a waiver.

(2) The Chief, DINAP, advises that more than one new applicant is qualified for the second category of the hierarchy, and the incumbent grantee has not reapplied for designation.

(3) The Chief, DINAP, advises that two or more organizations have equal status in the third or fourth categories of the hierarchy, when there are no applicants qualified for the first and second categories, and no waivers have been granted.

When competition occurs, the Grant Officer may convene a review panel of Federal Officials to score the information submitted with the Notice of Intent. The purpose of the panel is to evaluate an organization's capability, *based on its application,* to serve the area in question. The panel will be provided only the information described at 20 CFR 632.11 and submitted with the final Notice of Intent. The panel will not give weight to simple assertions. Any information must be supported by adequate and verifiable documentation, *e.g.,* supporting references must contain the name of the contact person, an address and telephone number.

The factors listed below will be considered in evaluating the capability of the applicant. In developing the Notice of Intent, the applicant should organize his documentation of capability to correspond with these factors.

(1) Operational Capability—40 points. (20 CFR 632.10 and 632.11)

(a) Previous experience in successfully operating an employment and training program serving Indians and Native Americans of a scope comparable to that which the organization would operate if designated—20 points.

(b) Previous experience in operating other human resources development programs serving Indians or Native Americans or coordinating employment and training services with such programs—10 points.

(c) Ability to maintain continuity of services to Indian or Native American participants with those previously provided under JTPA—10 points.

(2) Identification of the training and employment problems and needs in the requested area and approach to addressing such problems and needs—20 points. (20 CFR 632.2)

(3) Planning Process—20 points (20 CFR 632.11)

(a) Private sector involvement—10 points.

(b) Community support as defined in Part IX (1), Designation Process Glossary, and documentation as provided in Part I (5), General Designation Principles—10 points.

(4) Administrative Capability—20 points. (20 CFR 632.11)

(a) Previous experience in administering public funds under DOL or similar administrative requirements—15 points.

(b) Experience of senior management staff to be responsible for a DOL grant—5 points.

**VII. Notification of Designation/ Nondesignation**

The Grant Officer will make the final designation decision giving consideration to the following factors: the review panel's recommendation, in those instances where a panel is convened; input from DINAP, the Office of Special Targeted Programs, the DOL Employment and Training Administration's Office of Grant and Contracts Management and Office of Management Services, and the DOL Office of the Inspector General; and any other available information regarding the organization's financial and operational capability, and responsibility. The Grant Officer's decisions will be provided to all applicants by March 1, 1995, as follows:

(1) *Designation Letter.* The designation letter signed by the Grant Officer will serve as official notice of an organization's designation. The letter will include the geographic service area for which the designation is made. It should be noted that the Grant Officer is not required to adhere to the geographical service area requested in the Final Notice of Intent. The Grant Officer may make the designation applicable to all of the area requested, a portion of the area requested, or if acceptable to the designee, more than the area requested.

(2) *Conditional Designation Letter.* Conditional designations will include the nature of the conditions, the actions required to be finally designated and the time frame for such actions to be accomplished.

(3) *Nondesignation Letter.* Any organization not designated, in whole or in part, for a geographic service area requested will be notified formally of the Nondesignation and given the basic reasons for the determination. An applicant for designation that is refused such designation, in whole or in part, may file a Petition for Reconsideration in accordance with 20 CFR 632.13, and subsequently, may appeal the Nondesignation to an administrative law judge under the provisions of 20 CFR Part 636.

If an area is not designated for service through the foregoing process, alternative arrangements for service will be made in accordance with 20 CFR 632.12.

**VIII. Special Designation Situations**

(1) *Alaskan Native Entities.* DOL has established geographic service areas for Alaskan Native employment and training based on the following: (a) The boundaries of the regions defined in the Alaskan Native Claims Settlement Act (ANCSA); (b) the boundaries of major subregional areas where the primary provider of human resource development related services is an Indian Reorganization Act (IRA)-recongnized tribal council, and (c) the boundaries of one Federal reservation in the State. Within these established geographic service areas, DOL will designate the primary Alaskan Native-controlled human resource development services provider or an entity formally designated by such provider. In the past, these entities have been regional nonprofit corporations, IRA-recognized tribal councils and the tribal government of the Metlakatla Indian Community. DOL intends to follow these principles in designating Native American Grantees in Alaska for Program Years 1995 and 1996.

(2) *Oklahoma Indians.* DOL has established a service delivery system for Indian employment and training programs in Oklahoma based on a preference for Oklahoma Indians to serve portions of the State. Generally, geographic service areas have been designated geographically as countywide areas. In cases in which a significant portion of the land area of an individual county lies within traditional jurisdiction of more than one tribal government, the service area has been subdivided to a certain extent on the basis of tribal identification information in the most recent Federal Decennial Census of Population. Wherever possible, arrangements mutually satisfactory to grantees in adjoining or overlapping geographic service areas have been honored by DOL. DOL intends to follow these principles in designating Native American grantees in Oklahoma for Program Years 1995 and

1996 to preserve continuity and prevent unnecessary fragmentation.

**IX. Designation Process Glossary**

In order to ensure that all interested parties have the same understanding of the process, the following definitions are provided:

(1) *Indian or Native American-Controlled Organization.* This is defined as any organization with a governing board, more than 50 percent of whose members are Indians or Native Americans. Such an organization can be a tribal government, Native Alaskan or Native Hawaiian entity, consortium, or public or private nonprofit agency. For the purpose of hierarchy determinations, the governing board must have decision-making authority for the section 401 program.

(2) *Service Area.* This is defined as the geographic area described as States, counties, and/or reservations for which a designation is made. In some cases, it will also show the specific population to be served. The service area is defined by the Grant Officer in the formal designation letter. Grantees must ensure that all eligible population members have equitable access to employment and training services within the service area.

(3) *Community Support.* This is evidence of active participation and/or endorsement from Indian or Native American-controlled organizations within the geographic service area for which designation is requested.

While applicants are not precluded from submitting attestations of support from individuals, the business community, State and local government offices, and community organizations that are not Indian or Native American-controlled, they should be aware that such endorsements do not meet DOL's definitional criteria for community support.

Signed at Washington, DC, this 26th day of September 1994.

**Thomas M. Dowd,**

*Chief, Division of Indian and Native American Programs.*

**Paul A. Mayrand,**

*Director, Office of Special Targeted Programs.*

**James C. Deluca,**

*Grant Officer, Office of Grants and Contracts Management, Division of Acquisition and Assistance.*

[FR Doc. 94–24183 Filed 9–29–94; 8:45 am]

BILLING CODE 4510–30–M

## Employment Standards Administration

### Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedures thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

**New General Wage Determination Decisions**

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State:

*Volume I*

Maine
ME940038 (Sep. 30, 1994)

**Modification to General Wage Determinations Decisions**

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

Maine
ME940031 (Aug. 12, 1994)
ME940034 (Aug. 12, 1994)
ME940035 (Aug. 12, 1994)
New York
NY940003 (Feb. 11, 1994)
NY940013 (Feb. 11, 1994)
NY940043 (Feb. 11, 1994)
NY940060 (Apr. 01, 1994)

*Volume II*

District of Columbia
DC940001 (Feb. 11, 1994)
Maryland

MD940035 (Feb. 11, 1994)
MD940048 (Feb. 11, 1994)
Pennsylvania
PA940005 (Feb. 11, 1994)
PA940006 (Feb. 11, 1994)
PA940009 (Feb. 11, 1994)
PA940012 (Feb. 11, 1994)
PA940024 (Feb. 11, 1994)
PA940025 (Feb. 11, 1994)
PA940026 (Feb. 11, 1994)
PA940028 (Feb. 11, 1994)
Virginia
VA940025 (Feb. 11, 1994)
VA940037 (Feb. 11, 1994)
VA940040 (Feb. 11, 1994)
VA940058 (Feb. 11, 1994)
VA940104 (Feb. 11, 1994)
VA940105 (Feb. 11, 1994)
West Virginia
WV940002 (Feb. 11, 1994)
WV940003 (Feb. 11, 1994)

*Volume III*

None

*Volume IV*

Indiana
IN940001 (Feb. 11, 1994)
IN940018 (Feb. 11, 1994)
Ohio
OH940002 (Feb. 11, 1994)
OH940003 (Feb. 11, 1994)
OH940029 (Feb. 11, 1994)

*Volume V*

Arkansas
AR940001 (Feb. 11, 1994)
AR940003 (Feb. 11, 1994)
AR940008 (Feb. 11, 1994)
Iowa
IA940004 (Feb. 11, 1994)
IA940005 (Feb. 11, 1994)
Kansas
KS940007 (Feb. 11, 1994)
KS940010 (Feb. 11, 1994)
KS940012 (Feb. 11, 1994)
KS940063 (Mar. 25, 1994)
Texas
TX940003 (Feb. 11, 1994)
TX940004 (Feb. 11, 1994)
TX940014 (Feb. 11, 1994)
TX940019 (Feb. 11, 1994)

*Volume VI*

Colorado
CO940001 (Feb. 11, 1994)
CO940002 (Feb. 11, 1994)
CO940004 (Feb. 11, 1994)
CO940005 (Feb. 11, 1994)
CO940006 (Feb. 11, 1994)
CO940008 (Feb. 11, 1994)
Idaho
ID940001 (Feb. 11, 1994)
ID940002 (Feb. 11, 1994)
North Dakota
ND940002 (Feb. 11, 1994)
Oregon
OR940001 (Feb. 11, 1994)
Washington
WA940001 (Feb. 11, 1994)
WA940002 (Feb. 11, 1994)
WA940003 (Feb. 11, 1994)
WA940006 (Feb. 11, 1994)
WA940007 (Feb. 11, 1994)
WA940008 (Feb. 11, 1994)
WA940011 (Feb. 11, 1994)
WA940013 (Feb. 11, 1994)

**General Wage Determination Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which included all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, D.C. This 23rd Day of September 1994.

**Alan L. Moss,**

*Director, Division of Wage Determination.*

[FR Doc. 94–23984 Filed 9–29–94; 8:45 am]

BILLING CODE 4510–27–M

## Mine Safety and Health Administration

### Coal Mine Respirable Dust Standard; Single-Shift and Noncompliance Determinations

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Extension of comment period; close of record.

**SUMMARY:** The Mine Safety and Health Administration (MSHA) recently supplemented the record concerning the notices addressing changes to the Federal respirable dust program for coal mines. The mining community has requested additional time to review this information and to prepare their comments. MSHA is extending the period for the public to submit post-hearing comments on the February 18, 1994, notices which address: (1) The use of single, full-shift respirable dust measurements to determine noncompliance under the MSHA coal mine respirable dust program; and (2) the joint finding by the Secretary of Labor and the Secretary of Health and Human Services that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be measured accurately over a single shift.

**DATES:** All comments and information must be submitted on or before November 30, 1994. Commenters are encouraged to send comments on a computer disk with their original comments in hard copy.

**ADDRESSES:** Send comments to MSHA, Office of Standards, Regulations, and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235–1910.

**SUPPLEMENTARY INFORMATION:** On August 1, 1994, (59 FR 38988), MSHA published a notice in the **Federal Register** extending the time for post-hearing comments on the February 18, 1994, notices (59 FR 8356 and 8357), from August 5, 1994 to September 30, 1994.

In that notice, MSHA also stated that based on comments received at the public hearings held in July 1994, (59 FR 29348 and 59 FR 34868), and in response to specific requests, the Agency would supplement the record with additional information. On September 9, 1994, the Agency added several documents to the record. This additional information does not in any way change the proposed findings. Commenters have requested additional time to review this information.

Therefore, the Agency is extending the post-hearing comment period until November 30, 1994. Interested parties are encouraged to submit their comments on or before that date.

Dated: September 27, 1994.

**J. Davitt McAteer,**

*Assistant Secretary for Mine Safety and Health.*

[FR Doc. 94–24281 Filed 9–29–94; 8:45 am]

BILLING CODE 4510–43–P

## Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

### 1. Triton Coal Company

[Docket No. M–94–136–C]

Triton Coal Company, P.O. Box 3027, Gillette, Wyoming 82717–3027 has filed a petition to modify the application of 30 CFR 77.1607(u) (loading and haulage equipment; operation) to its Buckskin Mine (I.D. No. 48–01200) located in

Campbell County, Wyoming. The petitioner requests a variance from the mandatory standard for towing of haul trucks and other large off highway surface mine equipment. The petitioner proposes to use a portable hydraulic unit to supply power to the necessary functions of disabled equipment in order to move it safely. The petitioner states that proper training would be provided to every miner responsible for using this equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**2. Rosebud Mining Company**

[Docket No. M–94–137–C]

Rosebud Mining Company, Box 324B, R.D. 2, Parker, Pennsylvania 16049 has filed a petition to modify the application of 30 CFR 75.333(b)(2) (ventilation controls) to its Rosebud No. 3 Mine (I.D. No. 36–07843) located in Armstrong County, Pennsylvania. The petitioner requests a modification of the mandatory standard to permit the use of temporary ventilation controls in the room necking procedure for rooms developed less than 600 feet. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**3. Ram Head Coal Company**

[Docket No. M–94–138–C]

Ram Head Coal Company, 277 Main Street, Joliet, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Primrose Slope (I.D. No. 36–08454) located in Schuylkill County, Pennsylvania. Because of steep, frequently changing pitch and numerous curves and knuckles in the main haulage slope, the petitioner proposes to use the gunboat without safety catches in transporting persons. As an alternate, when using the gunboat to transport persons, the petitioner proposes to use an increased rope strength safety factor and secondary safety connections which are securely fastened around the gunboat and to the hoisting rope above the main connecting device. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**4. Independent Aggregates**

[Docket No. M–94–38–M]

Independent Aggregates, P.O. Box 519, Inglis, Florida 34449 has filed a petition to modify the application of 30 CFR 57.6306(b) (loading and blasting) to its I.A.C. Mine (I.D. No. 08–01035) located in Citrus County, Florida. The petitioner requests a modification of the mandatory standard to permit the drill to continue drilling the shot pattern while loading is in progress. The petitioner proposes to complete a drill hole and immediately load the hole while drilling new holes continues. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**5. Akzo Nobel Salt, Inc.**

[Docket No. M–94–39–M]

Akzo Nobel Salt, Inc., P.O. Box 6920, Cleveland, Ohio 44101 has filed a petition to modify the application of 30 CFR 57.19000(c) (personnel hoisting; application) to its Cleveland Mine (I.D. No. 33–01994) located in Cuyahoga County, Ohio. The petitioner requests a variance from the mandatory standard to permit the use of an approved escape hoist as a secondary escape hoist for persons underground, while upgrading its production hoist to increase its hoisting capability. The petitioner states that the escape hoisting equipment is capable of hoisting out 70 people in one hour; that working schedules would be modified to ensure that only 70 people would be underground when the escape hoist is in operation; and that a hoist operator would be available at all times while personnel are underground. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**Request for Comments**

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 31, 1994. Copies of these petitions are available for inspection at that address.

Dated: September 23, 1994

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances*

[FR Doc. 94–24228 Filed 9–29–94; 8:45 am]

BILLING CODE 4510–43–P

## Pension and Welfare Benefits Administration

**[Application No. D–9767, et al.]**

## Proposed Exemptions; Del Monte Savings Plan; et al.

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

**Written Comments and Hearing Requests**

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

**Notice to Interested Persons**

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice

shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

**Del Monte Savings Plan, and Del Monte Certain Hourly Savings Plan (the Plans) Located in San Francisco, CA**

[Application Nos. D–9767 & D–9768]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) The proposed extension of credit to the Plans (the Loan) by Del Monte Corporation (the Employer), the sponsor of the Plans, with respect to the Plans' interests in guaranteed investment contract No. CG01300B3A (the GIC) issued by Executive Life Insurance Company of California (Executive Life); and (2) the Plans' potential repayment of the Loan (the Repayments); provided that the following conditions are satisfied:

(A) All terms and conditions of such transactions are no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties;

(B) No interest or expenses are paid by the Plans;

(C) The Loan is made in lieu of amounts to be paid to the Plan under the plan of rehabilitation resulting from the bankruptcy of Executive Life (the Rehab Plan);

(D) The Repayments shall not exceed the principal amount of the Loan;

(E) The Repayments shall not exceed the amounts actually received by the Plans under the Rehab Plan; and

(F) Repayment of the Loan shall be waived to the extent that the amount of the Loan exceeds the amount of cash recovered by the Plans under the Rehab Plan.

**Summary of Facts and Representations**

1. The Employer is a New York corporation engaged in the business of processing and marketing canned vegetables and fruit, with its corporate headquarters in San Francisco, California. The Employer is a wholly-owned subsidiary of Del Monte Foods Company (DMFC), a Maryland corporation. On behalf of its employees and those of its affiliates, the Employer sponsors both of the Plans, which are defined contribution pension plans providing for individual participant accounts (the Accounts) and participant-directed investment of the Accounts. As of December 31, 1993, the Plans had approximately 3,730 participants.

2. The Plans' assets are held in a master trust (the Master Trust) of which the trustee is the Merrill Lynch Trust Company of California (the Trustee). The named fiduciary of each Plan is the Del Monte Investment Committee (the Committee), which consists of five employees of the Employer appointed by the Employer's board of directors. The Committee designates the investment options into which the Plans' participants may direct the investment of their Accounts. The Plans currently offer five investment options, one of which is the Interest Income Fund (the I Fund), which invests in, among other things, guaranteed investment contracts issued by insurance companies. As of December 31, 1993, the I Fund represented approximately 54 percent of the fair market value of the assets of the Master Trust. The assets of the I Fund include guaranteed investment contract No. CG01300B3A (the GIC). The GIC was issued to the Plans on or about December 1, 1990 by Executive Life Insurance Company of California (Executive Life) as part of an arrangement whereby Executive Life agreed to "clone" a contract previously held by the Plans' predecessor plans (the Predecessor Plans), in connection with the sale of the Employer to DMFC in 1990 and the Employer's agreement that the Plans would assume the assets and liabilities of the Predecessor Plans. The GIC is a benefit-responsive contract permitting withdrawals for plan benefits, loans, and participant-directed reallocations among investment options under the Plans, and was issued in the principal amount of $3,899,130.43, with a guaranteed simple annual interest rate of 9.22 percent (the Contract Rate) to the July 1, 1993 maturity date.

The Committee has designated Merrill Lynch Asset Management, Inc. (MLAM) as the investment manager for the I Fund. MLAM and the Trustee are both subsidiaries of Merrill Lynch & Co. In accordance with investment guidelines provided by the Committee, MLAM generally invests and manages the I Fund's assets, which consist of Plan contributions, participant reallocations of Account balances to the I Fund, and proceeds of maturing investments. MLAM represents that it is not an investment manager within the meaning of Section 3(38) of the Act with respect to any "cloned" contracts, including the GIC, which were issued to the Plans as part of the asset transfer from the Predecessor Plans.[1]

3. On April 11, 1991 (the Conservation Date), Executive Life was placed in conservatorship by the Commissioner of Insurance of the State of California.[2] As of that date, payments under the GIC were suspended, and no withdrawals or payments from the GIC have been made since the Conservation Date. As of the Conservation Date, the GIC had a book value of $3,766,668, representing total principal deposits under the GIC plus accrued interest at the Contract Rate less previous withdrawals, and constituting approximately 2.4 percent of the assets of the I Fund at that time. Effective April 30, 1991, the Committee froze a proportionate share of each of the 2,918 Accounts invested in the I Fund. With respect to the frozen portion of each Account, the Committee has prohibited the crediting of earnings, the making of distributions, withdrawals and loans, and the reallocation of the frozen Account portions to other investment options of the Plans. Printed Account

[1] In this proposed exemption, the Department expresses no opinion as to whether or not MLAM constitutes an investment manager within the meaning of Section 3(38) of the Act.

[2] The Department notes that the decision to acquire and hold the GIC is governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GIC.

statements provided to the Plans participants have reported the frozen Account portions separately, indicating the frozen status.

4. In September 1993, the Employer entered into a written agreement for the sale of substantially all the assets of one of the Employer's business units to Silgan Containers Corporation (Silgan). Pursuant to that agreement, the Employer is required to transfer to one or more individual account plans maintained by Silgan (the Silgan Plans) the assets and liabilities of the Plans with respect to the Accounts of the Plans' participants who transferred employment from the Employer to Silgan as a result of the sale of the business unit. The parties agreed that the asset transfer is to be made in cash. The asset transfer includes 288 Accounts which are subject to the proportionate freeze resulting from the Executive Life conservatorship.

5. On August 13, 1993, the Los Angeles Superior Court approved the terms of the Rehabilitation/Liquidation Plan for Executive Life (the Rehab Plan) effective September 3, 1993. On or about December 29, 1993, each holder of an Executive Life contract was provided with an election form and summary of the Rehab Plan. Under the Rehab Plan, Executive Life's guaranteed investment contracts were reduced in value to approximately 79 percent of the book value as of the Conservation Date (the Rehab Value), and each holder of such contracts was paid an amount (the Interim Payment) for accumulated interest and fees for the period between the Conservation Date and September 3, 1993. Each contract holder, including the Plans, was informed that each contract holder could elect by February 12, 1994 to "opt in" or "opt out" of the Rehab Plan. The Employer represents that by "opting in", according to the Rehab Plan summary, a contract holder would be issued a new 5-year contract issued by Aurora National Life Assurance Company, the successor of Executive Life, in an amount equal to the Rehab Value less the amount of the Interim Payment, plus the right to receive possible distributions (Residual Payments) from certain trusts and settlements which may occur in the liquidation of Executive Life. The Employer states that, according to the Rehab Plan summary, "opting out" of the Rehab Plan results in a cash settlement, consisting of an immediate cash payment (the Initial Payment), and the right to receive any Residual Payments which become available. The Interim Payment was payable to all contract holders, whether they "opt in" or "opt out" of the Rehab Plan.

6. The Employer states that after review and consideration of the Rehab Plan summary and the reports of outside consultants retained for analysis and advice, the Committee determined that the Plans should "opt out" of the Rehab Plan. Accordingly, the Plans received the Initial Payment on the GIC on March 31, 1994. When combined with the Interim Payment, the Plans have received approximately 57 percent of the GIC's Conservation Date book value. The Employer states that the Residual Payments potentially available to the Plans, as a contract holder which "opts out" of the Rehab Plan, will consist of the net proceeds, if any, from the following: (a) An allocation holdback equal to approximately 11 percent of the GIC's Conservation Date book value; (b) liquidation of three trusts established under the Rehab Plan to liquidate Executive Life's non-investment grade securities and other assets, paid through an "Opt-Out Trust"; and (c) remaining proceeds from another trust established under the Rehab Plan to deal with bond indemnification obligations shared by contract holders. The Employer states that the summary of the Rehab Plan reported that some Residual Payments may be made annually but others could take a substantial period of time to realize. The Employer represents that under the Rehab Plan, neither the timing nor the amount of any Residual Payments can be determined with certainty. However, the Employer represents that on the basis of the Rehab Plan summary and the analysis conducted by consultants retained to assist the Committee, the Committee estimates that the Plans will receive total Residual Payments of $1,073,500.30 (the Estimated Residuals), or about 28.5 percent of the GIC's book value as of the Conservation Date.

7. In order that the frozen portions of the Accounts may be released without the delay and uncertainty of awaiting the Residual Payments, and in order to enable the transfer of assets from the Plans to the Silgan Plans, the Employer proposes to loan the Plans the amount of the Estimated Residuals (the Loan), and is requesting an exemption to permit the Loan under the terms and conditions described herein.[3] The Loan, pursuant to a written agreement, will be made in a lump sum in the amount of the Estimated Residuals less any Residual Payments which the Plans may have received prior to the Loan. The Loan will be made as soon as practicable after the Committee has obtained the exemption proposed herein, if granted, and a closing agreement with respect thereto has been consummated with the Internal Revenue Service. The repayment of the Loan (the Repayments) will be limited to the cash proceeds, if any, received by the Plan as Residual Payments after the date of the Loan. Repayments are due only as and when Residual Payments are received by the Plans. No interest will be paid on the Loan, and the Plans will incur no expenses with respect to the Loan. Under no circumstances will the Repayments exceed the Loan. At such time as the Trustee or Executive Life notifies the Employer that no further Residual Payments will be made, repayment of any outstanding Loan amount will be waived by the Employer.

8. If the proposed exemption is granted, the Committee intends to revalue the Plans' investment in the GIC (the Adjusted Value) to equal the sum of the Initial Payment, the Interim Payment, the Loan, and any Residual Payments received prior to the Loan. Each frozen Account will also be adjusted to reflect the Adjusted Value accordingly, reducing the Plans' recorded investment in the GIC from the Conservation Date book value to the Adjusted Value, and a proportional percent of each frozen Account will be recorded as a loss. After the Loan is made and the Accounts are adjusted, the Committee will remove the freeze on the Accounts invested in the GIC and the Plans will resume distribution, withdrawals, loans and interfund transfers with respect to Account portions previously subject to the freeze. Additionally, the Plans will be able to complete the transfer of assets to the Silgan Plans, in accordance with the agreement of sale of the Employer's business unit to Silgan, by transferring the previously frozen Account portions on the basis of the Adjusted Value and by utilizing the cash made available by the Loan.

9. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (a) All terms and conditions of the Loan will be no less favorable to the Plans than those which the Plans could obtain in an arm's-length transaction with an unrelated party; (b) The Loan will enable the Plans to resume normal operations with respect to the frozen portion of the Accounts; (c) The Loan will enable the completion of the transfer of assets to the Silgan Plan with respect to 288 frozen Accounts; (d) No interest or expenses will be paid by the

[3] The Department notes that this exemption, if granted, will not affect the ability of any participant or beneficiary to bring a civil action against Plan fiduciaries for breaches of section 404 of the Act in connection with any aspect of the GIC transactions.

Plans; (e) The Repayments will be restricted to the Residual Payments received by the Plans pursuant to the Rehab Plan; (f) The Repayment will not exceed the Loan or the Residual Payments received after the Loan is made; and (g) The Repayments will be waived to the extent the Loan exceeds Residual Payments received by the Plans after the Loan is made.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

**Xerox Corporation Profit Sharing and Savings Plan (the PSSP); Xerox Corporation Retirement Income Guarantee Plan (the RIGP); Profit Sharing Plan of Xerox Corporation and the Xerographic Division, A.C.T.W.U, AFL–CIO (the Union PSP); and the Retirement Income Guarantee Plan of Xerox Corporation and the Xerographic Division, A.C.T.W.U, AFL–CIO (the Union RIGP; Collectively, the Plans) Located in Stamford, Connecticut**

[Application Nos. D–9778 through D–9781]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed guarantees (the Guarantees) by the Xerox Corporation (the Employer), the sponsor of the Plans, of amounts payable to the Plans by the Aurora National Life Assurance Company (Aurora) with respect to five group annuity contracts (the GACs) originally issued by Executive Life Insurance Company of California (Executive Life); provided that the following conditions are satisfied:

(A) All terms and conditions of such transactions are no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties;

(B) The Guarantees are made solely with respect to the amounts which are due the Plans, but unpaid, with respect to the GACs; and

(C) The Settlement Agreement described in the Summary of Facts and Representations, below, is approved by the U.S. District Court, District of Connecticut.

**Summary of Facts and Representations**

*Introduction:* In 1994, the Xerox Corporation and other defendants to certain litigation entered into a settlement agreement which requires, among other things, that Xerox Corporation guarantee the Plans' receipt of certain payments in connection with the rehabilitation of Executive Life Insurance Company of California. Xerox Corporation also has undertaken to make a similar guarantee with respect to certain of the Plans' participants who were not parties to the litigation settlement agreement Xerox Corporation is requesting an exemption to permit these guarantees, under the terms and conditions described herein.

1. Xerox Corporation (the Employer) is a publicly-held New York corporation engaged in the development, manufacture, marketing, and servicing of document processing technology, with its corporate headquarters in Stamford, Connecticut. The Employer maintains various qualified employee benefit plans for its employees, including the Plans, the assets of which are held in the Xerox Corporation Trust Agreement to Fund Retirement Plans (the Master Trust), which had total assets of approximately $4.6 billion as of December 31, 1993. The Union PSP and the Union RIGP (the Union Plans) are maintained pursuant to collective bargaining agreements between the Employer and the Xerographic Division of the Amalgamated Clothing and Textile Workers' Union, A.F.L.–C.I.O. (the Union). The trustee of the Master Trust is the State Street Bank and Trust Company of North Quincy, Massachusetts (the Trustee), serving as a directed trustee according to directions of a delegee of a committee of representatives of the Employer's board of directors (the Committee). The PSSP and the Union PSP are defined contribution plans (the DC Plans) which provide for individual participant accounts and participant-directed investment of such accounts among investment options in the Master Trust (the MT Funds). The RIGP and Union RIGP are hybrid defined benefit plans (the DB Plans) in which certain participants may accrue benefits measured in part by reference to individual accounts consisting of contributions made on the participant's behalf. The individual accounts of the DB Plans are invested among the MT Funds.

2. Included among the MT Funds as of April 1, 1991 was a guaranteed fund (the G Fund) which invested primarily in group annuity and guaranteed investment contracts issued by various insurance companies. As of April 1, 1991, the G Fund had approximately $65.6 million invested in group annuity contracts (the GACs) issued by Executive Life Insurance Company of California (ELIC), representing approximately 7.5 percent of the assets in the G Fund as of that date. On April 11, 1991, the Insurance Commissioner of the State of California (the Commissioner) ordered a conservatorship (the Conservatorship) of ELIC, and halted all payments on ELIC's guaranteed contracts, including the GACs.[4] The Employer represents that it took immediate protective action on behalf of the Plans' participants, by segregating the G Fund assets attributable to the GACs in a new segregated fund (the Segregated Fund), effective April 1, 1991. The account of each Plan participant with an interest in the G Fund as of April 1, 1991 was assigned an interest in the Segregated Fund, in proportion to the GACs' total value as of April 1, 1991.[5] The remaining G Fund assets were placed in a new fund designated as the Income Fund. The Plan was amended, effective April 1, 1991, to prohibit distribution, withdrawal, and transfer of any account balance attributable to the Segregated Fund.

3. The Employer represents that on September 3, 1993 the assets and restructured liabilities of ELIC were assigned to Aurora Life National Assurance Company (Aurora), pursuant to the Commissioner's court-approved rehabilitation plan (the Rehab Plan). Under the Rehab Plan, each ELIC contract holder was permitted to elect between (1) Opting in to the Rehab Plan, in which case Aurora would assume the ELIC contract, or (2) opting out of the Rehab Plan, in which case a cash settlement would be paid in exchange for the ELIC contract. A determination was made by a delegee of the Committee that the Plans would elect to opt out of the Rehab Plan, and the appropriate opt-out election forms were completed by the Trustee. Subsequently, the Plans received $37.9 million (the Initial Recovery), approximately 58 percent of

[4] The Department notes that the decision to acquire and hold the GACs are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GACs.

[5] Each participant's interest in the Segregated Fund was determined by multiplying his interest in the G Fund by a fraction, the numerator of which was the value of G Fund assets invested in the GACs as of April 1, 1991, and the denominator of which was the value of total assets in the G Fund as of April 1, 1991.

the Segregated Fund, as part of the Rehab Plan's provisions for ELIC contract holders who opted out of the Rehab Plan. The Employer represents that the Commissioner has estimated that such holders of ELIC contracts can expect to recover a total of about 85 percent of the Conservatorship Date value of the contracts. Accordingly, the Employer states that the Plans can expect to recover from Aurora another $17.8 million on the contracts, approximately 27 percent of the Segregated Fund, over the remaining estimated four years of the Rehab Plan's operation.

4. However, on April 6, 1992, a class action (the 1992 Litigation) was commenced on behalf of affected participants and beneficiaries of the RIGP and PSSP (the Plaintiffs) against the Employer and members of the Committee (collectively, the Defendants), *Maureen Rose, et al.*, v. *Joan Ganz Cooney, et al.*, Civil Action No. 5:92–CV–208, Federal District Court, District of Connecticut (the Court). The Plaintiffs alleged that the Defendants' actions in connection with the Plans' purchase of the GACs violated various provisions of the Act. On July 15, 1994, Plaintiffs and Defendants executed an agreement in settlement of the 1992 Litigation (the Agreement), which provides as follows:

(A) Defendants are to make an initial cash payment of $13 million to an interest-bearing escrow account (the Escrow). Amounts in the Escrow, including interest, less attorney's fees and administrative costs approved by the Court, are to be transferred to the Master Trust for the benefit of Plaintiffs no sooner than 10 days after the Court enters a final order approving the Agreement, but only if the transactions contemplated by the Agreement are approved by the Department, in the exemption proposed herein, and by the Internal Revenue Service (the Service). The Employer represents that it is expected that the Escrow payment to the Master Trust on behalf of Plaintiffs, after payment of costs and fees, will be approximately $9 million, or about 15 percent of the Plaintiff's account balances in the Segregated Fund.

(B) In the event that payments after June 3, 1994, and before January 1, 1999, from Aurora (and any other source related to the rehabilitation of ELIC, other than any state insurance guaranty associations) to the Master Trust for the benefit of Plaintiffs with respect to the GACs are less than $16.1 million, approximately 27 percent of the Plaintiffs' account balances in the Segregated Fund, then the Employer shall pay the difference to the Master Trust on or before January 31, 1999. This undertaking by the Employer is referred to herein as the Settlement Guarantee. The Employer requests an exemption to permit the Settlement Guarantee under the terms and conditions of the Agreement and this proposed exemption.

Each Plaintiff will have a pro rata share of the amounts paid under the Agreement in proportion to the Plaintiff's account's share of the Segregated Fund. The Employer represents that when added to the amounts already received from Aurora, the Employer's payments under the Agreement are expected to ensure that Plaintiffs will recover 100 percent of their account balances in the Segregated Fund. The Agreement, after approval by the Court, will be in full satisfaction of all claims of Plaintiffs arising out of the subject matter of the 1992 Litigation, and the 1992 Litigation will be dismissed with prejudice. The Agreement will be effective only if approved by the Court and only if the Employer obtains the exemption proposed herein by the Department and a favorable ruling on the Agreement by the Service. The Employer represents that the Court entered a preliminary approval of the Agreement on July 22, 1994, and rendered its final approval of the Agreement in a hearing on September 8, 1994.[6]

5. Participants in the Union Plans were not parties to the 1992 Litigation. The Employer represents that since 1991, the Union has demanded that the Union Plans' participants with rights in the GACs (the Union Participants) be made whole for their losses on the GACs. On June 9, 1994, a class action lawsuit was filed against the Trustee (the 1994 Litigation) on behalf of the Plaintiffs in the 1992 Litigation and the Union Participants, alleging that the Trustees' actions in connection with the Plans' purchase of the GACs violated various provisions of the Act. Although the proposed Agreement will provide that the 1994 Litigation be dismissed with prejudice as to the 1992 Litigation Plaintiffs, it will provide that the 1994 Litigation be dismissed without prejudice as to the Union Participants. The terms of the Agreement do not require any payments by the Employer to the Segregated Fund on behalf of the Union Participants. In response to ongoing demands on behalf of the Union Participants, the Employer has agreed to make payments to the Master Trust with respect to the Union Participants in a manner similar to the Agreement's provisions for the 1992 Litigation Plaintiffs. Specifically, the Employer will make an initial cash payment to the Master Trust on behalf of the Union Participants equal to 15 percent of the Segregated Fund account balances of the Union Participants. The Employer also guarantees to make additional payments to the extent that amounts received by the Master Trust from Aurora for the benefit of Union Participants after June 3, 1994 and before January 1, 1999 are less than $1.8 million, or 27 percent of the Union Participants' account balances in the Segregated Fund. The Employer's guarantee to make such additional payments (the Union Guarantee) is included in the Guarantees for which the Employer requests an exemption, under the terms and conditions of the exemption proposed herein.[7] The Employer represents that, when added to amounts already received from Aurora, the initial payments and contingent additional payments by the Employer pursuant to the Union Guarantee will ensure that the Union Participants recover 100 percent of their account balances in the Segregated Fund. The Employer's initial and contingent additional payments to the Union Participants are conditioned upon the grant of the exemption proposed herein and a favorable ruling by the Service.

8. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (a) The Guarantees will protect the Plans participants and beneficiaries from losses on the GACs' value as of the commencement of the ELIC conservatorship; (b) The Guarantees will eliminate uncertainty with respect to the value of the GACs in the Segregated Fund; (c) The Settlement Guarantee will enable the settlement of Plaintiffs claims arising from the 1992 Litigation and the 1994 Litigation; and (d) the Union Guarantee will extend to the Union Participants the same protections with respect to the GACs as those extended

[6] In this proposed exemption, the Department is proposing exemptive relief solely for the Guarantees, and not for any other aspects of the GAC transactions or the Agreement. The Department notes that this exemption, if granted, will not affect the rights of any participant or beneficiary of the Plans with respect to any civil action against Plan fiduciaries for breaches of section 404 of the Act in connection with any aspect of the GAC transactions.

[7] The Union Guarantee is not evidenced by a written agreement, like the Settlement Guarantee. Instead, the Employer's commitment to the Union Guarantee is evidenced in a public announcement by the Employer's chief executive officer, Paul A. Allaire, reported in the July 18, 1994 edition of a newsletter, Today at Xerox, which is published by the Employer.

to the Plaintiffs under the Settlement Guarantee.

**FOR FURTHER INFORMATION CONTACT:** Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

**Vaquero Farms, Inc. Profit Sharing Plan and Agri-Bis, Inc. Profit Sharing Plan (the Plans) Located in Stockton, California**

[Application Nos. D–9711 and D–9712]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the past cash sale (the Sale) by the Plans of certain promissory notes (the Notes) to Vaquero Farms, Inc. (the Applicant) and Agri-Bis, Inc., a related company, provided that the following conditions were met at the time of the Sale: (1) The sales price of the Notes was not less than their aggregate fair market value on the date of the Sale; (2) the Sale was a one-time transaction for cash; (3) the Plans did not pay any fees or commissions in connection with the Sale; and (4) the Plans' independent fiduciary determined that the transaction was appropriate for and in the best interests of the Plans and their participants and beneficiaries.

**EFFECTIVE DATE:** If granted, this proposed exemption would be effective as of May 31, 1994, the date of the Sale.

**Summary of Facts and Representations**

1. The Applicant operates a farming enterprise in the San Joaquin Valley area of California. Agri-Bis, Inc. is related to the Applicant by common ownership. The Plans are both defined contribution plans. As of September 30, 1992, the Vaquero Farms, Inc. Profit Sharing Plan had 138 participants and total assets of approximately $4,531,364. As of January 31, 1993, the Agri-Bis, Inc. Profit Sharing Plan had 41 participants and total assets of approximately $2,039,764.

2. The Plans acquired their interests in the Notes in June of 1989 when each Plan loaned $250,000 to Triad Pacific 1987 Investors (Triad), a California limited partnership, unrelated to the Applicant. The Notes are secured by second deeds of trust on industrial leased real property located at 192–252 West Larch Road, Tracey, California (Drew Centre) and 3008 East Hammer Lane, Stockton, California (the Pavilion). The Applicant represents that, prior to investing Plan assets in Triad, the Plans' trustees conducted a thorough investigation of the potential investment, including an examination of the properties and the financial condition of Triad. According to the Applicant, the investment was consistent with the Plans' investment policies. The Applicant represents that the Plans have invested from time to time in other deeds of trust and that they learned of this investment opportunity directly from the principals of Triad. In accordance with the terms of the Notes, the principal amount of the loans became due in June of 1993. The principal amount plus accrued interest from June 1993 remains unpaid.[8] In July of 1993, the borrower, Triad, filed a voluntary petition under Chapter 11 of the Bankruptcy Act. Union Bank, which holds a first deed of trust on the Drew Centre property securing a promissory note in the principal amount of $3,301,132, has filed a motion for relief from the automatic stay seeking to foreclose on its security interest in the Drew Centre property. Appraisals of the Drew Centre property indicate a range of values between $2,750,000 and $3,900,000. Gentra Financial, which holds a first deed of trust on the Pavilion Property securing a promissory note in the amount of $3,800,000 has also sought relief from the automatic stay to enable it to foreclose on its security interest in the Pavilion property. Appraisals of the Pavilion property indicate a range of values between $2,366,000 and $3,125,000. Consequently, the Applicant represents that the Plans are in jeopardy of losing the security for their loans. The Applicant also represents that full repayment of the loans is very unlikely.

3. On May 31, 1994, the Applicant purchased the Notes from the Plans for their full face value, plus interest at the rate provided in the Notes, through the date of purchase.[9] The actual purchase price for each of the Notes was $269,823.91. The Applicant represents that the transaction was designed to protect the Plans' participants and beneficiaries from losses which would have resulted from the foreclosure of senior lienholders on the real property which secured the Plans' loans to Triad. The Applicant represents that it was necessary to purchase the Notes from the Plans prior to receiving an individual exemption for the transaction because foreclosure was imminent and the Notes would have been worthless to the Applicants if foreclosure had occurred prior to the purchase of the Notes.

4. Howard L. Seligman, an attorney licensed to practice in the State of California and a partner in the firm of Seligman and Willet, Inc., has agreed to serve as an independent fiduciary (the Independent Fiduciary) in connection with the transaction. The Independent Fiduciary has acknowledged his status as an ERISA fiduciary and represents that he understands and accepts his fiduciary duties, responsibilities and potential liabilities. The Independent Fiduciary maintains that he has no pre-existing business relationship with the Applicant or Agri-Bis, Inc. He also represents that, prior to the date the Sale took place, he reviewed the appraisals of the Pavilion and Drew Centre, the documents related to the outstanding security interests on those properties, and documents related to the pending Chapter 11 proceeding by Triad. Based on his review of these documents, the Independent Fiduciary represents that the ability of Triad to repay its obligation to the Plans was questionable. The Independent Fiduciary also represents that the purchase price for the Notes exceeded the fair market value of the Notes as of the date of the Sale. The Independent Fiduciary has determined that the purchase of the Notes by the Employer resulted in fully satisfying each of the obligations owed by Triad to the Plans, that the transaction was protective of the Plans' participants and beneficiaries, and that, therefore the transaction was in the best interests of the Plans' participants and beneficiaries.

5. In summary, the applicant represents that the transaction meets the statutory criteria for an exemption under section 408(a) of the Act because: (a) the Plans' independent fiduciary reviewed the terms and conditions of the exemption and determined that the purchase of the Notes for full face value plus interest was in the best interest of the Plans' participants and beneficiaries; (b) the Plans received a price which was not less than the fair market value of the Notes; (c) the Sale was a one-time sale for cash; and (d) the Plans did not pay

[8] The Department notes that the decisions to acquire and hold the Notes, and all decisions regarding collection on the Notes when due, are governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this regard, the Department is not herein proposing relief for any violations of part 4 which may have arisen as a result of the acquisition and holding of the Notes.

[9] The Notes provided for interest at 2½ percentage points above the prime lending rate charged by the Bank of America.

any expenses in connection with the Sale.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 27 day of September, 1994.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 94–24184 Filed 9–29–94; 8:45 am]

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**[Prohibited Transaction Exemption 94–69; Exemption Application No. D–9679, et al.]**

## Grant of Individual Exemptions; Lake Dallas Telephone Company, Inc. Defined Benefit Pension Plan; et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

### Lake Dallas Telephone Company, Inc. Defined Benefit Pension Plan (Pension Plan) and Lake Dallas Telephone Company, Inc. 401(k) Profit Sharing Plan (P/S Plan; collectively, the Plans) Located in Lake Dallas, Texas

[Prohibited Transaction Exemption 94–69; Exemption Application Nos. D–9679 and D–9680]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale from the Plans of two interests (the Interests) in a certain partnership to Lake Cities Land and Development, Inc., an affiliate of the Plans' sponsor and a party in interest with respect to the Plans, provided that the following conditions are satisfied:

(1) the sale will be a one-time cash transaction;

(2) no commissions or fees will be paid by the Plans as a result of the sale; and

(3) the sale price will be the higher of: a) the aggregate fair market value of the Interests on the date of the sale; or b) the aggregate investment cost of the Interests to the Plans of $129,146.64.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 9, 1994 at 59 FR 40609/40611.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

### Berean Capital, Inc. (Berean) Located in Chicago, Illinois

[Prohibited Transaction Exemption 94–70; Exemption Application No. D–9745]

Exemption

*I. Transactions*

A. Effective June 27, 1994, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through

(D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[1]

B. Effective June 27, 1994, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) the plan is not an Excluded Plan;

(ii) solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) a plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[2] For purposes of this paragraph B(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. Effective June 27, 1994, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) the pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[3]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective June 27, 1994, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

*II. General Conditions*

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D & P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such

[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

*III. Definitions*

For purposes of this exemption:

A. "Certificate" means:

(1) a certificate—

(a) that represents a beneficial ownership interest in the assets of a trust; and

(b) that entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) a certificate denominated as a debt instrument—

(a) that represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) that is issued by and is an obligation of a trust;

with respect to certificates defined in (1) and (2) above for which Berean or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) either—

(a) secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3–101(i)(2);

(f) fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) property which had secured any of the obligations described in subsection B.(1);

(3) undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to made to certificateholders; and

(4) rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) the investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D & P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means:

(1) Berean;

(2) any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Berean; or

(3) any member of an underwriting syndicate or selling group of which Berean or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor"

within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

(1) each underwriter;

(2) each insurer;

(3) the sponsor;

(4) the trustee;

(5) each servicer;

(6) any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) any affiliate of a person described in (1)–(6) above.

M. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) such person is not an affiliate of that other person; and

(2) the other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c-2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) the fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) the servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) the ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) the amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(a) which is secured by equipment which is leased;

(b) which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) with respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(a) the trust holds a security interest in the lease;

(b) the trust holds a security interest in the leased motor vehicle; and

(c) the trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 9, 1994 at 59 FR 40617.

Effective Date: This exemption is effective for transactions occurring on or after June 27, 1994.

For Further Information Contact: Gary Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 27th day of September 1994.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 94–24185 Filed 9–29–94; 8:45 am]

BILLING CODE 4510–29–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94–078]

### NASA Advisory Council, Aeronautics Advisory Committee, Subcommittee on Propulsion; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aeronautics Advisory Committee, Subcommittee on Propulsion meeting.

**DATES:** November 2, 1994, 8:30 a.m. to 5 p.m.; and November 3, 1994, 8:30 a.m. to 4 p.m.

**ADDRESSES:** National Aeronautics and Space Administration, Lewis Research Center, Room 215, Administration Building, 21000 Brookpark Road, Cleveland, OH 44135.

**FOR FURTHER INFORMATION CONTACT:** Mr. Calvin L. Ball, National Aeronautics and Space Administration, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135, 216/433–3397.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—NASA Aeronautics Program Overview
—NASA Aeropropulsion Program Overview and Status
—New Initiatives
—Metrics
—National Laboratory Review

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: September 26, 1994.

**Timothy M. Sullivan,**

*Advisory Committee Management Officer.*

[FR Doc. 94–24187 Filed 9–29–94; 8:45 am]

BILLING CODE 7510–01–M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50–277]

### Philadelphia Electric Company, et al.; Peach Bottom Atomic Power Station Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption to the Philadelphia Electric Company, et al. (the licensees) for the Peach Bottom Atomic Power Station (PBAPS), Unit 2, located in York County, Pennsylvania.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed action would grant an exemption from 10 CFR Part 50, Appendix J, Section III.D.1.(a). Section III.D.1.(a) requires a set of three Type A tests (i.e., Containment Integrated Leak Rate Test (CILRT)) to be performed at approximately equal intervals during each 10-year service period and specifies that the third test of each set shall be conducted when the plant is shut down for the performance of the 10-year inservice inspection (ISI). The request involves a one-time schedular exemption from the requirements of Section III.D.1.(a) that would extend the PBAPS, Unit 2 Type A service period and allow the three Type A tests in the current service period to be performed at intervals that are not approximately equal. Hence, this one-time exemption would allow the third, Unit 2, Type A test to be performed during refueling outage 11, scheduled to begin in September 1996, approximately 66 months after the last Unit 2 test, thereby coinciding with the 10-year plant ISI refueling outage.

The proposed action is in accordance with the licensee's application dated May 13, 1994.

*Need for the Proposed Action*

The proposed action is required in order to allow the third Type A test to be performed during the eleventh Unit 2 refueling outage scheduled to begin in September 1996, concurrent with the 10-year plant inservice inspections. Without the exemption, the licensee would be required to perform a Type A test during both refueling outage 10, scheduled to begin in September 1994 and refueling outage 11. Performing the Type A test during two consecutive refueling outages would result in increased personnel radiation exposure and increased cost to the licensee. With the exemption, the third Type A test would be performed during the eleventh Unit 2 refueling outage which would thus align the start of the third 10 CFR Part 50, Appendix J, 10-year service period with the start of the third 10-year ISI period.

*Environmental Impact of the Proposed Action*

The Commission has completed the evaluation to the action and concludes that this action would not significantly increase the probability or amount of expected primary containment leakage. The performance history of Type A leak tests at PBAPS, Unit 2, demonstrates adequate margin to acceptable leak rate limits. No time-based failure mechanisms were identified that would significantly increase expected leak rates over the proposed extended interval. The one historical Type A test failure at PBAPS, Unit 2, in June 1985, was determined to be an activity-related failure which would not be related to an extended test interval. Thus radiological release rates will not differ from those determined previously and would not be expected to result in undetectable leak rates in excess of the values established by 10 CFR Part 50, Appendix J.

Consequently, the probability of accidents would not be increased, nor would the post-accident radiological releases be greater than previously determined. The proposed action does not otherwise affect radiological plant effluents or increase occupational radiation exposures. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

*Alternatives to the Proposed Action*

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative to the action would be to deny the request. Such action would not reduce environmental impacts of plant operation and would result in increased radiation exposure to plant personnel.

*Alternate Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Peach Bottom Atomic Power Station, Units 2 and 3, dated April 1973.

*Agencies and Persons Consulted*

The staff consulted with the Commonwealth of Pennsylvania regarding the environmental impact of the proposed action. The state official had no comments.

**Finding of No Significant Impact**

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this proposed action, see the licensee's letter dated May 13, 1994, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 26th day of September 1994.

For the Nuclear Regulatory Commission.

**Mohan C. Thadani,**

*Acting Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 94–24210 Filed 9–29–94; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket Nos. 50–352/50–353]**

## Philadelphia Electric Company; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–39 and NPF–85 issued to Philadelphia Electric Company (the licensee) for operation of the Limerick Generating Station, Units 1 and 2, located in Montgomery County, Pennsylvania.

The proposed amendment would extend the snubber functional testing interval from 18-months (+/− 25%) to 24 months (+/− 25%), and to increase the sample plan size from 10% to 13.3%.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes do not require any modifications to plant systems, snubbers, or other plant equipment. The snubber will continue to function as designed to mitigate the effects of earthquakes and other dynamic transients (e.g., main turbine trip). Extending the snubber functional testing interval from 18 months to 24 months ([greater than or equal to] 25%) and increasing the initial sample size from 10% to 13.3%, as proposed, will continue to maintain the same test scope ratio as that which currently exists (i.e. 1.5 yr./interval [at] 10% snubbers/interval and 2 yr./interval [at] 13.3% snubbers/interval results in approximately 100% of all snubbers of a given type being tested within 15 years). The proposed TS change will only affect the interval between functional tests and the initial sample size population. As previously stated, LGS currently uses the 10% plan for compensating struts only, and since there are less than 10 struts per Unit, this proposed change will have a negligible impact on the number of struts in the initial sample size to be tested during a particular interval (i.e., each refueling outage). All systems and equipment important to safety that rely on snubbers will continue to function as designed.

Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes do not involve any physical changes to plant systems or equipment. The snubbers will continue to function as designed to mitigate the effects of earthquakes and other dynamic transients (e.g., main turbine trip). Snubbers are not accident initiators, and function to mitigate the effects of an accident. The snubbers will continue to protect piping and equipment during dynamic events. Extending the snubber functional testing interval from 18 months to 24 months ([greater than or equal to] 25%) and increasing the initial sample size from 10% to 13.3%, as proposed, will continue to maintain the same test scope ratio as that which currently exists in the TS. The proposed TS changes will continue to ensure that approximately 100% of the snubbers of a given type are tested within a 15-year period.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The bases for the TS require that all snubbers whose failure could have an adverse effect on any safety-related systems, be operable. This ensures that the structural integrity of the reactor coolant system and other safety-related systems are maintained during and following a seismic or other event initiating dynamic loads. The bases also discuss clarification and grouping of the general snubber population, snubber listing requirements, visual inspection frequency, and visual acceptance criteria. The proposed TS changes will provide for the same confidence level as that which currently exists in TS for determining snubber operability. The proposed TS changes will continue to maintain the same test scope ratio as that currently provided in the TS. The 10% plan is used at LGS for compensating struts only, and increasing initial sample size to 13.3%, as proposed, will have a negligible effect on the number of struts functionally tested during each interval. No other aspects of the bases associated with snubber surveillance will be affected by these proposed TS changes.

Therefore, the proposed TS changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 31, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Mohan C. Thadani (Acting): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J.W. Durham, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 16, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Dated at Rockville, Maryland, this 26th day of September 1994.

For the Nuclear Regulatory Commission.

**Frank Rinaldi,**

*Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 94–24211 Filed 9–29–94; 8:45 am]

BILLING CODE 7590–01–M

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[Docket Nos. 50–236 and 50–333]

## Power Authority of the State of New York; Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DRP–64 and DPR–59, issued to the Power Authority of the State of New York (the licensee), for operation of the Indian Point Nuclear Generating Unit No. 3 (Indian Point 3) located in Westchester County, New York, and the James A. FitzPatrick Nuclear Power Plant (FitzPatrick) located in Oswego County, New York, respectively.

The proposed amendments would revise Section 6.0 (Administrative Controls) of the Technical Specifications of both facilities to reflect, in part, licensee management changes. Specifically, the title of Executive Vice President—Nuclear Generation is being changed to Executive Vice President and Chief Nuclear Officer and a new position, Vice President Regulatory Affairs and Special Projects, which will report to the Executive Vice President and Chief Nuclear Officer, is being established. In addition, the list of Safety Review Committee (SRC) members is being deleted and replaced with a description of SRC membership requirements, including individual qualifications. Each SRC member, including the alternates, will have to be approved by the Executive Vice President and Chief Nuclear Officer.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick and Indian Point 3 nuclear power plants in accordance with the proposed amendment[s] would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change is purely administrative and does not involve plant equipment or operating parameters. There is no change to any accident analysis assumptions or other conditions which could effect previously evaluated accidents. The proposed change will not decrease the effectiveness of the organization's ability to respond to a design basis accident.

2. Create the possibility of a new or different kind of accident from those previously evaluated. Since the proposed change is administrative in nature and does not involve hardware design or operation, it cannot create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety. The authority and responsibilities of the Resident Managers and the Executive Vice President and Chief Nuclear Officer with respect to the safe operation and maintenance of the FitzPatrick and Indian Point 3 nuclear plant are not being reduced or otherwise changed.

The proposed changes do not reduce the effectiveness of the SRC as an oversight committee.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facilities, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 31, 1994, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document rooms located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601 and the Penfield Library, State University of New York, Oswego, New York 13126. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention which must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Michael J. Case: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated September 16, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document rooms located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601 and the Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland this 23rd day of September 1994.

For the Nuclear Regulatory Commission.

**Michael J. Case,**

*Acting Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 94–24212 Filed 9–29–94; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket Nos. 50–445 and 50–446]**

## Texas Utilities Electric Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–87 and NPF–89, for Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, located in Somervell County, Texas, operated by Texas Utilities Electric Company (the licensee).

The proposed amendment would change the technical specifications to review the 18-month surveillance requirements for certain emergency core cooling system, containment system, and plant systems to eliminate the restriction that these surveillances be performed during shutdown or during the refueling mode or cold shutdown.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR

50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

These proposed technical specification changes delete the restrictions that only tests which are performed "during shutdown" or "during REFUELING MODE or COLD SHUTDOWN" be used to comply with certain surveillance requirements. The tests of concern are equally valid whether they are performed during shutdown or if they are performed entirely or in part at power. "Testing at power" was never prohibited by the technical specifications although, for these surveillances, "testing while shutdown" was required. The testing which is performed at power is reviewed to ensure that the proper prerequisites are established, including the proper unit mode of operation and the proper circuit blocks. Significant portions of the testing needed to comply with these surveillance requirements, and in some cases the entire test, are already performed while at power as part of the test procedures which are used to comply with other surveillance requirements such as the Slave Relay Testing. In general, removing the "during shutdown" and "during REFUELING MODE or COLD SHUTDOWN" restrictions from these surveillance requirements will eliminate the need to reperform, while shutdown, those portions of the testing which are already routinely performed at power. Deleting such "retest" requirements does not reduce safety, cannot increase the probability or consequences of an accident previously evaluated, and is more likely to reduce the probability of a transient by eliminating duplicative testing.

In the future, it is possible that TU Electric may choose to perform additional portions of these tests at power. Since these portions are not being performed at power now, the net effect is not the deletion of a retest but a change in the required conditions for that portion of the test. Such a change would require a change in the test procedure and would only be allowed if technically and operationally acceptable and if the change did not constitute an unreviewed safety question per 10 CFR 50.59. These controls are adequate to ensure that any future changes in the test procedures as a result of these proposed technical specification changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated accident.

The elimination of the requirement to "retest" circuits or equipment which are already tested at power cannot create any failure modes which could result in a new or different kind of accident. The controls which presently exist on revisions to procedures and on testing will ensure that any revisions to test procedures which allow testing which is now performed while shutdown to be performed while operating, are technically and operationally acceptable and will not result in an unreviewed safety question and as such will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The "during shutdown" or "during the REFUELING MODE or COLD SHUTDOWN" restriction on these surveillance requirements was intended to provide a margin of safety by avoiding unnecessary unit transients and by avoiding placing the unit in an unanalyzed condition. This intention seems reasonable based on the knowledge that portions of the testing should not be performed at power and that doing the entire surveillance test while shutdown should not have an adverse impact. The proposed changes do not affect system performance or acceptance limits. Because a large portion of the testing, and in some cases the entire test, would be performed at power as a result of other requirements or expectations, the proposed technical specification changes eliminate duplicative testing and, as such, will not reduce the margin of safety.

The impact of revising existing test procedures, as a result of this technical specification change, to allow additional testing to be performed at power, would be properly addressed in the reviews performed as part of the procedure changes, including the required 10 CFR 50.59 review, and when considered along with the reduction in shutdown risk that could result from such changes, it is concluded that such procedure changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 31, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. As requested by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the

results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration,the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William D. Beckner, Director, Project Directorate IV–1: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, NW., Suite 1000, Washington, D.C. 20336, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 19, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019.

Dated at Rockville, Maryland, this 26th day of September 1994.

For the Nuclear Regulatory Commission.

**Thomas A. Bergman,**

*Project Manager, Project Directorate IV–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 94–24207 Filed 9–29–94; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket Nos. 50–445 and 50–446]**

## Texas Utilities Electric Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–87 and NPF–89, for the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, located in Somervell County, Texas, operated by Texas Utilities Electric Company (the licensee).

The proposed amendment would change the technical specifications to allow a one-time extension of emergency diesel generator and related surveillance testing from 18 to 24 months. These changes apply to Unit 2 only

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or

consequences of an accident previously evaluated.

These are a one-time extensions. The proposed changes only extend the surveillance test intervals and do not alter the function or operation of the equipment and are consistent with the philosophy of Generic Letter (GL) 91–04. The surveillances relate to mitigation features and have no impact on probability of an accident. The only impact on consequences would result from the component or system reliability. The reliability of the affected systems and components is not being affected since the same testing will be performed but with a one-time extended test interval.

Many features are tested more frequently by other surveillances and the ESF [emergency safety features] actuation surveillances (response time tests) have historically been successful, therefore, any increase in probability or consequences of a previously evaluated accident would be insignificant.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated accident.

These are one-time extensions. No new accident scenarios are being introduced because neither the testing nor the methodology itself are been affected. Only the interval between testing is being changed consistent with the intent of GL 91–04.

3. The proposed changes do not involve a significant reduction in the margin of safety.

These are one-time extensions. Margin of safety is not significantly affected because no test functions are being omitted and many attributes of the systems will continue to be verified in other surveillance tests. The increased time between surveillances, which could result in a slight decrease in assumed equipment reliability, is mitigated by the facts that many features are tested more frequently by other surveillances and by the relatively short duration of the extension. In addition, minimizing train outages during refueling outages and using demonstrated test procedures reduces the risk of events occurring during the outage and improves safety. Overall, because the potential impact on equipment reliability is small and because of the reduced shutdown risks, this license amendment request does not involve a significant reduction in margin of safety but potentially increases the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 31, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to

relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William D. Beckner, Director, Project Directorate IV–1: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, NW., Suite 1000, Washington, D.C. 20336, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 19, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019.

Dated at Rockville, Maryland, this 26th day of September 1994.

For the Nuclear Regulatory Commission

**Thomas A. Bergman,**

*Project Manager, Project Directorate IV–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 94–24208 Filed 9–29–94; 8:45 am]

BILLING CODE 7590–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–34716; File No. SR–BSE–94–10]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Specialist Concentration

September 26, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on August 30, 1994, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is granting accelerated approval and is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to obtain accelerated effectiveness as to a one-year extension of the Specialist Concentration Policy pilot program.[3] This will continue to permit the Exchange's Executive Committee to review proposed combinations that, in the Exchange's view, may lead to undue concentration within the specialist community. The Exchange therefore requests the Commission to find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the Federal Register. Accelerated approval is hereby granted for the reasons stated below.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of 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 III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to extend the concentration policy pilot program, which establishes certain standards based on Consolidated Tape Association ("CTA") ranking[4] of

[1] 15 U.S.C § 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] On February 7, 1990, the Commission approved, on a six-month pilot basis ending August 7, 1990, a proposed rule change by the BSE to establish procedures for reviewing proposed combinations among specialist units on the Exchange. *See* Securities Exchange Act Release No. 27684 (February 7, 1990), 55 FR 5527 (approving File No. SR–BSE–89–05). The Commission later approved the renewal of the pilot program for additional one-year periods ending August 1, 1991, August 13, 1992, August 13, 1993, and August 13, 1994. *See* Securities Exchange Act Release Nos. 28327 (August 10, 1990), 55 FR 33794 (File No. SR–BSE–90–11); 29551 (August 13, 1991), 56 FR 41380 (File No. SR–BSE–91–06); 31037 (August 13, 1992), 57 FR 37854 (File No. SR–BSE–92–08); and 32753 (August 16, 1993), 58 FR 44707 (File No.SR–BSE–93–15).

[4] In March 1973, the CTA was formed and the consolidated tape was established to disseminate last sale transaction information for trades executed on any of the participant exchanges or through the National Association of Securities Dealers Automated Quotation ("NASDAQ") system. The current CTA participants include the New York Stock Exchange ("NYSE"), American Stock Exchange ("Amex"), Chicago Stock Exchange ("CHX"), Philadelphia Stock Exchange ("Phlx"), Pacific Stock Exchange ("PSE"), BSE, Chicago Board Options Exchange ("CBOE"), Cincinnati

specialist stocks for reviewing certain proposed mergers, acquisitions and other combinations between or among specialist units. The proposed policy would authorize the Executive Committee of the Board of Governors to review proposed combinations that, in the Exchange's view, may lead to undue concentration within the specialist community.

The Executive Committee will review any arrangement where previously separate specialist organizations would be operating under common control and would comprise:

(a) 15% or more of the 100 most actively traded CTA stocks; or,

(b) 15% or more of the second 100 most actively traded CTA stocks; or,

(c) 20% or more of the third 100 most actively traded CTA stocks; or,

(d) 15% or more of all the CTA stocks eligible for trading on the BSE where the Free List contains fewer than 100 issues.[5]

The Executive Committee shall approve or disapprove the proposed combination based on its assessment of the following considerations:

(a) Specialist performance and market quality in the stocks subjects to the proposed combination;

(b) The effects of proposed combination in terms of the following criteria:

(i) Strengthening the capital base of the resulting specialist organization;

(ii) Minimizing both the potential for financial failure and the negative consequences of any such failure on the specialist system as a whole; and

(iii) Maintaining or increasing operational efficiencies;

(c) Commitment to the Exchange market, focusing on whether the constituent specialist organizations engage in business activities that might detract from the resulting specialist organization's willingness or ability to act to strengthen the Exchange agency/auction market and its competitiveness in relation to other markets; and

(d) The effect of the proposed combination on overall concentration of specific organizations.

With respect to the criteria relating to the "commitment to the Exchange market", the Executive Committee would look to a variety of factors that extend beyond compliance with the Exchange's requirements for providing sufficient capital, talent and order handling services. For example, the Committee would review and assess each constituent unit's past performance on the Exchange relating to such matters as:

- Acceptance and cooperation in the development, implementation and enhancement to the Boston Exchange Automated Communications and Order-routing Network ("BEACON");
- Efforts at resolving problems concerning customer orders;
- Willingness to facilitate early openings in order to compete effectively with other exchanges; and
- Willingness to voluntarily provide Execution Guarantees beyond the minimum required under Rule 2039A.[6]

2. Statutory Basis

The Exchange believes that the basis under the Act for the proposed policy is Section 6(b)(5) in that the policy enables the Exchange to monitor the tendencies toward concentration in the specialist community and to intervene to prevent undue concentration. As such, it is designed to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purpose of this title or the administration of the Exchange.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed policy 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*

Comments have neither been solicited nor received.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–94–10 and should be submitted by October 21, 1994.

**IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

The Commission finds that the BSE's proposal to extend its pilot program regarding specialist concentration for an additional one-year period is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 of the Act.[7] For the reasons set forth below, the Commission believes that the BSE proposal to extend its specialist concentration pilot furthers the objectives of Section 6 of the Act.

The Commission believes it is necessary to extend the pilot program's operation in order to afford both the Exchange and the Commission a further opportunity to evaluate the pilot's operation during the Commission's consideration of permanent approval of the concentration rules. Although the pilot has been in effect since February, 1990, only two proposed combinations have triggered an extensive Committee review by exceeding the concentration limits set forth in the policy. Consequently, the Commission believes that the Exchange, in conjunction with the SEC, needs additional time to fully evaluate the operation of the concentration policy and to determine whether the concentration rules are enhancing the quality of the markets that specialist units make and thus improve the standards of specialist performance. The Commission believes that allowing the Exchange an additional one-year period in which to implement the pilot will enable the Exchange and the Commission to adequately address the effectiveness of the pilot.

Stock Exchange ("CSE"), and the National Association of Securities Dealers ("NASD"). Each specialist stock is ranked according to the number of CTA trades in such stock. The ranking is based upon an average for the past four quarters.

[5] The Free List is made up of securities which are not registered to certain specialists and can be traded by any specialist.

[6] *See* BSE Rule 2039A. The Rule states that the BSE Execution Guarantee shall be available to each member firm in all issues traded through the Intermarket Trading System (ITS) registered to a member specialist of the Exchange. For example, the rule imposes an obligation upon specialists to guarantee executions on all agency orders from 100 up to and including 1,299 shares.

[7] 15 U.S.C. § 78f(b)(5) (1988).

In its prior orders renewing and extending the pilot program,[8] the Commission requested that the BSE develop criteria to evaluate the effects of its concentration rules on the activities of specialists and to determine, for example, whether implementation of these rules is increasing the performance and effectiveness of specialists and aiding in the prevention of undue concentration. Specifically, the Commission requested that the BSE submit a report to the Commission addressing, among other things, the following issues: the number of proposed specialist combinations that have triggered an Executive Committee review since the inception of the pilot program and the circumstances surrounding these reviews; whether the existence of more firms has increased competition among specialists for new stock allocations; whether the concentration rules have increased incentives for quality markets and higher standards for performance; and the impact that the specialist combination rules have had upon the competitive environment necessary to maintain an orderly market.

In response to the Commission's request, the BSE submitted a letter[9] which addressed many of the issues the Commission outlined in previous orders. The BSE stated that, during the last pilot period, there have been no proposed specialist combinations that exceeded the concentration limits set forth in the policy.[10] The BSE reported that the last combination reviewed under the concentration policy was in February of 1993. The acquisition was discussed in the previous pilot extension approval order.

The Commission also asked the BSE to discuss various other issues, identical to the requests made during the previous one-year pilot periods. The BSE's responses were identical to those submitted pursuant to the previous pilot extension due to the absence of relevant data during the last year.

During the extended pilot period, as was requested during the previous one-year pilot periods, the Commission expects the Exchange to continue to develop criteria to evaluate the effects of its concentration rules on the activities of specialists. In this regard, the Commission expects the BSE to report to the Commission by May 1, 1995, the number of proposed specialist combinations that have triggered an Executive Committee review since the extension of the pilot program and the circumstances surrounding these reviews; whether competition among specialists for new stock allocations as well as specialists and specialist firms applying for those allocations since the inception of the pilot program;[11] and whether any of the specialist firms that have undergone Executive Committee review have demonstrated an improvement in specialist evaluation results or displayed a higher quality of markets. In addition, the Commission remains interested in whether the BSE finds that the concentration rules have assisted the Exchange in increasing order flow and if so, the reasons for this conclusion, as well as the impact that the specialist combination rules have had upon the competitive environment necessary to maintain an orderly market.[12]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the extension of the pilot program furthers the protection of investors and the public interest because it allows the Exchange additional time to evaluate the effectiveness of the pilot program on an uninterrupted basis during the Commission's consideration of the Exchange's request for permanent approval of its rules for reviewing proposed specialist combinations and because the BSE's concentration policy may result in higher quality markets and improved standards of specialist performance. Further, the substance of the proposal has been noticed previously in the **Federal Register** for the full statutory period and the Commission did not receive any comments on it.[13]

*It Is Therefore Ordered,* Pursuant to section 19(b)(2)[14] that SR–BSE–94–10 is hereby approved on a pilot basis through August 13, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–24271 Filed 9–29–94; 8:45 am]

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**[Release No. 34–34717; File No. SR–Phlx–91–20]**

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Equity Floor Procedure Advice E–A–1—Responsibility for Displaying Best Bid and Offer Prices

September 26, 1994.

On July 15, 1991, as subsequently amended on June 23, 1994,[1] and July 14, 1994,[2] the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[3] and Rule 19b–4 thereunder,[4] a proposed rule change to adopt Phlx Equity Floor Procedure Advice ("EFPA") E–A–1: Responsibility for Displaying Best Bid and Offer Prices Established on the Equity Floor (the "Advice").

The proposed rule change, including amendment no. 1, was published for comment in Securities Exchange Act Release No. 34342 (July 11, 1994), 59 FR 36244 (July 15, 1994). No comments were received on the proposal.

The Advice being adopted requires specialists to display the best bid and offer available in their assigned securities. The specialists' responsibility will be different for primary stock

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[8] *See supra,* note 3.

[9] *See* letter from George Mann, Senior Vice President and General Counsel, Boston Stock Exchange, to Amy Bilbija, Commission, dated September 1, 1994.

[10] The BSE has had a total of two proposed combinations that exceeded the concentration limits since the inception of the pilot program. The first such proposed combination was discussed in Securities Exchange Act Release No. 29551 (August 13, 1991), 56 FR 41380 (File No. SR–BSE–91–06). The second such proposed combination was discussed in Securities Exchange Act Release No. 32753 (August 16, 1993), 58 FR 44707 (File No. SR–BSE–93–15).

[11] The Commission believes the BSE needs to more fully address and justify why the proposed concentration levels are set appropriately. In particular, the Commission expects the BSE to demonstrate that the Policy does not result in a decrease in competition for allocation and adversely affect the quality of the BSE's markets.

[12] In evaluating the effects of the pilot, the Commission expects the BSE to provide specific data to support its conclusions.

[13] *See supra* note 3.

[14] 15 U.S.C. § 78s(b)(2) (1988).

[15] 17 CFR 200.30–3(a)(12) (1991).

[1] See letter from Gerald D. O'Connell, First Vice President, Phlx, to Sharon Lawson, Assistant Director, SEC, dated June 23, 1994.

[2] See letter from Gerald D. O'Connell, First Vice President, Phlx, to Sandra Sciole, Special Counsel, SEC, dated July 14, 1994. This amendment, which is available in the Commission's Public Reference Room, changed "national exchanges" to "national securities exchanges" in the text of the Equity Floor Procedure Advice. This change was technical in nature and has no substantive impact on the original filing.

[3] 15 U.S.C. 78s(b)(1) (1988).

[4] 17 CFR 240.19b–4 (1993).

issues[5] and secondary stock issues.[6] For primary securities, specialists' will be responsible for ensuring that the best bid and offer voiced on the floor of the Exchange is properly and timely displayed for dissemination purposes. For securities in which the specialists make secondary markets, specialists will be responsible for ensuring proper and timely display of the best bid or offer so long as such bid or offer is equal to or superior to all other bids or offers reflected and disseminated at the time by the national securities exchanges.

In addition, the Advice will be included in the Exchange's minor rule plan.[7] The fine schedule below will be applied when an Exchange review identifies that five percent or more of the bids or offers have not been properly displayed in a timely fashion. The following schedule will be implemented on a three year running calendar basis:[8]

**Floor Procedure Advice E–A–1**

| | |
|---|---|
| 1st occurrence . | $100.00 |
| 2nd occurrence | 250.00 |
| 3rd occurrence . | 500.00 |
| 4th and thereafter. | Sanction is discretionary with Business Conduct Committee. |

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[9] In particular, the Commission believes the proposal is consistent with Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

The Commission has long believed that transparency plays a fundamental role in the fairness and efficiency of the secondary markets. Transparency may be defined as the extent to which trading information (*i.e.*, information regarding quotations, price, and volume of transactions) is made publicly available promptly after either the entry of a quotation or the completion of a transaction. As the Commission's Division of Market Regulation ("Division") stated in its Market 2000 Study,[10] at least three tangible benefits flow from transparency: (1) Transparency enhances investor protection because it makes it easier for investors to monitor the quality of executions they receive from their intermediaries, (2) transparency encourages investor participation in the market, and thereby promotes market liquidity, and (3) transparency fosters the efficiency of securities markets by facilitating price discovery and open competition, and thus counteracts the effects of fragmentation.[11]

The Division noted in the *Market 2000 Study* that the failure to display limit orders that are priced better than current quotes raises at least three regulatory concerns. First, the failure to display limit orders could artificially widen spreads, which raises the concern that investors are receiving unfair prices. Second, the failure to display limit orders raises fair competition concerns. If the quotes from a market or market maker do not fully represent the buying and selling interest, markets will lose incentives to compete based on quotes, and the price discovery process may be impaired. Third, with many markets offering automatic executions of small orders at the best displayed quotes, a failure to display the best quotes results in inferior executions for some small-order customers. The Division therefore recommended that the SROs encourage the display of all limit orders in listed stocks that are better than the best intermarket quotes (unless the ultimate customer expressly requests that an order not be displayed), noting that such a requirement would provide a more accurate picture of trading interest, result in tighter spreads, and contribute to improved price discovery.[12]

The Commission believes that the Phlx proposal will result in increased transparency to the benefit of investors. In particular, the Commission believes that the portion of Advice E–A–1 which requires specialists to display the best bid or offer price on the floor for primary stock issues will be beneficial because it should increase transparency and provide an indication of market interest for stocks in which Phlx is the primary market. For secondary issues, the requirements for the display of bids and offers will also be beneficial to market participants because it will provide to other market centers in the national market system all Phlx bids and offers that are equal to or superior to bids and offers displayed in the system. Such a standard is consistent with the discussion of limit order display in the *Market 2000 Study*, noted above.

The Commission also believes that it is appropriate to include Advice E–A–1 in the Phlx's minor rule plan because a violation of the dissemination requirements for the best bids or offers should not entail the complicated factual and interpretative inquiries associated with more sophisticated Exchange disciplinary actions under Phlx Rule 960. The Commission further believes that the fine schedule, which is graduated to account for repeat offenders and will be administered on a three-year rolling calendar basis under the Phlx's minor rule plan, should provide a prompt, effective and appropriate means to enforce compliance with the Advice. Moreover, under the Phlx's minor rule plan, a person fined under the Advice will be permitted to contest the fine pursuant to Phlx Rule 970 and will be entitled to full due process.

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Phlx–91–20) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–24272 Filed 9–29–94; 8:45 am]

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[5] A primary stock issue is any security listed on the Phlx which is not listed on any other national securities exchange or any issue dually listed with another exchange for which the Phlx has traded the majority of exchange volume over the previous six months.

[6] Secondary issues are all securities in which Phlx specialists make secondary markets, *i.e.*, all securities not classified as primary issues. *See* note 5, *supra*.

[7] *See* letter from Gerald D. O'Connell, First Vice President, Phlx, to Sandra Sciole, Special Counsel, SEC, dated August 18, 1994. The Exchange's minor rule plan is administered pursuant to Phlx Rule 970 (Floor Procedure Advices: Violations, Penalties, and Procedures). Under Phlx Rule 970, in lieu of commencing a disciplinary proceeding under Phlx Rule 960, the Exchange may impose a fine, not to exceed $2,500, for any violation of a Floor Procedure Advice if the Exchange has determined the violation is minor in nature.

[8] In November 1993, the commission approved a Phlx proposal to place nine Advices on a three-year rolling cycle for the imposition of fines. See Securities Exchange Act Release No. 33130 (November 2, 1993), 58 FR 59502 (November 9, 1993). Under the three-year rolling cycle, a violation of Advice E–A–1 that occurs within three years of the first violation of the Advice will be treated as a second occurrence, and any violation of the Advice within three years of the previous violation of the Advice will be subject to the next highest fine. Thus, a third violation of Advice E–A–1 within less than three years after a fine for a second violation of Advice E–A–1 will be treated as a third violation of that Advice, even though more than three years may have elapsed since the first violation of Advice E–A–1.

[9] 15 U.S.C. 78f(b) (1988).

[10] *See* Division of Market Regulation, *Market 2000: An Examination of Current Equity Market Developments* (January 1994).

[11] *Id.* at IV–2.

[12] *Id.* at IV–6.

[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1993).

[Rel. No. IC–20572; 812–9034]

## Landmark Funds I et al.; Notice of Application

September 23, 1994.

**AGENCY:** Securities and Exchange Commission (the "SEC" or the "Commission").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** Landmark Funds I, Landmark Funds II, Landmark Funds III, Landmark Fixed Income Funds, Landmark Tax Free Income Funds, Landmark Multi-State Tax Free Funds, Landmark Premium Funds, Landmark Institutional Funds I, Landmark Institutional Trust, Landmark Tax Free Reserves, and Landmark International Equity Fund, including all existing and future series thereof (the "Trusts"), and (i) Any future open-end management investment company (including all series thereof) for which Citibank, N.A. ("Citibank") or any company controlling, controlled by, or under common control with Citibank (a "Citibank Company") is the investment adviser or for which The Landmark Funds Broker-Dealer Services, Inc. ("LFBDS") or any company controlling, controlled by, or under common control with LFBDS (an "LFBDS Company") is the principal underwriter (as that term is defined in section 2(a)(29) of the Act), (ii) any existing open-end management investment company (and all existing and future series thereof) not currently advised by Citibank or a Citibank Company or underwritten by LFBDS or an LFBDS Company for which Citibank or a Citibank Company in the future serves as investment adviser or for which LFBDS or an LFBDS Company in the future serves as principal underwriter and (iii) any existing or future open-end management investment company (including all existing and future series thereof) not currently advised by Citibank or a Citibank Company that invests all of the investable assets of such company or any of its series in a management investment company for which Citibank or a Citibank Company is the investment adviser (the investment companies described in (i), (ii), and (iii), together with the Trusts, are referred to collectively as the "Funds"), Citibank, and LFBDS.

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) for exemptions from section 18(f), 18(g), 18(i), 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c-1 thereunder.

**SUMMARY OF APPLICATION:** Applicants seek an order (i) To permit the Funds to issue multiple classes of shares representing interests in the same portfolio of securities (the "Multiple Distribution System"); and (ii) to permit the Funds to assess and, under certain circumstances, waive, defer, or reduce, a contingent deferred sales charges ("CDSC") on certain redemptions of their shares.

**FILING DATE:** The application was filed on June 6, 1994, and amended on July 20, 1994. By supplemental letter dated September 23, 1994, counsel, on behalf of applicants, agreed to file an amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such amendment.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 18, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. The Trusts and LFBDS, 6 St. James Avenue, Boston, Massachusetts 02116. Citibank, 153 East 53rd Street, New York, NY 10043.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Mann, Special Counsel, at (202) 942–0582, or Barry D. Miller, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicants' Representations

1. Each of the Trusts is a Massachusetts business trust registered under the Act as an open-end management investment company. Some of the Trusts consist of multiple series each of which has separate investment objectives and policies and segregated assets. Each Trust, and each Trust on behalf of its series, if any, has either: (i) Entered into an investment advisory agreement with Citibank, or (ii) invested all of the investable assets of the Trust or series in another open-end management investment company that has entered into an investment advisory agreement with Citibank (such management investment company referred to herein as a "Hub℠ Portfolio"). Each of the Trusts has adopted an Administrative Services Plan that provides that the Trust may obtain the services of an administrator, a transfer agent, a custodian, a fund accounting agent (in the case of those Trusts for which the custodian does not act as fund accounting agent) and one or more shareholder servicing agents. Pursuant to the Administrative Services Plan, each Trust has entered into an Administrative Services Agreement with LFBDS, pursuant to which LFBDS provides non-investment management, administrative services. Citibank performs sub-administrative duties for each Trust pursuant to a Sub-Administrative Services Agreement with LFBDS. LFBDS, a registered broker-dealer, is the principal underwriter of the Trusts, and shares of each Trust are currently offered through LFBDS to customers of entities ("shareholder servicing agents") that have entered into shareholder servicing agreements ("Shareholder Servicing Agreements") with such Trust pursuant to the Trust's Administrative Services Plan.[1] Under the Shareholder Servicing Agreements, financial institutions including Citibank Companies and securities brokers provide various account and customer services in connection with the shares. For such services, each shareholder servicing agent receives a service fee[2] and a shareholder servicing fee[3] from the Trust.

[1] Each Administrative Services Plan under which a Trust has entered into a Shareholder Servicing Agreement has been adopted and operated in accordance with the procedures set forth in rule 12b–1(b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, including the voting rights of shareholders specified therein. Applicants may, however, in the future, seek an amendment to a Fund's Administrative Services Plan to modify or eliminate the voting rights granted therein.

[2] Some of the fees paid pursuant to the Shareholder Servicing Agreements may be deemed to be "service fees" as that term is defined in Article III, Section 26 of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. (the "NASD rule"). For the purposes of the application, the term "service fees" refers to such fees paid by the Funds to their shareholder servicing agents for certain services rendered under the Shareholder Servicing Agreements, and has the meaning given that term in the NASD rule. The terms "distribution fee" and "rule 12b–1 fee" mean an "asset-based sales charge" as defined in the NASD rule.

[3] As used in the application, "shareholder servicing fees" means fees paid by the Funds to

2. The shares of the Trusts, except for money market funds, are currently sold at net asset value ("NAV") subject to a conventional front-end sales charge. Each Trust has also adopted a distribution plan in accordance with rule 12b–1 authorizing it to pay LFBDS a distribution fee (the "Distribution Plan") (collectively, the Distribution Plans and the Administrative Services Plans are referred to herein as the "Plans").

3. Applicants propose to establish a Multiple Distribution system enabling each fund to offer investors the option of purchasing shares with either (a) A front-end sales load (which may vary among the Funds) (except for sales of $1 million or more which are subject to a CDSC for the twelve-month period following purchase and except in the case of the money market funds) and, in most cases, Plans providing for a distribution fee and/or service fee and/or shareholder servicing fee (the "Front-End Load Option" or "Class A shares"), (b) without a front-end sales load but subject to a CDSC (which may vary among the Funds) and Plans providing for a distribution fee and/or service fee and/or shareholder servicing fee (the "Deferred Option" or "Class B shares'), or (c) without a front-end sales load or CDSC, but subject to Plans providing for a distribution fee and/or service fee and/or shareholder servicing fee (the "Level Load Option" or "Class C shares"). It is presently intended that the money market funds other than Landmark Cash Reserves ("LCR"), a series of Landmark Funds III, will offer only one class of shares which will be sold without a front-end load or CDSC but subject to Plans providing for a distribution and/or service and/or shareholder servicing fee. Any distribution arrangement of a Fund, including distribution and service fees and front-end and deferred sales loads, will comply with the NASD rule.

4. Applicants also seek authority to create one or more additional classes of shares in the future, the terms of which differ from the Class A, Class B, and Class C shares only in the following respects: (i) Any such class may bear different distribution, service, and shareholder servicing fees (or may have no distribution, service, or shareholder servicing fees) and any other costs relating to implementing the Plans for such class or an amendment to such Plans (including obtaining shareholder approval of such Plans or any amendment thereto), (ii) any such class may bear any incremental difference in transfer agency fees, (iii) any such class may bear different class designations, (iv) voting rights on matters which pertain to the Plans, except as provided in condition 15, (v) any such class may bear any other incremental expenses subsequently identified that should be properly allocated to such class which shall be approved by the Commission pursuant to an amended order, (vi) any such class may have different conversion features, (vii) any such class may have different exchange privileges, and (viii) any such class will bear only those printing and postage expenses (not otherwise payable by a shareholder servicing agent) relating to preparing and distributing materials such as shareholder reports, prospectuses, and proxy statements (hereafter "Class Expenses") relating to that class of shares.

5. After a shareholder's Class B shares remain outstanding for a specified period of time (not to exceed eight years), they will automatically convert to Class A shares of the same Fund at the relative net asset values of each of the classes, and will thereafter be subject to the lower aggregate distribution, service, and shareholder servicing fees under the Class A Plans applicable to the Class A shares. For purposes of conversion to Class A, all shares in a shareholder's account purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares will considered to be held in the separate sub-account. Each time any Class B shares in the shareholder's account convert to Class A, a proportional amount of Class B shares in the sub-account will also convert to Class A.

6. Any other class of shares may provide that shares in that class (the "Purchase Class") will, after a period of time, automatically convert into another class of shares (the "Target Class") on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge, provided that, after conversion, the converted shares would be subject to an asset-based sales charge and/or service fee (as those terms are defined in the NASD rule) and/or a shareholder servicing fee, that in the aggregate are lower than the asset-based sales charge and service fee and shareholder servicing fee to which the Purchase Class shares were subject prior to the conversion. Such a conversion feature will be described in the relevant prospectus. (The term "Purchase Class" hereafter refers to any class of shares, including Class B shares, with a conversion feature).

7. Any conversion of shares of one class to shares of another class is subject to the continuing availability of a ruling of the Internal Revenue Service or an opinion of counsel to the effect that the conversion of shares does into constitute a taxable event under federal income tax law. Any such conversion may be suspended if such a ruling or opinion is no longer available.

8. Under the Multiple Distribution System, all expenses incurred by a Fund will be borne proportionately by each class based on the relative net assets attributable to each such class, except for the different: (a) Distribution, service, and shareholder servicing fees, and any other costs relating to implementing the Plans or an amendment to such Plans (including obtaining shareholder approval of a Plan or an amendment to such Plan); (b) Class Expenses; and (c) possibly transfer agency fees (and any other incremental expense properly attributable to a class which the Commission shall approve by amended order) attributable to a class, which will be borne directly by each respective class.

9. LFBDS or shareholder servicing agents may choose to reimburse or waive distribution, service, or shareholder servicing fees on certain classes of a Fund on a voluntary, temporary basis. The amount on such fees waived or reimbursed by LFBDS or shareholder servicing agents may vary from class to class. Such fees are by their nature specific to a given class and may vary from one class to another. Applicants believe that it is acceptable and consistent with shareholder expectations to reimburse or waive such fees at different levels for different classes of the same Fund.

10. In addition, LFBDS, Citibank, or other service contractors may waive or reimburse certain fees or expenses which do not vary from class to class but apply equally to all classes of a given Fund ("Fund expenses") provided that the same proportionate amount of Fund expenses are waived or reimbursed for each class of a Fund. Any Fund expenses that are waived or reimbursed would be credited to each class of a Fund based on the relative net assets of the classes.

11. To the extent exchanges are permitted, such exchanges will comply with all applicable provisions of rule 11a–3 under the Act.

12. Applicants also request relief to permit each of the Funds to assess a CDSC on certain redemptions of certain

their shareholder servicing agents for providing subaccounting services for Funds shares held beneficially, providing beneficial owners with statements showing their positions in the Funds, forwarding shareholder communications, receiving, tabulating, and transmitting proxies and other similar services. "Shareholder servicing fees" does not refer to service fees as defined in the NASD Rule.

classes of shares of such Fund, and, from time to time, as described below, to permit such Fund to waive, reduce, or defer the CDSC with respect to certain types of redemptions of such shares. The amount of the CDSC to be imposed will depend on the amount of time since the investor purchased the shares being redeemed, as set forth in each Fund's prospectus. The amount of any applicable CDSC will be based upon the lower of the net asset value at the time of purchase or at the time of redemption as required by proposed rule 6c–10(a)(1)(i) under the Act. If a shareholder holding shares of more than one class does not specify which class of shares of a Fund are to be redeemed, the following order of redemption will apply: (a) Shares of a Fund not subject to a CDSC and subject to the highest distribution and/or service and/or shareholder servicing fees in effect on the date of redemption will be redeemed first (provided, however, that if such shares of the Fund are subject to the same distribution and/or service and/or shareholder servicing fees then shares of the Fund without a conversion feature will be redeemed before shares of the Fund with a conversion feature), then (b) shares of the Fund subject to the lowest CDSC will be redeemed, provided that if such shares of the Fund are subject to the same CDSC, shares of the Fund with the highest distribution and/or service and/or shareholder servicing fees in effect on the date of redemption will be redeemed first. If such shares of the Fund are subject to the same distribution and/or service and/or shareholder servicing fees, then shares of the Fund without a conversion feature will be redeemed before shares of the Fund with a conversion feature.

13. Applicants also propose to permit LFBDS from time to time to provide a credit (i.e., a reimbursement) for any CDSC paid by a redeeming shareholder in connection with a redemption of shares of a class followed by a reinvestment in any shares of the same class of the same Fund or, as permitted by LFBDS from time to time, the same class of another Fund, effected within such number of days of the redemption as may be specified, from time to time, in a Fund's prospectus (the "Reinstatement Privilege"). The CDSC credit will be paid by LFBDS. Upon redemption thereafter, when calculating the amount of the CDSC (if any), the shares will be deemed to have been held for one continuous period from purchase through redemption and reinvestment until such shares are finally redeemed.

14. If the Funds waive, defer, or reduce the CDSC for a particular class, such waiver, deferment, or reduction will be uniformly applied to all offerees in a class with similar qualifications. In waiving, deferring, or reducing a CDSC, the Funds will comply with the requirements of rule 22d–1. If a Fund that has been waiving, deferring, or reducing its CDSC for a particular class discontinues such waiver, deferment, or reduction, (a) such waiver, deferment, or reduction will continue to apply to shares of such Fund then outstanding, and (b) the disclosure in that Fund's prospectus relating to that class will be revised appropriately. No CDSC will be imposed on shares issued prior to the date of the requested order.

**Applicants' Legal Conclusions**

1. Applicants request an order under section 6(c) exempting the Funds' proposed issuance and sale of multiple classes of securities to the extent that such issuance and sale might be deemed to result in a "senor security" within the meaning of section 18(g) of the Act and be prohibited by section 18(f)(1), and to violate the equal voting provisions of section 18(i).

2. The creation of multiple classes does not present the concerns that section 18 was designed to address. The proposed arrangement does not involve borrowings, affect any Fund's existing assets or reserves, nor increase the speculative character of any Fund shares. The Funds' capital structures under the proposed arrangement will not induce any group of shareholders to invest in higher risk securities to the detriment of any other group of shareholders since the investment risks of each Fund will be borne equally by all of its shareholders.

3. Mutuality of risk will be preserved with respect to each class of shares in a Fund. Further, (a) Since each class of shares will be redeemable at all times, (b) since no class of shares will have any preference or priority over any other class in the Fund, and (c) since the similarities and dissimilarities of the classes of shares will be disclosed in the Funds' prospectuses, investors will not be given misleading impressions as to the safety or risk of any class of shares, and the nature of the shares will not be rendered speculative.

4. The Funds' capital structures under the proposed arrangement will not enable insiders to manipulate expenses and profits among the various classes of shares since all the expenses and profits of a particular Fund (except the different fees of any Plan applicable to a class of shares, any higher incremental transfer agency fees, Class Expenses attributable to a class of shares and any other incremental expense subsequently identified that should be properly allocated to a particular class which shall be approved by the Commission pursuant to an amended order) will be borne *pro rata* by all the shares of the Fund, irrespective of class, and all shareholders will have equal voting rights except with respect to matters pertaining to the Plans and related agreements. The concerns that a complex capital structure may facilitate control without equity or other investment and may make it difficult for investors to value the securities of the Funds are not present.

5. The proposed arrangement will permit the Funds to facilitate both the distribution of their securities and provide investors with a broader choice as to the method of purchasing shares without assuming excessive accounting and bookkeeping costs. Moreover, owners of each class of shares may be relieved of a portion of the fixed costs normally associated with investing in mutual funds since such costs would potentially be spread over a greater number of shares than they would otherwise.

**Applicants' Multiple Class Conditions**

Applicants agree that the order of the Commission granting the requested relief shall be subject to the following conditions:

1. Each class of shares of a Fund will represent interests in the same portfolio of investments of that Fund, and will be identical in all respects, except as set forth below. The only differences among the various classes of shares of the same Fund will relate solely to: (a) The impact of the different distribution, service, and shareholder servicing fee payments associated with any Plan relating to a particular class of shares and any other costs relating to the implementation of such Plan or any amendment thereto (including obtaining shareholder approval of such Plan or any amendment thereto) which will be borne solely by shareholders of such class, any incremental transfer agency fees attributable solely to a particular class of shares of the Fund, and any other incremental expenses subsequently identified that should be properly allocated to one class and which shall be approved by the Commission pursuant to an amended order, (b) voting rights on matters which pertain to the Plans, except as provided in Condition No. 15 below, (c) the different exchange privileges of each class of shares, (d) the designation of each class of shares of the Fund, (e) the differences in the conversion features of each class of shares, and (f) any

differences in Class Expenses of each class of shares.

2. The Board of Trustees of each Fund, including a majority of the Independent Trustees, will approve the Multiple Distribution System for a particular Fund prior to its implementation by such Fund. The minutes of the meetings of the Trustees regarding their deliberations with respect to the approvals necessary to implement the Multiple Distribution System will reflect in detail the reasons for the Trustees' determination that the proposed Multiple Distribution System is in the best interests of both the Fund and its shareholders.

3. On an ongoing basis, the Boards of Trustees of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts between the interests of the various classes of shares. The Trustees, including a majority of the Independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflict that may develop. Citibank and LFBDS will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, Citibank and LFBDS, at their own cost, will take steps to remedy such conflict, up to and including establishing a new registered management investment company.

4. The Trustees of the Funds will receive quarterly and annual statements concerning distribution, service and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as amended from time to time. In these statements, only expenditures properly attributable to the sale of a particular class of shares or to the provision of services to holders of such shares will be used to justify any distribution or service or shareholder servicing fee attributable to such class. Expenditures not related to the sale or service of a particular class of shares or to services provided to holders of such shares will not be presented to the Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Trustees of the Funds in the exercise of their fiduciary duties.

5. Dividends paid by a Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that (i) Distribution, service and shareholder servicing payments associated with any Plans relating to a particular class of shares (any other costs relating to implementing the Plans for such class or any amendment to such Plan including obtaining shareholder approval of the Plans for such class or any amendment to such Plans) will be borne exclusively by that class; (ii) any incremental transfer agency fees relating to a particular class will be borne exclusively by that class; (iii) Class Expenses relating to a particular class will be borne exclusively by that class; and (iv) any other incremental expenses subsequently identified that should be properly allocated to a particular class which shall be approved by the Commission pursuant to an amended order will be borne exclusively by such class.

6. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses among the various classes have been reviewed by an expert (the "Expert") who has rendered a report to the applicants, a copy of which has been filed as Exhibit D to the application, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30 (b)(1) of the Act. The workpapers of the Expert with respect to such reports, following request by the Funds (which the Funds agree to make), will be available for inspection by the Commission staff upon the written request to the Fund for such workpapers by a senior member of the Division of Investment Management or of a Regional Office of the Commission, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "report on the policies and procedures placed in operation" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

7. The applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses among such classes of shares, and this representation has been concurred with by the Expert in the initial report referred to in condition no. 6 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition no. 6 above. Applicants agree to take immediate corrective measures if the Expert, or appropriate substitute Expert, does not so concur in the ongoing reports.

8. The prospectuses of the Funds will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class over another in the Fund.

9. LFBDS will adopt compliance standards regarding when a class of shares may appropriately be sold to particular investors. LFBDS will require its registered representatives and all broker-dealer firms with which it enters into selling agreements and all financial institutions with which it enters into agency agreements regarding the Funds to agree to conform to such standards.

10. The conditions pursuant to which the exemptive relief is granted and the duties and responsibilities of the Trustees of the Funds with respect to the Multiple Distribution System will be set forth in guidelines that will be furnished to the Trustees as part of the materials setting forth the duties and responsibilities of the Trustees.

11. Each Fund will disclose in its prospectus the respective expenses, performance data, distribution arrangements, services, fees, sales loads, contingent deferred sales loads, conversion features, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The shareholder reports of each Fund will disclose the respective expenses and performance data applicable to each class of shares. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share

data, however, will be prepared on a per class basis with respect to the classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will disclose the expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of a Fund's net asset value and public offering prices will present each class of shares separately.

12. The applicant acknowledge that the grant of the exemptive order requested by the application will not imply Commission approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to their Plans in reliance on the exemptive order.

13. Purchase Class shares will convert into Target Class shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice) and/or shareholder servicing fee, if any, that in the aggregate are lower than the asset-based sales charge and service fee and shareholder servicing fee to which they were subject prior to the conversion.

14. The initial determination of the Class Expenses, if any, that will be allocated to a particular class of a Fund and any subsequent changes thereto will be reviewed and approved by a vote of the Board of Trustees of the Fund, including a majority of the Independent Trustees. Any person authorized to direct the allocation and disposition of the monies paid or payable by the Fund to meet Class Expenses shall provide to the Board of Trustees, and the Board of Trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

15. If a Fund implements any amendment to its Plans that would increase materially the amount that may be borne by the Target Class shares under the Plans, existing Purchase Class shares will stop converting into Target Class shares unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The Trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into Target Class shares. If deemed advisable by the Trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to the existing Purchase Class shares in all material respects except that New Purchase Class will convert into New Target Class. The New Target Class or the New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the Trustees reasonably believe will not be subject to Federal taxation. In accordance with Condition No. 3, any additional cost associated with the creation, exchange, or conversion of the New Target Class or the New Purchase Class shall be borne solely by Citibank and LFBDS. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

16. The Administrative Services Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

**Applicants' CDSC Condition**

Applicants agree that any order granting the requested relief shall be subject to the condition that applicants will comply with the provisions of proposed rule 6c–10 under the Act (Release No. IC–16619 (Nov. 2, 1988)), as such rule is currently proposed and as it may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–24170 Filed 9–29–94; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 35–26130]**

## Filings Under the Public Utility Holding Company Act of 1935 ("Act")

September 23, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 17, 1994 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**General Public Utilities Corporation, et al. (70–7926)**

General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, and its public-utility subsidiary companies Jersey Central Power & Light Company ("JCP&L"), 300 Madison Avenue, Morristown, New Jersey 07960, Metropolitan Edison Company ("Met-Ed"), 2800 Pottsville Pike, P.O. Box 16001, Reading, Pennsylvania 19640 and Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907 (collectively, the "GPU Companies"), have filed a post-effective amendment under sections 6(a) and 7 of the Act and rules 53 and 54 thereunder to their declaration previously filed under sections 6(a) and 7 and rule 50(a)(5).

By order dated March 18, 1992 (HCAR No. 25493) ("Order"), the Commission authorized the GPU Companies from time to time through March 31, 1995 to: (1) Issue, sell and renew unsecured promissory notes ("Notes") in amounts up to $150 million outstanding at any one time and maturing not more than six months from the date of issue, to certain banks under the terms of a revolving credit agreement ("Credit Agreement") with Citibank, N.A. and Chemical Bank as co-agents and

Chemical Bank as the administrative agent; (2) issue, sell and renew their unsecured promissory notes, maturing not more than nine months from the date of issue, pursuant to loan participation arrangements and informal lines of credit ("Lines of Credit") in amounts up to the limitations on short-term indebtedness contained in their respective charters but, the case of GPU, $200 million; (3) incur other short-term unsecured debt ("Other Short-Term Debt"), from time to time, in amounts up to the limits permitted by their respective charters but, in the case of GPU, $200 million; and (4) in the case of JCP&L, Met-Ed and Penelec, issue and sell their respective unsecured promissory notes as commercial paper ("Commercial Paper") in amounts up to their respective charter limits. In no event, however, would the total amount of such unsecured debt of any GPU Company outstanding at any one time exceed the limitations on such indebtedness imposed by such company's charter but, in case of GPU, $200 million.

At June 30, 1994, the charter limits of JCP&L, Met-Ed and Penelec would have permitted them to have maximum short-term indebtedness outstanding at any one time of $275, $122 and $137 million, respectively.

The GPU Companies now propose to extend the term of the Credit Agreement and to provide for an increase in the amount of borrowings that the GPU Companies may make thereunder. They also propose to extend and increase their other short-term borrowing capability. Accordingly, the GPU Companies now request authority from the effective date of the authorization herein sought through December 31, 1997 from time to time (1) To issue, sell and renew their unsecured promissory notes ("New Notes") to certain banks ("Banks") under the terms of a new revolving credit agreement or an amendment to the existing agreement ("New Credit Agreement") in amounts up to $250 million outstanding at any one time, (2) to issue, sell and renew their unsecured promissory notes pursuant to loan participation arrangements and lines of credit ("New Lines of Credit") in amounts up to the limitations on short-term indebtedness contained in their respective charters and, in the case of GPU, $200 million, (3) in the cases of JCP&L, Met-Ed and Penelec to issue and sell their respective unsecured promissory notes as commercial paper ("New Commercial Paper") in amounts up to their respective charter limits, and (4) to incur other short-term unsecured debt from time to time in amounts up to the limits permitted by their respective charters and, in the case of GPU, $200 million. In no event, however, would the total amount of such unsecured debt of any GPU Company outstanding at any one time exceed the limitation on such indebtedness imposed by such Company's charter and, in the case of GPU, $200 million. Citibank, N.A. and Chemical Bank would serve as co-agents under the New Credit Agreement and Chemical Bank would also serve as administrative agent.

New Notes issued under the New Credit Agreement would mature not more than six months from their date of issue. The annual interest rate on each borrowing would be either (a) The Alternate Base Rate, as in effect from time to time, (b) the CD Rate, as in effect from time to time, plus an amount ranging from .375% to .625% depending upon the Debt Rating of the borrower and, in the case of GPU, the Debt Rating of JCP&L, or (c) the Eurodollar Rate, as in effect from time to time, plus an amount ranging from .25% to .50% depending upon the Debt Rating of the borrower and, in the case of GPU, the Debt Rating of JCP&L.

The New Credit Agreement will afford the GPU Companies the option of inviting competitive bids from the Banks for requested maturities of up to six months in such principal amounts as a GPU Company may request, subject to the $250 million limit of the New Credit Agreement ($200 million in the case of GPU). No Bank would be required to bid for any such loan and the GPU Companies would not be obligated to accept any bids received.

The GPU Companies propose to pay the Banks a facility fee ranging from .125% to .375% per annum, depending on the Debt Ratings of Met-Ed, JCP&L and Penelec, of the total amount of the commitment, and a competitive bid fee of $2,500 for each request for a competitive bid. In addition, an agency fee of $25,000 would be payable to each of the Co-Agents upon signing of the New Credit Agreement, and an annual administrative agent fee of $15,000 would be payable to Chemical Bank.

Issuance of the New Notes would be subject to certain conditions, and the New Notes would be subject to acceleration under certain circumstances. Borrowings bearing interest at the Alternate Base Rate would be prepayable at any time, without penalty; borrowings at the CD Rate or the Eurodollar Rate would also be prepayable, subject to payment of certain costs incurred by the Banks in connection with the prepayment; borrowings at a competitive bid rate would not be prepayable.

Each borrowing pursuant to an unsecured promissory note issued under New Lines of Credit will bear interest at a rate (after giving effect to any fees or compensating balance requirements) not exceeding 125% of the greater of (A) The lending bank's prime rate for commercial borrowing in effect from time to time, and (B) the Federal Funds Rate plus ½ of 1%, will mature not more than nine months from the date of issuance, will be prepayable only to the extent provided therein and will not be issued as part of a public offering. New Lines of Credit borrowings may include borrowings under which a GPU Company would execute a master unsecured promissory note. The principal amount outstanding under each such master note would increase or decrease depending upon the amount of borrowings. Such arrangements are often employed to facilitate the sale of loan participations by the lending bank.

Unsecured promissory notes sold as New Commercial Paper would be issued in denominations of $100,000 or multiples thereof with maturities of up to 270 days and would not be prepayable prior to maturity. New Commercial Paper would be sold directly to one or more commercial paper dealers at a discount rate prevailing at the date of issuance for commercial paper of comparable quality and of the particular maturity sold by other issuers of commercial paper. No fee or commission would be payable by JCP&L, Met-Ed or Penelec in connection with their issuances and sales of New Commercial Paper. The New Commercial Paper will be reoffered by the purchasing dealer or dealers to institutional investors at a discount of not more than ⅛ of 1% per annum less than the prevailing discount rate to JCP&L, Met-Ed or Penelec. The commercial paper dealers will offer and resell the New Commercial Paper to not more than a total of 200 of their respective customers, identified and designated in a non-public list ("Closed List") prepared by each such dealer in advance for this purpose.

JCP&L, Met-Ed and Penelec may also utilize the services of one or more commercial paper placement agents ("Placement Agent") through whom they would sell their New Commercial Paper directly to one or more institutional investors included on the Placement Agent's Closed List (as it may be amended) which would not exceed 200 such investors. The Placement Agent would arrange for the sale of New Commercial Paper and would be compensated for its services out of the discount on the sale. No fee or other

commission would be otherwise payable by JCP&L, Met-Ed or Penelec in connection with the placement of their New Commercial Paper.

The GPU Companies further propose to issue, sell and renew from time to time their unsecured promissory notes evidencing short-term borrowings from lenders such as commercial banks, insurance companies or other institutions. Such notes would mature not later than nine months after the date of issue, bear interest at a rate (after giving effect to any fees and compensating balance requirements) not in excess of the greater of 125% of (A) Such lender's or other recognized prime rate and (B) the Federal Funds Rate plus ½ of 1%, would be prepayable only to the extent therein provided and would not be issued as part of any public offering.

The proceeds from the issuance and sale of the unsecured promissory notes as proposed herein will be used by the GPU Companies to finance their businesses, including, in the case of GPU, to finance the acquisition of securities of EWGs and FUCOs.

**Central and South West Services, Inc., et al. (70–8459)**

Central and South West Corporation ("CSW"), a registered holding company, and its service company subsidiary, Central and South West Services, Inc. ("CSWS"), both located at 1616 Woodall Rogers Freeway, Dallas, Texas 75202, have filed a declaration under Section 6(a), 7 and 12(b) of the Act and Rule 45 thereunder.

CSWS proposes, through December 31, 1996, to refinance certain of its long-term assets ("Assets"), including the CSW headquarters building located in Dallas, Texas ("Headquarters Building") by borrowing up to $60 million from one or more commercial banks and/or institutional lenders. The Assets, including the Headquarters Building, are currently financed primarily through the CSW Money Pool ("Money Pool").

CSWS and CSW propose to refinance the Assets either through a floating rate loan from a commercial bank or through a fixed rate private placement of securities to institutional lenders. Bank borrowings will be evidenced by secured or unsecured notes with maturities not exceeding 15 years and bear interest at not more than 100 basis points above the LIBOR or similar rate. In connection with such floating rate borrowing, CSWS requests authority to enter into interest rate swap agreements to obtain the benefits of fixed rate financing. Any swap agreements would provide that the prepayment of the notes would terminate CSWS' obligations to its counterparty under the swap agreement. Institutional borrowings will be evidenced by notes with maturities not exceeding 15 years and bear interest at a rate not expected to exceed the effective cost of money from unsecured prime commercial rate loans prevailing on the date of such borrowings. The choice between the financing alternatives will depend principally on market conditions.

Proceeds from the proposed borrowings will not be used to finance the acquisition of an exempt wholesale generator or a foreign utility company as defined in Section 32 and 33 of the Act.

As the sole holder of the outstanding common stock of CSWS and as an inducement to commercial banks or institutional lenders to make loans to CSWS, it is contemplated that CSW may be required to guarantee the obligations of CSWS to the lenders. Accordingly, CSW proposed to guarantee the payments due to lenders.

**Alabama Power Company, et al. (70–8461)**

Alabama Power Company, 600 North 18th Street, Birmingham, Alabama 35291 ("Alabama"), Georgia Power Company, 333 Piedmont Avenue, NE., Atlanta, Georgia 30308 ("Georgia"), Gulf Power Company, 500 Bayfront Parkway, Pensacola, Florida 32501 ("Gulf"), Mississippi Power Company, 2992 West Beach, Gulfport, Mississippi 39501 ("Mississippi"), and Savannah Electric and Power Company, 600 Bay Street, East, Savannah, Georgia 31401 ("Savannah") (collectively, "Operating Companies"), electric public utility subsidiaries of the Southern Company, a registered holding company, have filed an application-declaration under Sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 45 and 54 thereunder.

Each Operating Company proposes to organize a separate special purpose subsidiary as either: (1) a limited liability company ("LLC") under the Limited Liability Company Act ("LLC Act"); or (2) a limited partnership ("LP") under the Revised Uniform Limited Partnership Act ("LP Act") of any state in which they respectively are organized to do business or are incorporated, or of the State of Delaware or other jurisdiction considered advantageous by any of the Operating Companies ("Special Purpose Subsidiaries"). In the event that any Operating Company organizes its Special Purpose Subsidiary as either an LLC or an LP, it may also organize a second special purpose subsidiary under the General Corporation Law of any state in which they respectively are organized to do business or are incorporated, or of the State of Delaware or other jurisdiction, as the case may be ("Investment Sub"), for the respective purpose of: (1) Acquiring and holding Special Purpose Subsidiary common stock so as to comply with the requirement under the applicable LLC Act that a limited liability company have at least two members; and (2) acting as the general partner of such Special Purpose Subsidiary and acquiring, either directly or indirectly through such Investment Sub, a limited partnership interest in such Special Purpose Subsidiary to ensure that such Special Purpose Subsidiary will at all times have a limited partner to the extent required by the applicable LP Act.

The Special Purpose Subsidiaries then will issue and sell their preferred securities ("Preferred Securities"), with a par or stated value or liquidation preference of up to $100 per security, at any time or from time-to-time, in one or more series through December 31, 1997. The Preferred Securities will be sold by the respective Special Purpose Subsidiaries in the following aggregate par or stated value or liquidation preference amounts: (1) Up to $175 million in the case of Alabama; (2) up to $300 million in the case of Georgia; (3) up to $15 million in the case of Gulf; (4) up to $15 million in the case of Mississippi; and (5) up to $10 million in the case of Savannah.

Each Operating Company and/or its respective Investment Sub will acquire all of the common stock or all of the general partnership interests, as the case may be, of its Special Purpose Subsidiary for an amount up to 21% of the total equity capitalization from time-to-time of such Special Purpose Subsidiary ("Equity Contribution"). Each Operating Company may issue and sell to its Special Purpose Subsidiary, at any time or from time-to-time in one or more series, subordinated debentures, promissory notes or other debt instruments ("Notes") governed by an indenture or other document, and the Special Purpose Subsidiary will apply both the Equity Contribution and the proceeds from the sale of Preferred Securities to purchase Notes of such Operating Company. Alternatively, each Operating Company may enter into a loan agreement or agreements with its Special Purpose Subsidiary under which it will loan to the Operating Company ("Loans") both the Equity Contribution and the proceeds from the sale of the Preferred Securities evidenced by Notes. Each Operating Company may also guarantee ("Guaranties") the payment of dividends or distributions on the

Preferred Securities, payments to the Preferred Securities holders of amounts due upon liquidation or redemption of the Preferred Securities and certain additional amounts that may be payable regarding the Preferred Securities.

Each Note will have a term, including extensions, of up to 50 years. Prior to maturity, each Operating Company will pay only interest on its Notes at a rate equal to the dividend or distribution rate on the related series of Preferred Securities. The dividend or distribution rate may be either fixed or adjustable, determined on a periodic basis by auction or remarketing procedures, in accordance with a formula or formulae based upon certain reference rates, or by other predetermined methods. Such interest payments will constitute each Special Purpose Subsidiary's only income and will be used by it to pay monthly dividends or distributions on the Preferred Securities issued by it and dividends or distributions on the common stock or the general partnership interests of such Special Purpose Subsidiary.

Dividend payments or distributions on the Preferred Securities will be made monthly, will be cumulative and must be made to the extent that funds are legally available. However, each Operating Company will have the right to defer payment of interest on its Notes for up to five years, provided that if dividends or distributions on the Preferred Securities of any series are not paid for up to 18 consecutive months, then the holders of the Preferred Securities of such series may have the right to appoint a trustee, special general partner or other special representative to enforce the Special Purpose Subsidiary's rights under the related Note and Guaranty. Each Special Purpose Subsidiary will have the parallel right to defer dividend payments or distributions on the related series of Preferred Securities for up to five years. The dividend or distribution rates, payment dates, redemption and other similar provisions of each series of Preferred Securities will be substantially identical to the interest rates, payment dates, redemption and other provisions of the related Note issued by the Operating Company.

The Notes and related Guaranties of each Operating Company will be subordinate to all other existing and future indebtedness for borrowed money of such Operating Company and will have no cross-default provisions with respect to their indebtedness of the Operating Company. However, each Operating company may not declare and pay dividends on its outstanding preferred or common stock unless all payments due under its Notes and Guaranties have been made.

It is expected that each Operating Company's interest payments on the Notes issued by it will be deductible for federal income tax purposes and that its Special Purpose Subsidiary will be treated as a partnership for federal income tax purposes. Consequently, holders of the Preferred Securities will be deemed to have received partnership distributions in respect of their dividends or distributions from the respective Special Purpose Subsidiary and will not be entitled to any "dividends received deduction" under the Internal Revenue Code.

The Preferred Securities are optionally redeemable by the Special Purpose Subsidiary at a price equal to their par or stated value or liquidation preference, plus any accrued and unpaid dividends or distributions, at any time after a specified date not later than 10 years from their date of issuance or upon the occurrence of certain events. The Preferred Securities of any series may also be subject to mandatory redemption upon the occurrence of certain events. Each Operating Company also may have the right in certain cases to exchange the Preferred Securities of its Special Purpose Subsidiary for the Notes or other junior subordinated debt of the Operating Company.

In the event that any Special Purpose Subsidiary is required to withhold or deduct certain amounts in connection with dividend distribution or other payments, it may also have the obligation to "gross up" such payments so that the holders of the Preferred Securities will receive the same payment after such withholding or deduction as they would have received if no such withholding or deduction were required. In such event, the related Operating Company's obligations under its Note and Guaranty may also cover such "gross up" obligation. In addition, if any Special Purpose Subsidiary is required to pay taxes on income derived from interest payments on the Notes, the related Operating Company may be required to pay additional interest equal to the tax payment. Each Operating Company, individually, expects to apply the net proceeds of the Loans to the repayment of outstanding short-term debt, for construction purposes, and for other general corporate purposes, including the redemption or other retirement of outstanding senior securities.

**Columbus Southern Power Co, et al. (70–8463)**

Columbus Southern Power Co. ("Columbus"), 215 North Front Street, Columbus, Ohio 43215, an electric utility subsidiary company of American Electric Power Co., Inc., a registered holding company, and Simco, Inc. ("Simco"), 215 North Front Street, Columbus, Ohio 43215, a non-utility subsidiary company of Columbus, have filed a declaration under Section 12(c) of the Act and Rule 42 thereunder.

Columbus and Simco request an authorization for Simco to return excess capital to Columbus through a declaration of dividends on its common shares of stock out of paid-in capital surplus to be paid on a periodic basis until the amount of dividends equals $500,000.

In an order dated June 5, 1987 (HCAR No. 24405), the Commission authorized Columbus to acquire a note from Peabody Coal Company ("Peabody") in connection with the sale of real property and fixed assets to Peabody. In consequence of this transaction, the coal mining activities of Simco were transferred and almost all of its business operations were discontinued.

In an order dated October 19, 1990 (HCAR No. 25174), the Commission authorized Simco to reduce the par value of its authorized shares of common stock to $0.10 per share, to reduce the stated capital of its common stock from $9,000,000 to $9,000, and to declare and pay to Columbus dividends out of paid-in capital up to $4.5 million.

Simco is a party to a May 1, 1991 agreement with Conesville Coal Preparation Co. ("Conesville"), a non-utility subsidiary company of Columbus. Under the agreement, Conesville has a non-exclusive right to the use of a coal conveyor beltline, through January 1, 2017, in exchange for a usage charge currently in the amount of approximately $38,000 per month.

In consequence of the above-described transactions and the cessation of all other business by Simco, Simco has cash in excess of its foreseeable capital requirements. Simco currently has 90,000 shares of common stock, par value $.10 per share. On June 30, 1994, Simco had retained earnings of $111,338, paid-in capital of $740,000, a stated capital of $9,000, and cash and temporary investments of $355,479.

Monthly usage charges under the agreement will continue for approximately twenty-two years. This amount together with the current capital of Simco is far in excess of foreseeable capital needs. Therefore, it is proposed that excess capital in an amount not to exceed $500,000 be distributed to Columbus.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–24171 Filed 9–29–94; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF THE TREASURY

### Customs Service

[T.D. 94–76]

### Determination That Maintenance of Determination/Finding of July 7, 1992, Pertaining to Certain Tea Imported From the PRC is No Longer Necessary

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Determination that Merchandise is no longer subject to 19 U.S.C. 1307.

**SUMMARY:** On July 7, 1992, the Commission of Customs; with the approval of the Secretary of the Treasury issued a determination/finding that certain tea, described as Red Star Brand Tea, Red Star Tea Farm Brand Tea, and any other tea produced by the Red Star Tea Farm in Guangdong Province, People's Republic of China, with the use of convict labor and/or forced labor, and/or indentured labor, was being, or was likely to be imported into the United States. The Commissioner of Customs, pursuant to 19 CFR 12.42(f) has now determined, based upon additional Customs investigation, that such merchandise is no longer being, or is likely to be imported into the United States in violation of Section 307 of the Tariff Act of 1930, as amended (19 U.S.C. 1307).

**DATES:** This determination shall take effect October 5, 1994.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Tinger, Senior Special Agent, Office of Enforcement, Headquarters, U.S. Customs Service, 1301 Constitution Ave., N.W., Washington D.C. 20229 (202) 927–1510.

#### Determination

Pursuant to Section 12.42(f)), Customs Regulations (19 CFR 12.42(f), it is hereby determined that certain articles of the People's Republic of China are no longer being, or likely to be, imported into the United States, which are being mined, produced or manufactured with the use of convict, forced or indentured labor.

| Articles schedule | Item number from the Harmonized Tariff (19 U.S.C. 1202) |
|---|---|
| Tea (manufactured by the Red Star Tea Farm). | 0902.10.00<br>0902.30.00 |

Approved September 9, 1994.

**George J. Weise,**

*Commissioner of Customs.*

**John P. Simpson,**

*Deputy Assistant Secretary (Enforcement).*

[FR Doc. 94–24237 Filed 9–29–94; 8:45 am]

BILLING CODE 4820–02–M

## UNITED STATES INFORMATION AGENCY

### Culturally Significant Objects Imported for Exhibition Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibit "Treasures of the Czars" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition of the objects at The Florida International Museum from on or about January 11, 1995, to on or about June 11, 1995 and possibly thereafter at other venues within the United States yet to be determined, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

Dated: September 27, 1994.

**Les Jin,**

*General Counsel.*

[FR Doc. 94–24269 Filed 9–29–94; 8:45 am]

BILLING CODE 8230–01–M

### Convention on Cultural Property Implementation Act (Pub. L. 97–446; Import Restriction on Maya Artifacts From the Peten Region, Guatemala

**AGENCY:** United States Information Agency.

**ACTION:** Determination to Extend Emergency Restriction on Maya Artifacts from the Peten Region, Guatemala.

Pursuant to the authority vested in me under Executive Order 12555 and Delegation Order No. 86–3 of March 18, 1986 (51 FR 10137),

I find: Pursuant to the requirements of Section 304(c)(3) of the Act, 19 U.S.C. 2603(c)(3), with respect to the extension of an emergency import restriction on Maya artifacts from the Peten Region, Guatemala, and pursuant to the emergency provisions under Section 304(a)(3); and pursuant to a favorable recommendation from the Cultural Property Advisory Committee,—

(1) That the material is archaeological and is identifiable as part of the remains of the Maya civilization (approximately 1200 B.C.–1500 A.D) which developed a writing system and about which little is known except from limited scientific excavation of intact remains; that pillage continues to exist relative to these remains of the Maya culture, the record of which continues to be in jeopardy from pillage, dismantling, dispersal, or fragmentation which is, or threatens to be, of crisis proportions;

(2) That the application of the import restriction set forth on a temporary basis would continue, in whole or in part, to reduce the incentive for pillage.

#### Determination

Therefore, in accordance with the aforementioned authority vested in me, and pursuant to Section 304(c)(3) of the Act, 19 U.S.C. 2603(c)(3), and consistent with a favorable recommendation from the Cultural Property Advisory Committee, I determine:

(1) That the emergency condition continues to apply with respect to Maya artifacts from the Peten Region of Guatemala,

(2) That the emergency import restriction that went into effect on April 15, 1991, is extended for a period of three more years effective October 3, 1994.

Dated: September 23, 1994.

**Penn Kemble,**

*Deputy Director, United States Information Agency.*

[FR Doc. 94–24144 Filed 9–29–94; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Lorie Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/619–6084, and the address is U.S. Information Agency, 301 Fourth Street, SW., Room 700, Washington, DC 20547.

# Sunshine Act Meetings

Federal Register
Vol. 59, No. 189
Friday, September 30, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL MARITIME COMMISSION**

**TIME AND DATE:** 10 a.m.—October 6, 1994.

**PLACE:** Hearing Room One—800 North Capitol St., NW., Washington, DC 20573–0001.

**STATUS:** Open.

**MATTER(S) TO BE CONSIDERED:**

1. Docket No. 94–06—Financial Responsibility Requirements for Nonperformance of Transportation—Consideration of Comments.
2. Docket No. 93–22—Coloading Practices by Non-Vessel-Operating Common Carriers; Shipper Affiliate Access to Service Contracts—Consideration of Comments.

**CONTACT PERSON FOR MORE INFORMATION:** Joseph C. Polking, Secretary, (202) 523–5725.

**Ronald D. Murphy,**

*Assistant Secretary.*

[FR Doc. 94–24383 Filed 9–28–94; 3:22 pm]

BILLING CODE 6730–01–M

**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**

**TIME AND DATE:** 10:00 a.m., Wednesday, October 5, 1994.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 28, 1994.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 94–24350 Filed 9–28–94; 3:22 pm]

BILLING CODE 6210–01–P

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

[USITC SE–94–31]

**TIME AND DATE:** October 4, 1994 at 3:00 p.m.

**PLACE:** Room 101, 500 E Street S.W., Washington, DC 20436.

**STATUS:** Open to the public.

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. FY 1995 Expenditure Plan and FY 1996 Budget Request.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

The Commission has a previously scheduled hearing on this date, which will begin at 9:30 a.m. If the hearing has not concluded by 3:00 p.m., the meeting to consider the 1995 Expenditure Plan and the 1996 Budget Request will immediately follow the hearing.

By order of the Commission.

Issued: September 26, 1994.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 94–24364 Filed 9–28–94; 3:22 pm]

BILLING CODE 7020–02–P

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

[USITC SE–94–32]

**TIME AND DATES:** October 5, 1994 at 2:30 p.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436.

**STATUS:**

1. Agenda for the future meeting.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–670 (Final) (Certain Cased Pencils from Thailand)—briefing and vote.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: September 26, 1994.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 94–24366 Filed 9–28–94; 3:23 pm]

BILLING CODE 7020–02–P

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

[USITC SE–94–33]

**TIME AND DATES:** October 11, 1994 at 3:30 p.m.

**PLACE:** Room 101, 500 E Street S.W., Washington, DC 20436.

**STATUS:**

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–719 (Preliminary) (Carbon Steel Pipe Nipples from Mexico)—briefing and vote.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: September 26, 1994.

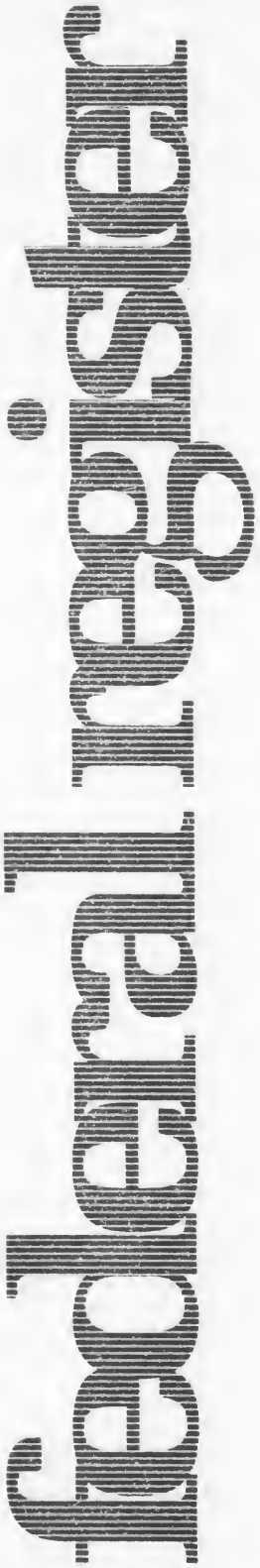
**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 94–24367 Filed 09–28–94; 3:24 pm]

BILLING CODE 7020–02–P

Friday
September 30, 1994




Part II

# Environmental Protection Agency

40 CFR Parts 9, 86, and 88
Emission Standards for Clean-Fuel Vehicles and Engines, Requirements for Clean-Fuel Vehicle Conversions, and California Pilot Test Program; Final Rule

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 9, 86 and 88

[AMS–FRL–5002–7]

### Emission Standards for Clean-Fuel Vehicles and Engines, Requirements for Clean-Fuel Vehicle Conversions, and California Pilot Test Program

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

**ACTION:** Final rule.

**SUMMARY:** The 1990 Clean Air Act Amendments require the establishment of two clean-fuel vehicle programs: a Clean Fuel Fleet Program and a California Pilot Test Program. Under the Clean Fuel Fleet Program, a percentage of new vehicles acquired by certain fleet owners located in covered areas will be required to meet clean-fuel fleet vehicle emission standards. Fleet owners can comply with this requirement by purchasing new clean-fuel fleet vehicles, by converting conventional vehicles to clean-fuel fleet vehicles, or by acquiring "credits" pursuant to a credits program. Affected states are required to revise their State Implementation Plans to implement the fleet program, including provisions to implement a credit program and exempt clean-fuel fleet vehicles from certain transportation control measures. Regulations have already been promulgated for the credit program and transportation control measures exemptions. Also, definitions of terms used with the Clean Fuel Fleet program have recently been finalized. The other Clean Air Act clean-fuel vehicle program is the California Pilot Test program. This program requires manufacturers to sell light-duty clean-fuel vehicles in the state of California. EPA has established a credit program for the California Pilot Test Program in a separate rulemaking.

This action promulgates the statutory requirements that have not been implemented to date. These include the emission standards for light-duty and heavy-duty clean-fuel vehicles, regulations for the conversion of conventional vehicles to clean-fuel fleet vehicles, manufacturer California clean-fuel vehicles sales requirements under the California Pilot Test Program, and a state opt-in program for the California Pilot Test Program. The part of the conversion provisions addressing the sales volume limit beyond which special small-volume manufacturer provisions will not apply, will not become effective sooner than 60 days after publication and then only if no adverse comment is received within 30 days of publication. If adverse comment is received within 30 days of publication, EPA will withdraw this part of the rule pending a full notice and comment process on this topic.

**DATES:** This regulation is effective October 31, 1994, except that 40 CFR 88.306–94(b)(3) will become effective on November 29, 1994, unless notice is received on or before October 31, 1994, that adverse or critical comments will be submitted. EPA will publish a timely document in the **Federal Register** if the effective date is delayed for this reason. The effective date may also be delayed if the information collection requirements contained in this section have not been approved by the Office of Management and Budget. In that case, EPA will publish a timely document in the **Federal Register** delaying the effective date. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 31, 1994, except as specified elsewhere in this **DATES** section. Sections 40 CFR 88.104–94 (b) and (d), 88.201–94 through 88.206–94, and 88.306–94(b) (1), (2), and (4) are not effective until the Office of Management and Budget approves the information collection requirements contained in them. EPA will publish a document in the **Federal Register** once the information collection requirements are approved.

**ADDRESSES:** Comments on 40 CFR 88.306–94(b)(3) may be submitted to Docket No. A–92–30 at the following address. Materials relevant to this proposal have been placed in Docket Nos. A–92–30 (Clean Fuel Fleet Program) and A–92–69 (California Pilot Test Program) by EPA. The docket is located at: Air and Radiation Docket and Information Center, Room M–1500, Waterside Mall, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. These dockets may be inspected between 8:30 a.m. and noon, and between 1:30 and 3:30 p.m. on weekdays. EPA may charge a reasonable fee for copying docket materials. In addition, copies of the Summary and Analysis of Comments document, which develops certain issues relevant to this final rulemaking, may be obtained by request from the contact person below. This document contains the Agency's response to the public comments received in regard to the two Notices of Proposed Rulemaking (NPRM).

Electronic copies of the preamble, regulations, Regulatory Impact Analysis, Regulatory Support Document for heavy-duty clean-fuel vehicles, and the Summary and Analysis of Comments for this rulemaking are available on the Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTNBBS). Instructions for accessing TTNBBS and downloading the above rulemaking files are described under **SUPPLEMENTARY INFORMATION** in section I.A.

**FOR FURTHER INFORMATION CONTACT:** Mr Bryan Manning, U.S. EPA (SRPB–12), Regulatory Development and Support Division, 2565 Plymouth Rd, Ann Arbor, MI 48105. Telephone (313) 741–7832.

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

### *A. Accessing Electronic Copies of Rulemaking Documents through the Technology Transfer Network Bulletin Board System (TTNBBS)*

TTNBBS can be accessed using a dial-in telephone line (919–541–5742) and a 1200, 2400, 9600, or 14,400 bps modem. The parity of the modem should be set to N or none, the data bits to 8, and the stop bits to 1. When first signing on to the bulletin board, the user will be required to answer some basic informational questions to register into the system. After registering, proceed through the following options from a series of menus:

OMS;
Rulemaking and Reporting;
Alternative Fuels/Fleets;
Clean Fuel Fleets or California Pilot Program.

A list of ".ZIP" files will be displayed, all of which relate to the Clean Fuel Fleet or California Pilot Program rulemakings. The above five documents for the Emission Standards for Clean-Fuel Vehicles and Engines, Requirements for Clean-Fuel Vehicle Conversions, and California Pilot Test Program rulemaking will be listed in the form of ".ZIP" files and are identified by the following titles:

"CFF–PRE.ZIP" (Preamble)
"CFF–REG.ZIP" (Regulations)
"CFF–COM.ZIP" (Summary and Analysis of Comments)
"CFF–RIA.ZIP" (Regulatory Impact Analysis)
"CFF–RSD.ZIP" (Regulatory Support Document for heavy-duty CFVs)

To download these files, type the instructions below and transfer according to the appropriate software on your computer: <D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, <H>elp or <ENTER> to exit: D filename.ZIP

The user needs to choose a file transfer protocol appropriate for the user's computer from the options listed on the terminal. The user's computer is then ready to receive the file by invoking the user's resident file transfer software. Programs and instructions for de-archiving compressed files can be found under <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers.

TTNBBS is available 24 hours a day, 7 days a week except Monday morning from 8–12 EST, when the system is down for maintenance and backup. For help in accessing the system, call the systems operator at 919–541–5384 in Research Triangle Park, North Carolina, during normal business hours EST.

*B. Background*

The Clean Air Act (CAA) Amendments of 1990 (Public Law 101–549) added part C to Title II of the CAA entitled, "Clean Fuel Vehicles". Under part C, states are to establish clean fuel fleet programs (collectively called the Clean Fuel Fleet (or CFF) program) in certain nonattainment areas and EPA is to establish a clean-fuel vehicle (CFV) pilot program in the State of California (the California Pilot Test program or Pilot program).

The purpose of the Clean Fuel Fleet Program is to introduce light- and heavy-duty CFVs in specified "covered areas" with air quality problems. CAA section 246(a)(2) defines a "covered area" for purposes of the fleet program as an area having a 1980 population of 250,000 or more that is also (1) a serious, severe, or extreme ozone nonattainment area (based on 1987–1989 data), or (2) a carbon monoxide (CO) nonattainment area with a CO design value at or above 16.0 parts per million (based on 1988–1989 data). Currently, there are 22 such areas in 19 states (Table 1).

TABLE 1.—STATES AND AREAS AFFECTED BY THE CLEAN-FUEL FLEET PROGRAM

| Affected area | State(s) |
|---|---|
| 1. Atlanta | Georgia. |
| 2. Baltimore | Maryland. |
| 3. Baton Rouge | Louisiana. |
| 4. Beaumont-Port Arthur | Texas. |
| 5. Boston-Lawrence-Worcester (Eastern Massachusetts) | Massachusetts, New Hampshire. |
| 6. Chicago-Gary-Lake County | Illinois, Indiana. |
| 7. Denver-Boulder | Colorado. |
| 8. El Paso | Texas. |
| 9. Greater Connecticut | Connecticut. |
| 10. Houston-Galveston-Brazoria | Texas. |
| 11. Los Angeles-South Coast Air Basin | California. |
| 12. Milwaukee-Racine | Wisconsin. |
| 13. New York-Northern New Jersey-Long Island | Connecticut, New Jersey, New York. |
| 14. Philadelphia-Wilmington-Trenton | Delaware, Maryland, New Jersey, Pennsylvania. |
| 15. Providence (All Rhode Island) | Rhode Island. |
| 16. Sacramento Metro | California. |
| 17. San Diego | California. |
| 18. San Joaquin Valley | California. |
| 19. Southeast Desert Modified AQMA | California. |
| 20. Springfield (Western Massachusetts) | Massachusetts. |
| 21. Ventura County | California. |
| 22. Washington (District of Columbia) | Maryland, Virginia, District of Columbia. |

These states are required to revise their State Implementation Plans (SIPs) to ensure that "covered fleet" owners will include, through purchase or lease, a minimum percentage of CFVs among the new vehicles they purchase for their fleets. (A "covered fleet" is defined in CAA section 241 as a fleet of ten or more motor vehicles which are owned or operated, leased, or otherwise controlled by a single person.) Both private business and government (federal, state, and local) fleets are subject to the statute. However, certain fleets and vehicles are exempt from the regulations, including fleets with vehicles that cannot be fueled at a central location, vehicles that are normally garaged at a personal residence, or vehicles that belong to vehicle classes without applicable CFV standards. (See the Definitions Rule: 58 FR 64679, December 9, 1993). In their SIP revisions, states must include provisions to require that CFVs used in the clean fuel fleet program operate on fuels on which they comply with the CFV standards.

Covered fleet operaters can also meet the requirements by converting conventional vehicles to CFVs, or by obtaining credits. CAA section 246(a)(3) requires that all states containing all or part of an ozone and/or CO nonattainment area described above that is reclassified in the future as a serious, severe, or extreme ozone nonattainment area, or has a CO design value at or above 16.0 parts per million, must prepare revised SIPs implementing the CFF program within one year of reclassification.

Three vehicle classes are included in the CFF program: light-duty vehicles (LDVs) and light-duty trucks (LDTs) up to 8,500 lbs GVWR,[1] and heavy-duty vehicles (HDVs) between 8,500 lbs and 26,000 lbs GVWR.[2] To qualify as a CFV, a vehicle must meet one of three sets of increasingly stringent standards. These are referred to as low-emission vehicle (LEV) standards, ultra low-emission vehicle (ULEV) standards, and zero-emission vehicle (ZEV) standards.

CAA section 242(a) requires EPA to promulgate CFV emission standards for purposes of compliance with the CFF program and the Pilot program (LEV standards). In addition, section 246(f)(4) requires EPA to promulgate emission standards for purposes of the CFF program credit program (ULEV and ZEV standards). Under section 249(d)(3), the CFF credit program standards will also apply to the Pilot credit program. Therefore, vehicles that meet ULEV or ZEV standards are eligible for vehicle

[1] Gross Vehicle Weight Rating.

[2] HDVs over 26,000 lbs GVWR are not included in the mandatory program.

purchase credits under the CFF program and for manufacturers' credits under the Pilot program.

The CAA Amendments of 1990 require EPA to promulgate a Pilot program for the sale of CFVs in the State of California. Whereas the CFF program will be run by individual states, the Pilot program is a federal program that will be administered in California. Manufacturers with motor vehicle sales in California are required to sell a minimum number of light-duty CFVs (CFVs up to 8,500 lbs. GVWR) in California on an annual basis. Manufacturers may meet their share of required sales by selling the required number of CFVs or by using earned credits or credits they have acquired from other manufacturers. (EPA established the credits program in a previous rulemaking (57 FR 60038; December 17, 1992)). To earn credits, a manufacturer may sell more CFVs than required or sell CFVs which meet stricter exhaust emission standards. Except for heavy LDTs, for model years 1996 through 2001, the compliance standards for the Pilot program are known as the TLEV standards and credits are available for LEV, ULEV and ZEV purchases. Beginning in 2001, the compliance vehicle shifts to the LEV standards, and credits are only available for ULEV and ZEV purchases. This provision commences in the 1998 model year for heavy LDTs.

The CAA also directs EPA to establish a voluntary opt in program for states that want to adopt the Pilot program. States which contain all or part of any ozone nonattainment areas classified under subpart D of Title II as serious, severe, or extreme are eligible to participate. To do so, states are to revise their state implementation plans (SIPs) to include incentives for the sale and use of CFVs as well as the production and distribution of clean alternative fuels. States may not establish CFV sales or production mandates, however.

The remainder of today's action covers light- and heavy-duty CFV exhaust emission standards, requirements for vehicle conversions to CFVs, and the Pilot program, as well as regulatory impacts of the CFF and Pilot programs. In addition, EPA has included several technical amendments and clarifications related to the Definitions rule (58 FR 64679) and the rulemaking for the CFF credits program and transportation control measure exemptions (58 FR 11888; March 1, 1993).

## II. Description of Action

### *A. Clean-Fuel Vehicle Emission Standards*

CAA section 242 requires EPA to promulgate regulations setting emission standards and other requirements for CFVs. For LDVs and LDTs, EPA is required to adopt the standards set forth in sections 242 and 243 unless it finds that the standards of the California Air Resources Board LEV program are, in the aggregate, at least as protective of public health and welfare as the federal standards that would apply to CFVs. EPA cannot make such a finding at this time so today's regulations adopt the standards set forth in the CAA.

#### 1. Light-Duty Vehicle and Light-Duty Truck Clean-Fuel Vehicle Standards

a. *Requirements of the CAA.* Clean Air Act section 241(7) defines a CFV as a vehicle that meets the emission standards applicable under part C of Title II of the CAA. As discussed later in this preamble, CFVs will satisfy the requirements of both the Pilot program and the CFF program. The CFV emission standards for LDVs and LDTs are set forth in sections 242 and 243. (Standards for heavy-duty CFVs under section 245 of the Act are discussed in II.A.2 below.) Any LDV, LDT, or HDV that can operate on only one fuel and that meets these standards will be classified as a CFV regardless of the fuel that is used to meet the CFV standards. However, a CFV in the CFF program must operate on clean alternative fuels, as defined in section 241(2) of the Act, when operating in the covered area.

Subsections 243(a) through (d) specify LDV and LDT exhaust emission standards (50K and 100K miles)[3] for the following pollutants: non-methane organic gas (NMOG), carbon monoxide (CO), oxides of nitrogen ($NO_X$), diesel particulate matter (PM) (only for the 100,000 mile point), and formaldehyde (HCHO). These standards are prescribed in two phases for LDVs and light LDTs (up to 5,750 pounds loaded vehicle weight (LVW) and 6,000 pounds GVWR). Phase I applies only to the Pilot program and takes effect with the 1996 model year (MY), the first year of required sales under the Pilot program. These statutory Phase I standards are numerically identical to those which define the California Transitional Low Emission Vehicle (TLEV).[4] The Phase I standards apply to the Pilot program in MYs 1996 through 2001. Phase II standards are identical to those which define the California Low Emission Vehicle (LEV).[5] The Phase II standards apply to the CFF program in MY 1998 and to the Pilot program beginning in MY 2001. Only one set of exhaust emission standards applies to heavy LDTs (above 6,000 lbs. GVWR). These standards take effect in MY 1998 and apply to both the CFF and the Pilot program. Table 2 contains the TLEV and LEV standards for LDV and LDT CFVs.

CAA part C section 241 specifies that definitions contained in part A, section 216, shall apply to the CFV programs. The heavy LDT subcategories (i.e., above 6,000 lbs. GVWR) shown in Table 2 are based on test weight. CAA section 216(8) defines "test weight", or "TW", as the sum of the curb weight and the GVWR divided by two:

TW = (Curb weight + GVWR)/2 = ALVW

This definition was established in 40 CFR 86.129–94 by the federal Tier 1 rulemaking (56 FR 25724; June 5, 1991) and is referred to as "adjusted loaded vehicle weight", or "ALVW". The Agency chose to use ALVW, as opposed to TW, to minimize confusion with the term "equivalent test weight", which is used interchangeably with "test weight" throughout current EPA motor vehicle regulations and test procedures. Therefore, "test weight" defined in CAA section 216(8) is referred to as ALVW in this Final Rule, which is consistent with its definition established in the Tier 1 regulations.

[3] The intermediate useful life for LDV and LDTs is 50,000 (50K) miles. The full useful life for such vehicles is 100,000 (100K) miles.

[4] The California TLEV standards are effective in model years 1994 through 1996.

[5] The California LEV standards are effective in model years 1997 through 2003.

TABLE 2.— PHASE I AND II LDV AND LDT CLEAN FUEL VEHICLE EMISSION STANDARDS

| Standards (Effective Dates) | Pollutant (grams/mile) | | | | |
|---|---|---|---|---|---|
| | NMOG | CO | $NO_x$ | HCHO | PM[1] |
| All LDVs; LDTs ≤3750 lbs LVW; ≤6000 lbs GVWR: | | | | | |
| **Phase I (1996 MY):** | | | | | |
| 50,000 miles | 0.125 | 3.4 | 0.4 | 0.015 | ... |
| 100,000 miles | 0.156 | 4.2 | 0.6 | 0.018 | 0.08 |
| **Phase II (1998 MY for CFFP; 2001 MY for Pilot program):** | | | | | |
| 50,000 miles | 0.075 | 3.4 | 0.2 | 0.015 | ... |
| 100,000 miles | 0.090 | 4.2 | 0.3 | 0.018 | 0.08 |
| LDTs >3750 and ≤K5750 lbs LVW; ≤6000 lbs GVWR: | | | | | |
| **Phase I (1996 MY):** | | | | | |
| 50,000 miles | 0.160 | 4.4 | 0.7 | 0.018 | ... |
| 100,000 miles | 0.200 | 5.5 | 0.9 | 0.023 | 0.08 |
| **Phase II (1998 MY for CFFP; 2001 MY for Pilot program):** | | | | | |
| 50,000 miles | 0.100 | 4.4 | 0.4 | 0.018 | ... |
| 100,000 miles | 0.130 | 5.5 | 0.5 | 0.023 | 0.08 |
| LDTs >6000 lbs GVWR (1998 MY): | | | | | |
| ≤3750 lbs ALVW: | | | | | |
| 50,000 miles | 0.125 | 3.4 | [2]0.4 | 0.015 | ... |
| 120,000 miles | 0.180 | 5.0 | 0.6 | 0.022 | 0.08 |
| 3750< LDTs ≤65750 lbs ALVW: | | | | | |
| 50,000 miles | 0.160 | 4.4 | [2]0.7 | 0.018 | ... |
| 120,000 miles | 0.230 | 6.4 | 1.0 | 0.027 | 0.10 |
| 5750< LDTs ≤8500 lbs ALVW:[3] | | | | | |
| 50,000 miles | 0.195 | 5.0 | [2]1.1 | 0.022 | ... |
| 120,000 miles | 0.280 | 7.3 | 1.5 | 0.032 | 0.12 |

[1] Applicable to diesel-fueled vehicles only.
[2] Standards not applicable to diesel-fueled vehicles.
[3] Option of certifying HDEs in vehicles up to 10,000 lbs GVWR using the LDT standards.

CAA section 242(c) lists the useful life and in-use testing limitations for purposes of determining in-use compliance with the standards in section 243. The useful life for CFVs is the same as adopted in EPA's regulations for 1994 and later model year LDVs and LDTs, commonly called Tier 1 standards (56 FR 25724, June 5, 1991). For LDVs and LDTs, the standards in section 243 are established at the intermediate useful life of five years or 50,000 miles (5/50,000), whichever occurs first, and a full useful life of 10 years or 100,000 miles (10/100,000), whichever occurs first (see Table 2). With respect to in-use testing, however, section 242(c) provides that such testing for these vehicle classes would not be done beyond seven years or 75,000 miles, whichever occurs first. The analogous intermediate and full useful life levels for heavy LDTs are 5/50,000 and 11/120,000, respectively (see Table 2). Similarly, section 242(c) provides that the in-use testing for these vehicles would not be done beyond seven years or 90,000 miles, whichever occurs first.

While the standards described above apply to single fuel CFVs, subsection 243(d) also establishes different CFV NMOG standards for dual and flexible fuel LDVs and LDTs.[6] These vehicles are to be certified to two sets of NMOG standards (Table 3). One set contains the same NMOG levels that apply to single fuel CFVs; dual and flexible fuel vehicles must meet this standard when operating on the clean alternative fuel on which they are certified (section 243(d)(2)). The second set of NMOG standards applies to flexible and dual fuel vehicles when operated on conventional fuel for which they are certified (section 243(d)(3)).[7] This second set of standards is, in effect, equivalent to the next less stringent set of standards for the applicable vehicle category and model year. For example, the Phase I NMOG standard for flexible or dual fuel CFVs using conventional fuel is equivalent to the Tier I non-methane hydrocarbon (NMHC) emissions standard.[8] The Phase II NMOG standard for flexible or dual fuel CFVs using conventional fuel is equivalent to the Phase I standard for single fuel CFVs. The NMOG standards for flexible and dual fuel vehicles are listed in Table 3. Flexible or dual fuel vehicles must comply with all other CFV exhaust standards shown in Table 2 and with all other applicable requirements of Title II.

[6] Dual fuel vehicle is defined as any motor vehicle or motor vehicle engine engineered and designed to be operated on two different fuels, but not on a mixture of the fuels. The term "bi-fuel" is often used for this type of design. Flexible fuel vehicle is defined as any motor vehicle or motor vehicle engine engineered and designed to be operated on any mixture of two or more different fuels. The term "variable-fuel" is often used for this type of design. These definitions are contained in section § 88.102-94 of the regulatory text.

[7] CAA section 241 requires that dual and flexible fuel vehicles are to operate on the fuels on which they are certified. As discussed in the CFF credit program and TCM exemptions rulemaking (58 FR 11888, March 1, 1993), dual and flexible fuel vehicles shall operate only on the clean alternative fuel on which they are certified to the CFV standards when operating in a covered area, as provided in section 246(a)(2).

[8] NMOG and NMHC emissions are essentially equivalent when the fuel combusted is conventional gasoline.

TABLE 3.—NMOG STANDARDS FOR FLEXIBLE- AND DUAL-FUELED VEHICLES

| Vehicle subclass | Standard[1] (g/mi) | |
|---|---|---|
| | 50,000mi | 100,000mi |
| LDVs, LDTs (≤6000 lbs GVWR): | | |
| **Beginning MY 1996 for Pilot program:** | | |
| LDTs (0–3,750 lbs. LVW), LDTs | 0.125/0.25 | 0.156/0.31 |
| LDTs (3,751–5,750 lbs. LVW) | 0.160/0.32 | 0.200/0.40 |
| **Beginning MY 1998 for CFFP; MY 2001 for Pilot program:** | | |
| LDTs (0–3,750 lbs. LVW), LDVs | 0.075/0.125 | 0.090/0.156 |
| LDTs (3,751–5,750 lbs. LVW) | 0.100/0.160 | 0.130/0.200 |
| LDTs (>6,000 lbs GVWR): | | |
| **Beginning MY 1998:** | | |
| LDTs (0–3,750 lbs. ALVW) | 0.125/0.25 | 0.180/0.36 |
| LDTs (3,751–5,750 lbs. ALVW) | 0.160/0.32 | 0.230/0.46 |
| LDTs (>5,750 lbs. ALVW) | 0.195/0.39 | 0.280/0.56 |

[1] The standards are presented for flexible- and dual-fueled CFVs when operating on clean alternative fuel and conventional fuel in the format "x/y" where x represents the NMOG standard when the vehicle is operated on a clean alternative fuel and y represents the NMOG standard when the vehicle is operated on a conventional fuel.

CAA section 246(f)(4) directs EPA to establish additional CFV standards for ULEVs and ZEVs (discussed earlier). These standards, shown in Table 4, should be more stringent than the CFV standards in section 243. Vehicles meeting these more stringent standards are eligible to earn credits which may be used toward compliance under the CFF program or the Pilot program, as specified in sections 246(f) and 249(d)(3), respectively. The Act requires EPA to set these more stringent standards for LDVs and LDTs so that they conform "as closely as possible" to the ULEV and ZEV standards established by California for vehicles in the same class. The California ULEV and ZEV standards are described below in section A.1.b. in this preamble.

TABLE 4.—LDV AND LDT CLEAN FUEL VEHICLE ULEV EMISSION STANDARDS

| Vehicle category | Pollutant (grams/mile) | | | | |
|---|---|---|---|---|---|
| | NMOG | CO | $NO_x$ | HCHO | PM[1] |
| LDVs & LDTs ≤3750 lbs LVW; ≤6000 lbs GVWR | | | | | |
| 50,000 miles | 0.040 | 1.7 | 0.2 | 0.008 | 0.08 |
| 100,000 miles | 0.055 | 2.1 | 0.3 | .011 | 0.04 |
| LDTs >3750 and ≤5750 lbs LVW; ≤6000 lbs GVWR: | | | | | |
| 50,000 miles | 0.050 | 2.2 | 0.4 | 0.009 | 0.08 |
| 100,000 miles | 0.070 | 2.8 | 0.5 | 0.013 | 0.04 |
| LDTs >6000 lbs GVWR (1998 MY): | | | | | |
| ≤3750 lbs ALVW: | | | | | |
| 50,000 miles | 0.075 | 1.7 | 0.2 | 0.008 | |
| 120,000 miles | 0.107 | 2.5 | [2]0.3 | 0.012 | 0.04 |
| 3750< LDTs ≤5750 lbs ALVW: | | | | | |
| 50,000 miles | 0.100 | 2.2 | 0.4 | 0.009 | |
| 120,000 miles | 0.143 | 3.2 | [2]0.5 | 0.013 | 0.05 |
| 5750< LDTs ≤8500 lbs ALVW:[3] | | | | | |
| 50,000 miles | 0.117 | 2.5 | 0.6 | 0.011 | |
| 120,000 miles | 0.167 | 3.7 | [2]0.8 | 0.016 | 0.06 |

[1] Applies to diesel vehicles only.
[2] Does not apply to diesel vehicles.
[3] Option of certifying HDEs in vehicles up to 10,000 lbs GVWR using the LDT standards.

CAA section 242(b) states that CFVs up to 8,500 lbs. GVWR "shall comply with all motor vehicle requirements of this title (i.e., on-board diagnostics, evaporative emissions, etc.) which are applicable to conventional gasoline-fueled vehicles of the same category and model year, except as provided in section 244 with respect to administration and enforcement, and except to the extent that any such requirement is in conflict with the provisions of" part C. These include, but are not limited to, standards for cold temperature CO exhaust emissions (cold CO), on-board diagnostics (OBD), evaporative emission controls (evap), and onboard refueling vapor recovery (ORVR). Previous requirements such as crankcase controls and vehicle labeling also apply.

CAA section 243(e) directs EPA to apply the standards of the California Air Resources Board (CARB) LEV program in lieu of the standards otherwise applicable to CFVs under sections 242 and 243 if the CARB standards are, in the aggregate, at least as protective of public health and welfare as the federal standards that apply to CFVs. Section 243(e)(1) addresses the replacement of CAA standards if CARB promulgates a single set of standards while section 243(e)(2) addresses the replacement if CARB promulgates multiple sets of standards. CARB's LEV program contains multiple sets of standards to which vehicles can certify (i.e., LEV, ULEV, and ZEV); therefore, section

243(e)(2) is the appropriate language for consideration and is provided below:

Section 243(e)(2): If the State of California promulgates regulations establishing and implementing several different sets of standards applicable in California pursuant to a waiver approved under section 209 to any category of vehicles referred to in subsection (a), (b), (c), or (d) of this section and each of such sets of California standards is, in the aggregate, at least as protective of public health and welfare as the otherwise applicable standards set forth in section 242 and subsection (a), (b), (c), or (d) of this section, such standards shall be treated as 'qualifying California standards' for purposes of this paragraph. Where more than one set of qualifying standards are established and administered by the State of California, the least stringent set of qualifying California standards shall apply to the clean-fuel vehicles concerned in lieu of the standards otherwise applicable to such vehicles under section 242 and this section.

EPA believes that the required comparison between the federal and CARB standards is not limited to the CFV exhaust emission standards of sections 242 and 243 but must also include the other Title II standards referred to in CAA section 242 (i.e., OBD, evap, etc.) and any California counterparts. Thus, EPA is required to compare the standards in CAA sections 242(b) and 243 with the CARB standards to determine whether the CARB standards should replace the federal standards.

As is discussed below in Section II.c., EPA cannot at this time make the determination that each set of CARB standards is, in the aggregate, at least as protective as the federal standards that apply to CFVs. Therefore, this final rule promulgates the emission standards and requirements for CFVs found in sections 242 and 243 of the CAA. EPA's reasoning to support this conclusion is included in Section II.c.

Finally, CAA section 244 provides requirements regarding the administration and enforcement of CFV exhaust emission standards. In the event that numerical emission standards for CFVs up to 8,500 lbs. GVWR are the same under the federal and California LEV program, EPA is to administer and enforce those standards in the same manner and with the same flexibility as CARB does under the California LEV program. This requires utilizing the same interpretations and policy judgments including, but not limited to, requirements regarding certification, production-line testing, and in-use compliance. The application of California's administration and enforcement practices does not depend on whether EPA replaces federal requirements with California requirements under section 243(e). If the Administrator determines that adopting California's administration and enforcement approaches would not meet the criteria for a waiver under section 209, then federal administration and enforcement procedures and interpretations would apply.

b. *CARB's Low-Emission Vehicle Standards.* Pursuant to CAA section 209, the State of California applied to EPA for a waiver on October 4, 1991 for its "Low-Emission Vehicle and Clean Fuels Regulations". EPA granted the waiver on January 7, 1993 (58 FR 4166, January 13, 1993). (Although states are generally preempted by CAA section 209 from adopting their own motor vehicle standards, California may adopt its own standards provided that EPA waivers the preemption provision of section 209.)

California's regulations establish four new levels of vehicle emission standards, termed "vehicle emission categories", for LDVs, LDTs, and medium-duty trucks (MDTs).[9] These new standards are effective with 1994 model year vehicles.[10] The California emission categories are, in order of increasing stringency: TLEV (Transitional Low Emission Vehicle); LEV (Low Emission Vehicle); ULEV (Ultra Low Emission Vehicle); and ZEV (Zero Emission Vehicle). The TLEV exhaust emission standards for NMOG, CO, $NO_X$, PM, and HCHO are identical to the federal Phase I CFV standards described above. The LEV exhaust emission standards are identical to the federal Phase II CFV standards. The California ULEV and ZEV standards are the same as the federal ULEV and ZEV categories, established for purposes of the CFF and Pilot program credit programs. CARB defines a ZEV as:

* * * any vehicle which is certified * * * to produce zero emissions of any criteria pollutants under any and all possible operational modes and conditions. A ZEV may be equipped with a fuel fired heater provided that the fuel fired heater cannot be operated at ambient temperatures above 40 degrees Fahrenheit and the heater is demonstrated to have zero evaporative emissions under any and all possible operational modes and conditions.[11]

CARB is allowing the use of intermediate in-use compliance standards that are intended to facilitate compliance by vehicle manufacturers. These in-use standards are numerically half way between the certification standards of the new emission category and the old emission category (e.g., half way between TLEV and LEV standards). These intermediate standards will be effective through MY 1995 for TLEVs and through MY 1998 for LEVs and ULEVs.

c. *Comparison of CAA and CARB Requirements.* As discussed above, CAA section 243(e) provides that CARB's standards shall replace the federal CFV and other motor vehicle standards if the CARB standards are, in the aggregate, at least as protective of public health and welfare as the CAA standards. While EPA believes that Congress preferred that the statutory standards be replaced with the CARB standards, EPA cannot at this time make the determination that CARB standards are, in the aggregate, at least as protective as the federal standards. Therefore, as mentioned earlier, EPA is at this time establishing federal standards that will apply to CFVs in the CFF and Pilot program.

As stated in the proposal, EPA believes that section 243(e)(2) requires a separate comparison of federal Phase I and Phase II standards to CARB standards. For the least stringent set of federal CFV standards (the Phase I standards), the appropriate comparison is to the least stringent set of California CFV standards (the TLEV standards). Similarly, the appropriate comparison for the federal Phase II standards is with the California LEV standards.

The Phase I standards will apply to the Pilot program in the 1996 MY. The phase II standards will apply to the CFF program in the 1998 MY, and to the Pilot program in the 2001 MY. Therefore, the federal Phase I standards will not apply to any federal CFV program after MY 2001. For this reason, EPA considers the California LEV standards to be the least stringent set of qualifying California standards after MY 2001, and currently intends to apply the California LEV standard to the CFF and Pilot programs at that time if replacement of the federal Phase II standards is warranted under section 243(e)(2). EPA requested comment in the proposal on this interpretation of the CAA and no adverse comments were received.

EPA must also compare CARB standards to the following federal requirements that apply to CFVs to assess whether "each of such sets of California standards is, in the aggregate, at least as protective" as the federal standards: cold CO emissions, evaporative emissions, onboard refueling vapor recovery, on-board diagnostics, total hydrocarbons, and non-methane hydrocarbon standards.

[9] The medium-duty truck class is a vehicle class unique to CARB and includes trucks between 6,000 and 14,000 lbs GVWR.

[10] See CARB's Proposed Regulations for Low-Emission Vehicles and Clean Fuels, Staff Report, available in EPA Air Docket A-91-23.

[11] California Code of Regualtions, Title 13, Definitions Section, Paragraph 15.

These standards are compared individually below.

i. *Cold CO emissions.* The currently waived California program does not have a cold CO standard which corresponds to the federal cold CO standard. It is not yet possible for EPA to consider CARB's cold CO standards in its comparison of the respective mobile source programs since California has not yet requested nor received a waiver.

In vehicles using liquid fuel, the difficult process of vaporizing cold liquid fuel for combustion contributes significantly to cold start emissions. Gasoline vehicles are most susceptible to this phenomenon in cold conditions. On July 17, 1992, EPA promulgated a cold CO standard (57 FR 31888, 40 CFR 86.201) in order to control CO emissions from gasoline-powered vehicles when operating in cold temperatures.[12] These regulations became effective for MY 1994. Although these regulations cover only gasoline-fueled vehicles, CAA section 242(b) extends the regulations to all CFVs regardless of fuel type by requiring that CFVs meet all federal requirements of Title II of the CAA that apply to gasoline vehicles of the same category and model year.

On January 14, 1993, CARB approved a cold CO standard which became effective in September 1993. CARB's regulations include gasoline-fueled, LPG, and alcohol-fueled vehicles, but do not cover other fuels. EPA is not able at this time to consider the CARB cold CO regulations because CARB has not requested nor received a waiver of federal preemption for its cold CO requirements.

ii. *Evaporative emissions.* The currently waived CARB evaporative emission standards and test procedures are not comparable to the recently promulgated federal evaporative emission standards and test procedures. Current federal regulations for evaporative emissions testing are effective through MY 1995, after which new federal regulations will be phased in. California has two sets of new evaporative emissions regulations: one set will be implemented only for 10 percent of California's MY 1995 vehicles and the second set, which CARB is in the process of finalizing at this time, will be phased in beginning in MY 1996. Indications are that CARB will seek a waiver for their 1996 evaporative emission regulations once they are finalized. EPA cannot yet consider CARB's revised evaporative emission regulations applicable to the 1995 and later model years because CARB has not yet received a waiver for them.

iii. *Refueling emissions.* Based on the currently waived California program, EPA cannot at this time conclude that CARB's refueling emission control regulations are as stringent as the federal onboard refueling vapor recovery (ORVR) standards. The currently waived California Program does not have a mobile source component which addresses refueling emissions. Federal Title II standards for ORVR will be required on certain vehicles beginning in MY 1998 (59 FR 16262; April 6, 1994).[13] CARB, which currently requires the use of Stage II vapor recovery equipment at most service stations in California, has held two workshops to discuss the proper application of refueling control (November 2, 1993 and March 15, 1994). CARB considered three options: adopting the federal ORVR regulations,; adopting a California-specific ORVR rule, test, or standard; or maintaining that California's current motor vehicle control program is, in the aggregate, at least as protective as the federal program notwithstanding the lack of ORVR controls. In a recent CARB mailout (94–27) dated May 27, 1994, ARB staff announced their proposal to allow the certification of ORVR-equipped vehicles for sale in California. However, the ARB staff did not address the equipped vehicles for sale in California. However, the ARB staff did not address the specific issue of whether ARB will require ORVR controls for certification. California's final determination regarding ORVR control must ultimately be approved by the Air Resources Board.

EPA is likely to consider California's lack of an ORVR aspect of its program in the next section 209 waiver proceeding for CARB regulations applicable to model years 1998 and later. EPA will likely decide in that context whether California's motor vehicle program absent ORVR is at least as protective of California as the federal program.

iv. *Volatile organic compound emissions.* EPA and California use different approaches to regulate emissions of volatile organic compounds (VOCs) from vehicles. Therefore, EPA believes it is useful to compare California VOC emission standards to the analogous federal standards on a fuel-by-fuel basis, as presented below. For gasoline- and diesel-fueled vehicles, EPA concludes that the CARB VOC emission standards are individually at least as stringent as the federal standards. However, EPA cannot make this comparison for gaseous and alcohol fuels at this time because CARB has not yet finalized RAFs (reactivity adjustment factors) for these fuels.

v. *Fuel-by-fuel comparison.* As stated above, EPA and CARB use different approaches to establish VOC emission standards. Traditionally, federal organic emissions controls have been based on total hydrocarbon (THC) emissions where mass of THC emissions is measured by a flame ionization detector (FID), implicitly assuming that all hydrocarbon emissions behave similarly with respect to ozone reactivity and FID response. This approach is not used for methanol-fueled vehicles because emissions from these vehicles consist primarily of methanol and formaldehyde, and a FID will only detect about 70 to 80 percent of the methanol and very little of the formaldehyde. For methanol-fueled vehicles, the methanol and formaldehyde emissions are sampled separately and measured chromatographically while other emissions are measured by a FID. The oxygen mass is factored out of the methanol and formaldehyde emissions resulting in "equivalent hydrocarbon emissions", which are then summed with the other FID-measured hydrocarbons to yield organic material (or total) hydrocarbon equivalent (OMHCE or THCE) mass. A third approach involves separately measuring methane and subtracting it from the THC to result in a non-methane hydrocarbon (NMHC) mass. For methanol-fueled vehicles, NMHC is equivalent to OMNMHCE (organic material non-methane hydrocarbon equivalent) or NMHCE (non-methane hydrocarbon equivalent).

The CAA has established THC and NMHC exhaust emission standards for conventional light-duty gasoline and diesel vehicles (0.41 g/mile for THC and 0.25 g/mile for NMHC). EPA has also established OMHCE and OMNMHCE standards for methanol-fueled vehicles (0.41 and 0.25 g/mile, respectively), an NMHC standard for CNG-fueled vehicles (0.25 g/mile), and THC and NMHC standards for LPG-fueled

[12] CAA Section 202(j) contains provisions for cold CO requirements.

[13] The phase-in schedule requires that ORVR standards apply to 40 percent of each manufacturer's LDV sales volume in MY 1998, 80 percent in 1999, and 100 percent in MY 2000. The same phase-in schedule applies to LDTs up to 8,500 lbs. GVWR but will not begin until MY 2001 for LDTs up to 6,000 lbs. GVWR and in MY 2004 for LDTs between 6,001 and 8,500 lbs. GVWR. The requirements do not apply to vehicles above 8,500 lbs. GVWR.

vehicles identical to the gasoline THC and NMHC standards.[14]

CARB measures VOC emissions as non-methane organic gases (NMOG). Under this approach, the mass of each organic compound except methane is measured and adjusted according to its ozone-forming reactivity relative to gasoline emissions. The sum of these adjusted masses is the amount of NMOG emitted from the vehicle. An alternative CARB NMOG method involves measuring the total mass of organic emissions and multiplying this mass by a single RAF for the particular fuel used. A RAF is equivalent to the ratio of the ozone-forming potential of emissions from a given fuel and the ozone-forming potential of conventional gasoline emissions. CARB determines a RAF for each fuel. Therefore, the relative stringency of the CARB and EPA standards for organic emissions should be compared for each fuel individually.

*Gasoline and Diesel Fuel*

For gasoline- and diesel-fueled vehicles, NMHC and NMOG standards are equivalent since CARB has established a RAF of 1.0 for these fuels. In addition, since the methane fraction of the THC emissions from these vehicles is very low,[15] and since CARB's TLEV and LEV NMOG standards (.125 and .075 g/mile, respectively) are well below the federal THC standard (0.41 g/mile), vehicles designed to meet the CARB NMOG standard will not exceed the federal THC standard. Thus, for gasoline- and diesel-fueled vehicles, the CARB NMOG standards are at least as stringent as the federal THC and NMHC standards.

*CNG Fuel*

The equivalency of CARB's NMOG standard with the federal NMHC standards cannot be strictly determined at this point for natural gas vehicles since CARB has not finalized a RAF for natural gas. Indications are that CARB may enact a CNG RAF between 0.5 and 0.6. If CARB adopts a RAF of 0.5 or more, then EPA expects that the CARB TLEV NMOG standard of 0.125 grams/mile (representing the least stringent set of CARB standards) will be at least as stringent as the 0.25 grams/mile federal NMHC standard. A RAF of 0.3 or more would make the CARB LEV NMOG standard of 0.075 grams/mile equivalent to the federal NMHC standard.

CNG vehicles being certified as CFVs for use in the CFF and Pilot program will not be subject to the federal THC standard, therefore, a comparison of the relative stringency between the federal THC and the CARB NMOG standard is not appropriate. In the Pilot program NPRM (58 FR 34727, June 29, 1993), EPA requested comment on the appropriateness of applying a THC standard to natural gas CFVs even though a THC standard is not applied to other natural gas vehicles. EPA believes that requiring CNG vehicles to meet the federal THC standard would exclude CNG vehicles from participating in the CFF and Pilot programs. CNG vehicles do produce high methane emissions; however, these emissions have a very low ozone reactivity and are therefore not a significant contributor to ozone formation, which is a primary objective of both programs.[16] In addition, CNG vehicles typically produce lower NMHC emissions than gasoline-fueled vehicles. Therefore, although a THC standard would strictly limit the amount of methane emissions a CNG vehicle could emit, this result would be contrary to the ozone-reduction goals of the programs when methane reactivity and lower NMHC emissions of CNG vehicles relative to gasoline-fueled vehicles are considered. A further consideration in deciding whether to apply a THC standard to CNG CFVs was the Agency's desire to maintain consistency with its Gaseous Fuels rule whenever possible; that rule also does not apply THC standards to CNG vehicles. Commenters were not supportive of CNG vehicles, including CFVs, being subject to a THC standard.

*LPG Fuel*

CARB has not finalized a RAF for LPG fuel. Therefore, EPA cannot at this time strictly compare the CARB NMOG standard to the federal NMHC standard for LPG vehicles. However, as with CNG, if CARB adopts a RAF of at least 0.5, EPA expects that the CARB TLEV and LEV NMOG standard will be individually at least as stringent as the federal NMHC standard.

*Alcohol Fuels*

CARB has finalized a RAF of 0.41 for M85 vehicles and EPA's analysis indicates that the CARB NMOG standard is individually as protective as the federal NMHC equivalent standard for M85 fuel. However, CARB has not established a RAF for E85 and M100 fuel. EPA thus cannot determine at this time whether the CARB NMOG standards are individually as protective of public health and welfare as the federal NMHC equivalent standards for all alcohol-fueled vehicles.

Regarding THC, methane emissions from alcohol-fueled vehicles, as with gasoline- and diesel-fueled vehicles, are generally low enough that vehicles meeting the CARB NMOG standards would also comply with the federal THC standards. Therefore, EPA concludes that the CARB NMOG standards are individually at least as stringent as the federal THC standard.

vi. *Onboard diagnostics.* The currently waived California onboard diagnostic I (OBD I) regulation is not comparable to the recently promulgated federal OBD regulation ( 58 FR 9468, February 19, 1993). The recently promulgated federal OBD regulation is comparable to the recently revised California OBD II regulation. In fact, EPA has decided that vehicles demonstrating compliance with CARB onboard diagnostic (OBD) regulations will be deemed to satisfy federal OBD requirements through the 1998 model year. However, EPA cannot properly consider California's OBD II regulations under section 243(e) of the CAA because California has not yet received a waiver of federal preemption for them. Thus, in subsequent model years after 1998, vehicle OBD systems must comply with the federal OBD requirements.

vii. *Summary.* While the basic CFV exhaust standards are identical to CARB standards, EPA is not able to find that each set of currently waived CARB standards are as protective as the federal standards. By comparison to the federal program established for CFVs today pursuant to section 242 and 243, the California program lacks comparable components for at least the federal cold CO standards, recently promulgated evaporative emission standards and on-board diagnostics, as well as mobile source control for vehicle refueling vapor recovery. Since EPA cannot at this time make the required determination under section 243(e)(2), EPA is promulgating federal standards and requirements in this final rule that will apply to CFVs. The CAA exhaust standards will apply to clean fuel vehicles, and will be administered and enforced according to CARB practices under CAA section 244, which is discussed later under "Administration and Enforcement".

Pursuant to section 242(b), federal requirements for cold CO, evaporative emissions, refueling emissions, OBD (onboard diagnostics), NMHC, and, with certain exceptions, THC will also apply to CFVs. As proposed, EPA is waiving

[14] EPA Gaseous Fuels Rule: "Standards for Emissions from Natural Gas-Fueled, and Liquified Petroleum Gas-Fueled Motor Vehicles and Motor Vehicle Engines and Certification Procedures for Aftermarket Conversion Hardware." (Published in the **Federal Register** on September 21, 1994).

[15] U.S. Environmental Protection Agency, Office of Mobile Sources, "Specifications for S.A.I. Runs," Memorandum from Chris Lindhjem, Penny Carey, and Joe Somers to the Record, April 24, 1992.

[16] See CAA sections 246, 247, and 248.

testing requirements for the cold CO standards for gaseous-fueled, diesel-fueled and electric CFVs when manufacturers demonstrate compliance with the cold CO standard through engineering analysis or test data.[17] EPA does not expect problematic cold temperature CO emissions from gaseous-fueled CFVs since they do not generally use fuel enrichment strategies to aid with cold starts. Because of efficient combustion in diesel-fueled vehicles and the minimal emissions inherent with electric vehicles, EPA does not expect problematic cold CO emissions from these vehicles either. Also as discussed above, EPA will not require CNG vehicles to meet the THC standard due to the conflict with provisions of part C of the Act and other factors.

In the NPRM, EPA had anticipated that the regulatory processes underway would allow EPA to conclude at the time of this final rule that each set of California standards is, in the aggregate, at least as protective of public health and welfare as the otherwise applicable standards set forth in section 242 and 243. The Agency still believes that such a conclusion may be possible in the future. EPA will continue to monitor developments on these issues and, if changing circumstances warrant, EPA intends to revisit this rule and propose replacing the federal CFV standards with CARB standards under section 243(e)(2). In such a situation, the Agency will supplement the record and provide an opportunity for comment as appropriate.

d. *Credit Generating Standards.* As mentioned previously, the CAA requires EPA to establish standards for Ultra-Low Emission Vehicles (ULEVs) and Zero Emission Vehicles (ZEVs) which are more stringent than the standards that otherwise apply to CFVs. Section 246(f)(4) of the CAA states that, "[t]he standards established by the Administrator under this paragraph for vehicles under 8,500 lbs. GVWR or greater shall conform as closely as possible to standards which are established by the State of California for ULEV and ZEV vehicles in the same class". As proposed, EPA is promulgating the ULEV and ZEV standards established by CARB in the California LEV program as the federal ULEV and ZEV standards. Section 249(d)(3) specifies that these and other requirements established for purposes of the credit program for the Clean Fuel Fleet program shall also apply for purposes of issuing credits in the Pilot Program.

A ZEV (e.g., an electric vehicle) is defined as a vehicle that complies with the applicable ZEV standards (40 CFR 88.101). Like CARB, EPA will determine compliance with the ZEV standard through engineering analysis rather than by testing. As per section 244 of the CAA, the federal ZEV standards will be administered and enforced in accordance with applicable CARB procedures for LDVs and LDTs.

Consistent with the CARB, EPA is establishing ZEV standards which require zero emissions of the following pollutants: NMOG, $NO_x$, CO, particulates, and HCHO. (Emissions from non-fuel sources, like tires, seats, paint, etc., will likely exist as they do for conventional vehicles and other CFVs.) Compliance with this requirement may be assessed through engineering analysis. This analysis will include a description and analysis of all primary or auxiliary equipment and engines which concludes that no emissions of the stated pollutants is possible. The engineering analysis will determine that the vehicle fuel system(s) does not contain either carbon or nitrogen compounds (including air) which, when burned, form the above regulated exhaust emissions. Such criteria will also assure that evaporative emissions will not occur. Emission testing will not be necessary. When applicable, compliance testing on ZEVs may be performed according to the testing requirements of CFR Part 86 and 88 (Federal Test Procedure) at EPA's discretion. As with other CFVs, ZEVs will be subject to the standards of part 88 which will be administered per CARB's procedures for LDVs and LDTs and which are incorporated by reference.

Like CARB, EPA will consider a vehicle with an auxiliary heater to be a ZEV if the heater will not operate at ambient temperatures above 40 degrees Fahrenheit and the heater's power and/or fuel source does not have any evaporative emissions in use. Commenters responding to this issue supported this definition, on which EPA requrested comment in the NPRM. This auxiliary heater will not be subject to the cold CO standard (contained in 40 CFR Part 86.201–94) because the cold CO regulations do not require the testing of heaters. In addition, CARB has provided a specific exemption for ZEVs from the CARB cold CO requirements (whether or not the vehicle is equipped with an auxiliary heater); thus EPA's action on this issue is consistent with CARB's approach. EPA may reconsider subjecting ZEV auxiliary heaters to the federal cold CO requirement through regulation if circumstances warrant in the future. Any vehicle with additional power system(s) or auxiliary engine(s) that might produce regulated pollutants (e.g., a hybrid vehicle or electric vehicle with an auxiliary power source to run other vehicle systems) will be subject to the standards of 40 CFR Part 88 (administered per CARB procedures, which are incorporated by reference) or future applicable regulations and might not qualify as a ZEV. One respondent requested that EPA establish ZEV exhaust emission standards above zero such that hybrid electric vehicles may qualify as ZEVs. EPA has not promulgated a test procedure for such vehicles and therefore standards have not been established.

e. *Administration and Enforcement Per California Practice.* As proposed in the NPRM, EPA will administer and enforce the numerical CFV exhaust emission standards in the same manner as does the state of California. Section 244 of the Act directs EPA to administer and enforce the numerical CFV emission standards in the same manner as CARB does for vehicles less than 8,500 lbs. GVWR. Specifically, section 244 states that when the applicable CAA and CARB numerical standards are the same,

> Such standards shall be administered and enforced by the Administrator (1) in the same manner and with the same flexibility as the State of California administers and enforces corresponding standards * * *; and (2) subject to the same requirements, and utilizing the same interpretations and policy judgments, as are applicable in the case of such CARB standards, including, but not limited to, requirements regarding certification, production-line testing, and in-use compliance.

The application of California administration and enforcement procedures does not depend on whether EPA has replaced federal CFV standards with California standards under section 243(e). Section 246(f)(4) provides that the credit generating standards are to be administered and enforced in the same manner as the other CFV standards. Therefore, EPA will administer and enforce the ULEV and ZEV standards in the same manner as does CARB.

Section 244 states that EPA shall use California administration and enforcement procedures unless EPA determines that doing so will not meet the criteria for a waiver of preemption under section 209. EPA believes that the application of current California procedures would meet the criteria for a section 209 waiver. However, in a letter dated February 17, 1994, CARB

[17] This provision is similar to the requirements for Otto-cycle vehicles which must show compliance with a PM standard in the Tier 1 rulemaking (56 FR 25730).

requested that EPA waive preemption under section 209 for certain proposed amendments to California certification test procedures. EPA is currently analyzing this waiver request to determine whether these test procedure amendments meet the criteria for a waiver under section 209. For example, EPA must determine if the California enforcement procedures, as amended, are consistent with section 202(a) of the Act.

Until it has completed its analysis of the waiver request, EPA cannot present a determination that the amended California regulation, and thus California administration and enforcement, do not meet the criteria for a waiver under section 209. Given that section 244 directs EPA to adopt California's procedures unless it makes such a determination, EPA believes that it is required to adopt today California's administration and enforcement procedures. EPA believes this adoption is in accordance with the plain language of section 244. If EPA later determines that the California enforcement procedures do not meet the section 209 waiver criteria, it will propose to amend its regulation regarding enforcement of CFVs according to California procedures.

California procedures currently require certification testing of gasoline vehicles either on California reformulated gasoline or on the current federal gasoline test fuel called "indolene." EPA believes that adopting this requirement as a part of adopting California administration and enforcement procedures will allow manufacturers to certify vehicles both for California as well as the other 49 states. In most cases, EPA believes that vehicle designs likely to be certified on California reformulated gasoline to the CFV standards will be capable of being certified to those standards on indolene as well with no technological changes.

It is possible that some manufacturers may wish to certify vehicles on a gasoline formulation different from either California reformulated gasoline or indolene. For example, a manufacturer may wish to certify and market a CFV engine family for use by fleet operators only in areas where federal reformulated gasoline requirements apply, but where California reformulated gasoline is unavailable or expensive. A CFV engine family certified only on California reformulated gasoline would not be an attractive option to fleet operators in areas covered by federal reformulated gasoline requirements because the vehicles in that family will not have been demonstrated to comply with the CFV standards on federal reformulated gasoline. If certifying that family to the CFV standards on indolene would require additional emission control development effort over the California-fuel version, but certifying on a federal reformulated fuel would not, the manufacturer might prefer to certify on a fuel representative of federal reformulated gasoline. Thus, such a manufacturer might choose to market a line of CFVs which could use the local fuel (reformulated gasoline) instead of only marketing California-fuel versions. In this kind of situation, then, allowing manufacturers the option of certifying to the CFV standards on other gasoline formulations might provide fleets covered by the CFF program with an additional vehicle choice, one which may help them comply in a cost-effective manner with the requirement that they operate their CFVs in covered areas only on fuels on which the vehicles comply with the CFV standards.

While the California procedures adopted here do not appear to permit certification on gasoline different from California reformulated gasoline or indolene, EPA is considering whether it has the authority to propose and promulgate a provision which would permit manufacturers to request certification on a different gasoline formulation. Particularly if interest is shown in such a provision on the part of fleets, vehicle manufacturers, fuel producers, states, or other interested parties, EPA may issue a proposed rule to permit certification on any gasoline formulation.

With respect to the NMOG standard, CAA sections 241(3) and 241(4) provide definitions for NMOG and base gasoline to be used in determining reactivity adjustments for alternative fuels. Section 241(4) further provides that EPA is to modify these definitions and the method used for determining reactivity adjustment factors to conform to the definitions and method used by CARB, provided CARB's definitions are, in the aggregate, at least as protective of public health and welfare as the CAA definitions. CARB's definition of NMOG, contained in the "definitions" section of its LEV program regulations, is identical to the CAA definition. The CAA section 241(4) specifications for "base gasoline" for the most part fall within the specification ranges for CARB's "baseline", i.e., "conventional", gasoline used by CARB in establishing the RAF for methanol-fueled vehicles.[18] Thus, EPA concludes that CARB's regulatory definition of "conventional gasoline" is at least as protective as the CAA definition of base gasoline for determining RAFs.

To ensure that the administration and enforcement of the CFV exhaust emission standards is undertaken in conformance with section 244, EPA incorporates by reference CARB's test procedures and other regulatory provisions regarding administration and enforcement. (The California Regulatory Requirements Applicable to the Clean Fuel Fleet and California Pilot Programs, April 1, 1994, have been incorporated by reference in 40 CFR 88.104–94(k)(2).) Any vehicle certified by CARB in California to the same CFV exhaust emission standards promulgated today will be considered to satisfy the requirements for certification to the federal CFV exhaust standards although the vehicle must meet all other Title II requirements as well as qualify as a CFV. For federal standards which are not currently identical to CARB requirements (e.g., cold CO emissions, evaporative emissions, THC, NMHC), the existing federal administration and enforcement provisions, including the applicable test procedures, will apply.

Provisions established in the Motor Vehicle and Engine Compliance Program Fees rule (57 FR 30044, July 7, 1992) give EPA the authority to recover all reasonable costs associated with enforcement and compliance activities performed by EPA. CFVs certified for use in the Pilot program may be subject to California-only fees if a manufacturer only intends to sell the CFV in California. However, other CFVs certified under the same process may be subject to fees applicable for a federal certificate. This would be the case if such CFVs were sold outside of California (e.g., CFVs used in the CFF program outside California).

As EPA proposed in the NPRM, vehicles certified as CFVs are to be labeled according to CARB's revised motor vehicle emission control label specifications.[19] These revised labeling requirements include labeling vehicles to designate that they meet LEV, ULEV or ZEV standards.

2. Heavy-Duty Clean-Fuel Vehicle Standards

Today's rule requires that engines intended for use in clean-fuel vehicles greater than 8,500 and up to 26,000 pounds GVWR meet a combined non-

[18] California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-duty Vehicles, Appendix VIII.

[19] Contained in California's proposed LEV program, California Code of Regulations, Title 13, section 1965.

methane hydrocarbon (NMHC) plus $NO_X$ emissions standard of 3.8 grams per brake horsepower hour (g/Bhp–hr). This new standard applies to all light and medium heavy-duty engines which are to be certified for inclusion in the Clean Fuel Fleet program, independent of fuel type. (Also, this standard applies to heavy heavy-duty engines participating in the Clean Fuel Fleet program for the purpose of generating credits.) Thus, it applies to vehicles operating on gasoline, diesel, alcohols, gaseous fuels, electricity, and other fuels.

Section 246(f)(4) of the CAA requires that credit-generating standards be promulgated for heavy-duty clean-fuel vehicles, including standards for heavy-duty ULEVs and ZEVs. The CAA requires these standards to be "comparable", which EPA interprets to mean comparable to the credit-generating standards established for light-duty vehicles.

a. *The Heavy-Duty Clean Fuel Vehicle Low-Emission Vehicle NMHC+$NO_X$ Standard.* Section 245 of the CAA sets forth the statutory framework governing establishment of the heavy-duty clean-fuel vehicle standards. Section 245(a) sets a combined NMHC+$NO_X$ standard of 3.15 g/Bhp-hr for engines intended for use in heavy-duty clean-fuel vehicles, reflecting a 50 percent reduction from the current combined HC and $NO_X$ standards for heavy-duty diesel engines (HDDE). Section 245(b) permits EPA to set a less stringent standard or standards if EPA determines that the statutory level of 3.15 g/Bhp-hr is infeasible for clean diesel-fueled engines. Under this provision, EPA must make a determination as to the feasibility of this standard for clean diesel-fueled engine technology, taking into account "durability, costs, lead time, safety, and other relevant factors." If the Administrator determines that the standard is not feasible for clean diesel-fueled engines, EPA may set a less stringent standard so long as it is at least a 30 percent reduction from the combined NMHC plus $NO_X$ standards for model year 1994 heavy-duty engines. A 30 percent reduction would be equivalent to a NMHC plus $NO_X$ standard of 4.41 g/Bhp-hr.

EPA determines today that a combined NMHC+$NO_X$ emission standard of 3.15 g/Bhp-hr is infeasible for clean diesel-fueled engines, for the reasons discussed below. Under Section 245(b)(1), EPA has the authority to establish a less stringent standard. The only statutory criteria for setting the less stringent standard is the requirement that the standard require at least a 30 percent reduction from the combined NMHC+$NO_X$ standards for the 1994 model year heavy-duty engines. Because the same standard that will apply to diesel-fueled vehicles will also apply to vehicles run on other fuels (including gasoline), EPA has looked at feasibility for both diesel- and nondiesel-fueled vehicles. Based on these considerations, EPA has decided to set the standard at 3.8 g/Bhp-hr.

(i) *Establishing the NMHC+$NO_X$ Standard.* In determining whether the 3.15 g/Bhp-hr NMHC+$NO_X$ standard is feasible for clean diesel-fueled heavy-duty engines, EPA believes that the CAA does not require a determination that the standard is feasible for every diesel engine family, but rather that it is feasible for at least enough diesel engine families such that fleet operators have enough choice to meet their requirements under the Clean Fuel Fleet Program. The clean-fuel vehicle standard is not a mandatory national standard for all heavy-duty vehicles manufactured, but instead applies to vehicles that fleet owners in certain areas must buy as a certain percentage of their vehicle purchases beginning in model year 1998.

In the NPRM, EPA proposed a level of 3.5 g/Bhp-hr NMHC+$NO_X$ based on concerns about technology, cost, leadtime, and durability for diesel engines as prescribed in section 245 (b) of the CAA. Based on the comments submitted to EPA and further analysis by the Agency, EPA believes that achieving HDDE emission levels below about 3.5 g/Bhp-hr NMHC+$NO_X$ would be technically difficult and costly to manufacturers and would not be achievable for an adequate number of light and medium heavy-duty diesel engine families by 1998. In their comments, engine manufacturers argued that the 3.15 g/Bhp-hr level, as well as the proposed 3.5 g/Bhp-hr level, would not be technologically and economically feasible for diesel-fueled engines. The Natural Gas Vehicle Coalition (NGVC) argued that the 3.15 g/Bhp-hr level would be feasible for diesel-fueled engines, based largely on a final report by Acurex under contract with CARB, entitled "Technical Feasibility Reducing $NO_X$ and Particulate Emissions from Heavy-Duty Engines." [20] As the analysis summarized below demonstrates, EPA agrees in part with each set of comments, but reaches a conclusion different from both.

As a part of its assessment of the potential HDDE emission control technology, EPA studied the Acurex report in depth. Like the Regulatory Support Document associated with this rule,[21] this report concludes that to achieve a $NO_X$-emission level of 2.5 g/Bhp-hr by 2000 ($NO_X$ levels needed to meet a 3.15 g/Bhp-hr NMHC+$NO_X$ standard),[22] diesel-fueled engines would need to be equipped with advanced catalytic trap or EGR (exhaust gas recirculation) technologies. In addition, the 2.5 g/Bhp-hr level would also require the use of a combination of some or all of the following emission control approaches for diesel-fueled engines: very high pressure fuel injection, variable geometry turbocharging, air-to-air aftercooling, optimized combustion, electronic unit injections with minimized sac volumes, optimized fuel injection nozzles, rate shaping, exhaust gas recirculation and sophisticated electronic control of all engine systems. Most of the devices described in the Acurex report are in relatively early stages of development and would require extensive changes in heavy-duty diesel-powered engines compared to today's designs. Acurex projects that achieving this level would be possible, but it would result in a 5 percent fuel economy penalty and a doubling of the engine price of a 1994 diesel-fueled engine. Based on reasons discussed throughout this section, EPA is very doubtful that this standard could be met in a cost-effective manner in time for the production of an adequate number of 1998 model year engine families. However, Acurex has projected that a 3.0 g/Bhp-hr $NO_X$-emission level (approximately equivalent to a 3.5 g/Bhp-hr NMHC+$NO_X$ level) is achievable for diesel-fueled engines by 1999 with the addition of EGR and oxidation catalyst technology without major new costs or fuel economy penalties.

Also, the NGVC argued that no technological breakthroughs are required to meet the 3.15 standard since each one of these technologies is already in use in one or more commercial diesel engine families to meet the 1994 and 1998 standards. They also state that all

[20] Acurex Environmental Project Under Contract with California Air Resources Board, Final Report, "Technical Feasibility of Reducing $NO_X$ and Particulate Emissions From Heavy-Duty Engines," Acurex Environmental Project 8450, Contract No. A132–085, April 30, 1993 (found in the docket for this rulemaking).

[21] U.S. Environmental Protection Agency, Office of Mobile Sources, "Regulatory Support Document: Emissions Standards for Heavy-Duty Fleets," June 1994 (found in the docket for this rulemaking).

[22] Current certification data indicate that generally all diesel engine families have HC certification levels less than 0.5 g/Bhp-hr, so most reductions would have to be achieved in $NO_X$ emissions. Thus, achieving a 3.15 g/Bhp-hr NMHC+$NO_X$ standard would essentially require $NO_X$-certification levels on the order of 2.5 to 2.7 g/Bhp-hr.

that would be required to meet the 3.15 standard would be the addition of EGR and possibly a particulate trap. Although it is true that some versions of the necessary technologies are in use today, EPA believes, as stated above, that the additional development effort needed to reach very low emission levels would be very costly and would likely limit or eliminate the availability of heavy-duty diesel engines for the program.

Furthermore, a review of the 1993 HDE federal certification results clarifies the magnitude of the developmental task for manufacturers to achieve extremely low- emission levels, especially for diesels. The data, which represents engines tested on federal certification fuel, indicates that no current gasoline or diesel HDE family meets or is close to the 3.15 g/Bhp-hr standard on federal certification fuel (for diesel and gasoline engines NMHC and HC are roughly equivalent). Of the 9 gasoline HDE families certified in 1993, three are within one g/Bhp-hr of the standard (see Figure 1). Based on the aftertreatment control technology used by and available for gasoline engines, EPA believes that 3.15 g/Bhp-hr level would be within reach for a number of these families. For diesel engines, however, the 1993 heavy-duty engine federal certification results presented in Figure 1 indicate that achieving the 3.15 g/Bhp-hr standard on federal diesel fuel would be extremely problematic for the majority of engine families by 1998. However, five of the 37 diesel engine families certified in 1993 are within one g/Bhp-hr of the 3.5 g/Bhp-hr NMHC+$NO_X$ level (equivalent to $NO_X$-certification level of 3.0 g/Bhp-hr), indicating that a standard in this range would more likely be achieved by a variety of diesel engines on federal certification fuel than would the 3.15 level. Only one of 37 diesel engine families certified in 1993 is within one g/Bhp-hr of the 3.15 level; most have combined HC and $NO_X$ certification levels of 5.5 g/Bhp-hr or less.

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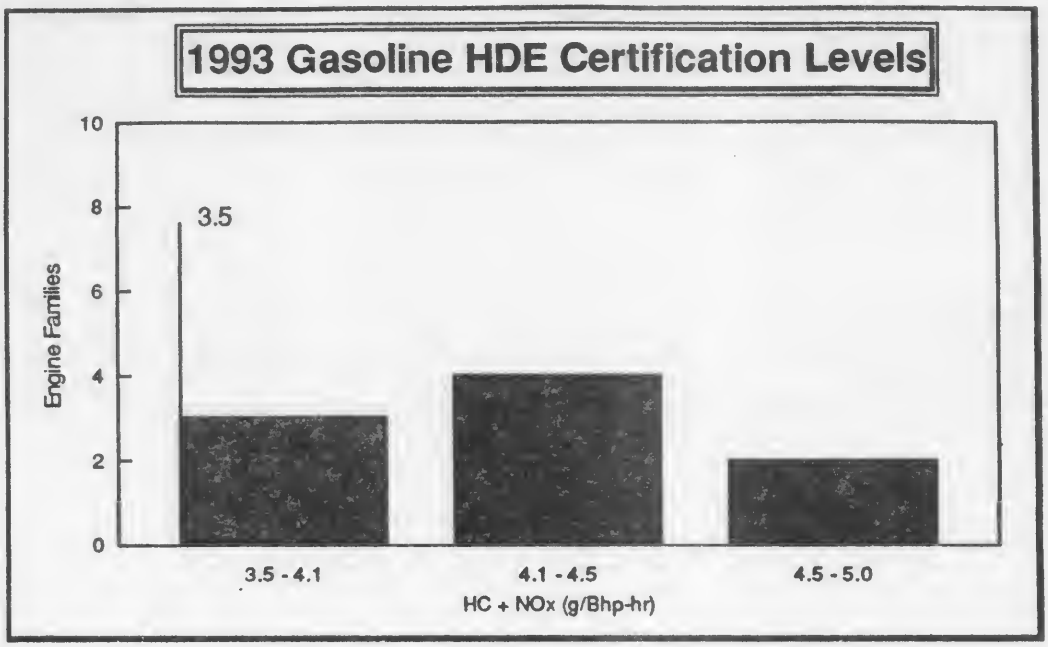


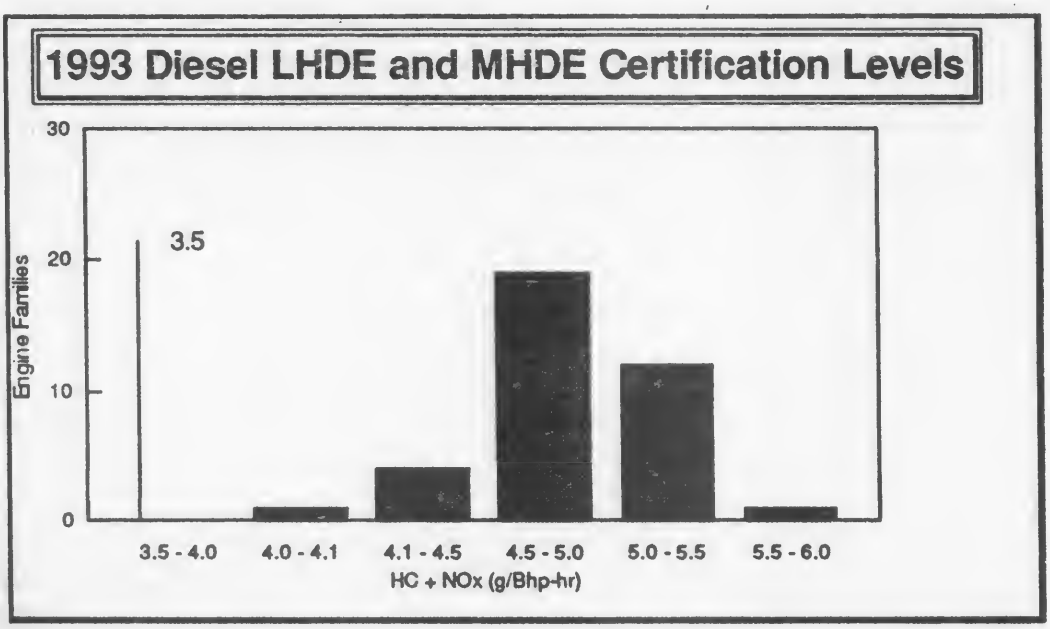


**Figure 1: 1993 Heavy-Duty Engine Certification Levels**

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There are two existing sets of regulations that will drive heavy-duty engine technology towards low NMHC+$NO_X$ levels: the federal 1998 4.0 g/Bhp-hr $NO_X$ standard, and the California Air Resources Board (CARB) LEV standard for diesel engines and incomplete medium-duty vehicles of 3.5 g/Bhp-hr NMHC+$NO_X$. EPA received many comments in Docket A–91–28 stating that the 4.0 g/Bhp-hr $NO_X$ standard for all 1998 and later HDEs, which is one g/Bhp-hr lower than the existing standard, is feasible for diesel engines. Development of the technology necessary to comply with the 4.0 g/Bhp-hr $NO_X$ standard will make it more likely that a significant number of light and medium diesel HDE families will be able to reach emission levels slightly below 4.0 g/Bhp-hr $NO_X$ on federal diesel fuel in the future, but it is unlikely that this federal standard will force the development of technologies needed to achieve a 3.15 g/Bhp-hr NMHC+$NO_X$ standard on such fuel (i.e., $NO_X$ levels of 3.0 g/Bhp-hr or less) since there is no federal requirement to reach lower levels.

CARB's 3.5 g/Bhp-hr NMHC+$NO_x$ standard is the only other impetus driving technology to achieve emission levels significantly below the 4.0 g/Bhp-hr $NO_x$ standard. Engine manufacturers have stated that the CARB 1998 3.5 g/Bhp-hr NMHC+$NO_x$ standard for incomplete medium-duty vehicles and diesel engines is feasible, and EPA agrees with CARB's expectation that manufacturers will market a range of LEV diesel HDEs in California which will meet the California standard. However, as with the federal 4.0 g/Bhp-hr $NO_x$ standard, it is unlikely the current California standard will prompt the additional technology development needed to reach a 3.15 g/Bhp-hr NMHC+$NO_x$ level since there is no requirement to reach levels below 3.5 g/Bhp-hr NMHC+$NO_x$. This is especially true for engines intended for vehicles between 14,000 and 26,000 pounds GVWR, which are covered by the Clean Fuel Fleet Program but not the current CARB LEV program.

EPA believes it is appropriate to look at the demand that will be created for heavy-duty CFVs as a relevant factor when determining whether a particular combined NMHC+$NO_x$ standard for diesel-fueled vehicles is technologically feasible under section 245(b)(1). For the reasons discussed above, EPA believes that achieving a level of 3.15 g/Bhp-hr NMHC+$NO_x$ for even a small selection of HDDEs by 1998 will be a very difficult task. Manufacturers will need to invest significantly in research and accelerated technology development, and any engines which reach production would be more costly (in terms of both engine price increase and fuel economy penalty, as discussed above), especially based on the relatively small demand that will be created by the Clean Fuel Fleet Program. In the absence of mandated production, EPA believes that a technological effort of this magnitude is likely to be undertaken by engine manufacturers only under circumstances of a certain, substantial market.

The CFF program contains no authority for a production mandate. Thus, the size and certainty of the market is central to whether diesel engines will be developed to meet the requirements of heavy-duty fleets covered by the fleet program. However, only a small number of vehicles will be needed by fleets for their fleet program purchase requirements. For example, during each year of the fleet program EPA estimates that a maximum of only about 2 percent (10,000) of total nationwide new heavy-duty diesel vehicles will be purchased by fleet operators to meet the Clean Fuel Fleet Program requirements.[23] This projected market decreases by about 25 percent if California opts out of the Clean Fuel Fleet Program; other potential opt outs by additional states may reduce the market to under one percent of nationwide heavy-duty diesel engine sales (or under about 5000 vehicles). By comparison, based on the implementation schedule of CARB's LEV program, the annual market (30,000) for vehicles required to meet CARB's LEV standard for diesel engines and incomplete medium duty-vehicles of 3.5 g/Bhp-hr NMHC+$NO_x$ is approximately three to six times as large as the potential federal clean diesel-fueled market.[24] CARB's program incorporates a phased-in percentage sales mandate for this larger number of vehicles.

EPA is concerned that a market of the size represented by the CFF program will not be seen as sufficient for engine manufacturers to justify the major voluntary technological development efforts necessary to reach a 3.15 g/Bhp-hr standard. Even if some manufacturers do launch such an effort, the likely higher cost and possible fuel economy penalty may make it much more difficult for diesel engine producers to compete for sales with gasoline or alternative fueled engine options which may be available. Since developing and producing vehicles for the fleet program is, by statute, voluntary, the Agency believes that it is very possible that, with a very low emission standard, no diesels will be produced for the clean fuel fleet program. The Act is clear in its intention that EPA may design the fleet program such that clean diesel vehicles can participate. EPA thus concludes that a standard of 3.15 g/Bhp-hr is not feasible for heavy-duty diesel-fueled CFVs taking into account costs, lead time, durability, and other relevant factors, and should not be promulgated at this time.

EPA reserves the right to reconsider through rulemaking the 3.15 g/Bhp-hr NMHC+$NO_x$ standard at a later time if diesel $NO_x$ control technology and the HD clean-fuel engine market develop to a point which would make this level feasible for heavy-duty diesel-fueled CFVs. Such a reconsideration may be prompted by developments in the ongoing CARB HD LEV program now under consideration.

ii. *NMHC+$NO_x$ LEV standard.* EPA is adopting an approach for the heavy-duty clean fuel vehicle engine standard that is very similar to the proposed approach. The intent of this approach is to implement a challenging standard in a way that harmonizes as completely as possible the federal standard with CARB's NMHC+$NO_x$ LEV standard for diesel engines and incomplete medium-duty vehicles. The Agency believes that the effect of this harmonization is to make the overall national market for clean HDDs significantly larger than it would be with either program alone and will thus assure that clean diesels will in fact be produced by 1998 for the clean fuel fleet program.

To meet these objectives, EPA is promulgating a combined NMHC+$NO_x$ clean-fuel engine emission standard of 3.8 g/Bhp-hr for heavy-duty engines certified on federal diesel certification fuel. Manufacturers may also certify heavy-duty engines to a standard of 3.5 g/Bhp-hr on California diesel certification fuel, which for a given engine is approximately equal in stringency to the 3.8 g/Bhp-hr standard using federal diesel certification fuel, as described below. The level of stringency represented by these standards should be achievable for at least several diesel engines with fairly straightforward technological improvements and

[23] U.S. Environmental Protection Agency, Office of Mobile Sources, "Estimated Number of Fleet Vehicles Affected by the Clean Fuel Fleet Program," Memorandum from Sheri Dunatchik to Docket A–91–25, June 11, 1991.

[24] Heavy-duty vehicle population projections for the California LEV program are based on the following: (1) light heavy-duty production reports submitted to the U.S. Environmental Protection Agency for model year 1991 and (2) New Truck Registrations by Manufacturer and State data from the "AAMA Facts and Figures 1993" (page 27) that shows California truck sales to be 10 percent of nationwide truck sales.

without a serious fuel economy penalty. EPA intends for this approach to assure that the same engines that are developed and produced for the California LEV program will also be acceptable to fulfill the requirements of the Clean Fuel Fleet Program. These vehicles and engines would, as specified by section 242(b) of the Act, also be required to meet all other applicable emission standards and requirements of 40 CFR Part 86 (such as standards for CO, particulates, smoke and evaporative emissions, as applicable).

As discussed in the NPRM, EPA recognizes that differences between California and federal certification and in-use diesel fuels may cause a difference in emission rates. CARB limits the aromatics content of the test fuel to a maximum of ten percent, while federal test fuel may contain as much as 35 percent aromatics. There is evidence to suggest that the use of federal test fuel can result in higher NMHC+$NO_X$ emissions than the use of CARB fuel in the same engine. Apparently, this occurs because the higher aromatic content of the fuel reduces its cetane rating and thus combustion is slightly less enhanced. Data reported in the NPRM for a 1991 prototype DDC Series 60 heavy heavy-duty engine showed this difference to be in the range of 0.3 g/Bhp-hr offset.[25]

In addition to the analysis of the 1991 prototype heavy-duty diesel engine referenced in the NPRM, EPA has used a similar analysis to examine diesel fuel effects based on data presented in a study performed on a 1993 prototype Navistar Diesel DTA 466 medium heavy-duty engine.[26] As had been done in the earlier analysis, EPA compared federal and California diesel fuels on the basis of aromatic percent and cetane number. EPA used the specified aromatic levels of 10 percent for California test fuel and 35 percent for federal test fuel and natural cetane numbers of 50 and 46 for typical California and federal certification fuels, respectively.[27] An API gravity number typical of both test fuels of 36 degrees was used. The following regression equations were developed in the study conducted on the 1993 engine for total hydrocarbon (THC) and $NO_X$:

THC [g/Bhp-hr] = 0.819 − 0.01942 * (Natural Cetane) + 0.01159 * (API)

$NO_X$ [g/Bhp-hr] = 6.593 + 0.01183 * (SFC Aromatics %) − 0.02497 * (Natural Cetane) − 0.02365 (API)

Substituting the values selected above for percent aromatics and cetane numbers into these equations, the Agency calculated a THC + $NO_X$ offset of about 9.7 percent. Applying this percent offset to the 3.5 g/Bhp-hr standard for CARB diesel fuel, the Agency analysis calculated that the offset would be about 0.34 g/Bhp-hr THC + $NO_X$. (This analysis assumed that the offset would apply equally whether THC or NMHC was being considered; the Agency has no data to indicate that the small methane emissions component in diesel emissions would affect the relative behavior of the engine on the two fuels).

Thus, the Agency concludes that diesel engines certified to a 3.5 g/Bhp-hr level on California diesel fuel would for typical engines, result in emissions of approximately 3.8 g/Bhp-hr for the same engines operated on federal diesel fuel, confirming the estimate made in the NPRM. In their comments engine manufacturers quoted the same data that EPA has used for the 1991 and 1993 prototype diesel engines, but used different assumptions for the cetane number for in-use diesel fuel. Also, the industry analysis did not adjust the offset proportionally to account for the much lower emissions of CFVs as compared to the current engine which generated the test data. In their comments, they concluded that the offset between federal certification fuel and California certification fuel may be more in the range of 0.55–0.66 g/Bhp-hr. EPA has examined the assumptions used in the industry analysis and concluded that the EPA analysis is a more appropriate approach for determining the expected emissions offset. While this conclusion is based on data from a single engine, the 1993 engine is of the appropriate size (medium heavy-duty) from which to draw a conclusion for this program and the study was done on a meaningful array of diesel test fuels. It is likely that if similar data were collected on other engines, somewhat different values for the CARB/federal fuel offset might be observed. Until such a time when additional data becomes available, EPA will assume that offsets for other heavy-duty diesel engines would range on either side of the 0.34 g/bhp-hr level EPA has developed for the 1993 engine. Thus, the Agency believes that its analysis reasonably accounts for potential fuel variability and that the 0.34 g/Bhp-hr value represents a reasonable estimate for the average emissions offset between federal certification fuel and California certification fuel. If a reduction catalyst is used as a means to reduce $NO_X$ levels, concerns over fuel variability diminish significantly. The CARB/federal fuel offset would tend to be less because the reduction catalyst would reduce emissions proportionally for both fuels. While the use of reduction catalysts may not be universal, EPA expects that some light/medium heavy-duty engine families will use reduction catalyst technology to meet the $NO_X$ target level. Additional data and analysis supporting the above conclusion of the offset between federal and California diesel fuel can be found in the Summary and Analysis of Comments document for this rulemaking.

Based on its analysis of the emissions offset above, EPA has set the emission standard for HDD CFVs certified on federal diesel fuel at 3.8 g/Bhp-hr NMHC + $NO_X$. This standard is consistent with EPA's intent that the heavy-duty clean-fuel vehicle standards be of as close to equivalent stringency as possible to the CARB LEV standard for similar vehicles to assure the production of an adequate number of diesel engine models for the clean fuel fleet program. Further, because the Agency is reasonably confident that in-use emissions of a engine certified at 3.5 g/Bhp-hr on California fuel will emit in the range of 3.8 g/Bhp-hr on federal fuel, EPA will grant a federal certificate of conformity to a manufacturer which demonstrates compliance with the 3.5 g/Bhp-hr standard on California certification fuel. While it is possible that individual engines certified on California fuel may experience a slightly different offset when operated on federal diesel fuel (e.g., when a cetane number is much different between the fuels), EPA believes that this will be the exception and that in-use performance on federal diesel fuel will average about 3.8 g/Bhp-hr. The use of federal fuel in engines certified on California fuel is consistent in this case with the fuel use

[25] "Effects of Fuel Aromatics, Cetane Number, and Cetane Improver on Emissions from a 1991 Prototype Heavy-Duty Diesel Engine," T. Ullman, R. Mason, and D. Montalvo, Southwest Research Institute, SAE Paper 902171., U.S. Environmental Protection Agency, Office of Mobile Sources, "Effect of Test Fuel Differences on NMHC+$NO_X$ Emissions," Memorandum from Michael Samulski to the docket of this rulemaking, February 23, 1993.

[26] Diesel Fuel Property Effects on Exhaust Emissions from a Heavy Duty Diesel Engine that Meets the 1994 Emissions Requirements, "C. McCarthy, Amoco Oil Co., W. Slodowske, E. Sienicke, and R. Jass, Navistar International Transportation Corp., SAE Paper 922267.

[27] The cetane numbers used in the EPA analysis on the 1993 heavy-duty engine were based on the following: (1) "Development of the First CARB certified California Alternative Diesel Fuel", M. Nikanjam, SAE Paper 930728, (2) Section 2282, Title 13, California Code of Regulations procedure for certifying diesel fuel formulations resulting in equivalent emissions reductions and (3) Cummins Engine Company and Caterpiller diesel fuel formulations for federal diesel fuel. These cetane numbers are natural cetane numbers (without cetane improver).

provisions of sections 246(b) and 241(2), since EPA has concluded that such engines indeed comply with the clean fuel vehicle requirements on federal diesel fuel.

As another way of harmonizing the CARB LEV program and the CFF program to ensure a sufficient number of HDDEs will be available by 1998 for the fleet program, EPA will only test engine families which were certified to CFV standards on California diesel fuel on diesel fuel meeting California specifications during any Selective Enforcement Audit (SEA) testing or in-use recall enforcement testing. The Agency believes that if manufacturers of HD CFVs certified on California fuel perceive that their engines may be subject to later EPA testing on federal diesel fuel, then they may desire to perform additional testing of these engines on federal certification diesel fuel for the purpose of assuring themselves of in-use compliance on federal diesel fuel. This approach to SEA and in-use recall testing should assure manufacturers that they will not need to perform any additional testing at certification beyond that required for California certification. Fuel meeting California diesel test fuel specifications is an acceptable test fuel under the FTP because it meets the federal fuel specifications. This policy of the Agency using fuel meeting California diesel test fuel specifications for SEA and recall testing applies only to CFVs. If the Agency becomes aware of changed circumstances which indicate that this policy is inappropriate, the Agency reserves the right to discontinue this policy.

For gasoline-fueled HD CFVs, EPA is aware of no evidence to suggest any significant difference in emissions between such vehicles operating on federal and California certification gasolines; thus the technical basis for separate standards which exists for diesels does not apply for gasoline engines. Commenters did not respond to the issue of the appropriateness of a single standard for all HDEs. However, EPA believes that in general, a single standard for all fuels provides equity among manufacturers of different types of engines for this program. Also, section 245 of the Act seems to indicate that Congress intended for there to be a single heavy-duty CFV standard. Therefore, as for diesel engines, EPA today also promulgates a standard of 3.8 g/Bhp-hr for gasoline clean-fuel vehicle engines certified on federal gasoline test fuel. As with diesel engines, gasoline engines demonstrating compliance with the California 3.5 g/Bhp-hr standard on California gasoline certification fuel will be eligible for a federal certificate.

Given the arguments above, as well as the fact that manufacturers have more than three years before the purchase requirements for clean-fuel fleet vehicles begin, EPA believes that several heavy-duty diesel engine families will achieve a standard of 3.8 g/Bhp-hr NMHC + $NO_X$ on federal certification fuel or 3.5 g/Bhp-hr NMHC + $NO_X$ on California certification fuel by the 1998 model year. Also, EPA believes that most gasoline-fueled HDE families can meet a standard of either 3.8 g/Bhp-hr on federal certification fuel or 3.5 g/Bhp-hr on California fuel by the 1998 model year. These clean fuel vehicle standards will apply to HDEs used in clean-fuel fleet vehicles of 8,501 to 26,000 lbs. GVWR to meet the purchase requirements of the fleet program.

*b. Heavy-Duty ULEV and ZEV Standards.* As previously discussed, section 246(f)(4) of the CAA requires EPA to promulgate emission standards for ULEVs and ZEVs, for the purpose of determining fleet program credits. The provision states that the standards:

> * * * shall be more stringent than those otherwise applicable to clean-fuel vehicles under this part* * * . The standards* * *for [light-duty] vehicles* * *shall conform as closely as possible to standards which are established by the State of California for ULEV and ZEV vehicles in the same class. For vehicles of 8,500 lbs. GVWR or more, the Administrator shall promulgate comparable standards for purposes of this subsection.

EPA interprets this comparability criteria to mean that ULEV and ZEV standards for heavy-duty engines should require approximately the same percentage of emission reduction compared to heavy-duty CFV LEV standards as light-duty CFV ULEV and ZEV standards require compared to light-duty CFV LEV standards. Under this provision, EPA must determine the appropriate level for the heavy-duty ULEV and ZEV standards. EPA proposed this interpretation and did not receive any comments objecting to it.

EPA also believes it is appropriate to take California's ULEV and ZEV standards into consideration and attempt to harmonize the federal and California standards where possible. As mentioned above in the section pertaining to the feasibility of the HD CFV LEV standard, EPA believes such harmonization is valuable because it helps create a single larger market for heavy-duty ULEVs and ZEVs rather than two smaller markets. A single larger market makes it more economical for manufacturers to produce heavy-duty ULEVS and ZEVs, which makes it more likely that manufacturers will choose to produce vehicles that can participate in the federal program. (The federal program does not have a sales mandate for manufacturers, so their participation is voluntary and controlled, in part, by market demand for their products.)

EPA also believes it has authority to consider harmonization of federal heavy-duty ULEV and ZEV standards and California incomplete medium-duty vehicle and diesel engine ULEV and ZEV standards in setting the federal standards.[28] As explained above, EPA interprets "comparable standards" to mean that heavy-duty CFV ULEV and ZEV standards must be comparable to light-duty CFV ULEV and ZEV standards. Since the Act requires EPA to establish federal light-duty ULEV and ZEV standards that conform as closely as possible to California's light-duty ULEV and ZEV standards, harmonization of the federal heavy-duty ULEV and ZEV standards and California incomplete medium-duty vehicle and diesel engine ULEV and ZEV standards could be part of the comparability determination. In addition, the direction of section 246(li) to set "comparable standards" gives EPA some discretion in establishing standards. EPA believes it is appropriate to consider California's standards in exercising this discretion. EPA believes that, since the federal HD ULEV and ZEV standards are voluntary credit-generating standards, their intended purpose is primarily to provide compliance flexibility for manufacturers and fleet operators. The Agency's goal then, in selecting these standards, is to provide the maximum flexibility allowable under section 246(f)(4) of the Act, while ensuring that there will be no negative impacts on the environment.

i. Ultra low-emission vehicle standards. EPA is adopting standards for heavy-duty ULEVs NMHC+$NO_X$, CO, particulate, and formaldehyde emissions as specified below in Table 5. These standards are the same as those that were proposed, except the formaldehyde standard, which is lower than originally proposed. In the opening statement at the public hearing for the proposal and in a memorandum that was placed in the docket and distributed at the public hearing,[29] EPA

[28] Beginning with the 1995 model year, CARB's medium-duty vehicles include vehicles with a GVWR of 14,000 pounds or less.

[29] U.S. Environmental Protection Agency, Office of Mobile Sources, "Request for Comment on Revised Formaldehyde Standard for Heavy-Duty ULEVs for the Clean Fuel Fleet NPRM," July 12, 1993, Memorandum from Bryan J. Manning through Tad Wysor to docket A-92-30 (Document Number III-A-03).

informed the public that the proposed standard for formaldehyde was a typographical error and requested comment on the change of the heavy-duty ULEV standard to the level specified in Table 5. EPA did not receive any comments objecting to this level for the formaldehyde ULEV standard. The final heavy-duty ULEV standards require reductions in emissions that are comparable to the respective emission reductions required of light-duty ULEVs, and are consistent with the respective requirements of the California LEV program.

As proposed, EPA is setting a combined NMHC + $NO_X$ HD CFV ULEV standard that is approximately a 30 percent reduction from the HD CFV LEV standard. The comparable light-duty CFV ULEV standards require reductions from light-duty CFV LEV standards of 38 to 50 percent of NMOG emissions and 45 to 50 percent for $NO_X$ emissions. Even though EPA has separate NMOG and $NO_X$ standards for light-duty CFV ULEVs, the Agency does not believe it is required to establish such separate standards for heavy-duty CFV ULEVs. Rather, EPA believes it is appropriate to have a combined NMHC + $NO_X$ heavy-duty CFV ULEV standard because heavy-duty CFV LEV standards have a combined NMHC + $NO_X$ standard rather than separate NMOG and $NO_X$ standards (as do light-duty CFV LEVs and ULEVs). Furthermore, a combined NMHC + $NO_X$ standard is consistent with the California incomplete medium-duty vehicle and diesel engine ULEV standard. EPA proposed this interpretation and did not receive any comments objecting to a combined NMHC + $NO_X$ standard for HDEs.

EPA also is setting specific emission standards for CO and particulates that require a reduction in emissions from the heavy-duty CFV LEV standards of 50 to 54 percent and 50 percent, respectively, as proposed. (For both CO and particulates, heavy-duty CFV LEVs must meet the same standards as do conventional heavy-duty vehicles. Thus, for these standards, the reductions in emissions for heavy-duty CFV ULEV standards are the same whether they are compared to conventional or CFV LEV heavy-duty standards.) The comparable light-duty CFV ULEV standards require reductions in CO and particulate emissions of 50 percent each from light-duty CFV LEV standards. These federal heavy-duty ULEV standards are identical to California's incomplete medium-duty vehicle and diesel engine ULEV standards.

Finally, EPA is also setting a specific heavy-duty ULEV standard for formaldehyde. The comparable light-duty CFV ULEV standard requires a reduction in emissions ranging from 39 to 52 percent from light-duty CFV LEV standards. Though formaldehyde is not regulated for heavy-duty CFV LEVs, formaldehyde is regulated in the light-duty CFV ULEV standards. EPA believes that heavy-duty vehicles that emit formaldehyde are likely to participate in the CFV ULEV program. Because emissions of formaldehyde are of significant concern to EPA and to Congress, as evidenced by the inclusion of formaldehyde standards for light-duty CFV LEVs and the inclusion of formaldehyde as a hazardous air pollutant, EPA believes it is appropriate to include standards for formaldehyde emissions in the heavy-duty CFV ULEV program. EPA has the authority to regulate formaldehyde emissions not only under section 246(f)(4), but also under CAA sections 202(a) and 301(a). Also, the CARB LEV program includes a formaldehyde ULEV standard for diesel engines and incomplete medium-duty vehicles. Therefore, it is consistent with the CARB LEV program to set a formaldehyde standard for federal HD ULEVs. The standard promulgated today is identical to CARB's incomplete medium-duty vehicle and diesel engine ULEV formaldehyde standard.

TABLE 5.—EMISSION STANDARDS FOR MODEL YEAR 1998 AND LATER HEAVY-DUTY VEHICLES

| Vehicle type | THC (g/Bhp-hr) | $NO_X$ (g/Bhp-hr) | NMHC + $NO_X$ (g/Bhp-hr) | CO (g/Bhp-hr) | Particulate [1] (g/Bhp-hr) | OMHCE (g/Bhp-hr) | HCHO (g/Bhp-hr) |
|---|---|---|---|---|---|---|---|
| Conventional Gasoline <= 14,000 GVWR | 1.1 | 4.0 | ..... | 14.4 | ..... | 1.1 | ..... |
| Conventional Gasoline >= 14,000 GVWR | 1.9 | 4.0 | ..... | 37.1 | ..... | 1.9 | ..... |
| Conventional Diesel | 1.3 | 4.0 | ..... | 15.5 | 0.10 | 1.3 | ..... |
| LEV Certified on Federal Fuel | [2] | [2] | 3.8 | [2] | [2] | [2] | ..... |
| LEV Certified on California Fuel | [2] | [2] | 3.5 | [2] | [2] | [2] | ..... |
| ULEV | [2] | [2] | 2.5 | 7.2 | 0.05 | [2] | 0.025 |
| ILEV | [2] | [2] | 2.5 | 14.4 | 0.10 | [2] | 0.050 |

[1] Standards for particulate matter (PM) apply only to diesel-fueled vehicles.
[2] HD CFVs must meet conventional vehicle standards for THC, $NO_X$, CO, PM, and OMHCE.

Based on the Acurex report, Regulatory Support Document, and comments received from the Natural Gas Vehicle Coalition, EPA believes that alternative fuel vehicle technology will be available to meet these standards by 1998, and that gasoline and diesel engines may also be able to achieve these ULEV levels by that time or shortly thereafter. In any event, covered fleet operators are never required to purchase ULEVs to meet the requirements of the fleet program.

ii. *Zero-emission vehicle standards.* Zero-emission vehicles (e.g. electric vehicles) are vehicles which have no emissions of the pollutants of concern. Therefore, as proposed, EPA today establishes heavy-duty ZEV standards of zero for NMHC + $NO_X$, CO, particulates, and formaldehyde. (Emissions from non-fuel sources (e.g. tires, seats, paint, etc.) will likely exist as they do for conventional vehicles and other CFVs.) These final heavy-duty ZEV standards each require a 100 percent reduction in emissions from the heavy-duty LEV standards, which for each pollutant is comparable to the respective emission reductions required of light-duty CFV ZEVs. Furthermore, these federal ZEV standards are identical to California's incomplete medium-duty vehicle and diesel engine ZEV standards.

Compliance with the ZEV standards may be assessed through engineering analysis, which shall include a description and analysis of all primary or auxiliary equipment and engines which concludes that no emissions of the stated pollutants is possible. The engineering analysis must determine that the vehicle fuel system(s) does not contain either carbon or nitrogen compounds (including air) which, when burned, form the above regulated exhaust emissions. Such criteria will also assure that evaporative emissions will not occur. Given these criteria there is no need to perform emission testing because the above pollutants cannot be emitted from the vehicle. However, compliance for ZEVs may be assessed

through testing by performing the tests required by Parts 86 and 88 (Federal Test Procedure) when applicable.

Any vehicle with additional power system(s) or auxiliary engine(s) that might produce regulated pollutants (e.g. hybrid vehicle or an electric vehicle with an auxiliary power source to run other vehicle systems) will be subject to the testing requirements of Part 86 or Part 88 or future applicable regulations and might not qualify as a ZEV. A ZEV with a heater will be considered a ZEV as long as the heater will not operate at an ambient temperature above 40°F and the heater's power/fuel source does not have evaporative emissions in use.

c. *Other Issues*—i. *Flexible- and Dual-Fuel HDEs.* EPA is not promulgating a set of emission standards for flexible- and dual-fuel heavy-duty vehicles. (Flexible- and dual-fuel vehicles are also commonly referred to as variable- and bi-fuel vehicles, respectively.) Section 243(d) of the Act prescribes emission standards for flexible- and dual-fueled light-duty vehicle and light-duty trucks. EPA is establishing these standards today (see II.A.1.a). The directive of section 243(g) that "nothing in this section shall apply to heavy-duty engines" makes it clear that section 243(d) does not require EPA to establish flexible- and dual-fueled standards for heavy-duty engines.

Even if EPA has authority to promulgate such standards (a question which we do not answer here), EPA does not think it is appropriate to exercise that authority at this time. As Natural Gas Vehicle Coalition suggested in their comments, it is possible that similar standards could be implemented for HDEs in the same manner as prescribed in the statute for light-duty vehicles and light-duty trucks. However, as described in the proposal, separate NMHC standards are not necessary for flexible- or dual-fuel HDEs since similar behavior of NMHC (or the equivalent (NMHCE)) would be expected for all fuel types. In addition, as discussed above, heavy-duty vehicles operated on conventional gasoline and diesel fuel will be able to comply with the CFV standards by 1998, and thus, there is not a compelling technical reason to have slightly higher standards for the vehicle when it is operated on clean alternative fuel. For all these reasons, EPA is not adopting separate standards for flexible- or dual-fuel HDEs.

Section 241(2) defines clean alternative fuel for flexible- or dual-fuel vehicles and engines as the fuel(s) on which such vehicles are certified to the CFV standards. EPA concludes from this statutory language that engines certified on California gasoline or diesel fuel only will need to operate exclusively on that fuel in covered nonattainment areas. (For single-fuel vehicles and engines, section 241(2) requires operation in covered areas on the fuel(s) on which they "comply" with the CFV standards. As discussed above, EPA has determined that single-fuel HDEs certified on California gasoline or diesel fuel comply with the HD CFV standard on federal fuels.)

ii. *Optional LDT Certification.* For a number of years, manufacturers have had the option of certifying their HDEs used in vehicles between 8501 and 10,000 lbs. GVWR using the LDT emission standards and provisions. This provision is found in 40 CFR 86.085–1(b). EPA finds no reason why the treatment of CFVs should be different than conventional vehicles in this regard, and thus for consistency EPA will also make this option available for clean-fuel HDEs.

iii. *Heavy-duty test procedures.* While this action establishes NMHC + NOx standards for heavy-duty vehicles and engines, EPA regulations historically have not included test procedures for the measurement of methane separate from other hydrocarbons, and thus the calculation of NMHC emissions would not have been possible. Prior to today's regulations the heavy-duty test procedures only measured the total amount of hydrocarbons (including methane), but did not separately measure the amount of any individual hydrocarbons such as methane. Therefore, EPA is promulgating additional test procedures for the separate measurement of methane and calculation methods for NMHC emissions, as discussed below. Test procedures for measurement of total hydrocarbon (THC) emissions will be unchanged, and EPA will continue the current practice of using a flame ionization detector (FID) for THC measurement.

The test procedures call for the separate measurement of methane using gas chromatography [30] as specified in the Society of Automotive Engineers (SAE) Recommended Practice J1151. This is consistent with both the previously established EPA procedure for light-duty vehicles and light-duty trucks (40 CFR 86.111–94 and 40 CFR 86.140–94), and the California procedure for methane measurement. This approach does not permit continuous methane measurement of exhaust samples and will require that a bag sample be collected for all classes of vehicles and engines. (The SAE Recommended Practice J1151 is incorporated by reference in sections 86.111–94(b)(3)(vii) and 86.1311–94(b)(2)(iii) of the regulatory text and is available in EPA Air Docket A–92–30.)

Under the approach for measuring NMHC, THC will first be measured using the FID. Then, methane will be measured using gas chromatography. This methane measurement will then be multiplied by a "FID response factor." This response factor is necessary because the FID responds differently to methane than it does to other hydrocarbons. In order to find what portion of the FID's THC reading is attributable to methane, the tester must know the relationship between the FID response to other hydrocarbons and to methane. Such a "FID response factor" is calculated by noting the response of the FID, calibrated for typical HCs, to a known quantity of methane. For example, if a sample known to be 10.0 grams of methane gives a FID reading of 11.0 grams, then the FID response factor is 11.0/10.0 or 1.10. The mass of NMHC is then the difference between the THC (as measured by the FID) and the methane (as measured by gas chromatography), multiplied by the FID response factor.

For natural gas vehicles (NGVs), the Natural Gas Vehicle Coalition and the American Gas Association suggested that the EPA adopt the CARB method of direct measurement of NMHC by gas chromatography. This issue was also raised in response to the Gaseous Fuels Rule NPRM (proposed in November, 1992), and EPA has addressed all concerns related to the measurement of NMHC emissions for NGVs in the subsequent Gaseous Fuels FRM. The NMHC measurement method promulgated in this section is the same as the method established in the Gaseous Fuels FRM. If the NMHC measurement procedure for NGVs is revisited and changed in the future, then any revised method will apply to clean-fuel vehicle testing as well.

In order to provide manufacturers with additional flexibility, EPA proposes to make the measurement of methane (and subsequent calculations) optional. Manufacturers would be allowed to measure and report THC emissions for compliance with the NMHC standards. Since THC emissions are the sum of the methane and NMHC emissions, they will be higher than the NMHC emissions alone; thus, if the THC emissions are lower than the standard, the NMHC will also be below the

[30] Gas Chromatography—A separation technique in which a sample of the gaseous state is carried by a flowing gas (carrier gas) through a tube (column) containing stationary material. The stationary material performs the separation by means of its differential affinity for the components of the sample.

standard. While this option in effect increases the stringency of the standard, some manufacturers may find that the savings associated with using a simpler test procedure justify certifying under this option. This is especially true for diesels, where the methane fraction of THC emissions is small.

iv. *Averaging, trading, and banking.* The Agency has previously established an extensive credit exchange program for $NO_x$ and PM emissions from heavy-duty engines [31]. Under this program, a manufacturer can take emissions credits for producing vehicles that are below the applicable standards, and then use those credits either on its own engines within the same averaging set or to sell to other manufacturers for use in families in the same averaging set which do not meet the applicable standards (trading). These emission credits can be used in the year generated or retained for later use (banking). Fleet average emissions are unchanged by this program.

It would be inappropriate for a manufacturer to receive certification emission credits for vehicles certified under part 88 (i.e., CFV LEVs, ULEVs and ZEVs) for participation in the fleet program. The CFV standards are mandatory for covered fleet vehicle purchases; to also allow manufacturer credits for certification of the same vehicles would result in less emission reduction than is contemplated in the Act. Thus, CFVs certified under part 88 for use in the fleet program for either compliance or credit purposes shall be excluded from the manufacturers' credit exchange program. By contrast, single-fuel engines that are certified under part 86 may not participate in the fleet program even if their emissions meet CFV standards. Therefore, such engines may generate manufacturer certification credits. However, dual- and flexible-fuel vehicles certified under part 86 may only be able to generate certification emission credits based on the least stringent standard to which the vehicle is certified since the manufacturer has no control of the fuel used by the vehicle owner.

In order to allow a distinction between engines which are eligible for the fleet program and those that are not, EPA requires manufacturers to have different engine lables. Those engines labeled under Part 88 must include on the label an indication that this engine is intended to be part of a clean-fuel vehicle program, and as such, they will be excluded from the manufacturers' credit exchange programs. Those engines labeled under Part 86 only will not include any indication on the label that the engine meets any of the emissions requirements of Part 88, and as such, they will be excluded from all clean-fuel vehicle programs and may be included in a manufacturers' credit exchange programs. EPA will allow manufacturers to divide a clean-fueled engine family into two engine families, one labeled under Part 88 (the Part which regulates clean-fuel fleet vehicles) and one labeled under Part 86 (the Part which regulates conventional vehicles) only. The Agency believes that this approach will prevent "double counting" of emissions benefits, but will still provide the manufacturers flexibility in determining the most cost effective means of complying with the requirements of Part 86.

Furthermore, EPA has decided not to pursue the proposed Credit Exchange Programs for Manufacturers of Heavy-Duty Clean-Fuel Fleet Vehicles. The programs appeared to be administratively burdensome with minimal economic and emission benefit, and there was no support expressed in the comments for these programs.

v. *Labeling.* Section 86.095–35 of Part 86 requires that all heavy-duty vehicles and engines certified by EPA have a permanently affixed label indicating that this vehicle or engine meets all of the applicable requirements of Part 86. All heavy-duty LEVs, ULEVs, and ZEVs will be required to meet additional labeling requirements so the purchaser (e.g. fleet operator) knows the vehicle is a CFV and "double counting" of emissions benefits by the purchasers or manufacturers of CFVs is prevented as discussed above in the Averaging, Banking, and Trading section. Those clean-fuel vehicles and engines that are regulated under both Part 86 and Part 88 (e.g., gasoline-fueled vehicles, methanol-fueled vehicles) shall meet the standard labeling requirements of Part 86 with the addition of a statement that this vehicle or engine meets the applicable heavy-duty LEV, ULEV, or ZEV standards. However, certain clean-fuel vehicles (for instance electric vehicles) are regulated under Part 88 but have not yet been regulated under Part 86. For these clean-fuel vehicles not yet regulated under Part 86, the manufacturer shall affix a permanent label that indicates that the vehicle or engine meets the requirements of Part 88 for heavy-duty LEVs, ULEVs, or ZEVs, as applicable, but does not necessarily meet the requirements of Part 86. The reason for this requirement is to inform the consumer that the vehicle may be used by a fleet operator towards meeting the purchase requirements of the Clean Fuel Fleet program, but the vehicle is not eligible to be used in the averaging, trading, and banking program in Part 86.

*B. Conversions to Clean-Fuel Vehicles*

CAA section 247 states that fleet owners may meet clean-fuel fleet vehicle purchase requirements through the conversion of existing or new gasoline- or diesel-powered vehicles to clean-fuel vehicles. A converted CFV will thus be considered a new vehicle for the purposes of the Clean Fuel Fleet program, and so it will be eligible to meet CFF purchase requirements and to earn credits and TCM exemptions. For this purpose, a clean-fuel fleet vehicle (or engine) is one which meets the applicable CFV emission standards and other requirements as prescribed in CAA sections 242 through 245.

1. EPA's General Regulatory Approach for Conversions of Vehicles

EPA today codifies the exemption from tampering liability for conversion of gasoline or diesel-fueled vehicles to clean fuel vehicles if the converted vehicles comply with the applicable clean fuel vehicle standards and the conversions are performed in compliance with EPA's conversion regulations being promulgated today. Section 247(e) states that such conversions shall not be considered as violations of the tampering prohibition in Section 203(a)(3).

Since conversions involve changes to vehicles/engines that have previously been certified as meeting applicable emission standards, conversions are typically subject to the tampering prohibitions of CAA section 203(a)(3), which prohibit tampering with emission control devices. The initial guidelines established by EPA regarding the enforcement of tampering prohibitions are contained in the two documents entitled "Mobile Source Enforcement Memorandum No. 1A", dated June 25, 1974, and "Fact Sheet: Conversion of Vehicles and Engines to Operate on Natural Gas or Propane", dated November 1, 1991. In the 1990 amendments to the CAA, section 203 was amended to limit the scope of the tampering provisions of section 203(a)(3). As amended, an exemption to the tampering provisions of section 203(a)(3) is provided where a conventional vehicle is converted "* * * for use of a clean alternative fuel and if such vehicle continues to comply with section 202 standards when operating on the alternative fuel * * *

[31] "Certification Programs for Banking and Trading of Oxides of Nitrogen and Particulate Emission Credits for Heavy-Duty Engines;" Final Rule, 55 FR 30584, July 26, 1990.

and if in the case of a clean alternative fuel vehicle (as defined by the Administrator), the device or element is replaced upon completion of the conversion procedure and such action results in proper functioning of the device or element when the motor vehicle operates on a conventional fuel."

In addition to the general exemption for clean fuel conversion from the tampering prohibitions, section 247(d) creates a special exemption for conversions performed pursuant to EPA's regulations issued under section 247. Thus, if a conversion is performed in compliance with the regulations issued today, the conversion will not violate the tampering prohibition of section 203(a)(3). For any conversions that are not performed in compliance with today's regulations (e.g., installation of a not-certified conversion configuration), liability for tampering will be determined based on section 203(a).

Issues related to the conversion of vehicles to alternative fuel use are addressed in the NPRM and FRM on gaseous-fueled emission standards, (FRM: published in the **Federal Register** on September 21, 1994), hereafter referred to as the Gaseous Fuels Rule. The conversion provisions in the Gaseous Fuels Rule apply to all conversions regardless of fuel type and hence form the basis for the certification procedures established in today's rule for vehicles converted to CFVs except where superseded by the requirements of today's rule. The Gaseous Fuels Rule provides that a vehicle conversion will not be considered tampering if the vehicle has been converted to a configuration which has been certified by EPA as meeting applicable emission standards. For vehicles converted to use fuels for which no standards exist, the provisions of Memorandum 1A apply, and EPA will not consider a modification to a certified emission control configuration to be tampering if the emissions from the vehicle are not increased as a result of the modification. Consistent with the Gaseous Fuels Rule, today's rule provides that in order to be considered clean fuel vehicles, conversion configurations of vehicles/engines must include all of the hardware necessary to allow a vehicle to operate on a fuel other than the fuel for which the vehicle or engine was originally manufactured.

2. Requirements for Clean Fuel Fleet Vehicle Conversions

Section 247(b) of the CAA directs EPA to promulgate regulations governing conversions of conventional vehicles to CFVs that "* * * will ensure that a converted vehicle will comply with the standards applicable under this part to clean-fuel vehicles." While the conversion provisions in the Gaseous Fuels Rule will require that emissions from converted vehicles meet the applicable emission standards whenever manufacturers certify conversion configurations, those provisions are not intended to fulfill all of the requirements of section 247 of the CAA. Therefore, in addition to the general guidelines for converted vehicles discussed in the section above and in the Gaseous Fuels rule, today's rule establishes that certification must be obtained from EPA before a converted vehicle can be sold to the public as a clean fuel fleet vehicle. The following sections describe the regulations which are promulgated by today's rule to satisfy the requirement of section 243(b).

a. *Responsible parties: certification, warranty and liability provisions for CFV vehicles.* EPA in today's rule holds that the certifier of the conversion configuration is liable as a manufacturer for purposes of sections 206 and 207 and related enforcement provisions. Imposing such liability on the certifier is an outgrowth and systhesis of the two options presented in the proposal. Following is a discussion of the significant advantages and disadvantages inherent in each of the proposed options, a response to pertinent pubic comments, and the final approach being promulgated today.

Section 247(c) states that "any person who converts conventional vehicles to clean-fuel vehicles * * * shall be considered a manufacturer for purposes of sections 206 and 207 and related enforcement provisions." To implement this requirement EPA considered two options in the NPRM regarding the definition of the "person who converts."

Under the first proposed option, the person(s) who installs a conversion configuration on a vehicle in order to convert the vehicle into a CFV would be liable as a manufacturer under section 247(c). Thus, a person installing a conversion kit would be required to obtain a federal certificate of conformity for that conversion configuration. Under the second proposed option, both the conversion kit manufacturer and the installer of the kit would be liable as manufacturers under 247(c). In the second option, the kit manufacturer and the installer would both have responsibilities in demonstrating that a vehicle converted to a CFV complies with the CFV standards and with EPA's regulations promulgated under section 247(b).

A significant advantage inherent in the first option is that liability is easily assigned and enforcement is less complicated if a single entity is held accountable for warranting each vehicle's emissions performance and is subject to production line testing requirements. The existence of such a sole liable party may also make it easier for purchasers of converted vehicles to seek redress for emissions performance failures under warranty provisions.

However, EPA believes that the installer may not be the appropriate party on which to focus all liability. Commenters indicated that the kit manufacturer is in the best position to perform the required certification testing. In addition, EPA believes that the first proposed option would result in a larger number of certifiers, and multiple certificates for the same conversion configuration. This would complicate enforcement and warranty actions by increasing the number or parties against whom such actions would need to be taken.

Commenters also noted the need for strong warranty and recall provisions in order to increase public confidence in the performance of converted vehicles. EPA believes that the existence of a large number of certifier-installers, many of whom may be relatively small businesses with limited financial resources [32] will adversely affect the confidence of purchasers of converted vehicles in their ability to pursue warranty claims.

The second option offers the advantage of allowing EPA to hold kit manufacturers legally responsible for some or all of the certification, production line testing, in-use testing, warranty, and recall requirements. EPA believes it will be more practical to focus enforcement efforts on kit manufacturers than on installers, given the large number of installers in relation to the number of kit manufacturers. This option would also allow EPA to distribute the responsibility for certification, and warranty and recall between a kit manufacturer and installers in a manner consistent with their abilities and level of involvement in the conversion process. Public comment was generally in support of adopting this option and favored holding conversion kit manufacturers responsible for in-use emission performance of kit hardware except where performance failures result from poor installation.

[32] U.S. Environmental Protection Agency, Office of Mobile Sources, "A Preliminary Assessment of the Gaseous Fuels Aftermarket Conversions Industry, EPA Contract 68–C1–0059, September 28, 1992.

A significant disadvantage in this approach is that, though EPA could bring an action against either the kit manufacturer or the installer for any violation of the Act, as both would be jointly and severally liable, factual disputes between the parties regarding the actual cause of the emission failure could become a complicating factor during an enforcement action. This could lead to lengthy proceedings between the involved parties which in turn may delay resolution of emission problems and/or the compensation to vehicle owners for in-use performance problems covered under vehicle warranty.

The definition of the "person who converts" for the purposes of section 247(c) that will be promulgated by today's rule is as follows. Any entity (kit manufacturer, installer, or other) may apply for a certification for a conversion configuration and receive a federal certificate of conformity. This certifier will be considered the "person who converts" under section 247(c) and will assume all responsibility as the manufacturer under sections 206 and 207. If the conversion is performed by an entity other than the certifier, the certifier must provide the installer with instructions for proper installation, and the installer must follow these instructions. While the certifier is responsible as the manufacturer, if the installer installs improper equipment or performs a faulty installation, EPA may hold the installer responsible as well under the tampering provisions of the Act.

Under this approach a single party, the certifier, will be responsible for warranting the vehicle's emissions performance, and liability can easily be assigned for enforcement and warranty purposes as under the first option considered in the NPRM. In addition, this approach avoids the disadvantages inherent in the first option by providing industry with the flexibility to determine which business entity is in the best position to provide EPA with the data necessary for certification and to assume responsibilities as the manufacturer. Based on public comment EPA anticipates that in most cases the kit manufacturer will be the certifying party. Since the certifier will assume liability for in-use vehicle performance failures that result from faulty installations, EPA expects that the certifier will develop oversight programs to insure that installations are performed properly and will enter into indemnification agreements with installers. Kit manufacturers would be wholly within their rights to require such indemnification agreements before allowing installers to install their kit.

Thus, the result of holding the certifier solely responsible is consistent with the intent of the second option and with public comment in that it provides that the responsibility for certification, and warranty and recall will be distributed equitably among all those responsible for the completion of the final vehicle. Given that under the second option, kit manufacturers would have been liable for any violation (although EPA would have attempted to enforce against the party it believed was responsible), this approach does not substantially increase manufacturers' liability. In addition, enforcement actions by EPA will be simplified and the resolution of warranty claims by vehicle owners will be expedited. EPA believes that this approach best satisfies the need expressed in public comment to provide strict standards of liability in order to instill consumer confidence in the emissions performance of converted vehicles. The Natural Gas Vehicle Coalition and the American Gas Association encouraged EPA to establish CFV conversion requirements that are consistent with requirements for all other conversions. Holding the converter solely responsible is also consistent with the approach taken in the Gaseous Fuels Final Rule.

As proposed, the original equipment manufacturer (OEM) will remain responsible for the equipment that was on the vehicle before it was converted unless the conversion caused the failure of the OEM equipment to function in its role in meeting emission standards. EPA believes that this is necessary because the proper performance of the conversion configuration relies on the OEM's underlying emissions control systems. Also, EPA interprets section 247(c) of the CAA to direct that the certifier of a CFV conversion will not be required to warrant any vehicle for parts or operation existing in the vehicle prior to conversion and not affected by the conversion.

Public comment was mixed on the issue of OEM liability, with some commenters agreeing with EPA's proposed approach and others stating that the OEM should not be held responsible for post-conversion failures of OEM equipment due to concerns over the potential impact that converted parts may have on the performance or durability of the original parts. EPA recognizes this concern, and will evaluate in-use enforcement actions that involve an OEM versus converter liability decision on a case by case basis. One indicator that might be used by EPA to determine that the OEM was liable for an emission failure of a converted vehicle will be an emission-related recall action against unconverted OEM vehicles of the same model.

The CAA does not specify how the useful life period of converted vehicles should be measured for the purposes of in-use liability. EPA requested comment on this issue, and all of the public comment received suggested that the liability of the converter should not extend beyond the original useful life of the vehicle. Given that the emissions performance of the conversion configuration depends on the underlying emissions control systems of the OEM, EPA agrees with this approach. Thus, the regulations promulgated by today's rule provide that the liability of both the OEM and converter for in-use emission performance will extend to the end of the original vehicle/engine's useful life.

This definition of useful life creates the potential concern that fleet operations will satisfy Clean Fuel Fleet Program (CFFP) purchase requirements through the conversion of vehicles that have little mileage remaining in their useful life. If this occurs to a significant degree, CFFP purchase requirements could be met without achieving the emissions reductions anticipated from the CFFP. However, EPA does not expect fleet operators to satisfy their CFFP purchase requirements in this way because of the financial disincentives involved with converting such high mileage vehicles and maintaining them beyond their useful life solely for the purpose of meeting CFFP purchase requirements.

b. *Certification requirements.* Dedicated, dual, or flexible fuel conversions of light-duty vehicles, light-duty trucks, and heavy-duty vehicles/engines may qualify as CFVs. CFV conversions must meet the CFV emission standards (LEV, ULEV, or ZEV) prescribed in 40 CFR Part 88 (as described in the previous section on light-duty and heavy-duty standards) and must also meet the applicable emission standards and provisions of Part 86 which apply to all vehicles to the extent they are not superseded by the requirements of Part 88. In addition, the conversion must comply with the requirements of the regulations being promulgated today to qualify as a CFV.

A separate certification is required for each conversion configuration to be used with a given model year vehicle/engine for each certifier desiring to perform such a conversion. The conversion configuration certification will also be eligible for carryover to future model years only if the OEM vehicle/engine is also certified under

carryover provisions and no changes occurred in the conversion configuration. A dual-fuel or flexible fuel conversion must be certified according to the general requirements for dual-fuel/flexible fuel vehicles discussed in section A.1.a above.

It should be noted that a certificate issued for a given model year expires on December 31st of that calendar year, after which time a conversion under that certificate may no longer be performed. A conversion for a given model year may be introduced for sale prior to January 1st of that year, but in no case may a conversion be introduced prior to January 1st of the preceding year.

i. *Small-volume manufacturers certification program—volume limits.* Consistent with the Gaseous Fuels Rule, today's rule establishes that a conversion configuration may be certified according to the Small-Volume Manufacturers Certification Program (55 FR 7178, February 28, 1990) and that certifiers of conversion configurations will be treated the same as small volume manufacturers for this purpose. In the Gaseous Fuels NPRM and in the proposal for this rule, EPA proposed that all certifiers of conversion configurations be permitted to use the Small-Volume Manufacturers Certification Program, regardless of the annual volume of conversions. Public comment on the gaseous fuels NPRM[33] was received that suggested that the production volume limits that currently define a small volume vehicle manufacturer under 40 CFR 86.092–14 should also apply to parties seeking to certify a conversion configuration. The Agency agrees with this comment and believes that given the anticipated increase in demand for conversions in response to a variety of federal and state programs, it is reasonable to believe that existing or future manufacturers may produce more than 10,000 converted vehicles annually at some point in the future. (No current company produces this number of conversions). EPA does not believe it would be equitable for certifiers with sales or production of more than 10,000 converted vehicles to take advantage of the Small Volume Manufacturer's Certification Program when that program is not available to manufacturers of more than 10,000 new vehicles. EPA believes it would be inappropriate to provide relief designed for small volume manufacturers to entities that sell or produce more than 10,000 converted vehicles annually.

Thus, consistent with the approach taken in the Gaseous Fuels Rule, EPA believes that the volume limits that currently apply to manufacturers seeking to certify under the provisions for small volume manufacturers should also apply to parties seeking to certify under the CFF program. Small-volume aftermarket conversion certifiers will also have the option of using the EPA full certification program prescribed in 40 CFR 86.094–23. Aftermarket conversion certifiers with annual sales or production volume of more than 10,000 converted vehicles should be required to use the EPA full certification program.

While the sales volume limit in the Small-Volume Manufacturers Certification Program applies to sales for a particular model year, conversion companies may certify conversion configurations based on engine families from older model years. To accommodate this, the 10,000 vehicle limit will apply to the aggregate total of all vehicles converted within a calendar year by a given aftermarket conversion certifier at all of its installation facilities without regard to the model year of the original vehicles upon which the configurations are based. All vehicle conversions within a calendar year will be considered when determining whether the 10,000 vehicle limit is exceeded including those converted under the CFF program, the Gaseous Fuels Rule, and Memorandum 1A. Apart from this difference, all provisions related to the sales volume limit under the Small-Volume Manufacturers Certification Program would apply (40 CFR Part 86, as promulgated by 55 FR 7178, February 28, 1990).

In this rulemaking, EPA did not propose to set a sales or production volume limit for manufacturers wishing to certify according to the Small Volume Manufacturers Certification Program (the "volume limit"), nor did EPA receive any comments in this rulemaking suggesting that such a volume limit should be used. In this circumstance, EPA believes it should not finalize a volume limit without first providing the public an opportunity to comment on such a limit. Therefore, the portion of today's rule that limits the use of the Small-Volume Manufacturers Certification program to those certifiers with an annual sales or production volume of 10,000 or fewer converted vehicles, shall be effective on November 29, 1994, unless the information collection requirements contained in this section have not been approved by the Office of Management and Budget (OMB). In that case, EPA will publish a timely document in the Federal Register delaying the effective date. If, on or before October 31, 1994. EPA does not receive notification that someone wishes to file an adverse or negative comment on the volume limit portion of the rule, then the volume limit portion of the rule will become final and effective without further EPA action. On the other hand, if, on or before October 31, 1994, EPA receives notification that someone wishes to file adverse or negative comment on the volume limit portion of the rule, EPA will withdraw the volume limit portion of the rule. EPA will then repropose the volume limit and go through full notice-and-comment procedures before adopting the volume limit. If EPA were to withdraw this portion of the rule, all certifiers would be able to certify according to the Small-Volume Manufacturers Certification Program until and unless EPA issued a final rule that established a different requirement.

ii. *Small-volume manufacturers certification program—durability testing.* Under the Small-Volume Manufacturer's Certification Program, a certifier will be required to demonstrate durability unless the certifier is specifically authorized to use another certifier's durability data and deterioration factors. If deterioration factors are not available, certifiers will be required to use assigned deterioration factors from the Small-Volume Manufacturer's Certification Program. Current regulations require that assigned deterioration factors be determined based on the seventieth percentile of industry-wide gasoline-fueled vehicle deterioration factors. Since the emission deterioration characteristics of vehicles operating on other fuels may be different, EPA may in the future consider through rulemaking the use of deterioration factors based on data from vehicles using different fuels when developing deterioration factors for such vehicles.

The Small-Volume Manufacturers Program requires manufacturers to provide full low mileage emission data which show compliance with new vehicle emission standards, but requires complete durability testing only for vehicles with unproven technology. Certification through use of the small-volume certification program reduces the burden of durability testing for small volume manufacturers while providing reasonable assurance of emission compliance. Public comment was received that to further reduce the burden on small volume manufacturers, EPA should accept as proven

[33] Materials relevant to the Gaseous Fuels NPRM have been placed in the public docket, No. A–92–14.

technology under the Small-Volume Manufacturers Program any aftermarket conversion technology that has been durability tested and certified under CARB's bench testing rules [34] or has been durability tested using on-road mileage accumulation.

As specified in 40 CFR 86.092–2, EPA will accept bench or road test data that has been demonstrated to be equal or more severe than certification mileage accumulation requirements to satisfy the requirements for proven technology under the Small-Volume Manufacturers Program. Thus, durability test data collected to satisfy CARB's bench testing rules or by on-road mileage accumulation could be submitted to EPA for review under the Small-Volume Manufacturers Program. EPA reserves the right to evaluate the adequacy of such data, and acceptance by CARB will not constitute automatic acceptance by EPA. It should be noted that EPA requires in-use data to demonstrate that bench and on-road durability testing is equal or more severe than certification mileage accumulation requirements. For example, actual temperature trace data collected during vehicle operation must be used to demonstrate that the temperature experienced during bench aging testing is at least as severe.

It should also be noted that EPA will only permit the use of provisions in the Small-Volume Certification Program to demonstrate the durability of technology that is currently used in automotive applications. For technology that has not previously been used in automotive applications in certified vehicles the full mileage accumulation durability requirements will be required.

iii. *Other provisions.* EPA is also establishing other requirements with which certifiers must comply. For vehicles converted under today's regulations, the certifier must list each installer which produces CFV conversions on the certification application for that CFV conversion. A revised list must be submitted as new installers are authorized to produce the conversion configuration. Because the certifier will be treated as the manufacturer for purposes of sections 206 and 207 and related enforcement provisions, EPA anticipates that certifiers will enter into legally binding agreements with installers to ensure that installers are exercising due care in performing the installation and meeting other obligations under today's regulations.

In cases where installations of conversion configurations are performed by parties other than the certifier, EPA envisions that the certifier will enter into legally binding agreements with said installers. To facilitate EPA enforcement actions each installer must be listed on the certificate filed with EPA at the time of certification for each conversion configuration, and the certifier must submit a revised list to EPA when new installers are added. The certifier is responsible for compliance with any applicable production line testing requirements (e.g., Selective Enforcement Auditing in federal certification) regarding the availability of vehicles and emissions testing facilities at the certifier's facilities and at those of the certifier's installers.

Identification of a converted CFV as a LEV, ULEV, or ZEV will be based on the information provided to EPA at the time of the certification of the conversion configuration. To aid in their identification, a converted CFV must be labeled as such on the engine labels. Consistent with other EPA certification programs, records are required to be maintained of the tests performed to support the certification application, and these records must be made available to EPA enforcement personnel upon request. Certifiers must maintain records of each vehicle converted including the make of the vehicle, vehicle identification number, serial number of the conversion kit, date and location of the conversion, and the results of the post-installation emission test discussed in the following section.

c. *Conversion installation quality test.*

i. *Background.* The CFV emission standards are considerably more stringent than conventional standards, and converted vehicles certified as CFV's will be eligible to earn marketable purchase and emission credits and to receive TCM exemptions as CFVs in the Clean Fuel Fleet program (LEVs, ULEVs, ZEVs or ILEVs). In the NPRM EPA requested comment on whether additional requirements are necessary to ensure compliance with the CFV standards given that the conversion industry historically has consisted of a large number of relatively small businesses that have not previously faced specific emissions performance requirements. Specifically, EPA requested comment on whether it would be useful to require a post-installation test for converted vehicles to assess the quality of the conversion installation from an emissions perspective. Such a test is required by the California Air Resources Board in its regulation of alternative fuel retrofit systems.[35]

Of those commenting on this subject, all expressed concern regarding reports of poor emissions performance of some converted vehicles presently in use and stated that EPA should promulgate strict standards to instill consumer confidence in the emissions performance of CFVs. There was support for the EPA concept of a post-installation test requirement to help identify poor installations or defective conversion kit hardware that would otherwise result in high emissions.

ii. *Summary of today's action.* EPA believes that the certification program and warranty and liability provisions promulgated by today's notice address many of the concerns noted in the public comments and will provide a fair degree of confidence that the in-use emissions performance of CFVs will remain within the applicable standards. EPA believes that these provisions, coupled with production line and in-use testing programs, will adequately ensure that installations by larger conversion manufacturers that produce or sell more than 10,000 converted vehicles per year will be performed properly and that the emissions performance of these vehicles will meet expectations. However, EPA believes that it is uncertain whether smaller conversion manufacturers will have the resources and experience to institute the necessary quality control measures. Therefore, to provide greater assurance that conversion hardware is installed properly, EPA will require that each vehicle converted by a manufacturer that sells or produces less than 10,000 converted vehicles per year undergo a post-installation test to assess the quality of the installation from an emissions perspective before it may be sold as a CFV or is eligible for special benefits available under the CFF program.[36] For vehicles that fail the post-installation test, the certifier will be required to take such remedial actions as are necessary to ensure compliance, and to retest each vehicle before it is sold as a CFV.

Another point that supports the need for a post-installation test for small-

[34] Sections 2030 and 2031 of Title 13, California Code of Regulations.

[35] Title 13, California Code of Regulations, Sections 2030 and 2031.

[36] These special benefits include potential eligiblity for a purchase credit in the fleet program and exemptions from some transportation control measures (TCMs). Converted vehicles could also potentially qualify as Inherently Low-Emissions Vehicles (ILEVs) under the program promulgated in March 1, 1993 (58 FR 11888), and receive expanded TCM exemptions. Finally, converted vehicles could generate mass emission credits for trading under state programs developed as part of the Federal Economic Incentives Program under the Clean Air Act (58 FR 11110, February 23, 1993).

volume conversion manufacturers is the anticipated difficulty in conducting production line emissions testing at small manufacturers' facilities. In such cases, small production volumes will make the necessary statistical sampling difficult to achieve, and such manufacturers will not generally have on-site test equipment capable of running FTP testing. Due to these difficulties, EPA will not be able to rely on production line testing of small manufacturers to the same degree as it will for larger volume manufacturers. Requiring post-installation testing of small-volume manufacturers helps to compensate for this limitation.

EPA proposed to allow manufacturers that convert fewer than 300 vehicles per year special exemptions from the post-installation test requirements when access to inspection and maintenance test facilities is not available in the area where the production facility for converted vehicles is located.[37] EPA believes that it is unlikely that manufacturers will be located in areas without access to such facilities. However, inspection and maintenance testing is not available for heavy duty vehicles in all areas, and the alternate two-speed idle post-installation test may represent a significant burden for small manufacturers. Therefore, in cases where inspection and maintenance testing is not available, manufacturers which sell or produce fewer than 300 vehicles in a calendar year may request an exemption from EPA from the post-installation test requirement. Included in the request for exemption must be the estimated number of vehicles and engines that the manufacturer will convert in the calendar year, a description of any emissions related quality control procedures used, and sufficient information to demonstrate that the post-installation testing requirement represents a severe financial hardship. Within 120 days of receipt of the application for exemption, the Administrator will notify the applicant either that an exemption has been granted, or that sufficient cause for an exemption has not been demonstrated and that all of the manufacturer's vehicles are subject to the post-installation testing requirement.

If granted, an exemption from the post installation testing requirement would apply only to the manufacturer's vehicles which have the conversion installations performed outside of a nonattainment area with an inspection and maintenance testing program that has a test for CO emissions. A small manufacturer that is exempted from the post-installation test requirement could sell untested converted vehicles otherwise certified as CFVs. These vehicles could be used by covered fleet owners in compliance with CFFV purchase requirements, would be eligible for temporal TCM exemptions, would be eligible to participate in the CFF purchase credit program, and could qualify as ILEVs.

EPA considered allowing the post-installation test to be alternately conducted by the purchaser to provide additional flexibility for those manufacturers who may not have access to inspection and maintenance test facilities. Upon further evaluation of this option, EPA believes that it is unworkable given that it would create a situation where the requirements for producing a certified vehicle would not be complete until after the manufacturer transferred the title of the converted vehicle to the ultimate purchaser. To be eligible as a CFV, each vehicle emission control information label[38] must state that it is a clean fuel vehicle (indicating that a post-installation test was performed as required). The transfer of the vehicle title before all of the criteria for certification of the converted vehicles are met would raise doubts as to the validity of such a label given that a vehicle purchaser could fail to perform the required test.

Public comment largely supported the use of a CO emissions test such as that discussed in the NPRM for the post-installation emission evaluation. Commenters agreed that the approach proposed by EPA would be useful in uncovering gross installation errors and would provide an additional level of assurance that CFV emission standards will be met in-use. EPA believes that the simple requirements of such a CO emissions test will fulfill the goal of uncovering gross installation errors without imposing a significant burden on small-volume manufacturers.[39] It should be noted that this test is intended as a screening mechanism only and may not be as discriminating of emissions levels as tests performed for inspection and maintenance purposes or a full Federal Test Procedure.

Two options will be available to satisfy the post-installation test requirement. Under both options, a separate test would be required for dual-fuel vehicles for each fuel on which the converted vehicle is capable of operating. Under the first option, a CO emissions test could be performed using the same equipment, procedure, and pass/fail criteria as that used under the inspection and maintenance testing program in the area where the testing is conducted. This test could be performed at an official inspection and maintenance facility, by the manufacturer, or by the manufacturer's contractor. If pass/fail criteria specific to the converted vehicle's operation on alternative fuel are not available the pass/fail criteria applicable to the vehicle's operation on gasoline prior to conversion will be used. In cases where inspection and maintenance testing procedures are not available the second post-installation testing option described below must be used. The second post-installation testing option may also be used in areas where inspection and maintenance facilities are available at the manufacturer's discretion.

In the NPRM EPA discussed adopting a single-speed idle test per 40 CFR 85.2212 as an alternative to the inspection and maintenance testing facilities procedure described above. Since the publication of the NPRM, EPA has further evaluated the capabilities and limitations of potential post-installation test procedures and has determined that measuring CO emissions on an existing two-speed idle test[40] would provide greater assurance of properly identifying gross installation errors while limiting the potential of false failures as compared to a single-step idle test. EPA believes that the minor change from a single-speed to a two-speed idle test will not add significantly to the cost and difficulty of post-installation testing.[41] The California Air Resources Board's regulation of alternative fuel retrofit systems also requires that a two-speed idle test be performed as part of a post-installation vehicle evaluation.[42] For these reasons, EPA is adopting the two-speed idle test of CO emissions as the required post-installation test when an inspection and maintenance test procedure is not available.

A two-speed idle test is required to be performed on the certification vehicle

[37] The sugeested guidelines for the post installation test were placed in Section II–A of the public docket.

[38] See 40 CFR 86.085–35 regarding additional labeling requirements.

[39] ibid.

[40] The two-speed idle test (40 CFR 85.2215, "EPA 91") is described in the Short Test Emission Regulations Final Rule, 58 FR 58405–58407.

[41] The two-speed idle test requires a tachometer and a special multiple emission measurement computer software algorithm that are not required for the single-speed idle test. However, many emissions testing facilities will already have access to such equipment and EPA believes the cost to those who may need to acquire the additional equipment to be less than $300.

[42] Title 13, California Code of Regulations, Sections 2030 and 2031.

during certification testing to establish reference values (at idle and 2500 rpm) against which post-installation test results may be compared. EPA considered requiring that each vehicle's post-installation test CO emissions measurement be below the reference value established at the time of certification plus 20 percent of the reference value. The comment received from the public on the post-installation test pass/fail criteria indicated that the CO emissions of some CFVs may be so low as to make the use of a cut point at this level impractical given the measurement accuracy of the test. One commenter suggested an alternative cut point of the CO certification reference value plus 0.4 percent CO by volume.

This cutpoint is very similar to the 0.5 percent CO standard promulgated for the certification short test (CST) two-speed idle procedure for gasoline-fueled vehicles (58 FR 58382–58440, November 1, 1993). The choice of the CST standard was based on a review of data collected from inspection and maintenance facilities that employ a two-speed idle test which indicate that production line gasoline powered vehicles from non-pattern failure engine families could easily meet a 0.5 percent CO standard.[43] Since the CO emissions of CFVs can be expected to be no greater than, and in many cases are expected to be less than, those from vehicles meeting Tier 1 and Tier 2 standards, EPA believes that properly manufactured CFVs can also easily meet a 0.5 percent CO standard and will therefore not have difficulty in meeting a standard of 0.4 percent plus the certification reference value (the sum of which will likely total more than 0.5 percent in most instances). Based on the above discussion, EPA agrees that a cut point of the CO certification reference value plus 0.4 percent CO by volume provides reasonable assurance that gross installation errors will be discovered while sufficiently limiting the probability of false test failures, and therefore will adopt this pass/fail criteria for the two-speed idle post-installation test.

*C. The California Pilot Test Program*

The Pilot program will be federally administered in the State of California and will require vehicle manufacturers to sell a minimum number of clean-fuel LDVs and LDTs in California starting in MY 1996. Unlike the CFF program, the Pilot program's requirements do not include HDVs. The CAA gives EPA several responsibilities with regard to the Pilot program. EPA has already implemented a credit program for vehicle manufacturers (57 FR 60038, December 17, 1992; 40 CFR 88.304–94) and today's action covers vehicle sales requirements and state opt-in provisions. The light-duty vehicle and truck CFV emission standards applicable to vehicles under both the Pilot and CFF program are discussed above under section A.1.a.

1. Sales Requirements

a. *CAA Requirements.* Section 249(c) of the CAA requires EPA to promulgate regulations requiring that "[c]lean fuel vehicles shall be produced, sold, and distributed (in accordance with normal business practices and applicable franchise agreements) to ultimate purchasers in California (including owners of covered fleets . . .) in numbers that meet or exceed" 150,000 in MYs 1996 through 1998 and 300,000 in MYs 1999 and later. However, the CAA does not direct EPA on how to distribute these sales requirements among vehicle manufacturers. Section 249(d) allows EPA to make available credits for use in the "fulfillment of [a] manufacturer's share of the requirements" of the Pilot program. As mentioned earlier, EPA has established a credit program that allows manufacturers to use credits to meet the sales requirements of the Pilot program.

b. *CARB requirements.* CARB's Low Emission Vehicle (LEV) Program will require the sale of vehicles meeting more stringent exhaust emission levels by establishment of (1) a decreasing fleet average NMOG emission requirement (for manufacturers of vehicles up to 6,000 lbs GVWR) and (2) through direct sales percentage requirements (for manufacturers of vehicles from 6,000 to 14,000 lbs GVWR). (Note: The Pilot program and the California LEV program will overlap only for those vehicles up to 8,500 lbs GVWR, as the Pilot program does not cover vehicles beyond this GVWR.)

The CARB program will require each manufacturer of vehicles up to 6,000 lbs GVWR to sell LEVs in each of two LVW subclasses (≤3750 and 3750–5750 lbs LVW) . Each manufacturer will need to sell a sufficient number of LEVs such that the manufacturer's California fleet average NMOG exhaust emission value is less than or equal to a fleet average NMOG exhaust emission requirement for the corresponding model year, vehicle type, and LVW subclass. In addition to meeting the fleet average NMOG requirement, each manufacturer must also sell a required minimum percentage of ZEVs starting in the 1998 MY. Also beginning with MY 1998, CARB requires that manufacturers of medium-duty vehicles (i.e., trucks from 6,001 to 14,000 lbs GVWR) certify enough such vehicles to CARB's emission standards such that the manufacturer's fleet consists of a minimum percentage of ULEVs.

The projected sales of vehicles in California resulting from the CARB LEV program are likely to far exceed the sales of CFVs under the Pilot program. Based on the projected sales of only LDVs and LDTs under 3,750 LVW in 1996 and 1999, sales under the CARB LEV program are expected to reach about 200 and 400 percent of the Pilot program CFV sales requirements, respectively. Unless and until EPA adopts California standards for CFVs, CARB LEVs which do not meet federal CFV requirements could not be counted in the Pilot program (although vehicles meeting CFV requirements will likely meet the exhaust emission requirements of the CARB LEV program).

c. *California Pilot Program sales requirements*—i. *"Sales" definition.* CAA Section 249(c)(1) requires that "[c]lean fuel vehicles be produced, sold, and distributed to ultimate purchasers in California". EPA is today establishing this requirement as applying at the first point of sale from the manufacturer to the dealer or ultimate owner. Until such time as EPA formally changes its interpretation of section 249(c), manufacturers covered by the Pilot program may not use sales of converted vehicles to meet the sales requirements of the Pilot program. Similarly, manufacturers of conversions are not subject to the sales requirements. As was stated in the NPRM for this rule, nothing in section 249(c)(1) requires that conversions be part of the CFV sales requirements. Furthermore, section 247 sets forth requirements applicable to conversions and states that conversions to CFVs that meet those requirements may be used to satisfy the purchase requirements of the federal CFF program; however, there is no mention of the Pilot program.

In light of the evolving regulatory framework affecting conversions, culminating with today's provisions for CFV conversions, EPA is reconsidering whether it is appropriate for manufacturers of CFV conversions to participate in the Pilot program. This reconsideration is largely due to the fact that manufacturers of CFV conversions under today's rule will be treated like vehicle manufacturers for purposes of compliance with EPA emission regulations. EPA may propose by regulation in the future to include

[43] Sierra Research Inc., "Analytical Support for Selection of Certification Short Test Standards", Report No. SR93–03–0, EPA Air Docket #A–91–21, item. IV–A–01, March 4, 1993.

manufacturers of conversions in the Pilot program. EPA will solicit public comment on this issue at that time.

*ii. Manufacturer sales distribution.* Although CAA section 249 clearly indicates that vehicle manufacturers are responsible for meeting sales requirements, it does not cover how the sales requirements are to be allocated among manufacturers. Sales under the California LEV Program are likely to far exceed the sales requirements set forth in the Pilot program and, since the vehicles for the two programs will be identical or at least very similar, the Pilot program requirements will likely be easily satisfied. As a result, any method for allocating sales requirements among manufacturers will have little impact.

Two options for determining a manufacturer's individual sales allocation were presented in the NPRM. In both options, an equation was used to calculate a manufacturer's share of required CFV sales based on the share of that manufacturer's vehicle sales in the State of California during the previous model year. Under Option 1, EPA would be responsible for calculating the individual sales responsibilities; in the second option, manufacturers would perform the computation. The primary concern of those commenters who responded was that only California vehicle sales be considered since the Pilot program was to be implemented in California. The proposed regulations were written based on the second option and it is this option that is finalized today.

A manufacturer's share of the total CFV sales requirement in any given year (150,000 CFVs annually for 1996–1997; 300,000 CFVs annually thereafter) will be based on the ratio of the manufacturer's sales to all sales in California according to the following equation:

$$RMS = (MS/TS) \times TCPPS$$

where:

RMS = a manufacturer's required sales in a given model year.

MS = a manufacturer's total LDV and light LDT sales in California two model years earlier than year in question (for MY 1996 and 1997 RMS calculations).

= a manufacturer's total LDV and light LDT sales in California two model years earlier than year in question (for MY 1998 and later RMS calculations).

TS = total LDV and light LDT sales in California of all manufacturers two model years earlier than the year in question (for MY 1996 and 1997 RMS calculations). Sales of manufacturers which meet the criteria of (d) of this paragraph will not be included.

= total LDV and light LDT sales in California of all manufacturers two model years earlier than the year in question (for MY 1998 and later RMS calculations). Sales of manufacturers which meet the criteria of (d) of this paragraph will not be included.

TCPPS = Pilot program CFV sales requirement for the year in question (either 150,000 or 300,000).

Each manufacturer will use this equation to determine its individual CFV sales requirement. The two factors, MS and TS, will be based on vehicle sales two MYs from the year in question (e.g, for MY 1996, a manufacturer will use sales data from MY 1994). In the NPRM, EPA requested comment as to whether a manufacturer's share of required CFV sales should be calculated based on sales in the previous model year or sales two model years prior. Commenters did not address this issue. EPA believes that using MY sales data that is two years prior, as opposed to only one year, is not likely to reflect the most recent market changes and will also allow new manufacturers a two year delay before they are factored into the equation; however, it will provide manufacturers with sufficient time for planning their CFV production and will also require less administration and oversight on the part of both EPA and manufacturers. EPA believes that the CFV sales distribution that will result among manufacturers will be fair and equitable in light of these advantages. Therefore, EPA is finalizing the requirement that California sales figures from two model years earlier be used by manufacturers to calculate required CFV sales shares.

Since heavy LDT standards under the Pilot program are not effective until MY 1998, a manufacturer's share of required sales for MYs 1996 and 1997 will be based on LDV and light LDT sales only. All LDV and LDT sales will be used once the CFV standards for heavy LDTs are in effect beginning with MY 1998.

iii. *Exemptions for small volume manufacturers.* EPA proposed that, for the Pilot program, small volume manufacturers of clean-fuel LDVs and LDTs would not have to fulfill a calculated share of the required CFV sales requirements until the 2001 MY. EPA is finalizing this requirement today. However, in 2001 and subsequent model years, no further distinction will be made between small volume manufacturers and larger manufacturers for purposes of the Pilot program.

As defined in the CARB LEV program, a small volume manufacturer has average annual vehicle sales less than or equal to 3,000 vehicles based on the consecutive three-year period 1989–1991. If a small volume manufacturer exceeds this average level, they are then subject to the LEV program fleet average NMOG requirements applicable to larger manufacturers beginning four model years after the last of the consecutive three model years. Larger manufacturers with average sales that fall below the 3,000 unit threshold over any consecutive three-year period qualify as small volume manufacturers beginning with the following model year.

Due to the many parallels between the Pilot program and the CARB LEV program, EPA continues to believe it is logical that the "small volume manufacturer" definition under the Pilot program should be as similar as possible to the definition under the CARB LEV program. Several commenters also supported consistency between the two programs. Therefore, for purposes of the Pilot program, EPA is defining "small volume manufacturer" as one whose average annual LDV and LDT sales in California are less than or equal to 3,000 units during a consecutive three-year period beginning no earlier than 1993. (This accommodates new manufacturers who may have less than three consecutive years of sales but which do not exceed the 3,000 threshold.) And, like CARB, EPA is also granting leadtime to small volume manufacturers who exceed the average annual level. A manufacturer who qualifies as a small volume manufacturer for the first year of the Pilot program (i.e., in model year 1996) will not have to fulfill a CFV sales requirement until model year 2001. As proposed in the NPRM and finalized here today, beginning with model year 2001, all manufacturers, regardless of average annual sales, will have to calculate and fulfill their CFV sales share based on the formula above. This five-year delay is intended to encourage the viability of small volume manufacturers whose limited capital and resources do not allow them to comply as easily. It is also intended to provide consistency with the CARB LEV program and minimize adminstrative burden.

iv. *Sales reporting and enforcement of requirements.* In order for EPA to administer and enforce the sales requirements of the Pilot Program, manufacturers will have to report their California vehicles sales to EPA. Currently, there is a requirement for manufacturers to submit sales data to EPA in Code of Federal Regulations

(CFR), 40 CFR 86.085–37); however, the reporting requirements do not distinguish between California vehicle sales and sales throughout the U.S. Such a distinction is necessary for purposes of the Pilot Program. Therefore, EPA will require that manufacturers, in addition to complying with the requirements of 40 CFR 86.085–37, report the number of vehicles sold only in California.

If a manufacturer fails to meet its required sales volume, EPA believes that it has the authority to penalize the manufacturer to the full extent allowed for such an infraction under CAA section 205(a). In accordance with this section, a $25,000 penalty will be levied on a manufacturer in the event of a failure to meet the prescribed sales requirements for certified Pilot Program vehicles.

2. State Opt-In Program

CAA section 249(f) requires that EPA promulgate regulations which will (1) allow states other than California to encourage the sale of CFVs in their state which are sold in California under the Pilot program and (2) allow such states to use incentives to promote the sale and use of CFVs and clean alternative fuels. States opting into the program may voluntarily decide to implement a clean fuel vehicle incentive program as described in this Final Rule.

Any state that contains all or part of any ozone nonattainment area that is classified under subpart D of Title I as serious, severe, or extreme can choose to submit a revision of their applicable state implementation plan (SIP) under part D of Title I and section 110. A state's SIP shall include incentives for the sale and use of CFVs and for the production and distribution of clean alternative fuels such as those that are required to be produced, sold, and distributed in the State of California. These SIP provisions shall come into effect at least one year after the state has notified vehicle manufacturers and fuel suppliers of the plan provisions.

As mentioned above, section 249(f) directs EPA to establish the voluntary opt-in program under which states may use incentives to promote the sale and use of CFVs and clean alternative fuels. Examples of incentives listed in section 249(f) include higher registration fees for non-CFVs, financial incentives, exemptions from high occupancy vehicle or trip reduction requirements, and parking preferences. Today's rule establishes these incentives for use by states under a section 249(f) opt-in provision. States may develop additional incentives, as well, subject to EPA approval via the SIP approval process.

Section 249(f) prohibits a state opting into the program from including sales or production mandates for CFVs or clean alternative fuels in its SIP revision opting into the Pilot program. In addition, the SIP revision must provide that vehicle manufacturers and fuel suppliers will not be penalized or subject to sanctions for failing to produce or sell CFVs or clean alternative fuels.

*D. Technical Amendments to CFF Definitions and Other Clarifications*

1. Explanatory Language in the Preamble of the Final Rulemaking for Clean Fuel Fleet Definitions and General Provisions Is Clarified in Four Areas, as Described Below

a. *The role of fleet payment methods in establishing whether fleet vehicles are centrally fueled.* In the description of "contract fueling" as it pertains to the definition of "centrally fueled" (section III(3)(a) of the Definitions final rule preamble, 58 FR 64679, December 9, 1993), EPA indicated that the nature of the method of payment used by a fleet operator for fuel purchases might be useful for determining whether the fueling arrangement constituted "central fueling." In its description, EPA stated that "retail credit cards" would not represent central fueling arrangements while "commercial fleet credit cards" would represent such arrangements.

Since the time of the final rule, parties representing fleet leasing companies and independent fuel marketers informed the Agency that the emerging business in broad national fleet fueling cards requires further clarification of this issue. These parties have indicated that the use of such cards, which generally include a wide network of fuel providers nationwide and an administrative system for monitoring fuel purchases, do not necessarily indicate that fueling is occurring at a central facility or set of facilities. Similarly, the use of retail credit cards does not prove that fueling is not occurring in a centralized way. EPA believes there is value in these observations, and the Agency will no longer recommend that states look to the payment method as a key indicator of the presence or absence of central fueling. Instead, EPA recommends that states look at the actual refueling patterns used by fleet operators. When an individual fleet's fueling is limited to a single location or a prescribed and identified set of locations within the operational range of the vehicles, EPA believes this situation represents central fueling, regardless of the method of payment for the fuel. As the implementation of state fleet programs evolves, EPA may consider further clarification of this issue, by rule or by guidance.

b. *Clarification of the determination of whether a fleet is "capable of being centrally fueled".* In the preamble of the Definitions final rulemaking, EPA described a preferred technique for determining fleets capability of being centrally fueled, based on the number of miles from trips that could be centrally fueled. Because of an editorial oversight, portions of section III(4)(a)(i) and (4)(c) of the Definitions final rule preamble may be misleading (58 FR 64679, December 9, 1993). EPA wishes to clarify that the number of miles from trips that could be centrally fueled should be tabulated only from those trips that do not require the fleet vehicle to travel outside of its operational range (i.e., the distance a vehicle is able to travel on a round trip with a single refueling). This clarification makes the method of calculation consistent with the stated intent of the overall determination procedure.

c. *Correction to reference in the definition of "owned or operated, leased, or otherwise controlled by such person".* The definition of "owned or operated, leased, or otherwise controlled by such person" in § 88.302–94 of the Definitions final rule regulations may be misleading (58 FR 64679, December 9, 1993). Paragraph (2) within this definition refers to the definition of "control" as being in paragraph (c) of § 88.302–94; however, the definition of "control" is not designated as paragraph (c). Thus, EPA wishes to clarify that in the definition of "owned or operated, leased, or otherwise controlled by such person" it intended to refer to the definition of "control" in § 88.302–94.

d. *Correction to the instructions for the promulgation of § 88.308–94 of the regulations, entitled "Programmatic requirements for clean-fuel fleet vehicles".* Because of an editorial error, the definition of "multi-state nonattainment areas" (§ 88.308–94) in the Definitions final rule regulation (58 FR 64679, December 9, 1993) was described as an amendment to a previously promulgated section instead of a new definition to be promulgated in a new section of part 88. Thus, EPA wishes to clarify that it intended to add a new § 88.308–94 to 40 CFR part 88.

2. Harmonization of ILEV Exhaust Standards and Test Procedures With the CFV Provisions

In EPA's final rule on "Clean Fuel Fleet Credit Programs, Transportation Control Measure Exemptions, and Related Provisions" (58 FR 11888, March 1, 1993), Inherently Low-Emission Vehicle (ILEV) emission standards and test procedures were established. The exhaust emission standards were published in tables C93–6, C93–6.1, and C93–6.2.

With the finalizing of exhaust emission standards and test procedures in today's rule, the earlier treatment of ILEV standards and test procedures for exhaust emissions are now obsolete. Technical revisions of the ILEV regulations are included in today's rule. These changes have the effect of focusing ILEV exhaust requirements on those of other CFVs, while the special ILEV evaporative emissions standard and test procedure remains unchanged.

*E. Display of OMB Control Numbers*

EPA is also amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. This amendment updates the table to accurately display those information requirements contained in this final rule which have already been approved. This display of the OMB control number and the subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR 1320.

The ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be necessary. For the same reasons, EPA finds that there is good cause under 5 U.S.C. 553(d)(3).

*F. Regulatory Impacts*

The economic and environmental impacts of this rulemaking are only from the provisions pertaining to the Clean Fuel Fleet Program since the impacts of the California Pilot Program will most likely be superseded by the projected effect of the CARB LEV program and other federal requirements and should not create additional economic or environmental impact. EPA has prepared a Regulatory Impact Analysis (RIA) that evaluates the program costs, potential program benefits, and cost effectiveness of the Clean Fuel Fleet Program. As described in the proposal, included here is a summary of the results of those analyses. The program costs and potential benefits related to light-duty vehicles and trucks are evaluated separately from those of heavy-duty vehicles (above 8,500 lbs GVWR) because the CFV standards and the technology used to meet them are very different for the light-duty and heavy-duty classes.

1. Program Costs

a. *Light-duty vehicles and light-duty trucks.* As described in the proposal, to estimate the potential costs of clean-fuel LDVs and LDTs, EPA has developed two scenarios representing different assumptions about the future use of nonconventional fuels. Scenario I assumes no major changes from conditions that exist today. Scenario II assumes the emergence of some driving force that would encourage or require OEMs to offer more non-petroleum fuel/vehicle combinations.

Using the above scenarios, the incremental acquisition and operating costs, coupled with estimates of the number of CFVs operating, can be used to estimate an overall cost of the fleet program for LDVs and LDTs. The incremental acquisition cost is the amount a fleet owner must pay for a CFV above the cost of a comparable conventional vehicle, and different incremental costs are associated with each vehicle/fuel type. As in the proposal, EPA estimates an incremental acquisition cost of $170 for vehicles fueled with reformulated gasoline, $300 for alcohol-fueled vehicles, $2,000 for gaseous-fueled vehicles, and $3,300 for electric vehicles.

Another fleet program cost is incurred in the operation of clean-fuel vehicles. Estimated operating costs, for all of the vehicle/fuel combinations, are based solely on fuel costs, since no additional maintenance is expected for CFVs above their conventional counterparts. As in the proposal, compared to conventional gasoline equivalent cost of $1.31 in the year 2000, the projected gasoline equivalents for the same year are as follows: $1.36 for reformulated gasoline, $1.12 for alcohol fuels, $1.09 for CNG, $0.62 for LPG, and $1.12 for electricity. Thus, all fuels except for reformulated gasoline represent a cost savings when compared to the estimated price of conventional gasoline in the year 2000.

The incremental costs for new CFV acquisitions and their operation were summed for each future year between 1998 and 2010 to yield an estimated total annual cost of the fleet program for LDVs and LDTs. The present value costs under Scenario I for the years 1998 through 2010 is almost $709 million in 1998 dollars. Under Scenario II, the present value of the potential costs in years 1998 through 2010 is estimated at $673 million in 1998 dollars. (In contrast to the proposal, the discount rate used in this analysis is 7 percent instead of 10 percent as recommended by EPA's Office of Policy, Planning, and Evaluation.)[44] Projected annual costs for each of the years from 1998 to 2010 are presented in the RIA. This analysis does not take into account infrastructure costs. EPA has examined the sensitivity of the projected incremental acquisition and operating costs results in the RIA to other reasonable estimates of future acquisition and operating costs and concluded that the impact on the cost effectiveness is not major.

b. *Heavy-duty vhicles.* As described in the draft RIA for the proposal, incremental acquisition costs were estimated for conventional gasoline and diesel HDVs expected to be capable of meeting CFV standards through the use of technological changes rather than the use of clean fuels themselves. However, possible manufacturing process changes or slightly higher component costs may be incurred when adapting these technologies to HDEs. The analysis projects that these changes could increase the variable production cost of heavy-duty gasoline engines by $50.00 and heavy-duty diesel engines by about $100.00. Factoring in a 29 percent overhead and profit mark-up would bring the estimated increase in manufacturing costs to $65 and $129 per engine for gasoline and diesel engines respectively. In addition to this increased manufacturing/component cost per engine, consumers will also have to pay for the amortized cost of research and development and engine certification, as well as retail price mark-up. Manufacturers are expected to recover the development costs over the first five years of engine sales. Thus, using a more conservative range of projected costs than in the proposal, the total incremental acquisition cost is estimated at $246 more per gasoline engine and $477 more per diesel engine for the first five years of the program as compared with engines used in conventional heavy-duty vehicles. During the remaining years of the program, the total incremental

[44] EPA Office of Policy, Planning and Evaluation, "OMB Presentation and Discussion on OMB Circular A–94 Regarding Discount Rates and Benefit-Cost Analysis," Memorandum from Brett Snyder to Addressees, March 23, 1993.

acquisition cost is estimated at $178 more per gasoline engine and $338 more per diesel engine.

Gasoline- and diesel-fuel HDVs meeting CFV standards are not expected to have added fuel or maintenance costs compared to conventional HDVs. However, EPA expects that approximately 10 percent of all fleet HDVs will need to be operated on reformulated gasoline in an area where reformulated gasoline is not routinely supplied. Thus, as in the proposal, an incremental fuel cost of five cents per gallon is applied to approximately 10 percent of all fleet HDVs.

The incremental costs for new CFV acquisitions and operations were summed for each year from 1998 to 2010 to yield an estimated total annual cost of the fleet program for HDVs. As described in the proposal, three scenarios were developed based on differing assumptions about vehicle mix and about costs of alternative-fuel vehicles compared to conventional HDVs. The first scenario, Scenario A, assumes conventional-fuel vehicles will be purchased for the fleet program, while the second, Scenario B, assumes 20 percent of CFVs will be nonconventional-fuel vehicles. The third scenario, Scenario C, assumes 30 percent of CFVs are nonconventional-fuel vehicles. Thus, for the first twelve years of the program 1998 present value cost is estimated to be $67 million for Scenario A, $99 million for Scenario B, and $30 million for Scenario C (using a discount rate of 7 percent).[45]

2. Program Benefits

As with the draft RIA for the proposal, the final RIA presents an analysis of the expected emission benefits of the Clean Fuel Fleet Program. These benefits were estimated by comparing the total emissions from covered fleet vehicles to the emissions which the same number of conventional vehicles would produce in the absence of a fleet program. As in the economic analysis, the emission benefits of LDVs and LDTs were studied separately from HDVs, and the results of both are summarized below. The same scenarios used in the economic analysis (i.e., assuming different degrees of participation by non-petroleum fueled vehicles) were used in the benefits analysis. Along with vapor emission reductions, reductions in NMOG, $NO_X$, and CO combustion emissions from LDVs and LDTs, and reductions in NMHC, $NO_X$, and CO combustion emissions from HDVs, are discussed below.

a. *Light-duty vehicles and light-duty trucks.* To estimate the environmental benefits of the fleet program, emission inventories were generated for two cases. In the base case, the number of covered fleet LDVs and LDTs estimated to be operating in each year were all assumed to be conventional vehicles. The base case emission inventories were calculated by computing lifetime emission factors for conventional (Tier 1) vehicles using the MOBILE5a emission factor model (instead of the specialized analysis using vehicle standards developed for the proposal). Similarly, emission inventories for the covered fleet vehicles were calculated using lifetime emission factors for LEVs from MOBILE5a. The difference between the two inventories yields the emission benifit of the program in terms of NMOG and $NO_X$ reductions. The final analyis results in 1998 present value benefits of the light-duty NMOG and $NO_X$ reductions realized for the years 1998 through 2010 (using a discount rate of 7 percent) are approximately 11,720 tons and 12,119 tons, respectively.

As in the proposal, since LEVs will not generally achieve CO emission reductions, potential CO inventories were determined using the number of light-duty ULEVs and ZEVs. The 1998 present value benefit of the annual CO reductions is projected to range between 93,694 tons and 120,885 tons.

In addition to combustion emission benefits, the fleet program will also realize benefits from vapor emission reductions resulting from use of CNG, LPG, and electric vehicles. Some of these benefits will be achieved by inherently low-emission vehicles (ILEVS); however, a calculation of the amount of vapor reduction attributable to ILEVs was not attempted because the purchase of these vehicles is voluntary and their numbers are very uncertain.

As in the proposal, vapor emission benefits of the fleet program were determined by multiplying the number of in-use CFVs projected to be operating on CNG, LPG, and electricity, by the average annual vehicle miles traveled for each class, and by the projected vapor emission reduction (grams/mile/vehicle) expected for each vehicle class. These vapor emission reductions were based on MOBILE5a evaporative emission factors in today's rule instead of MOBILE5.0 evaporative emission factors as were used in the proposal. Even though the new analysis results in lower annual emission reductions, the vapor emission benefits reported in today's rule are higher level than those in the proposal due to the use of the 7 percent discount rate. The 1998 present value benefits of the light-duty vapor emission reduction realized from the 1998 through 2000 are approximately 4,654 tons under Scenario I and 6,982 tons under Scenario II.

Thus, summing the benefits, the 1998 present value benefits of NMOG and CO emission reduction achieved by the light-duty portion of the fleet program for the years 1998 through 2010 are projected to range from 16,400 to 18,700 tons and 93,700 to 121,000 tons respectively. The $NO_X$ emission reduction is estimated to be approximately 12,100 tons.

b. *Heavy-duty vehicles.* As in the proposal and similar to the analysis conducted for light-duty fleet vehicles, the emission benefits of heavy-duty clean-fuel fleet vehicles have been estimated by comparing total emissions from a base case to the emissions from a scenario using clean-fuel fleet vehicles. (Unlike LDVs and LDTs, EPA has not incorporated clean-fuel HDVs into MOBILE5a, and thus, HDVs were modelled in the same way as in the proposal.) The clean-fuel fleet vehicle scenario assumes that all covered fleet HDVs operate at the LEV emission level, and is used to generate emission inventories of NMHC and $NO_X$. CO benefits expected to be realized at the ULEV level are also summarized below (heavy-duty ZEVs are not likely to be a viable option to fleet owners at the time the fleet program begins and thus no CO benefits are expected from vehicles other than heavy-duty ULEVs).

Annual emission inventories of NMHC and $NO_X$ were generated by multiplying the number of in-use heavy-duty vehicles by the number of vehicle miles traveled and multiplying the result by the appropriate difference in emission factors. The 1998 present value benefits of the heavy-duty NMHC and $NO_X$ emission reduction realized from the 1998 through 2010 are approximately 4,100 tons and 16,400 tons, respectively. The emission benefits are lower than the benefits reported in the proposal because the combined NMHC+$NO_X$ standard was changed from the proposed 3.5 g/Bhp-hr to 3.8 g/Bhp-hr in today's final rule (See section (II)(A)(2) above).

In determining CO benefits, there is no reduction in the CO emission standard for heavy-duty vehicles meeting the minimum clean-fuel fleet vehicle (LEV) requirements, but gasoline ULEVs will achieve a benefit. Those vehicles operating at the ULEV level, will include a 50 percent reduction in CO emissions from their conventional or LEV counterparts. Diesel heavy-duty

[45] As in proposal, Scenario C assumes that purchases of nonconventional-fuel vehicles are driven by a hypothetical combined acquisition and operating cost that is below the cost of conventional HDVs.

vehicles are not expected to generate incremental CO benefits since they currently emit below the heavy-duty ULEV standard for CO. The present value of the CO emission benefits are projected to range from 15,500 to 27,000 tons/year. Using a discount rate of 7 percent in today's rule instead of the proposed 10 percent rate, results in higher CO emission benefits than were projected in the proposal.

Vapor emission benefits were projected for the replacement of gasoline-fueled HDVs by gaseous-fueled HDVs. For the years 1998 through 2010 the program yields 1998 present value vapor emission benefits of 2,700 to 4,500 tons. As with LDVs and LDTs, these vapor emission reductions were based on MOBILE5a evaporative emission factors in today's rule instead of MOBILE5.0 evaporative emission factors as were used in the proposal, and thus, the vapor emission reductions used in today's rule for HDVs are at a higher level than those emission reductions used in the proposal. (Also, using a discount rate of 7 percent instead of the proposed 10 percent rate contrubuted to the higher levels of vapor emission reductions.)

Thus, summing the benefits together, the 1998 present values of NMHC and CO emission reduction achieved by the heavy-duty portion of the fleet program for the years 1998 through 2010 are projected to range from 4,100 to 8,600 tons and to 15,500 to 27,000 tons respectively. The $NO_x$ emission reduction is estimated to be approximately 16,400 tons.

3. Cost Effectiveness

As described in the proposal, for both light-duty and heavy-duty portions of the fleet program, the overall cost effectiveness was determined by dividing the total 1998 present value costs of the first 12 years of the program by the associated discounted 12-year benefits. The overall cost effectiveness for LDVs is estimated to range between $4,400 and $5,800 per ton of all pollutants. The analysis suggests that the fleet program will provide a greater reduction in emissions per dollar spent if more light-duty vehicles operate on alternative fuels. The overall estimated heavy-duty cost effectiveness ranges from $580 per ton to $3,300 per ton.

4. Additional Program Impacts

The increased use of clean alternative fuels due to the fleet program may well result in the displacement of some of the use of conventional fuels. As in the proposal, EPA projects for the first twelve years of the Clean Fuel Fleet Program 3.2 to 6.4 billion gallons of petroleum-based fuel could be conserved. In addition to the conservation of petroleum resources, the fleet program may provide a number of non-quantifiable impacts, as well. The program will potentially furnish incentives for the development of clean-fuel vehicle technology, stimulate the vehicle conversion industry, support the wider distribution of alternative fuels and related infrastructure, and encourage the public to purchase and use clean-fuel vehicles.

## III. Public Participation

As in past rulemaking actions, EPA strongly encouraged full public participation in arriving at final decisions. On July 15, 1993 a public hearing was held for any person to present testimony in response to the proposal, and written comments on this proposal were accepted for a period of sixty days after the hearing (September 15, 1993). EPA has fully considered all of the comments and has modified the proposal to reflect many of the suggestions received. EPA's complete assessment of the comments received can be found in the summary and analysis of comments document for this rulemaking, which has been placed in Docket No. A–92–30 and A–92–69.

## IV. Statutory Authority

The statutory authority for this proposal is provided by sections 241, 242, 243, 244, 245, 246, 247(a), 247(b), 249, and 301(a) of the CAA.

## V. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 [58 **Federal Register** 51,735 (October 4, 1993)], the Agency must determine whether this 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 governments or communities;

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

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

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

This rulemaking, covering emission standards for clean-fuel vehicles and engines, CFV conversion requirements, and the California Pilot Program, is considered an "economically significant regulatory action" under this definition, since the Clean Fuel Fleet Program and California Pilot Program together will cost more than $100 million annually in at least some years of its implementation. In addition, this rule is significant in that it represents the first motor vehicle emission control program which focus exclusively on fleets, raising a range of unprecedented issues. Finally, the rule is significant in that it parallels in many ways the alternative fuel fleet program required in the Energy Policy Act, which the Department of Energy is implementing; the areas of overlap between the two programs add to the significance of the rule. For these reasons, an RIA has been prepared, and is available in the docket for this rulemaking.

This final rulemaking was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12866. Any written comments from OMB and any EPA response to OMB comments are in the public docket for this rulemaking.

## VI. Compliance With Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires federal agencies to examine the effects of federal regulations and to identify significant adverse impacts on a substantial number of small entities. Because the RFA does not provide concrete definitions of "small entity", "significant impact", or "substantial number", EPA has established guidelines setting the standards to be used in evaluating impacts on small businesses.[46] Section 604 of the Regulatory Flexibility Act requires EPA to prepare a Regulatory Flexibility Analysis when the Agency determines that there is a significant adverse impact on a substantial number of small entities.

Concerns regarding the potential impact of this regulation on small businesses are related to vehicle conversions. There could be a

[46] U.S. Environmental Protection Agency Memorandum to Assistant Administrators, "Compliance With the Regulatory Flexibility Act", EPA Office of Policy, Planning, and Evaluation, 1984. In addition, U.S. Environmental Protection Agency, Memorandum to Assistant Administrators, "Agency's Revised Guidelines for Implementing the Regulatory Flexibility Act", EPA Office of Policy, Planning, and Evaluation, 1992.

significant impact on small converters if they were distant from inspection and maintenance testing facilities. Difficulty in using such test facilities to comply with the post-installation emission test requirement could represent a significant economic burden to small manufacturers if they were compelled to rely solely on the alternative two-step idle post-installation test. (See section II.B.2.c. for a discussion of the post-installation testing requirements). However, EPA has no information to indicate that converters which may face such a situation currently exist or will exist in the future. Generally, EPA expects that such a situation would not occur or would occur very infrequently since there are significant economic and logistical advantages associated with locating a vehicle conversion facility within or close to an urban area. In any event, the rule provides for converters of 300 or fewer vehicles per year to request an exemption from the post-installation test if a severe economic hardship can be demonstrated.

EPA has evaluated the effects of this regulation and the Administrator of EPA certifies that there will not be an adverse impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Analysis was not conducted.

### VII. Paperwork Reduction Act

The information collection requirements in this rule pertaining to the California Pilot Program and the post-installation test for converted vehicles have been submitted to OMB for approval under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Request document has been prepared by EPA (ICR No. 1694) and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA/OPPE/ORME, 401 M Street SW, Washington, DC 20460 (Mail Code 2136) or by calling (202) 260–2740. These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register**.

This collection of information has an estimated reporting burden averaging 1.4 hours per response and an estimated annual recordkeeping burden averaging 67 hours per respondent. However, the hours spent annually on information collection activities by a given manufacturer depends upon manufacturer-specific variables, such as the number of engine families, production changes, emissions defects, and so on. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA/OPPE/ORME; 401 M Street SW, (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: EPA Desk Officer".

All other information collection requirements in this rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and have been assigned control number 2060–0104.

### VIII. Consultation With DOE and DOT

As per section 250(d) of the Clean Air Act, this rulemaking has coordinated with the Department of Energy and the Department of Transportation. Also, pursuant to section 247(e) of the Act that states "* * * The Secretary of Transportation shall, if necessary, promulgate rules under applicable motor vehicle laws regarding the safety of vehicles converted from existing and new vehicles to clean-fuel vehicles," this rulemaking has been coordinated with the Department of Transportation regarding the safety of vehicles converted to CFVs. Interagency review documents are contained in section II–F and IV–H of this rulemaking's docket.

### IX. Judicial Review

Under section 307(b)(1) of the Clean Air Act, EPA hereby finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by filing a petition for review of the United States Court of Appeals for the District Of Columbia Circuit within 60 days of publication. Under section 307(b)(2) of the Act, the requirements which are the subject of today's notice may not be challenged later in the judicial proceedings brought by EPA to enforce these requirements.

### List of Subjects

*40 CFR Part 9*

Environmental protection, Reporting and recordkeeping requirements.

*40 CFR Part 86*

Environmental protection, Administrative practice and procedure, Confidential business information, Incorporation by reference, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

*40 CFR Part 88*

Environmental protection, Incorporation by reference, Motor vehicle pollution, Reporting and Recordkeeping requirements.

Dated: June 14, 1994.

**Carol M. Browner,**

*Administrator.*

For reasons set forth in the preamble, parts 9, 86 and 88 of title 40 of the Code of Federal Regulations are amended as follows:

## PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

**Authority:** 7 U.S.C. 135 *et. seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et. seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1334, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et. seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended in the table by adding in numerical order new entries under the center heading "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures" and by adding a new center heading, "Clean-Fuel Vehicles", and new entries under it to read as follows:

**§ 9.1 OMB approvals under the Paperwork Reduction Act.**

* * * * *

| *40 CFR citations* | *OMB control No.* |
|---|---|
| * * * * * | |
| **Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures** | |
| * * * * * | |
| § 86.111–94 | 2060–0104 |
| * * * * * | |
| § 86.1311–94 | 2060–0104 |
| * * * * * | |
| **Clean-Fuel Vehicles** | |
| § 88.104–94 (a), (c), (e), (f), (g), (h), (i), (j), (k) | 2060–0104 |
| § 88.105–94 | 2060–0104 |
| § 88.305–94 | 2060–0104 |
| § 88.306–94(a), (b) introductory text | 2060–0104 |
| * * * * * | |

## PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

3. The authority citation for part 86 continues to read as follows:

**Authority:** Secs. 202, 203, 205, 206, 207, 208, 215, 216, 217, and 301(a), Clean Air Act as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a)).

3a. Section 86.1 is amended by adding a new entry to the end of the table in paragraph (b)(2) to read as follows:

**§ 86.1 Reference materials.**

* * * * *

(b) * * *

(2) * * *

| Document No. and name | 40 CFR part 86 reference |
|---|---|
| * * * | * * |
| SAE Recommended Practice J1151, December 1991, Methane Measurement Using Gas Chromatography, 1994 SAE Handbook—SAE International Cooperative Engineering Program, Volume 1: Materials, Fuels, Emissions, and Noise; Section 13 and page 170 (13.170). | 86.111–94; 86.1311–94. |

4. Section 86.085–37 of subpart A is amended by revising paragraph (b)(1) introductory text to read as follows:

**§ 86.085–37 Production vehicles and engines.**

* * * * *

(b)(1) Any manufacturer of light-duty vehicles or light-duty trucks obtaining certification under this part shall notify the Administrator, on a yearly basis, of the number of vehicles domestically produced for sale in the United States and the number of vehicles produced and imported for sale in the United States during the preceding year. Such information shall also include the number of vehicles produced for sale pursuant to 40 CFR 88.204–94(b). A manufacturer may elect to provide this information every 60 days instead of yearly by combining it with the notification required under § 86.079–36. The notification must be submitted 30 days after the close of the reporting period. The vehicle production information required shall be submitted as follows:

* * * * *

5. Section 86.094–15 of subpart A is amended by revising paragraph (a)(1) to read as follows:

**§ 86.094–15 $NO_x$ and particulate averaging, trading, and banking for heavy-duty engines.**

(a)(1) Heavy-duty engines eligible for $NO_x$ and particulate averaging, trading and banking programs are described in the applicable emission standards sections in this subpart. All heavy-duty engine families which include any engines labeled for use in clean-fuel vehicles as specified in 40 CFR part 88 are not eligible for these programs. Participation in these programs is voluntary.

* * * * *

6. Section 86.094–24 of subpart A is amended by adding a new paragraph (a)(3)(iii) and revising paragraph (a)(4) introductory text to read as follows:

**§ 86.094–24 Test vehicles and engines.**

(a) * * *

(3) * * *

(iii) Engines identical in all of the respects listed in paragraphs (a)(2) and (a)(3)(i) of this section may be further divided into different engine families if some of the engines are expected to be sold as clean-fuel vehicles under 40 CFR Part 88, and if the manufacturer chooses to certify the engines to both the clean-fuel vehicle standards of 40 CFR part 88 and the general standards of this part 86. One engine family shall include engines that are intended for general use. For this engine family, only the provisions of this part 86 shall apply. The second engine family shall include all engines that are intended to be used in clean-fuel vehicles. For this engine family, the provisions of both this part 86 and 40 CFR Part 88 shall apply. The manufacturer may submit one set of data to certify both engine families.

(4) Where engines are of a type which cannot be divided into engine families based upon the criteria listed in paragraphs (a)(2) and (a)(3) of this section, the Administrator will establish families for those engines based upon those features most related to their emission characteristics. Engines that are eligible to be included in the same engine family based on the criteria in paragraphs (a)(2) and (a)(3)(i) of this section may be further divided into different engine families if the manufacturer determines that they may be expected to have different emission characteristics, or if the manufacturer chooses to certify the engines to both the clean-fuel vehicle standards of 40 CFR Part 88 and the general standards of this part 86 as described in paragraph (a)(3)(iii) of this section. The determination of the emission characteristics will be based upon a consideration of the following features of each engine:

* * * * *

7. Section 86.111–94 of subpart B is amended by adding a new paragraph (b)(3)(vii) to read as follows:

**§ 86.111–94 Exhaust gas analytical system.**

* * * * *

(b) * * *

(3) * * *

(vii) Using a methane analyzer consisting of a gas chromatograph combined with a FID, the measurement of methane shall be done in accordance with the Society of Automotive Engineers, Inc. (SAE) Recommended Practice J1151, "Methane Measurement Using Gas Chromatography," December 1991, 1994 SAE Handbook—SAE International Cooperative Engineering Program, Volume 1: Materials, Fuels, Emissions, and Noise; Section 13 and page 170 (13.170), which is incorporated by reference.

(A) 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.

(B) Copies may be inspected at U.S. EPA, OAR, 401 M Street, SW., Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies of this material may be obtained from Society of Automotive Engineers International, 400 Commonwealth Drive, Warrendale, PA 15096–001.

* * * * *

8. Section 86.1311–94 of subpart N is amended by adding a new paragraph (b)(2)(iii) preceding figure N94–1 to read as follows:

**§ 86.1311–94 Exhaust gas analytical system; CVS bag sample.**

* * * * *

(b) * * *

(2) * * *

(iii) Using a methane analyzer consisting of a gas chromatograph combined with a FID, the measurement of methane shall be done in accordance with SAE Recommended Practice J1151, "Methane Measurement Using Gas Chromatography". (Incorporated by reference pursuant to § 86.1(b)(2)).

* * * * *

## PART 88—CLEAN-FUEL VEHICLES

9. The authority citation for part 88 continues to read as follows:

**Authority:** 42 U.S.C. 7410, 7418, 7581, 7582, 7583, 7584, 7586, 7588, 7589, and 7601(a).

10. Sections 88.101–94 and 88.102–94 in subpart A are redesignated as §§ 88.102–94 and 88.103–94, respectively, and a new § 88.101–94 is added to read as follows:

**§ 88.101–94 General applicability.**

The clean-fuel vehicle standards and provisions of this subpart are applicable to vehicles used in subpart B of this part (the Clean Fuel Fleet Program) and subpart C of this part (the California Pilot Test Program).

1. Newly designated § 88.102–94 of subpart A is amended by revising the the introductory text and adding the following definitions in alphabetical order to read as follows:

**§ 88.102–94 Definitions.**

Any terms defined in 40 CFR part 86 and not defined in this part shall have the meaning given them in 40 CFR part 86, subpart A.

*Adjusted Loaded Vehicle Weight* is defined as the numerical average of the vehicle curb weight and the GVWR.

*Dual Fuel Vehicle (or Engine)* means any motor vehicle (or motor vehicle engine) engineered and designed to be operated on two different fuels, but not on a mixture of the fuels.

*Flexible Fuel Vehicle (or Engine)* means any motor vehicle (or motor vehicle engine) engineered and designed to be operated on any mixture of two or more different fuels.

* * * * *

*Non-methane Hydrocarbon Equivalent* means the sum of the carbon mass emissions of non-oxygenated non-methane hydrocarbons plus the carbon mass emissions of alcohols, aldehydes, or other organic compounds which are separately measured in accordance with the applicable test procedures of 40 CFR part 86, expressed as gasoline-fueled vehicle non-methane hydrocarbons. In the case of exhaust emissions, the hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1. In the case of diurnal and hot soak emissions, the hydrogen-to-carbon ratios of the equivalent hydrocarbons are 2.33:1 and 2.2:1 respectively.

* * * * *

12. Newly designated § 88.103–94 of subpart A is amended by adding the following abbreviations in alphabetical order to read as follows:

**§ 88.103–94 Abbreviations.**

* * * * *

ALVW—Adjusted Loaded Vehicle Weight.

* * * * *

HC—Hydrocarbon.

* * * * *

HDV—Heavy-Duty Vehicle.
LDT—Light-Duty Truck.
LDV—Light-Duty Vehicle.
NMHC—Non-Methane Hydrocarbon.
NMHCE—Non-Methane Hydrocarbon Equivalent.

* * * * *

13. A new § 88.104–94 is added to subpart A to read as follows:

**§ 88.104–94 Clean-fuel vehicle tailpipe emission standards for light-duty vehicles and light-duty trucks.**

(a) A light-duty vehicle or light-duty truck will be considered as a TLEV, LEV, ULEV, or ZEV if it meets the applicable requirements of this section.

(b) Light-duty vehicles certified to the exhaust emission standards for TLEVs, LEVs, and ULEVs in Tables A104–1 and A104–2 shall be considered as meeting the requirements of this section for that particular vehicle emission category for model years 1994–2000 for the California Pilot Program.

(c) Light-duty vehicles certified to the exhaust emission standards for LEVs and ULEVs in Tables A104–1 and A104–2 shall be considered as meeting the requirements of this section for that particular vehicle emission category for model years 2001 and later for the California Pilot Program, and for model years 1998 and later for the Clean Fuel Fleet Program.

(d) Light light-duty trucks certified to the exhaust emission standards for a specific weight category for TLEVs, LEVs, and ULEVs in Tables A104–3 and A104–4 shall be considered as meeting the requirements of this section for that particular vehicle emission category. For model years 1994–2000 for the California Pilot Program.

(e) Light Light-duty trucks certified to the exhaust emission standards for a specific weight category for LEVs and ULEVs in Tables A104–3 and A104–4 shall be considered as meeting the requirements of this section for that particular vehicle emission category. For model years 2001 and later for the California Pilot Program, and for model years 1998 and later for the Clean Fuel Fleet Program.

(f) Heavy light-duty trucks certified to the exhaust emission standards for a specific weight category of LEVs and ULEVs in Tables A104–5 and A104–6 for model years 1998 and later shall be considered as meeting the requirements of this section for that particular vehicle emission category.

(g) A light-duty vehicle or light-duty truck shall be certified as a ZEV if it is determined by engineering analysis that the vehicle satisfies the following conditions:

(1) The vehicle fuel system(s) must not contain either carbon or nitrogen compounds (including air) which, when burned, form any of the pollutants listed in Table A104–1 as exhaust emissions.

(2) All primary and auxiliary equipment and engines must have no emissions of any of the pollutants listed in Table A104–1.

(3) The vehicle fuel system(s) and any auxiliary engine(s) must have no evaporative emissions in use.

(4) Any auxiliary heater must not operate at ambient temperatures above 40 degrees Fahrenheit.

(h) *NMOG standards for flexible- and dual-fueled vehicles when operating on clean alternative fuel*—(1) *Light-duty vehicles, and light light-duty trucks.* Flexible- and dual-fueled LDVs and light LDTs of 1996 model year and later shall meet all standards in Table A104–7 for vehicles of the applicable model year, loaded vehicle weight, and vehicle emission category.

(2) *Light-duty trucks above 6,000 lbs GVWR.* Flexible- and dual-fueled LDTs above 6,000 lbs. GVWR of 1998 model year and later shall meet all standards in Table A104–8 for vehicles of the applicable test weight and vehicle emission category.

(i) *NMOG standards for flexible- and dual-fueled vehicles when operating on conventional fuel*—(1) *Light-duty vehicles, and light light-duty trucks.* Flexible- and dual-fueled LDVs and light LDTs of 1996 model year and later shall meet all standards in Table A104–9 for vehicles of the applicable model year, loaded vehicle weight, and vehicle emission category.

(2) *Light-duty trucks above 6,000 lbs GVWR.* Flexible- and dual-fueled LDTs of 1998 model year and later shall meet all standards in Table A104–10 for vehicles of the applicable test weight and vehicle emission category.

(j) *Other standards for flexible- and dual-fueled vehicles.* When operating on clean alternative fuel, flexible- and dual-fueled light-duty vehicles and light light-duty trucks must also meet the appropriate standards for carbon monoxide, oxides of nitrogen, formaldehyde, and particulate matter as designated in paragraphs (a) through (f) of this section as well as all other applicable standards and requirements. When operating on conventional fuel, flexible- and dual-fueled vehicles must also meet all other applicable standards and requirements in 40 CFR part 86.

(k) Motor vehicles subject to standards and requirements of this section shall also comply with all applicable standards and requirements of 40 CFR part 86, except that any exhaust emission standards in 40 CFR part 86 pertaining to pollutants for which standards are established in this section shall not apply. For converted vehicles, the applicable standards and requirements of 40 CFR part 86 and this part 88 shall apply based on the model year in which the conversion is performed, regardless of the model year in which the base vehicle was originally manufactured prior to conversion.

(1) Gaseous-fueled, diesel-fueled, and electric clean-fuel vehicles are waived from cold CO test requirements of subpart C of this part if compliance is demonstrated by engineering analysis or test data.

(2) The standards in this section shall be administered and enforced in accordance with the California Regulatory Requirements Applicable to the Clean Fuel Fleet and California Pilot Programs, April 1, 1994, which are incorporated by reference.

(i) 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.

(ii) Copies may be inspected at U.S. EPA, OAR, 401 M Street, Southwest, Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies of these materials may be obtained from Barclay's Law Publishers, 400 Oyster Point Boulevard, P.O. Box 3066, South San Francisco, CA 94080, phone (415) 244–6611.

(l) The standards set forth in this section other than those for NMOG emissions refer to the exhaust emitted while the vehicle is being tested in accordance with the applicable test procedures set forth in 40 CFR part 86, subpart N. NMOG emissions are to be measured in accordance with the California Regulatory Requirements Applicable to the Clean Fuel Fleet and California Pilot Program, April 1, 1994, incorporated by reference pursuant to paragraph (k)(2) of this section.

TABLE A104–1.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES FOR HCS, CO, $NO_X$, HCHO, and PM

| | Vehicle emission category | NMOG | CO | $NO_X$ | HCHO | PM[1] |
|---|---|---|---|---|---|---|
| | TLEV | 0.125 | 3.4 | 0.4 | 0.015 | |
| | LEV | [2].075 | [2]3.4 | .2 | [2].015 | |
| | ULEV | .040 | 1.7 | [2].2 | .008 | |

[1] Applies to diesel vehicles only.
[2] Applies to ILEVs.

TABLE A104–2.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES FOR HCS, CO, $NO_X$, HCHO, and PM

| | Vehicle emission category | NMOG | CO | $NO_X$ | HCHO | PM[1] |
|---|---|---|---|---|---|---|
| | TLEV | 0.156 | 4.2 | 0.6 | 0.018 | 0.08 |
| | LEV | [2]0.090 | [2]4.2 | .3 | [2].018 | [2].08 |
| | ULEV | .055 | 2.1 | [2].3 | .011 | .04 |

[1] Applies to diesel vehicles only.
[2] Applies to ILEVs.

TABLE A104–3.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS FOR HCS, CO, $NO_X$, HCHO, and PM

| LVW (lbs) | Vehicle emission category | NMOG | CO | $NO_X$ | HCHO | PM[1] |
|---|---|---|---|---|---|---|
| 0–3750 | TLEV | .125 | 3.4 | .4 | .015 | |
| | LEV | [2].075 | [2]3.4 | .2 | [2].015 | |
| | ULEV | .040 | 1.7 | [2].2 | .008 | |
| 3751–5750 | TLEV | 0.160 | 4.4 | .7 | .018 | |
| | LEV | [2].100 | [2]4.4 | .4 | [2].018 | |
| | ULEV | .050 | 2.2 | [2].4 | .009 | |

[1] Applies to diesel vehicles only.
[2] Applies to ILEVs.

TABLE A104–4.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS FOR HCS, CO, $NO_X$, HCHO, and PM

| LVW (lbs) | Vehicle emission category | NMOG | CO | $NO_X$ | HCHO | PM[1] |
|---|---|---|---|---|---|---|
| 0–3750 | TLEV | 0.156 | 4.2 | 0.6 | 0.018 | 0.08 |
| | LEV | [2]0.090 | [2]4.2 | 0.3 | [2].018 | [2].08 |
| | ULEV | .055 | 2.1 | [2].3 | .011 | .04 |
| 3751–5750 | TLEV | .200 | 5.5 | .9 | .023 | .08 |
| | LEV | [2].130 | [2]5.5 | .5 | [2].023 | [2].08 |
| | ULEV | .070 | 2.8 | [2].5 | .013 | .04 |

[1] Applies to diesel vehicles only.
[2] Applies to ILEVs.

TABLE A104–5.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS FOR HCS, CO, $NO_X$, HCHO, and PM

| ALVW (lbs) | Vehicle emission category | NMOG | CO | $NO_X$[2] | HCHO | PM[1] |
|---|---|---|---|---|---|---|
| 0–3750 ..... | LEV ..... | [3]0.125 | [3]3.4 | 0.4 | [3]0.015 | |
| | ULEV ..... | .075 | 1.7 | [3].2 | .008 | |
| 3751–5750 . | LEV ..... | [3].160 | [3]4.4 | .7 | [3].018 | |
| | ULEV ..... | .100 | 2.2 | [3].4 | .009 | |
| 5751– ..... | LEV ..... | [3].195 | [3]5.0 | 1.1 | [3].022 | |
| | ULEV ..... | .117 | 2.5 | [3].6 | .011 | |

[1] Applies to diesel vehicles only.
[2] Does not apply to diesel vehicles.
[3] Applies to ILEVs.

TABLE A104–6.—FULL USEFUL LIFE STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS FOR HCS, CO, $NO_X$, HCHO, and PM

| ALVW (lbs) | Vehicle emission category | NMOG | CO | $NO_X$ | HCHO | PM[1] |
|---|---|---|---|---|---|---|
| 0–3750 ..... | LEV ..... | [2]0.180 | [2]5.0 | 0.6 | [2]0.022 | [2]0.08 |
| | ULEV ..... | .107 | 2.5 | [2].3 | .012 | .04 |
| 3751–5750 . | LEV ..... | [2].230 | [2]6.4 | 1.0 | [2].027 | [2].10 |
| | ULEV ..... | .143 | 3.2 | [2].5 | .013 | .05 |
| 5751– ..... | LEV ..... | [2].280 | [2]7.3 | 1.5 | [2].032 | [2].12 |
| | ULEV ..... | .167 | 3.7 | [2].8 | .016 | .06 |

[1] Applies to diesel vehicles only.
[2] Applies to ILEVs.

TABLE A104–7.—NMOG STANDARDS (G/MI) FOR FLEXIBLE- AND DUAL-FUELED VEHICLES WHEN OPERATING ON CLEAN ALTERNATIVE FUEL FOR LIGHT LIGHT-DUTY TRUCKS AND LIGHT-DUTY VEHICLES

| Vehicle type | 50,000 mile NMOG standard | 100,000 mile NMOG standard |
|---|---|---|
| MY 1996 and later: | | |
| LDTs (0–3,750 lbs. LVW) and LDVs ..... | 0.125 | 0.156 |
| LDTs (3,751–5,750 lbs. LVW) ..... | .160 | .200 |
| Beginning MY 2001: | | |
| LDTs (0–3,750 lbs. LVW) and LDVs ..... | .075 | .090 |
| LDTs (3,751–5,750 lbs. LVW) ..... | .100 | .130 |

TABLE A104–8.—NMOG STANDARDS (G/MI) FOR FLEXIBLE- AND DUAL-FUELED VEHICLES WHEN OPERATING ON CLEAN ALTERNATIVE FUEL FOR HEAVY LIGHT-DUTY TRUCKS

| Vehicle type | 50,000 mile NMOG standard | 120,000 mile NMOG standard |
|---|---|---|
| Beginning MY 1998: | | |
| LDTs (0–3,750 lbs. ALVW) ..... | 0.125 | 0.180 |
| LDTs (3,751–5,750 lbs. ALVW) ..... | .160 | .230 |
| LDTs (5,751–8,500 lbs. ALVW) ..... | .195 | .280 |

TABLE A104–9.—NMOG STANDARDS (G/MI) FOR FLEXIBLE- AND DUAL-FUELED VEHICLES WHEN OPERATING ON CONVENTIONAL FUEL FOR LIGHT LIGHT-DUTY TRUCKS AND LIGHT-DUTY VEHICLES

| Vehicle type | 50,000 mile NMOG standard | 100,000 mile NMOG standard |
|---|---|---|
| Beginning MY 1996: | | |
| LDTs (0–3,750 lbs. LVW) and LDVs | 0.25 | 0.31 |
| LDTs (3,751–5,750 lbs. LVW) | .32 | .40 |
| Beginning MY 2001: | | |
| LDTs (0–3,750 lbs. LVW) and LDVs | .125 | .156 |
| LDTs (3,751–5,750 lbs. LVW) | .160 | .200 |

TABLE A104–10.—NMOG STANDARDS (G/MI) FOR FLEXIBLE- AND DUAL-FUELED VEHICLES WHEN OPERATING ON CONVENTIONAL FUEL FOR LIGHT LIGHT-DUTY TRUCKS

| Vehicle type | 50,000 mile NMOG standard | 120,000 mile NMOG standard |
|---|---|---|
| Beginning MY 1998: | | |
| LDTs (0–3,750 lbs. ALVW) | 0.25 | 0.36 |
| LDTs (3,751–5,750 lbs. ALVW) | .32 | .46 |
| LDTs (5,751–8,500 lbs. ALVW) | .39 | .56 |

4. A new § 88.105–94 is added to subpart A to read as follows:

**§ 88.105–94 Clean-fuel fleet emission standards for heavy-duty engines.**

(a) Exhaust emissions from engines used in heavy-duty low emission vehicles shall meet one of the following standards:

(1) Combined emissions of oxides of nitrogen and nonmethane hydrocarbons (or nonmethane hydrocarbon equivalent) shall not exceed 3.8 grams per brake horsepower-hour.

(2) Combined emissions of oxides of nitrogen and nonmethane hydrocarbons (or nonmethane hydrocarbon equivalent) shall not exceed 3.5 grams per brake horsepower-hour when tested (certified) on fuel meeting the specifications of California certification fuel.

(b) Exhaust emissions from engines used in heavy-duty low emission vehicles shall meet conventional vehicle standards set forth in Part 86 for total hydrocarbon, carbon monoxide, particulate, and organic material hydrocarbon equivalent.

(c) Exhaust emissions from engines used in ultra-low emission heavy-duty vehicles shall meet each of the following standards:

(1) The combined emissions of oxides of nitrogen and nonmethane hydrocarbons (or nonmethane hydrocarbon equivalent) shall not exceed 2.5 grams per brake horsepower-hour.

(2) Carbon monoxide emissions shall not exceed 7.2 grams per brake horsepower-hour.

(3) Particulate emissions shall not exceed 0.05 grams per brake horsepower-hour.

(4) Formaldehyde emissions shall not exceed 0.025 grams per brake horsepower-hour.

(d) Exhaust emissions from engines used in inherently-low emission heavy-duty vehicles shall meet each of the following standards:

(1) The combined emissions of oxides of nitrogen and nonmethane hydrocarbons (or nonmethane hydrocarbon equivalent) shall not exceed 2.5 grams per brake horsepower-hour.

(2) Carbon monoxide emissions shall not exceed 14.4 grams per brake horsepower-hour.

(3) Particulate emissions shall not exceed 0.10 grams per brake horsepower-hour.

(4) Formaldehyde emissions shall not exceed 0.05 grams per brake horsepower-hour.

(e) The standards set forth in paragraphs (a), (b), (c), and (d) of this section refer to the exhaust emitted while the vehicle is being tested in accordance with the applicable test procedures set forth in 40 CFR part 86, subpart N.

(f)(1) A heavy-duty zero-emission vehicle (ZEV) has a standard of zero emissions for nonmethane hydrocarbons, oxides of nitrogen, carbon monoxide, formaldehyde, and particulates.

(2) A heavy-duty vehicle shall be certified as a ZEV if it is determined by engineering analysis that the vehicle satisfies the following conditions:

(i) The vehicle fuel system(s) must not contain either carbon or nitrogen compounds (including air) which, when burned, form nonmethane hydrocarbons, oxides of nitrogen, carbon monoxide, formaldehyde, or particulates as exhaust emissions.

(ii) All primary and auxiliary equipment and engines must have no emissions of nonmethane hydrocarbons, oxides of nitrogen, carbon monoxide, formaldehyde, and particulates.

(iii) The vehicle fuel system(s) and any auxiliary engine(s) must have no evaporative emissions.

(iv) Any auxiliary heater must not operate at ambient temperatures above 40 degrees Fahrenheit.

(g) All heavy-duty engines used in low emission, ultra-low emission, or zero emission vehicles shall also comply with all applicable standards and requirements of 40 CFR part 86, except that any exhaust emission standards in 40 CFR part 86 pertaining to pollutants for which standards are established in this section shall not apply.

15. Section 88.201–94 of subpart B is amended by revising paragraph (a) to read as follows:

**§ 88.201–94 Scope.**

* * * * *

(a) State Implementation Plan revisions for the State of California and other states pursuant to compliance with section 249 of the Clean Air Act, as amended in 1990.

* * * * *

16. A new § 88.204–94 is added to subpart B to read as follows:

**§ 88.204–94 Sales requirements for the California Pilot Test Program.**

(a) The total annual required minimum sales volume of new clean fuel vehicles in California for this program shall correspond to Table B204.

(b) (1) When manufacturers of vehicles subject to the regulations of this section file a report pursuant to 40 CFR 86.085–37(b), such report shall include the following information: the number of light-duty vehicles and light-duty trucks sold only in California, and the number of clean-fuel vehicles sold for the Pilot program beginning with model year 1996.

(2) For model years 1996 and 1997, manufacturers may exclude heavy light-duty trucks from the reporting required by this section.

(c) (1) Except as provided in paragraph (d) of this section, each vehicle manufacturer must sell clean-fuel vehicles in California in an amount equal to the required annual sales volume calculated in paragraph (c)(2) of this section.

(2) The required annual clean fuel vehicle sales volume for a given manufacturer is expressed in the following equation rounded to the nearest whole number.

$$RMS = \frac{MS}{TS} \times TCPPS$$

Where:

RMS=a manufacturer's required sales in a given model year.

MS=a manufacturer's total LDV and light LDT sales in California two model years earlier than year in question (for MY 1996 and 1997 RMS calculations).

=a manufacturer's total LDV and LDT sales in California two model years earlier than year in question (for MY 1998 and later RMS calculations).

TS=total LDV and light LDT sales in California of all manufacturers two model years earlier than the year in question (for MY 1996 and 1997 RMS calculations). Sales of manufacturers which meet the criteria of (d) of this paragraph will not be included.

=total LDV and LDT sales in California of all manufacturers two model years earlier than the year in question (for MY 1998 and later RMS calculations). Sales of manufacturers which meet the criteria of (d) of this paragraph will not be included.

TCPPS=Pilot program annual CFV sales requirement (either 150,000 or 300,000) for the model year in question.

(i) A manufacturer's share of required annual sales for model years 1996 and 1997 will be based on LDV and light LDT sales only. Once the heavy LDT standards are effective beginning with model year 1998, a manufacturer's required sales share will be based on all LDV and LDT sales.

(ii) A manufacturer certifying for the first time in California shall calculate annual required sales share based on projected California sales for the model year in question. In the second year, the manufacturer shall use actual sales from the previous year. In the third year and subsequent years, the manufacturer will use sales from two model years prior to the year in question.

(d) (1) Small volume manufacturer is defined in the Pilot program as one whose average annual LDV and LDT sales in California are less than or equal to 3,000 units during a consecutive three-year period beginning no earlier than model year 1993.

(i) A manufacturer with less than three consecutive years of sales in California shall use a single year of sales or, if available, the average of two years of sales in California to determine whether they fall at or below the threshold of 3,000 units.

(ii) A manufacturer certifying for the first time in California shall be considered a small volume manufacturer if their projected California sales level is at or below 3,000 units for a given year. Once the manufacturer has actual sales data for one year, this actual sales data shall be used to determine whether the manufacturer qualifies as a small volume manufacturer.

(iii) A manufacturer which does not qualify as a small volume manufacturer in model year 1996 but whose average annual LDV and LDT sales fall to or below the 3,000 unit threshold between 1996 and 2001 shall be treated as a small volume manufacturer and shall be subject to requirements for small volume manufacturers as specified in paragraph (d)(2) of this section beginning with the next model year.

(2) A manufacturer which qualifies as a small volume manufacturer prior to model year 2001 is not required to comply with the sales requirements of this section until model year 2001.

TABLE B204.—PILOT PROGRAM VEHICLE SALES SCHEDULE

| Model years | Vehicle types | Required annual sales |
|---|---|---|
| 1996 and 1997. | LDTs (< 6000 GVWR and ≤5750 LVW); and LDVs. | 150,000 |
| 1998 ..... | All Applicable Vehicle Types. | 150,000 |
| 1999+ ..... | All Applicable Vehicle Types. | 300,000 |

17. A new § 88.206–94 is added to subpart B to read as follows.

**§ 88.206–94 State Opt-In for the California Pilot Test Program.**

(a) A state may opt into the Pilot program if it contains all or part of an ozone nonattainment area classified as serious, severe, or extreme under subpart D of Title I.

(b) A state may opt into the program by submitting SIP revisions that meet the requirements of this section.

(c) For a state that chooses to opt in, SIP provisions can not take effect until one year after the state has provided notice to of such provisions to motor vehicle manufacturers and fuel suppliers.

(d) A state that chooses to opt into the program can not require a sales or production mandate for CFVs or clean alternative fuels. States may not subject fuel or vehicle suppliers to penalties or sanctions for failing to produce or sell CFVs or clean alternative fuels.

(e) (1) A state's SIP may include incentives for the sale or use in such state of CFVs required in California by the Clean Fuel Fleet Program. and the use of clean alternative fuels required to be made available in California by the California Pilot Program.

(2) Incentives may include:

(i) A registration fee on non-CFVs of at least 1 percent of the total cost of the vehicle. These fees shall be used to:

(A) Provide financial incentives to purchasers of CFVs and vehicle dealers who sell high volumes or high percentages of CFVs.

(B) Defray administrative costs of the incentive program.

(ii) Exemptions for CFVs from high occupancy vehicle or trip reduction requirements.

(iii) Preferences for CFVs in the use of existing parking places.

18. The tables to subpart B of part 88 are revised to read as follows:

**Tables to Subpart B of Part 88**

TABLE B–1.—CREDIT TABLE FOR PHASE I VEHICLE EQUIVALENTS FOR LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS

TABLE B–1.1.—CREDIT GENERATION: SELLING MORE CLEAN-FUEL VEHICLES THAN REQUIRED

[Phase I: Effective Through 2000 Model-Year]

| Vehicle emission category | LDV & LDT ≤6000 gvwr ≤3750 lvw | LDT ≤6000 gvwr >3750 lvw ≤5750 lvw | LDT >6000 gvwr ≤3750 alvw | LDT >6000 gvwr >3750 alvw ≤5750 alvw | LDT >6000 gvwr >5750 alvw |
|---|---|---|---|---|---|
| TLEV | 1.00 | 1.28 | (1) | (1) | (1) |
| LEV | 1.40 | 1.76 | 1.00 | 1.28 | 1.56 |
| ULEV | 1.68 | 2.16 | 1.40 | 1.76 | 2.18 |
| ZEV | 2.00 | 2.56 | 2.00 | 2.56 | 3.12 |

TABLE B–1.2.—CREDIT GENERATION: SELLING MORE STRINGENT CLEAN FUEL VEHICLES

| Vehicle emission category | LDV & LDT ≤6000 gvwr ≤3750 lvw | LDT ≤6000 gvwr >3750 lvw ≤5750 lvw | LDT >6000 gvwr ≤3750 alvw | LDT >6000 gvwr >3750 alvw ≤5750 alvw | LDT ≤6000 gvwr >5750 alvw |
|---|---|---|---|---|---|
| TLEV | 0.00 | 0.00 | (1) | (1) | (1) |
| LEV | .40 | .48 | 0.00 | 0.00 | 0.00 |
| ULEV | .68 | .88 | .40 | .48 | .62 |
| ZEV | 1.00 | 1.28 | 1.00 | 1.28 | 1.56 |

TABLE B–1.3.—CREDIT NEEDED IN LIEU OF SELLING CLEAN-FUEL VEHICLE

| Vehicle emission category | LDV & LDT ≤6000 gvwr ≤3750 lvw | LDT ≤6000 gvwr >3750 lvw ≤5750 lvw | LDT >6000 gvwr ≤3750 alvw | LDT >6000 gvwr >3750 alvw ≤5750 alvw | LDT >6000 gvwr >5750 alvw |
|---|---|---|---|---|---|
| TLEV | 1.00 | 1.28 | (1) | (1) | (1) |
| LEV | ..... | ..... | 1.00 | 1.28 | 1.56 |

[1] There is no TLEV category for this vehicle class.

TABLE B–2.—CREDIT TABLE FOR PHASE II: VEHICLE EQUIVALENTS FOR LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS

TABLE B–2.1.—CREDIT GENERATION: SELLING MORE CLEAN-FUEL VEHICLES THAN REQUIRED

[Phase II: effective 2001 and subsequent model-years]

| Vehicle emission category | LDV & LDT ≤6000 gvwr ≤3750 lvw | LDT ≤6000 gvwr >3750 lvw ≤5750 lvw | LDT >6000 gvwr ≤3750 alvw | LDT >6000 gvwr >3750 alvw ≤5750 alvw | LDT >6000 gvwr >5750 alvw |
|---|---|---|---|---|---|
| LEV | 1.00 | 1.26 | 0.71 | 0.91 | 1.11 |
| ULEV | 1.20 | 1.54 | 1.00 | 1.26 | 1.56 |
| ZEV | 1.43 | 1.83 | 1.43 | 1.83 | 2.23 |

TABLE B–2.2.—CREDIT GENERATION: SELLING MORE STRINGENT CLEAN-FUEL VEHICLES

| Vehicle emission category | LDV & LDT ≤6000 gvwr ≤3750 lvw | LDT ≤6000 gvwr >3750 lvw ≤5750 lvw | LDT >6000 gvwr ≤3750 alvw | LDT >6000 gvwr >3750 alvw ≤5750 alvw | LDT >6000 gvwr >5750 alvw |
|---|---|---|---|---|---|
| LEV | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ULEV | .20 | .28 | .29 | .34 | .45 |
| ZEV | .43 | .57 | .71 | .91 | 1.11 |

TABLE B–2.3.—CREDIT NEEDED IN LIEU OF SELLING CLEAN-FUEL VEHICLES

| Vehicle emission category | LDV & LDT ≤6000 gvwr ≤3750 lvw | LDT ≤6000 gvwr >3750 lvw ≤5750 lvw | LDT >6000 gvwr ≤3750 alvw | LDT >6000 gvwr >3750 alvw ≤5750 alvw | LDT >6000 gvwr >5750 alvw |
|---|---|---|---|---|---|
| LEV | 1.00 | 1.26 | 0.71 | 0.91 | 1.11 |

19. Section 88.302–94 of subpart C is amended by adding two new definitions in alphabetical order and revising a third definition to read as follows:

**§ 88.302–94 Definitions.**

* * * * *

*Clean-fuel vehicle aftermarket conversion certifier* means the business or entity that obtains a certificate of conformity with the clean-fuel vehicle standards and requirements for a vehicle/engine conversion configuration pursuant to the requirements of 40 CFR part 86 and this part 88.

* * * * *

*Conversion configuration* means any combination of vehicle/engine conversion hardware and a base vehicle of a specific engine family.

* * * * *

*Owned or operated, leased or otherwise controlled by such person* means either of the following:

(1) Such person holds the beneficial title to such vehicle; or

(2) Such person uses the vehicle for transportation purposes pursuant to a contract or similar arrangement, the term of such contract or similar arrangement is for a period of 120 days or more, and such person has control over the vehicle pursuant to the definition of control of this section.

* * * * *

20. A new § 88.305–94 is added to subpart C to read as follows:

**§ 88.305–94 Clean-fuel fleet vehicle labeling requirements for heavy-duty vehicles.**

(a) All clean-fuel heavy-duty engines and vehicles used as LEVs, ULEVs, and ZEVs that are also regulated under 40 CFR part 86 shall comply with the labeling requirements of 40 CFR 86.095–35 (or later applicable sections), and shall also include an unconditional statement on the label indicating that the engine or vehicle is a LEV, ULEV, or ZEV, and meets all of the applicable requirements of this part 88.

(b) All heavy-duty clean-fuel fleet vehicles not regulated under 40 CFR part 86 shall have a permanent legible label affixed to the engine or vehicle in a readily visible location, which contains the following information:

(1) The label heading: vehicle emissions classification information (e.g., "This is a Low Emission Vehicle");

(2) Full corporate name and trademark of the manufacturer;

(3) A statement that this engine or vehicle meets all applicable requirements of the U.S. Environmental Protection Agency clean-fuel fleet vehicle program, as described in this part 88, but not necessarily those requirements found in 40 CFR part 86.

21. A new § 88.306–94 is added to subpart C to read as follows:

**§ 88.306–94 Requirements for a converted vehicle to qualify as a clean-fuel fleet vehicle.**

(a) For purposes of meeting the requirements of section 246 of the Clean Air Act or the SIP revisions, conversions of engines or vehicles which satisfy the requirements of this section shall be treated as a purchase of a clean-fuel vehicle under subpart C of this part.

(b) The engine or vehicle must be converted using a conversion configuration which has been certified according to the provisions of 40 CFR part 86 using applicable emission standards and other provisions from part 88 for clean-fuel engines and vehicles. The following requirements will also apply:

(1) If the installation of the certified conversion configuration is performed by an entity other than aftermarket conversion certifier, the aftermarket conversion certifier shall submit a list of such installers to the Administrator. Additional installers must be added to this list and the revised list submitted to the Administrator within 5 working days from the time they are authorized to perform conversion installations by the clean-fuel vehicle aftermarket conversion certifier.

(2) If the installation of the certified conversion configuration is performed by an entity other than the certificate holder, the certificate holder shall provide instructions for installation of the aftermarket conversion system to installers listed on the certificate, and ensure that the systems are properly installed.

(3) For the purpose of determining whether certification under the Small-Volume Manufacturers Certification Program pursuant to the requirements of 40 CFR 86.094–14 is permitted, the 10,000 sales volume limit in 40 CFR 86.094–14(b)(1) shall apply to the aggregate total of all vehicles sold by a given clean-fuel vehicle aftermarket conversion certifier at all of its installation facilities without regard to the model year of the original vehicles upon which the conversion configurations are based. All vehicle sales will be included in calculating the clean-fuel vehicle aftermarket conversion certifier's aggregate total, including vehicle conversions performed under the requirements of this part 88, and all other vehicle conversions. Vehicle conversions not covered by this part 88 will be counted if they occur within the model year for which certification is sought.

(4) Clean-fuel vehicle aftermarket conversion certifiers that are subject to the post-installation emissions testing requirements in paragraph (c) of this section and who will satisfy these requirements by using the two speed idle test procedure detailed in paragraph (c)(2)(ii) of this section must conduct the following testing at the time of certification in order to generate the required certification CO emissions reference values. The certification CO emissions reference values generated must be submitted to the Administrator at the time of application for certification.

(i) For dual and flexible fuel vehicles, certification reference values must be generated for each certification test fuel required for exhaust emissions testing pursuant to 40 CFR 86.113 or 40 CFR 86.1313.

(ii) For light-duty vehicles and light-duty trucks the test fuels used during the emissions testing required by paragraph (b)(3) of this section must comply with the fuel specifications for exhaust emissions testing found in 40 CFR 86.113. For heavy-duty engines the test fuels used during the emissions testing required by paragraph (b)(3) of this section must comply with the fuel specifications for exhaust emissions testing found in 40 CFR 86.1313.

(iii) Single, consecutive idle mode and high-speed mode segments of the two speed idle test must be conducted pursuant to the requirements of 40 CFR 85.2215 and as modified by the provisions of paragraph (c)(4)(ii)(D) of this section and this paragraph to determine the required certification CO emission reference values.

(A) The certification CO emission reference value for the idle mode of the test will be the simple average of all emissions measurements taken during an idle mode of 90 seconds duration pursuant to the requirements in 40 CFR 85.2215(a).

(B) The certification CO emission reference value for the high-speed mode of the test will be the simple average of all emissions measurements taken during a high-speed mode of 180 seconds duration pursuant to the requirements in 40 CFR 85.2215(a).

(c) Except as provided in paragraph (c)(1) of this section, each converted vehicle manufactured by a clean-fuel vehicle aftermarket conversion certifier with aggregate sales of less than 10,000 converted vehicles within a given calendar year must satisfy the post-installation emissions testing requirements of paragraph (c)(2) of this section. If a vehicle fails to satisfy the

emissions testing requirements such vehicle may not be considered a clean-fuel vehicle until such noncompliance is rectified and compliance is demonstrated.

(1) A clean-fuel vehicle aftermarket conversion certifier with estimated sales of 300 or fewer engines and vehicles in a calendar year and which sells or converts vehicles outside of a non-attainment area (as classified under subpart D of Title I) which has an inspection and maintenance program that includes a test of carbon monoxide emissions may submit a request to the Administrator for an exemption from the post-installation emission test requirements of paragraph (c) of this section. If granted, such an exemption would apply to converted vehicles that have the conversion installation performed outside of a nonattainment area which has an inspection and maintenance program that includes a test of carbon monoxide emissions.

(i) The request for exemption submitted to the Administrator must include the following:

(A) The estimated number of engines and vehicles that will be converted in the calendar year.

(B) Sufficient information to demonstrate that complying with the post-installation emission test requirement represents a severe financial hardship.

(C) A description of any emission related quality control procedures used.

(ii) Within 120 days of receipt of the application for exemption, the Administrator will notify the applicant either that an exemption is granted or that sufficient cause for an exemption has not been demonstrated and that all of the clean-fuel vehicle aftermarket conversion certifier's vehicles are subject to the post-installation test requirement of paragraph (c)(2) of this section.

(iii) If the clean-fuel vehicle aftermarket conversion certifier granted an exemption originally estimates that 300 or fewer conversions would be performed in the calendar year, and then later revises the estimate to more than 300 for the year, the certifier shall inform the Administrator of such revision. A post-installation emissions test for each conversion performed after the estimate is revised is required pursuant to the requirements of paragraph (c)(2) of this section. The estimated number of conversions from such a clean-fuel vehicle aftermarket conversion certifier must be greater than 300 in the following calendar year.

(2) A clean-fuel vehicle aftermarket conversion certifier with aggregate sales less than 10,000 converted vehicles within a given calendar year shall conduct post-installation emissions testing using either of the following test methods:

(i) The carbon monoxide (CO) emissions of the converted vehicle must be determined in the manner in which CO emissions are determined according to the inspection and maintenance requirements applicable in the area in which the vehicle is converted or is expected to be operated.

(A) For dual-fuel vehicles, a separate test is required for each fuel on which the vehicle is capable of operating. For flexible fuel vehicles, a single test is required on a fuel that falls within the range of fuel mixtures for which the vehicle was designed. The test fuel(s) used must be commercially available.

(B) A converted vehicle shall be considered to meet the requirements of this paragraph if the vehicle's measured exhaust CO concentration(s) is lower than the cutpoint(s) used to determine CO pass/fail under the inspection and maintenance program in the area in which the conversion is expected to be operated.

*(1)* If CO pass/fail criteria are not available for a vehicle fuel type then pass/fail criteria specific to gasoline use are to be used for vehicles of that fuel type.

*(2)* [Reserved].

(ii) The carbon monoxide (CO) emissions of the converted vehicle must be determined in the manner specified in the two speed idle test-EPA 91 found in 40 CFR 85.2215. All provisions in the two speed idle test must be observed except as detailed in paragraph (c)(2)(ii)(D) of this section.

(A) For dual and flexible fuel vehicles, a separate test is required for each certification test fuel required for exhaust emissions testing pursuant to 40 CFR 86.113 or 40 CFR 86.1313.

(B) For light-duty vehicles and light-duty trucks the test fuels used during the emissions testing required by paragraph (c)(4) of this section must comply with the fuel specifications for exhaust emissions testing found in 40 CFR 86.113. For heavy-duty engines the test fuels used during the emissions testing required by paragraph (c)(2) of this section must comply with the fuel specifications for exhaust emissions testing found in 40 CFR 86.1313.

(C) A converted vehicle shall be considered to meet the requirements of this paragraph if the following criteria are satisfied:

*(1)* The vehicle's measured idle mode exhaust CO concentration(s) must be lower than the sum of 0.4 percent CO plus the idle mode certification CO emissions reference value as determined according to the requirements of paragraph (b)(3) of this section.

*(2)* The vehicle's measured high-speed mode exhaust CO concentration(s) must be lower than the sum of 0.4 percent CO plus the high-speed certification CO emissions reference value as determined according to the requirements of paragraph (b)(3) of this section.

(D) For the purposes of the post-installation emissions testing required by paragraph (c) of this section, the following adjustments to the two speed idle test-EPA 91 in 40 CFR 85.2215 are necessary.

*(1)* Testing of hydrocarbon emissions and equipment associated solely with hydrocarbon emissions testing is not required.

*(2)* The CO emissions pass/fail criteria in 40 CFR 85.2215(a)(2), (c)(1)(ii)(A), (c)(2)(ii)(A)*(1)*, (c)(2)(iii)(A)*(1)*, and (d)(3)(i) are to be replaced with the pass/fail criteria detailed in paragraph (c)(2)(ii)(C) of this section. All HC pass/fail criteria in 40 CFR 85.2215 do not apply.

*(3)* The void test criteria in 40 CFR 85.2215(a)(3) and (b)(2)(iv) associated with maintaining the measured concentration of CO plus $CO^2$ above six percent does not apply. However, the Administrator may reconsider requiring that the void test criteria in 40 CFR 85.2215(a)(3) and (b)(2)(iv) be applied, and may issue an advisory memorandum to this effect in the future.

*(4)* The ambient temperature levels encountered by the vehicle during testing must comply with the specifications in 40 CFR 86.130 or 40 CFR 86.1330.

(d) The clean-fuel vehicle aftermarket conversion certifier shall be considered a manufacturer for purposes of Clean Air Act sections 206 and 207 and related enforcement provisions, and must accept liability for in-use performance of all the vehicles produced under the certificate of conformity as outlined in 40 CFR part 85.

(1) The useful life period for the purposes of determining the in-use liability of the clean-fuel vehicle aftermarket conversion certifier shall be the original useful life of the vehicle prior to conversion.

(2) [Reserved].

(e) *Tampering.* (1) The conversion from an engine or vehicle capable of operating on gasoline or diesel fuel only to a clean-fuel engine or vehicle shall not be considered a violation of the tampering provisions of Clean Air Act section 203(a)(3), if such conversion is done pursuant to a conversion configuration certificate by the

aftermarket conversion certifier or by an installer listed on the certificate.

(2) In order to comply with the provisions of this subpart, an aftermarket conversion installer must:

(i) Install a certified aftermarket conversion system for which the installer is listed by the certifier; and

(ii) Perform such installation according to instructions provided by the aftermarket conversion certifier.

(f) *Data collection.* The clean-fuel vehicle aftermarket conversion certifier is responsible for maintaining records of each engine and vehicle converted for use in the Clean Fuel Fleets program for a period of 5 years. The records are to include the engine or vehicle make, engine or vehicle model, engine or vehicle model year, and engine or vehicle identification number of converted engines and vehicles; the certification number of the conversion configuration; the brand names and part numbers of the parts included in the conversion configuration; the date of the conversion and the facility at which the conversion was performed; and the results of post-installation emissions testing if required pursuant to paragraph (c) of this section.

22. A new § 88.308–94 is added to subpart C to read as follows:

**§ 88.308–94 Programmatic requirements for clean-fuel fleet vehicles.**

*Multi-State nonattainment areas.* The states comprising a multi-State nonattainment area shall, to the greatest extent possible, promulgate consistent clean-fuel fleet vehicle programs.

23. Section 88.311–93 of subpart C is amended by revising paragraphs (c) and (d) to read as follows:

**§ 88.311–93 Emissions standards for inherently Low-Emission Vehicles.**

* * * * *

(c) *Light-duty vehicles and light-duty trucks.* ILEVs in LDV and LDT classes shall have exhaust emissions which do not exceed the LEV exhaust emission standards for NMOG, CO, HCHO, and PM and the ULEV exhaust emission standards for $NO_x$ listed in Tables A104–1 through A104–6 for light-duty CFVs. Exhaust emissions shall be measured in accordance with the test procedures specified in § 88.104(l). An ILEV must be able to operate on only one fuel, or must be certified as an ILEV on all fuels it can operate on. These vehicles shall also comply with all requirements of 40 CFR part 86 which are applicable to conventional gasoline-fueled, methanol-fueled, diesel-fueled, natural gas-fueled or liquified petroleum gas-fueled LDVs/LDTs of the same vehicle class and model year.

(d) *Heavy-duty vehicles.* ILEVs in the HDV class shall have exhaust emissions with combined non-methane hydrocarbon and oxides of nitrogen exhaust emissions which do not exceed the exhaust emission standards in grams per brake horsepower-hour listed in § 88.105. Exhaust emissions shall be measured in accordance with the test procedures specified in § 88.105(d). An ILEV must be able to operate on only one fuel, or must be certified as an ILEV on all fuels it can operate on. These vehicles shall also comply with all requirements of 40 CFR part 86 which are applicable in the case of conventional gasoline-fueled, methanol-fueled, diesel-fueled, natural gas-fueled or liquified petroleum gas-fueled HDVs, of the same weight class and model year.

* * * * *

24. The tables to subpart C of part 88 are amended by removing tables C93–6, C93–6.1, and C93–6.2, and by revising tables C94–1, C94–1.1, C94–1.2, C94–1.3, C94–2, C94–2.1, C94–2.2, C94–2.3, C94–3, C94–3.1, C94–3.2, and C94–3.3 to read as follows:

**Tables to Subpart C of Part 88**

TABLE C94–1.—FLEET CREDIT TABLE BASED ON REDUCTION IN NMOG. VEHICLE EQUIVALENTS FOR LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS

TABLE C94–1.1.—CREDIT GENERATION: PURCHASING MORE CLEAN-FUEL VEHICLES THAN REQUIRED BY THE MANDATE

| NMOG | LDV, LDT ≤6000 GVWR, ≤3750 LVW | LDT ≤6000 GVWR, >3750 LVW ≤5750 LVW | LDT >6000 GVWR, ≤3750 ALVW | LDT >6000 GVWR, >3750 ALVW ≤5750 ALVW | LDT >6000 GVWR, >K5750 ALVW |
|---|---|---|---|---|---|
| LEV | 1.00 | 1.26 | 0.71 | 0.91 | 1.11 |
| ULEV | 1.20 | 1.54 | 1.00 | 1.29 | 1.47 |
| ZEV | 1.43 | 1.83 | 1.43 | 1.83 | 2.23 |

TABLE C94–1.2.—CREDIT GENERATION: PURCHASING A ULEV OR ZEV TO MEET THE MANDATE

| NMOG | LDV, LDT ≤6000 GVWR, ≤3750 LVW | LDT 1≤6000 GVWR, >3750 LVW ≤5750 LVW | LDT >6000 GVWR, ≤3750 ALVW | LDT >6000 GVWR, >3750 ALVW, ≤5750 ALVW | LDT >6000 GVWR, >5750 ALVW |
|---|---|---|---|---|---|
| LEV | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ULEV | 0.20 | 0.29 | 0.29 | 0.34 | 0.45 |
| ZEV | 0.43 | 0.57 | 0.71 | 0.91 | 1.11 |

TABLE C94–1.3.—CREDIT NEEDED IN LIEU OF PURCHASING A LEV TO MEET THE MANDATE

| NMOG | LDV, LDT ≤6000 GVWR, ≤3750 LVW | LDT ≤6000 GVWR, >3750 LVW ≤5750 LVW | LDT >6000 GVWR, ≤3750 ALVW | LDT >6000 GVWR, >3750 ALVW ≤5750 ALVW | LDT >6000 GVWR, ≤5750 ALVW |
|---|---|---|---|---|---|
| LEV | 1.00 | 1.26 | 0.71 | 0.91 | 1.11 |

TABLE C94–2.—FLEET CREDIT TABLE BASED ON REDUCTION IN $NMOG+NO_x$. VEHICLE EQUIVALENTS FOR LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS

TABLE C94–2.1.—CREDIT GENERATION: PURCHASING MORE CLEAN-FUEL VEHICLES THAN REQUIRED BY THE MANDATE

| $NMOG+NO_x$ | LDV, LDT ≤6000 GVWR, ≤3750 LVW | LDT ≤6000 GVWR, >3750 LVW ≤5750 LVW | LDT >6000 GVWR, ≤3750 ALVW | LDT >6000 GVWR, >3750 ALVW ≤5750 ALVW | LDT >6000 GVWR, >5750 ALVW |
|---|---|---|---|---|---|
| LEV | 1.00 | 1.39 | 0.33 | 0.43 | 0.52 |
| ULEV | 1.09 | 1.52 | 1.00 | 1.39 | 2.06 |
| ZEV | 1.73 | 2.72 | 1.73 | 2.72 | 3.97 |

TABLE C94–2.2.—CREDIT GENERATION: PURCHASING A ULEV OR ZEV TO MEET THE MANDATE

| $NMOG+NO_x$ | LDV, LDT ≤6000 GVWR, ≤3750 LVW | LDT ≤6000 GVWR, >3750 LVW ≤5750 LVW | LDT >6000 GVWR, ≤3750 ALVW | LDT >6000 GVWR, >3750 ALVW ≤5750 ALVW | LDT >6000 GVWR, >5750 ALVW |
|---|---|---|---|---|---|
| LEV | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ULEV | 0.09 | 0.13 | 0.67 | 0.96 | 1.54 |
| ZEV | 0.73 | 1.34 | 1.40 | 2.29 | 3.45 |

TABLE C94–2.3.—CREDIT NEEDED IN LIEU OF PURCHASING A LEV TO MEET THE MANDATE

| $NMOG+NO_x$ | LDV, LDT ≤6000 GVWR, ≤3750 LVW | LDT ≤6000 GVWR, >3750 LVW ≤5750 LVW | LDT ≤6000 GVWR, ≤3750 ALVW | LDT >6000 GVWR, >3750 ALVW ≤5750 ALVW | LDT >6000 GVWR, >5750 ALVW |
|---|---|---|---|---|---|
| LEV | 1.00 | 1.39 | 0.33 | 0.43 | 0.52 |

TABLE C94–3.—FLEET CREDIT TABLE BASED ON REDUCTION IN CARBON MONOXIDE. VEHICLE EQUIVALENTS FOR LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS

TABLE C94–3.1.—CREDIT GENERATION: PURCHASING MORE CLEAN-FUEL VEHICLES THAN REQUIRED BY THE MANDATE

| CO | LDV, LDT ≤6000 GVWR, ≤3750 LVW | LDT ≤6000 GVWR, >3750 LVW ≤5750 LVW | LDT ≤6000 GVWR, ≤3750 ALVW | LDT >6000 GVWR, >3750 ALVW ≤5750 ALVW | LDT >6000 GVWR, >5750 ALVW |
|---|---|---|---|---|---|
| LEV | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 |
| ULEV | 2.00 | 2.29 | 2.00 | 2.29 | 2.47 |
| ZEV | 3.00 | 3.59 | 3.00 | 3.59 | 3.94 |

TABLE C94–3.2.—CREDIT GENERATION: PURCHASING A ULEV OR ZEV TO MEET THE MANDATE

| CO | LDV, LDT ≤6000 GVWR, ≤3750 LVW | LDT ≤6000 GVWR, >3750 LVW ≤5750 LVW | LDT >6000 GVWR, ≤3750 ALVW | LDT >6000 GVWR, >3750 ALVW ≤5750 ALVW | LDT >6000 GVWR, >5750 ALVW |
|---|---|---|---|---|---|
| LEV | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| ULEV | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 |
| ZEV | 2.00 | 2.29 | 2.00 | 2.29 | 2.47 |

TABLE C94–3.3.—CREDIT NEEDED IN LIEU OF PURCHASING A LEV TO MEET THE MANDATE

| CO | LDV, LDT ≤6000 GVWR, ≤3750 LVW | LDT ≤6000 GVWR, >3750 LVW ≤5750 LVW | LDT >6000 GVWR, ≤3750 ALVW | LDT >6000 GVWR, >3750 ALVW ≤5750 ALVW | LDT >6000 GVWR, >5750 ALVW |
|---|---|---|---|---|---|
| LEV | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 |

* * * * *

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Part III

# Department of Transportation

Federal Railroad Administration

49 CFR Parts 212 and 234
Grade Crossing Signal System Safety; Final Rule

**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

**49 CFR Parts 212 and 234**

**[FRA Docket No. RSGC–5; Notice No. 7]**

**RIN 2130—AA70**

## Grade Crossing Signal System Safety

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** FRA is issuing a final rule requiring that railroads comply with specific maintenance, inspection, and testing requirements for active highway-rail grade crossing warning systems. FRA is also requiring that railroads take specific and timely actions to protect the travelling public and railroad employees from the hazards posed by malfunctioning highway-rail grade crossing warning systems. This action is taken in part, in response to a statutory requirement that FRA "issue rules, regulations, orders, and standards to ensure the safe maintenance, inspection, and testing of signal systems and devices at railroad highway grade crossings."

**EFFECTIVE DATE:** These rules will become effective January 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** William Goodman, Chief, Signal and Train Control Division, Office of Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–366–2231), or Mark Tessler, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–366–0628).

**SUPPLEMENTARY INFORMATION:**

### Background

On January 20, 1994, FRA published a Notice of Proposed Rulemaking (NPRM) in which FRA proposed to require that railroads comply with specific maintenance, inspection, and testing requirements for active highway-rail grade crossing warning systems. FRA also proposed to require that railroads take specific and timely actions to protect the travelling public and railroad employees from the hazards posed by malfunctioning highway-rail grade crossing warning systems. A public hearing was held in Washington, D.C. on March 1, 1994. The comment period in this rulemaking closed on March 21, 1994. The final rule issued today reflects many of the comments and the testimony presented by 25 parties.

FRA had issued an earlier NPRM on June 29, 1992 (57 FR 28819), in which FRA proposed rules requiring specific and timely response in situations involving malfunctioning highway-rail grade crossing warning systems. A public hearing was held in Washington, D.C. on September 15, 1992. This prior NPRM did not address maintenance, inspection and testing of such warning systems. Due to comments received and an intention to widen the scope of the rulemaking to include proposed standards for maintenance, inspection, and testing pursuant to the mandate of 49 U.S.C. 20134(b), (formerly § 202(q) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(q)) (Safety Act) as amended by section 2 of the Rail Safety Enforcement and Review Act (Pub. L. 102-365)), an open meeting was held on December 11, 1992. Among the comments received was a joint submission from the Brotherhood of Railroad Signalmen, the Association of American Railroads, and The American Short Line Railroad Association. In addition to commenting on the prior NPRM, the labor/management group proposed specific regulatory language addressing both timely response and maintenance, inspection, and testing.

The NPRM issued on January 20, 1994 reflected the consolidation into one rulemaking docket of the timely response rulemaking with proposed standards for maintenance, inspection, and testing of grade crossing warning systems. The NPRM generated a wide range of comments. Individual comments were received from: thirteen state regulatory agencies representing eleven states; five commuter rail authorities; three freight railroads; one union; and two industry associations. Additionally, a joint submission was received from the Brotherhood of Railroad Signalmen, the American Short Line Railroad Association and the Association of American Railroads ("labor/management group").

This final rule amends 49 CFR Part 234, "Grade Crossing Signal Safety", and to a lesser extent, 49 CFR Part 212, "State Safety Participation Regulations."

This rule is a vital component of DOT's Rail-Highway Grade Crossing Action Plan which details six major Departmental initiatives addressing highway-rail grade crossing safety and trespass prevention. These initiatives include: enhanced enforcement of traffic laws at crossings; enhanced rail corridor crossing reviews and improvements; expanded public education and Operation Lifesaver activities; increased safety at private crossings; improved data and research efforts; and prevention of rail trespassing. These initiatives are comprised of fifty-five separate actions the Department proposes to take.

Part 234 was issued in 1991 (56 FR 33728, July 23, 1991) primarily as a reporting rule by which FRA received data pertaining to malfunctions of highway-rail grade crossing warning systems. Part 234 is being amended by restructuring the existing Part 234 into two new subparts, "Subpart A—General" and "Subpart B—Reports" and by adding two subparts, "Subpart C—Response to Reports of Warning System Malfunction" and "Subpart D—Maintenance, Inspection, and Testing."

Additionally, 49 CFR Part 212 is being amended to provide for the participation of qualified state highway-rail grade crossing inspectors and apprentices within the State Participation Program.

As we stated in the preamble to the early NPRM, we believe the risks to the travelling public and railroad employees from grade crossing accidents resulting from system failures can be reduced. The active grade crossing warning systems in place at the nation's highway-rail grade crossings are designed to fail in a "fail-safe" mode. If a component or circuitry fails, the device fails in such a manner that the warning is activated, thus in theory preventing a highway user from entering onto the tracks in front of a train. This system has worked successfully for many years. FRA does not take issue with the basic design theory of "fail-safe" warning devices—they are true lifesaving devices. However, the fail-safe feature loses its effectiveness as time goes by without repair of the warning system and its return to fully functioning status.

Failure of a device to activate when a train is approaching creates an obvious and acute risk. Indeed, an otherwise cautious highway user could be entrapped by the failure to warn. Although activation failures are rare events and railroads typically respond with appropriate dispatch, adding further impetus to appropriate diagnosis and response is warranted by the critical nature of the risk.

Therefore, FRA is issuing these amendments to 49 CFR part 234 in which railroads are required to take certain steps when they are notified of either activation failures or false activations. These steps, designed to assure the safety of the travelling public and railroad employees, are not unknown to the railroad industry. They require the railroad to take the following three series of steps after learning of a malfunctioning warning system: (1) Notify trains and law enforcement

authorities of the malfunction; (2) take appropriate actions to warn and control highway traffic pending inspection and repair of the system; and (3) repair the system.

The rules do not establish a specific time frame for repair of malfunctioning warning systems. Setting a specific repair time would necessitate establishing a schedule of various defects together with approved repair periods. Not only is a system of this type very cumbersome to establish and monitor, it would not take into consideration the operating environments of various railroads. Rather, safety is being maintained while the warning system is out of service by requiring an equivalent level of warning and protection. That safety level will be ensured by the flagging and speed restrictions contained in this rule.

Safety at active grade crossings will be further ensured by the maintenance, inspection, and testing requirements contained in this rule.

**Section-by-Section Analysis**

*49 CFR Part 212*

FRA proposed revisions to 49 CFR Part 212, "State Safety Participation Program" in order to provide for qualified state railroad safety inspectors to enforce the grade crossing safety rules issued today.

*Section 212.231 Highway-rail Grade Crossing Inspector*

As proposed, this section amends 49 CFR Part 212, "State Safety Participation Program" to create a new category of "Highway-rail grade crossing inspector" within the State Participation Program. The proposal established minimum qualification standards enabling state inspectors to enforce grade crossing signal system safety regulations at 49 CFR Part 234. Additionally, this section as proposed provided that all state signal and train control inspectors qualified under § 212.207 are also thereby fully qualified under new § 212.231. California Department of Transportation, Division of Rail (CA DOT) commented that this proposed section was "worrisome in its flagrant approval of substituting schooling or related technical specialization, or completion of an apprentice training program, in lieu of having four years of specific experience* * * ." FRA appreciates CA DOT's concerns, however, FRA has not found the qualification requirements, which mirror the requirements for state inspectors in other disciplines, to be a problem. However, if any state regulatory agency deems it appropriate to impose more stringent requirements for its inspectors, it is entirely free to do so. General qualifications of state inspection personnel under the state participation program are governed by 49 C.F.R. part 212.201 which, in subsection (a) states that "this subpart [subpart C—State Inspection Personnel] prescribes the minimum qualification requirements for State railroad safety inspectors, compliance inspectors and inspector apprentices. A State agency may establish more stringent or additional requirements for its employees." Consequently, FRA has not modified this section as suggested by CA DOT.

*Final Rule*

This section is being adopted as proposed, with the exception that language has been added to subsection (d) to clarify FRA's original intent that state signal and train control inspectors can also enforce Grade Crossing Signal System Safety Rules only if they have demonstrated the ability to understand and detect deviations from those rules. While FRA anticipates that state signal and train control inspectors will have the technical expertise needed to ensure compliance with these rules, they also need to be familiar with the regulatory requirements themselves.

*Section 212.233 Apprentice Highway-rail Grade Crossing Inspector*

As proposed, this section establishes minimum qualification standards which applicants must meet prior to being enrolled in the inspector training program within the State Participation Program. FRA received no specific comments regarding this section.

*Final Rule*

This section is adopted as proposed.

*49 CFR Part 234*

*Section 234.1 Scope*

As proposed, this section expands the scope of Part 234. The final rule issued today adds two new subparts to Part 234, "Response to Reports of Warning System Malfunction" and "Maintenance, Inspection, and Testing." This section is amended to include the subject areas covered by these new subparts.

This section has been revised from that proposed to make clear that this part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part. In addition to prescribing standards for the reporting of failures of highway-rail grade crossing warning systems, this part also prescribes minimum actions railroads must take when such warning systems malfunction and imposes minimum maintenance, inspection, and testing standards for such systems. The actions required by this part are the minimum actions which need to be taken by a railroad in a specific situation. Thus, it would be acceptable for a railroad to determine that it will stop at every malfunctioning warning system rather than cross at a reduced speed. Similarly, it is acceptable to test a crossing system component every three months, rather than every 12 months as required by this rule. References in sections 234.105 and 234.107 to a railroad "taking, at a minimum, the following actions:" have accordingly been revised to delete "at a minimum" inasmuch as the requirement has been placed more appropriately in section 234.1.

The NPRM contained a provision stating that "[w]hen any person performs any function required by this part, that person is required to perform that function in accordance with this part." After review, and in an effort to delete unnecessary and confusing language, FRA will delete the proposed language inasmuch as section 234.6 "Penalties", provides for appropriate penalties against any person who violates any requirement of this part.

*Final Rule*

This section sets forth the scope of Part 234. Part 234 imposes minimum maintenance, inspection, and testing standards highway-rail grade crossing warning systems. This part also prescribes standards for the reporting of failures of such systems and prescribes minimum actions railroads must take when such warning systems malfunction. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

*Section 234.3 Application*

FRA did not propose any specific changes to this section. Rather, FRA posed a series of questions pertaining to the application of these rules. FRA questioned whether the rules should apply to scenic or tourist railroads—those both on and off the general railroad system of transportation. FRA stated that:

> FRA does not believe that scenic railroads which are part of the general railroad system of transportation should be treated differently than other railroads under the proposed rules issued today. The primary beneficiary of these rules will be the motoring public. A motorist should have the same assurance of safety whether crossing the tracks of a Class

I railroad, a small short line, or those of a small scenic railroad. FRA invites public comment on this issue.

FRA further questioned whether these rules should "be applied to crossings on trackage not located on the general railroad system? Should the answer depend on whether the crossing is a public or private crossing?"

There was disagreement among commenters as to whether these rules should be applied to trackage not located on the general railroad system. The Minnesota Department of Transportation stated, "We believe the rules should apply to all signals whether they are on public or private railroads, public or private roadways or whether the railroad is connected into the rail network or not. The driver of a vehicle is seldom aware of facility ownership. The credibility of crossing signals needs to be maintained regardless of where they are used." The New York State Department of Transportation (NYS DOT) agreed to the extent that the rules "should apply to all crossings of public roadways regardless of the status of the railroad." However, the NYS DOT further stated that "extension of the authority to include tourist and plant railroad crossings on private property would not be appropriate, since motorist expectations are different on private property and both train and vehicle speeds are generally low." This difference of opinion was also reflected in comments received from other parties.

In analyzing this issue, FRA is confronted with a number of differing situations based on the different nature of vehicle roadways (public and private) and differing railroad operations: freight and passenger operation on the general system; freight operations within an industrial plant; tourist railroad on the general system; and tourist railroad not part of the general system (see discussion below).

Commenters generally agree that all crossings over general system railroads should be governed by this rule. We agree. Thus, active warning systems on both private and public roadways crossing general system railroads are subject to this rule.

There was no consensus as to whether these rules should apply to public or private crossings over "plant" railroads. While some commenters urged that all crossings under all circumstances should be governed by the rule, others, such as NYS DOT and West Virginia Department of Transportation held the opinion that crossings over plant railroads should not be subject to the rule. Unfortunately, FRA did not receive specific information or data supporting the views commenters supporting either position. If FRA were to include plant railroads within the application of this rule, it would be applying a regulatory regimen over entities which have historically not been regulated by the FRA. Although FRA has authority to regulate this field of entities, it has not chosen to do so for reasons of both lack of a demonstrated safety need and the need to apply limited FRA safety resources where they can be best utilized. As has been stated, plant railroad operations typically involve low speed operations with small numbers of rail cars permitting relatively short stopping distances. These operations typically also involve roadway crossings with relatively low speed vehicular traffic. These reasons, together with the historical basis for not asserting jurisdiction in these situations leads FRA to not assert jurisdiction over public and private crossings at such plant railroads. Of course, because FRA's regulatory authority permits it to amend the applicability sections of its regulations so as to expand or contract the populations of railroads covered by a particular set of regulations, if circumstances so warrant, FRA may assert such jurisdiction in the future.

As noted in the NPRM, FRA recently received a petition from the Berkshire Scenic Railway Museum, Incorporated on behalf of tourist, excursion, and scenic railroads requesting the need for legislative and regulatory action for new regulations tailored specifically to the tourist rail industry. Pursuant to FRA's response to that petition, FRA has considered the suggestions made by those parties in drafting these final regulations. There is a very wide range of operations that could be considered tourist, excursion, or scenic railroads under the broadest reading of the term "railroad." In an effort to clarify the proper extent of the exercise of FRA's jurisdiction, FRA recently settled on several principles that will be used as current FRA guidelines. FRA will exercise jurisdiction over all tourist, excursion, and scenic railroads, whether or not they operate over the general railroad system, except those that are (1) less than 24 inches in gage and/or (2) insular.

To determine insularity, FRA looks at various criteria that measure the likelihood that a railroad's operations might affect a member of the public. FRA has concluded that a tourist, excursion, or scenic railroad is insular if its operations are limited to a separate enclave in such a way that there is no reasonable expectation that the safety of any member of the public (except a business guest, a licensee of the tourist operation or an affiliated entity, or a trespasser) would be affected by the operation. A railroad is *not* considered insular if one or more of the following exists on its line: (a) A public highway-rail crossing that is in use; (b) an at-grade rail crossing that is in use; (c) a bridge over a public road or waters used for commercial navigation; or (d) a common corridor with a railroad, *i.e.*, its operations are within 30 feet of those of any railroad.

Thus, the mere fact that the trackage of a railroad is not connected to the general system does not make the railroad insular under these criteria. While these criteria tend to sort out the insular theme parks and museums, a need to do case-by-case analysis in certain close situations still exists.

Therefore, FRA has concluded that the requirements contained in this part should apply to each non-general system, non-insular passenger railroad that confines its operations to lines that are not part of the general system (*i.e.*, it is a stand-alone with no freight traffic but has one or more features that preclude its being considered insular). FRA believes that application of these regulations to non-insular passenger operations off the general system is warranted by the risk to passengers associated with accidents involving heavy motor vehicles and is consistent with FRA's ability to regulate and enforce safety standards in a cost effective manner.

FRA recognizes that additional crossings equipped with automated warning systems may be found on plant railroads and private freight railroads. Maintenance, inspection, and testing of these automated systems is the responsibility of entities not otherwise regulated by FRA. As to plant and private freight railroads, these functions lie outside the scope of this final rule, and state and local authorities will retain their existing authority to administer and enforce appropriate requirements for the protection of the public. If data should be developed that indicates a need for uniform national regulation of this subject matter, FRA may revisit this issue at a future time.

Based on the above, FRA is revising § 234.3 to apply to all freight, passenger and scenic railroads which are part of the general system of transportation. Because the present definition of "highway-rail grade crossing" contained in § 234.5 includes both private and public crossings, no change is necessary to provide that this part applies to both private and public crossings over railroads which are subject to the rule. As a consequence, private and public crossings over general system railroads

will be covered by this part. Additionally, this part will apply to all non-insular passenger railroads off the general system. FRA notes that a passenger railroad off the general system may be considered non-insular under FRA's listed factors, but have only private grade crossings on its line of railroad. Because of the non-insular status of the railroad, the private crossings will be subject to this rule. However, if based on an analysis of the listed factors which determine insularity, a tourist operation is considered to be insular, private crossings on its line would not be subject to this rule.

*Final Rule.*

This section provides that this part applies to all railroads except a railroad that exclusively operates freight trains only on track which is not part of the general railroad system of transportation, rail rapid transit operations conducted over track that is used exclusively for that purpose and that is not part of the general railroad system of transportation, or a passenger railroad that operates trains only on track inside an installation that is insular.

*Paragraph 234.4 Preemptive Effect*

FRA proposed adding this section to Part 234 to inform the public as to FRA's views regarding the preemptive effect of these rules. While the presence or absence of such a section does not in itself affect the preemptive effect of this part, it informs the public concerning the statutory provision which does govern the preemptive effect of these rules. Section 20106 of title 49 of the United States Code, (formerly Section 205 of the Safety Act (45 U.S.C. 434)) provides that all regulations prescribed by the Secretary relating to railroad safety preempt any State law, regulation, or order, covering the same subject matter, except a provision directed at an essentially local safety hazard that is not incompatible with a federal law, regulation, or order and that does not unreasonably burden interstate commerce.

The California Public Utilities Commission commented that the "Federal regulations do not explain the relationship between the FRA rules and the various state rail-highway crossing regulatory agency rules. Federal rules which preempt state regulation should clearly define a state regulatory agency's role." FRA views the terms of 49 U.S.C. 20106 as explaining such relationships. Any state regulatory agency rules covering the same subject matter as these regulations issued today are preempted. However, section 20106 provides that a State may adopt or continue in force an additional or more stringent law, rule, regulation, or order, relating to railroad safety when necessary to eliminate or reduce an essentially local safety hazard, and when not incompatible with any Federal law, rule, regulation, or order, and when not creating an unreasonable burden on interstate commerce.

Section 20105 of title 49 of the United States Code, (formerly Section 206 of the Safety Act (45 U.S.C. 435)) provides a mechanism by which a state agency can participate in the subject areas covered by today's regulation. That section provides for state participation in carrying out investigative and surveillance activities in connection with federal railroad safety rules. See also FRA's state participation regulations at 49 C.F.R. Part 212.

*Final Rule*

This section explains that under 49 U.S.C. 20106 (formerly Section 205 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 434)), issuance of these regulations preempts any State law, rule, regulation, order, or standard covering the same subject matter, except a provision directed at an essentially local safety hazard that is consistent with this part and that does not impose an undue burden on interstate commerce.

*Section 234.5 Definitions*

The NPRM contained proposals to add three definitions to those terms already defined in the rule. Commenters generally supported the proposed definitions contained in the NPRM. However, some parties suggested changes to two proposed definitions, "appropriately equipped flagger" and "credible report of system malfunction". No opposition was expressed to the definition of "warning system malfunction."

*"Appropriately equipped flagger."* As proposed, the definition of "appropriately equipped flagger" means a person other than a train crewmember who is equipped with an orange vest, shirt, or jacket for daytime flagging. For nighttime flagging, similar outside garments shall be retroreflective. The retroreflective material shall be either orange, white (including silver-colored coatings or elements that retroreflect white light), yellow, fluorescent red-orange, or fluorescent yellow-orange and shall be designed to be visible at a minimum distance of 1,000 feet. The design configuration of the retroreflective material shall provide recognition of the wearer as a person and shall be visible through the full range of body motions. Acceptable hand signalling devices for daytime flagging include STOP/SLOW paddles and red flags. For nighttime flagging, a flashlight, lantern, or other lighted signal shall be used.

The West Virginia Department of Transportation recommended that flaggers' clothing, devices and training conform to the Manual on Uniform Traffic Control Devices ("MUTCD") in all respects. As we stated in the NPRM, we encourage railroads to provide equipment and training in accordance with "Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility and Incident Management Operations" issued by the Federal Highway Administration as part VI of the MUTCD. However, given the industry-wide cost of equipping in full accordance with the MUTCD and training thousands of employees, FRA is leaving to individual railroads the decision as to the extent of training and equipping beyond the minimum requirements of this rule.

The Long Island Rail Road (LIRR) commented that a uniformed police officer should be considered to meet the requirements of this section. We agree. As noted in the NPRM, FRA does not intend to impose flagging equipment requirements on police officers, including uniformed railroad police. Police officers are presumably trained and equipped for traffic control functions. There is therefore no need for requiring any additional training or equipment.

The American Public Transit Association (APTA) suggested that FRA eliminate the requirement that flaggers carry specific signalling equipment. APTA stated that "it is important for flaggers to have their hands free to stay in radio contact with the railroad, which may not be possible if the flagger has to carry items such as paddles. In the commuter railroad's experience, once a flagger is at a crossing, motorists will obey the flagger regardless of the flagger's signalling devices." We agree that a motorist will obey the flagger, however a motorist must first identify a person as a flagger, and then the motorist must be able to determine the instructions given by the flagger. FRA believes that the proposed requirements provide the motorist with the necessary visual clues. FRA believes that the proposed requirements are the minimum that provide safety for both the highway user *and* the flagger and thus are retained in the final rule. Maine DOT also recommended that "reflective" be used to describe

materials to be worn by flaggers rather than "retroreflective." Retroreflective is used in the latest version of the MUTCD. FRA will retain use of "retroreflective" to maintain consistency with the MUTCD. In addition to the minimum standards established by this definition, FRA encourages railroads to provide flagging equipment and training in accordance with "Traffic Controls for Street and Highway Construction, Maintenance, Utility and Emergency Operations" issued by the Federal Highway Administration as Part VI of the MUTCD.

As stated in the NPRM, persons needing to be appropriately equipped are railroad employees other than a train crewmember, or others acting on behalf of the railroad, who flag highway traffic at grade crossings with malfunctioning warning systems. The requirement that persons be appropriately equipped does not apply to train crewmembers who dismount from a locomotive to flag the train through a crossing in an emergency situation, or to uniformed law enforcement officers.

*Final Rule*

The definition of "appropriately equipped flagger" is adopted as proposed.

*"Credible report of system malfunction."* As proposed, "credible report of system malfunction" means specific information regarding a malfunction at an identified highway-rail grade crossing, supplied by a railroad employee, law enforcement officer, highway traffic official, or an employee of a public agency acting in an official capacity.

APTA and LIRR stated that given the high frequency of commuter rail operations, commuter railroads consider all reports of malfunction as credible and respond accordingly. The American Trucking Associations, Inc. (ATA) objected to the definition of "credible report" as too narrow. The ATA believes that reports from individual citizens should be given the same weight by the railroad as reports from railroad employees and the police. FRA believes that a reporting system in which citizens notify their local police or highway department of malfunctions will be more efficient. Providing this initial screening process will reduce frivolous or fraudulent notifications in which members of the public may attempt to harass a railroad or individual railroad employee. Additionally, as discussed below in the analysis of § 234.101, certain situations requiring repair or adjustment of the warning system do not trigger a railroad response under §§ 234.105 and 234.107. Although those situations, such as dirty roundels, a burnt out bulb, a broken reflector, or a broken gate arm tip, although important, are not the type of situations in which the railroad should be expected to take the actions required under this rule, it is likely that such reports would be made to the railroad. Providing an initial screening process will better enable a railroad to quickly respond to those situations which safety factors clearly require the speedy response.

FRA, of course, has no objection to railroads acting on reports from individuals and, indeed, as we stated in the preamble to the NPRM, "we expect that railroads will, as they have traditionally done, investigate reports of malfunctions received from the public. After determining the accuracy of the report a railroad would then take appropriate action in accordance with regulations." The rules issued today do not prohibit a railroad from adopting internal rules that would trigger specific responses to an individual's complaint, but would only mandate the required responses to reports from "official" sources.

FRA is including within the definition of "credible report" information generated by an automatic reporting device. FRA has considered this inclusion in light of possible "scope of notice" problems. However, after consideration, FRA is of the opinion that even without this clarifying language, railroads would be required to respond to such reports under the rule as proposed. Section 234.101 mandates rules requiring employees to report instances of malfunctions. The employee responsible for monitoring such automatic devices must report such malfunctions under section 234.101. Such reports are within the definition of "credible report." By adding "generated by an automatic reporting device" to the definition, FRA will avoid any confusion in the industry as to what is expected when automatic reporting devices are used.

In a comment related to credible reports, the ATA further recommended that railroads be required to post at the crossing the railroad's name, crossing identification number, and a telephone number for reporting malfunctions similar to the system now in place in Texas. The railroads have cooperated in establishing such systems in three States (Texas, Delaware and Connecticut), and FRA is finalizing a report reviewing the results of the Texas program.

FRA agrees that establishment of a notification system is a desirable objective. The Department's Rail-Highway Grade Crossing Action Plan specifies that this issue will be further examined through a special safety inquiry.

Public/private cooperation is needed to make this type of system workable. It is important that initial notification go to a public authority or an entity operating on behalf of the public. This procedure helps prevent the misuse of the notification system, while providing immediate notice to public authorities where steps should be taken to protect highway traffic pending the railroad response. Where citizens making reports do not note the inventory number or it is not posted due to vandalism, knowledge of the street or highway system may be necessary to identification of the railroad company and specific crossing.

Railroad cooperation is important to sort out valid reports from those that derive from misunderstanding of how devices function (as where a switching movement is occupying the fouling circuit on an industrial siding) and to ensure prompt response to valid reports. Clear identification of responsibility for posting and maintaining signage is also essential.

Although this rulemaking is not the appropriate vehicle for resolving this issue, FRA will continue its examination of this issue through the safety inquiry noted above, with the objective of promoting the earliest feasible notification of warning device malfunctions.

*Final Rule*

The definition of "credible report of system malfunction" is adopted as proposed.

*"Warning system malfunction"* As proposed "warning system malfunction" means an activation failure or a false activation of a highway-rail grade crossing warning system.

No opposition was expressed to this definition.

*Final Rule*

The definition of "warning system malfunction" is adopted as proposed.

*Section 234.6(a) Civil Penalties*

As proposed, this section amends the present "civil penalty" provision in effect for Part 234. The amendment brings this section into conformity with 49 U.S.C. 21301 (formerly § 209(a) of the Safety Act as amended by section 9 of the Rail Safety Enforcement and Review Act). That section amended the definition of "person." The clarified definition of "person" includes, but is not limited to, such entities as

manufacturers and lessors of railroad equipment and independent contractors. Congress' purpose in amending the definition of "person" was to clarify the Secretary's existing power over entities whose activities related to rail safety by explicitly defining that authority. See 1992 U.S. Code Cong. and Adm. News, p. 879. Congress made it clear that the included list of "persons" subject to the Secretary's authority was intended to be illustrative and not exhaustive.

There were no comments pertaining to this proposed section.

*Final Rule*

This section is adopted as proposed.

*Section 234.101 Employee Notification Rules*

As proposed, this section requires that each railroad issue rules requiring employees to report to a designated railroad official, by the quickest means available, any warning system malfunction. This provision is intended to ensure that all employees report instances of false activations and activation failures (see definition of warning system malfunctions) and that such reports are made to the appropriate person. This section does not require that a railroad issue rules to require notification of maintenance or operational problems which are not false activations or activation failures. Examples of such situations not covered by this section would be dirty roundels, one bulb burnt out, a broken reflector, or a gate arm tip broken. While employees should report such situations to the railroad, those situations do not require a railroad response under Subpart C of this part.

The labor/management group recommended that this provision be modified in recognition that railroad employees frequently report signal malfunctions to dispatchers, operators, and other railroad personnel who would not be categorized as "railroad officials." The labor/management group thus recommended that the provision be revised to include other persons designated by the railroad. We agree. Broadening those persons to whom notification of malfunctions can be made will eliminate potential confusion in implementing the regulations. This section is being revised accordingly.

*Final Rule*

This section requires that each railroad issue rules requiring its employees to report to persons designated by that railroad, by the quickest means available, any warning system malfunction.

*Section 234.103 Timely Response to Report of Malfunction*

*§ 234.103(a)*

Proposed subsection (a) requires that upon receipt of a credible report of a warning system malfunction, the railroad shall immediately investigate the report and determine the nature of the malfunction. The railroad then takes action as required by § 234.207.

Various commenters stated that use of the term "immediately" is inappropriate. New Jersey Transit states that "[t]he requirement to 'immediately investigate' a reported warning system malfunction in (a) adds vagueness to an otherwise adequate rule." The labor/management group also recommended deletion of the "immediate response" requirement. They commented that "the term 'immediately' may be too restrictive and would impose a standard which simply could not be achieved under all circumstances." We agree with the commenters that use of "immediate" could present compliance problems when "immediate" is interpreted in its dictionary meaning. Immediately is commonly defined as "without lapse of time; without delay; instantly; at once." We agree with the labor/management group that a more appropriate standard is provided by requiring a "prompt" response, which, while not requiring a virtually impossible instantaneous response, will establish a standard that a railroad must respond quickly to a credible report of malfunction. The final rule is revised accordingly.

*Final Rule*

Subsection 234.103(a) requires that upon receipt of a credible report of a warning system malfunction, a railroad having maintenance responsibility for the warning system shall promptly investigate a credible report of malfunction. Based upon the results of that investigation, and in accordance with § 234.207, the railroad is required to adjust, repair, or replace any faulty component without undue delay.

*§ 234.103(b)*

As proposed, § 234.103(b) requires that, until repair or correction of the warning system is completed, the railroad shall provide alternative means of warning highway traffic and railroad employees in accordance with this subpart.

There were no comments on subsection (b).

*Final Rule*

Because acceptable alternative means of protecting the travelling public and railroad employees are described in §§ 234.105 and 234.107, this section is being revised to specifically reference those sections.

*§ 234.103(c)*

As proposed, subsection (c) provides that nothing in this subpart requires repair or correction of a warning system, if, acting in accordance with applicable State law, the railroad proceeds to discontinue or dismantle the warning system, provided such warning system not be left in place unless the railroad complies with this subpart.

This subsection makes clear that nothing in these regulations forces a railroad to continually repair a warning system that, under State law, may be retired. However, a railroad must still comply with this part during retirement proceedings. This subsection also requires that even if a warning system has been retired under State law, until that system is physically removed, the railroad must comply with this part. This requirement will ensure that if a highway user sees a warning system at a crossing, he or she can rely on it to be a properly functioning system.

There were no comments on this subsection.

*Final Rule*

Subsection 234.103(c) is adopted as proposed.

*Section 234.105 Activation Failure*

Commenters raised a number of issues relating to this section. The labor/management group recommended that this section be modified by establishing a requirement for "prompt," rather than "immediate," action in response to a credible report of warning system malfunction. For the same reasons as stated in the discussion regarding § 234.103, FRA is substituting "promptly" for "immediately" in the final rule. As in § 234.103, FRA believes this will establish a standard that a railroad must initiate the required warning efforts quickly and without undue delay.

The labor/management group suggested replacing the reference to "motorist" with "highway user" inasmuch as highway traffic is not limited to motorists. FRA agrees, and has changed the rule accordingly.

The labor/management group also recommended that the phrase "at a minimum" be eliminated from this section and § 234.107. The group believed that the phrase is unnecessary and that it could be misinterpreted as implying that additional action could be necessary in response to a report of a malfunction. As stated in the discussion of § 234.1, FRA intends that the rule

issued today specifies the minimum actions a railroad must take in certain circumstances. Section 234.1 has been revised to make clear that this part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part. Thus, given the revision to § 234.1, references in § 234.105 and 234.107 to minimum actions to be taken by a railroad have been deleted as unnecessarily repetitive.

The labor/management group also noted that manual operation of defective warning devices was not addressed in the NPRM and suggested that such operation should be considered to be an "alternative means" of giving warning, with the result that a train could proceed through the crossing at normal speed. FRA agrees that if a warning system is manually activated, a train can proceed through the crossing at normal speed.

*§ 234.105(b)*

FRA received a number of comments pertaining to the proposed requirement of § 234.105(b) that "the highway traffic control authority having jurisdiction over the crossing" be notified of the crossing system malfunction. The Southern Pacific Transportation Company and related railroads recommended deletion of this requirement because it "would be very difficult for the railroads to determine who to call, and to maintain such a database." The railroad further stated that "it is not likely that highway traffic authority will respond due to their own shortages of staff, and even if they do respond, they may be unable to properly staff the crossing * * *." West Virginia Department of Transportation (WVDOT) commented that notifying the highway traffic authority would only be appropriate during normal business hours. WVDOT suggested that it would be better to notify the appropriate law enforcement agency. We fully agree. FRA always intended that notification be given to the public agency charged with traffic enforcement on the road, whether that be the local police, sheriff's department or state police. FRA's use of the term "highway traffic authority" was misleading and FRA is therefore replacing that term with "law enforcement agency." The LIRR, which presently uses its own railroad police extensively in situations of grade crossing warning malfunctions, notifies the local police only when its own uniformed police are unable to respond or due to high volume of traffic flow at the crossing. FRA considers notification of railroad police who are capable of responding and controlling vehicular traffic to be equivalent to notification of the appropriate "law enforcement agency." The final rule is being modified accordingly.

*§ 234.105(c)*

In response to a commenter's suggestion, this subsection is rearranged to be consistent with the arrangement of § 234.107(c). Both subsections begin with the flagging requirements which permit train operations at normal speed. The subsections then address those situations which are progressively more restrictive on train operations. References in the following discussion are to the subsection numbers as proposed. The revised section number as it appears in the final rule follows in parentheses.

As proposed, subsection 105(c) requires that upon receipt of a credible report of malfunction, a railroad must provide or arrange for alternative means of actively warning motorists of approaching trains, consistent with requirements detailed in paragraphs (1) through (4). FRA is deleting the phrase "or arrange for" in the first sentence of this subsection. A railroad may provide for alternative means of warning highway users by providing its own flaggers, or it may contract with another entity to provide that warning. FRA is deleting the above phrase to avoid the impression that merely arranging for such activities is an adequate response. A railroad's responsibilities under this provision are fulfilled only when the alternative means of warning highway users is actually provided.

Paragraph 105(c)(1) (final rule—105(c)(3)) generated many comments. As proposed, it requires a train to stop before entering a crossing until an appropriately equipped flagger or law enforcement officer was stationed at the crossing. The proposal further requires that once the train was stopped, a crewmember must dismount to flag highway traffic to a stop. When safe to do so, the locomotive would proceed through the crossing, with the crewmember then reboarding.

The LIRR noted that the proposed regulation does not cover the situation of trains being operated by one person. The LIRR stated "it would not be in the best interest of our customers if the engine could not be moved until an appropriately equipped person arrived." The labor/management group also commented that in unusual situations there may be occasions where a train has only the engineer available to flag traffic: "In those cases, we believe that under § 234.105, the train would be permitted to proceed through the crossing after the train was stopped and it was determined that it was safe to do so." That interpretation is incorrect. FRA notes that nothing in the proposed language of § 234.105(c)(1) permits a locomotive to proceed through the crossing without being flagged through that crossing by someone on the ground, nor does the labor/management group provide any basis for their contrary conclusion.

In addressing the issue raised by these commenters, we are faced with balancing the railroads' and commuters' needs for timeliness with the safety needs of the motoring public. Requiring commuter trains to remain stopped until a flagger or law enforcement officer arrives will undoubtedly inconvenience the commuting public. Similarly, freight trains and intercity passenger trains will be inconvenienced, although on a smaller scale. We note however, that the requirement to flag a crossing during periods of malfunction, while not universal, is not new. Rule 138(c) of the Northeast Operating Rules Advisory Committee (NORAC) requires that if "crossing protection devices are not functioning properly * * * trains must approach the crossing(s) prepared to stop and not proceed until protection against highway traffic is provided by on-ground personnel." The Northeast Illinois Regional Commuter Railroad Corporation (METRA), a commuter railroad carrying 240,000 commuters daily, requires that in situations of activation failure, "trains must be advised to STOP and flag the crossing on both sides until the entire movement has cleared the crossing."

After consideration of the comments and implications for both safety and railroads' on-time performance, FRA is not revising the rule to provide an exception for trains operated by one person. Permitting a train to stop and then proceed through a crossing without a flagger and without properly functioning automatic gates and lights sends a confusing and potentially tragic message to a highway user. The highway user, seeing the train stop, may be encouraged to cross in front of the train thinking that he or she has the right of way.

FRA believes the effect on railroads such as the LIRR will be minimal. As noted elsewhere in this discussion, FRA is revising section 105(c) to permit trains to proceed at normal speed through crossings when one uniformed law enforcement officer is present, rather than one officer for each direction of highway traffic. Due to this change, railroad or local police will be better able to respond to crossing malfunctions, even in cases of multiple crossings malfunctioning. The presence

of one flagger will avoid the necessity of trains coming to a stop, and the presence of a uniformed police officer will permit normal speed operations through the crossing.

The labor/management group proposed adding a provision to this section which would provide that after a train is stopped at a crossing, if a member of the train crew determines that the warning devices are in fact operating properly, a crewmember will not be required to dismount to flag highway traffic. The group proposes that the locomotive may then proceed through the crossing and normal speed resumed after the locomotive has passed through the crossing. FRA takes no exception to this procedure, although an additional regulatory provision is not needed. If a train crew, after being notified of activation failure, finds instead that the warning system is indeed properly providing warning, the train may pass through the crossing without flagging because, in essence, the malfunction, if one then exists, is a false activation. It is difficult to determine whether the situation at the crossing was in fact a false activation, since the crew does not know if the system was incorrectly warning of oncoming trains when no trains were approaching, the reality is that the warning system is in fact providing warning to the highway user. Flagging in that situation is not needed since the malfunction is not one of activation failure, but instead is, at most, one of false activation.

Section 105(c)(1) (final rule—105(c)(3)) is also being revised to permit a train to resume normal speed after the flagging crewmember reboards the locomotive. This change will correct an earlier drafting oversight and will bring this section into conformity with both the remainder of this section and § 234.107.

*Section 234.105(c)(2) (Final Rule—234.105(c)(1))*

Paragraph 105(c)(2) (final rule—105(c)(1)) as proposed requires that if an appropriately equipped flagger or law enforcement officer provides warning for each direction of highway traffic, trains may proceed through the crossing at normal speed.

The LIRR objected to the requirement that there be a flagger or law enforcement officer flagging both directions of traffic before a train could proceed through the crossing at normal speed. LIRR presently uses uniformed railroad police to flag crossings during malfunctions. Under present LIRR policy, one uniformed police officer controls both directions of highway traffic at crossings with malfunctioning warning systems. Based on its experience and the effect it would have on its police operations, the LIRR strenuously objects to requiring a flagger for each direction of highway traffic. LIRR claims that it would result in unnecessary delays to LIRR's commuter trains, which operate at up to 2-minute headways, each carrying up to 1300 passengers. The railroad also stated that requiring two police officers to flag a crossing would have a significant impact on LIRR police operations by effectively requiring two-officer patrols instead of the present patrols using one officer.

FRA made no distinction in the NPRM between flaggers and law enforcement officers and their ability to safely control and direct vehicular traffic. Thus, under the NPRM, a train could proceed through a crossing with a malfunctioning warning system only if an appropriately equipped flagger or law enforcement officer provides warning for each direction of highway traffic. Based on the comments received, FRA has reconsidered and determined that due to a police officer's traffic control training, the officer's ability to call for assistance if needed, and the motoring public's higher level of responsiveness to a uniformed officer, the presence of one uniformed law enforcement officer at a crossing will enable trains to pass through the crossing at normal speed. This section is being revised accordingly.

Maine DOT recommended that speeds be limited in all cases of activation failure. It recommended a 20 mile per hour limit in those cases where a flagger is present for each direction of highway traffic. Such a limit would, according to Maine DOT "allow more stopping time for highway users, thereby simplifying the flaggers job and enhancing overall safety at the crossing." We continue to believe that the presence of a uniformed law enforcement officer or the appropriate number of flaggers can effectively warn highway traffic of oncoming trains. We are therefore not revising section 105(c)(2) (final rule—105(c)(1)) regarding train speed.

*Section 234.105(c)(3) (Final Rule—234.105(c)(2))*

Paragraph 105(c)(3) as proposed, provides that trains may proceed with caution through the crossing at a speed not exceeding 10 miles per hour if an appropriately equipped flagger or law enforcement officer provides warning for highway traffic, but there is not at least one flagger of law enforcement officer providing warning for each direction of highway traffic. After the locomotive has passed through the crossing, normal speed may be resumed.

This paragraph is being revised to omit references to law enforcement officers, inasmuch as paragraph 105(c)(1) of the final rule now provides that the presence of one law enforcement officer will permit normal speeds through the crossing.

LIRR expressed concern regarding the maximum speed at which a train would be permitted to proceed through a crossing under this paragraph. The representative of the LIRR testified that LIRR's "operating speed under restricted speed, * * * is a speed not exceeding 15 miles an hour, at which a train can be stopped within one half division of range short of the next signal, an obstruction, switch properly aligned, looking out for broken rail or crossing protection not functioning. We think that the restricted speed meets the criteria safely for moving trains over grade crossings." The LIRR emphasized the increased disruption to commuter traffic resulting from the 10 miles per hour limit compared to a limit of 15 miles per hour. APTA also opposed the 10 miles per hour limit, as did the labor/management group and the Southern Pacific. Other views included those of New Jersey Transit which was in favor of requiring movement at "restricted speed" rather than 10 miles per hour.

FRA rejected the use of "restricted speed" in the NPRM because it does not have the same meaning throughout the industry. "Restricted speed" has different meanings on different railroads, different speed limits ranging from 10 mph to 20 mph and its meaning can be changed unilaterally by a railroad. Reliance on the requirement that the train be able to "stop within one-half the range of vision" (a common element of the definition of "restricted speed") may be appropriate in a wholly railroad context in which the concern is to avoid other trains and equipment and personnel on the tracks in front of the locomotive. The requirement that a locomotive be able to stop within one-half the range of vision is virtually useless when an object can instantaneously move from off the right-of-way onto the tracks well within that range of vision limitation.

FRA will retain a specific and clearly understood speed limit for these situations. FRA has reconsidered its proposal and is revising this subsection to provide a 15 miles per hour speed limit. We repeat that the requirements of these sections are only minimum requirements. Under certain conditions, such as severe weather, sharp curves, or high speed vehicular traffic, a railroad

may wish to impose a slower speed during times of activation failure.

*Final Rule*

This section requires that upon receiving a credible report of an activation failure, a railroad having maintenance responsibility for the warning system shall immediately initiate efforts to warn highway users and railroad employees at the subject crossing by taking certain actions. Paragraph (a) provides that, prior to any train's arrival at the crossing, the railroad must notify the train crew of the report of activation failure and notify any other railroads operating over the crossing. Paragraph (b) requires that the railroad notify the law enforcement authority having jurisdiction over the crossing, and paragraph (c) requires the railroad to provide or arrange for alternative means of actively warning highway users of approaching trains.

Paragraph (c)(1)(i) provides that, if an appropriately equipped flagger provides warning for each direction of highway traffic, trains may proceed through the crossing at normal speed. Paragraph (c)(1)(ii) provides that, if at least one law enforcement officer (including a railroad police officer) provides warning to highway traffic at the crossing, trains may proceed through the crossing at normal speed.

Paragraph (c)(2) provides that, if an appropriately equipped flagger provides warning for highway traffic, but there is not at least one flagger providing warning for each direction of highway traffic, trains may proceed with caution through the crossing at a speed not exceeding 15 miles per hour. Normal speed may be resumed after the locomotive has passed through the crossing.

Paragraph (c)(3) provides that, until an appropriately equipped flagger or law enforcement officer is stationed at the crossing to warn highway traffic of approaching trains, each train must stop before entering the crossing to permit a crewmember to dismount to flag highway traffic to a stop. The locomotive may then proceed through the crossing and the flagging crewmember may reboard the locomotive before the remainder of the train proceeds through the crossing. Normal speed may be resumed after the crewmember reboards the train.

Paragraph (c)(4) has been redesignated § 234.105(d). The body of this paragraph remains unchanged. This paragraph requires that a locomotive's audible warning device be activated in accordance with railroad rules. This provision addresses those instances in which a "whistle ban" may be in effect in a local jurisdiction. While there may be disagreement as to the effect on safety of whistle bans, there can be little doubt that a ban on sounding a train whistle or horn should be lifted when a grade crossing warning system is malfunctioning. In addressing whistle bans in this limited situation, FRA does not wish to give the impression it approves of or encourages whistle bans in other situations. FRA is opposed to local restrictions on the use of train whistles. See FRA Emergency Order No. 15, 56 FR 36190, July 31, 1991.

*Section 234.107 False Activation*

Inasmuch as the proposed requirements of this section were in many ways similar to the requirements of § 234.105, comments, our responses and reasons for them, are consistent with that section.

*Final Rule*

This section requires a railroad to take the same initial actions as it would take in cases of activation failure. Upon receiving a credible report of a false activation, a railroad having maintenance responsibility for the warning system shall promptly initiate efforts to warn highway users and railroad employees at the subject crossing by taking certain actions.

Paragraph (a) provides that prior to any train's arrival at the crossing, the railroad must notify the train crew of the report of activation failure and notify any other railroads operating over the crossing. Paragraph (b) requires that the railroad notify the law enforcement authority having jurisdiction over the crossing, and paragraph (c) requires the railroad to provide for alternative means of actively warning highway users of approaching trains. Paragraphs (c)(1) and (c)(2) provide for the alternative means of warning highway users. Subparagraph (c)(1) as proposed in the NPRM has been divided into two parts to distinguish between the requirement that there be an appropriately equipped flagger for each direction of highway traffic while flagging by one uniformed police officer is sufficient even though there is more than one direction of highway traffic. Paragraph (c)(1)(A) provides that, if an appropriately equipped flagger is stationed at the crossing providing warning for each direction of highway traffic, trains may proceed through the crossing at normal speed. Paragraph (c)(1)(B) provides that, if at least one uniformed law enforcement officer (including a uniformed railroad police officer) provides warning to highway traffic at the crossing, trains may proceed through the crossing at normal speed.

Paragraph (c)(2) provides that, if there is not an appropriately equipped flagger providing warning for each direction of highway traffic, or if there is not at least one uniformed law enforcement officer providing warning, trains with the locomotive or cab car leading, may proceed with caution through the crossing at a speed not exceeding 15 miles per hour. Normal speed may be resumed after the locomotive has passed through the crossing. In the case of a shoving move, a crewmember shall be on the ground to flag the train through the crossing. This section has been expanded from that proposed in order to eliminate any possible confusion. Although we believe it was clear that this section as proposed only applied to trains with a locomotive or cab car at the leading end, the section has been revised to be more specific. Additionally, in the event of a shoving move, the rule has been expanded to require that a crewmember be on the ground to flag the train through the crossing. This requirement is similar to requirements in both NORAC and the General Code of Operating Rules pertaining to malfunctioning warning systems.

Paragraph (c)(3) of this section provides the railroad an option of temporarily taking the warning system out of service until repairs are completed. However, the warning system may only be taken out of service if the railroad complies with the protection requirements for activation failures. From a highway traffic control and warning system credibility perspective, it would be preferable for a railroad with few trains traversing the crossing to take a falsely activated warning system out of service. The railroad would then comply with the activation failure provisions of § 234.105 rather than § 234.107.

Paragraph (d) provides that a locomotive's audible warning device shall be activated in accordance with railroad rules regarding the approach to a grade crossing, regardless of any State laws or ordinances to the contrary.

*Section 234.109 Recordkeeping*

The labor/management group recommended that this section be revised to clarify that the recordkeeping provisions apply only to "credible" reports of warning system malfunctions. We agree and have modified the section accordingly.

Both APTA and the LIRR claimed that the recordkeeping requirements of this section are redundant since under § 234.9 railroads must file Form F 6180.83 which includes information pertaining to the time and date of the

reported malfunction, actions taken and the time and date of the repair. FRA notes that in an attempt to minimize paperwork burdens on the railroads, proposed § 234.109 did not require filing of reports. It requires only that a railroad maintain records pertaining to compliance—records which we believe most railroads would keep for their internal purposes in any event. All that is required by this section is that a railroad have the required information available for inspection. It is acceptable for that information to be contained in a data base a railroad maintains in order to comply with § 234.9's reporting requirements.

FRA notes that the requirements of § 234.9(b), which required reports for each false activation, expired on April 1, 1994. Those reports, which comprised the vast majority of reports required under § 234.9, will thus no longer be required.

Section 234.9(b) requires that records referred to in § 234.9(a) be retained for one year. Because various records required by § 234.9(b) will in some cases be made on different days, the retention period is one year from the latest date of railroad activity in response to a credible report of malfunction. That date would typically be the date of repair of the warning system.

The labor/management group suggested that it be made clear that keeping records by electronic means is acceptable. FRA agrees, and has revised paragraph (a) of this section accordingly.

*Final Rule*

Paragraph (a) of this section requires each railroad to keep records pertaining to compliance with this subpart. Records may be kept on forms provided by the railroad or by electronic means. Each railroad is required to keep the following information for each credible report of warning system malfunction: location of crossing (by highway name and DOT/AAR Crossing Inventory Number); time and date of receipt by railroad of report of malfunction; actions taken by railroad prior to repair and reactivation of repaired system; and time and date of repair.

Paragraph (b) requires that each railroad retain for at least one year (from the latest date of railroad activity in response to a credible report of malfunction) all records referred to in paragraph (a) of this section. Records required to be kept shall be made available to FRA as provided by 49 U.S.C. 20107 (formerly section 208 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437)).

## Subpart D—Maintenance, Inspection, and Testing Maintenance Standards

*Section 234.201 Location of Plans*

The proposed rule requires that plans and other information required for the proper maintenance and testing of highway-rail grade crossing warning systems, be available for use at each warning system location.

The labor/management group and New Jersey Transit commented that the phrase "and other information" should be eliminated from the rule. Labor/management group was concerned that "other information" has not been defined by FRA and could include such things as manufacturers' manuals for various types of warning system equipment. The parties note that 49 CFR 236.1, the equivalent requirement pertaining to signal and train control systems, does not contain such a requirement. While complete consistency between the two sets of regulations is not necessarily appropriate in every case, in this instance we agree that the phrase "and other information" is vague and unnecessary. It has been deleted from the final rule.

*Final Rule*

The final rule requires that plans required for the proper maintenance and testing of highway-rail grade crossing warning systems be available for use at each warning system location. Plans shall be legible and correct to protect against errors in circuitry connections.

*Section 234.203 Control Circuits*

The proposed rule requires that all control circuits that affect the safe operation of a highway-rail grade crossing warning system be designed on the closed circuit principle. This requirement was intended to ensure that failure of any part or component of the circuit will cause the warning system to activate (fail-safe principle). Interested parties commented that not all elements of control circuits for all warning systems can be designed on the closed circuit principle. The labor/management group also expressed concern that the proposed rule is a design standard and could conflict with the language in the MUTCD.

The final rule is changed to reflect a performance standard versus a design standard.

*Final Rule*

The final rule requires that all control circuits that affect the safe operation of a highway-rail grade crossing warning system shall operate on the fail-safe principle.

*Section 234.205 Operating Characteristics of Warning System Apparatus*

The proposed rule requires that operating characteristics of electromagnetic, electronic, or electrical apparatus of each crossing warning system be maintained in accordance with the limits within which it is designed to operate. The labor/management group supports the proposed rule. There were no other specific comments on the proposal.

In order to comply with this section, each carrier should have specifications available which set forth the pick-up values, release values, working values, and condemning limits of these values for all electromagnetic, electronic, or electrical devices used in highway-rail grade crossing warning systems.

*Final Rule*

The final rule is adopted as proposed. It requires that operating characteristics of electromagnetic, electronic, or electrical apparatus of each highway-rail crossing warning system shall be maintained in accordance with the limits within which the system is designed to operate.

*Section 234.207 Adjustment, Repair, or Replacement of Component*

Paragraph (a) of the proposal requires that when any essential component of a highway-rail grade crossing warning system fails to perform its intended function, the cause shall be determined and the faulty component shall be adjusted, repaired, or replaced without undue delay. Commenters expressed differing views on this provision. NJ Transit found the language consistent with FRA's signal and train control rules and stated that "it seems adequately defined and workable." The labor/management group also supported the rule as proposed. The Southern Pacific recommended that the rule be clarified to make clear that it does not, in every case, require that repairs be made before the next train movement. Paragraph (b) of the proposal which requires appropriate action under § 234.105 or § 234.107, is written on the assumption that at least in some situations a train will arrive at the crossing before repairs are completed.

The Illinois Commerce Commission (ICC) concurred with use of the term "without undue delay" when concerning the "total time it takes to make such repairs." However, the ICC stated that the rule should more specifically address the amount of time it takes railroad signal personnel to begin on-site repairs after receipt of a

credible false activation report. ICC recommended that the time limit for response be set at two hours. Similarly, Washington Public Utilities Commission viewed the phrase "undue delay" as too general or open ended.

As was stated in the NPRM, "[i]t is of paramount importance that remedial action begin as soon as possible after a credible report of a malfunction is received by a railroad. In general, adjustment, repair, or replacement without undue delay will require that remedial action be taken in as timely a manner as possible. Successful, practical application of these general principles may be the objective of this regulatory proceeding that is most crucial to the safety of the motoring public; and the safety of employees and rail operations is also implicated." Because of the great variety of factors involved with malfunctioning warning systems, including the location of the crossing, frequency of train movements, type of corrective action needed, availability of personnel, and other competing emergency situations we are unwilling at this time to establish specific time limits for actions. FRA continues to believe that the requirements of this section, taken together with the alternative protective measures required under §§ 234.105 and 234.107 will provide the needed measure of safety.

*Final Rule*

Paragraph (a) of this section requires that when any essential component of a highway-rail grade crossing warning system fails to perform its intended function, the cause shall be determined and the faulty component shall be adjusted, repaired, or replaced without undue delay. Paragraph (b) requires until repair of an essential component is completed, a railroad shall take appropriate action under § 234.105 or § 234.107.

*Section 234.209 Interference With Normal Functioning of System*

The proposed rule requires that the normal functioning of any system shall not be interfered with in testing or otherwise without first taking measures to provide for safety of highway traffic that depends on normal functioning of such system.

FRA requested that interested parties discuss the safety effect on warning systems caused by railroad equipment standing or being switched within the system's approach circuit where the warning system is not designed to accommodate those activities. FRA stated, "[t]here have been instances of such cars and locomotives activating the warning system for an extended length of time when there is no danger in crossing the tracks, raising the issue of credibility at that crossing. If there are multiple tracks at the crossing, a warning system activated for a period of time due to standing equipment may effectively entice a highway user to cross the tracks, when in fact a train may be approaching on the other track. This situation may be exacerbated by reduced visibility of the approaching train due to the standing equipment."

The ATA suggested that the rule be revised to prohibit railroad equipment from being left standing or switched at a crossing in a manner that interferes with the normal functioning of the warning system. Maine DOT noted that warning system activations due to switching activity and standing equipment within crossing circuitry can be alleviated by installation of motion sensing devices. The labor/management group concurred in the rule as proposed and noted that most railroads have established procedures to be followed when testing or other work is performed near grade crossings. The group also notes that it would be "inappropriate" to allow excessive or continuous operation of warning devices while such work is being performed. In response to FRA's question regarding the effect of switching operations and equipment standing near crossings, the group recognized that the issues presented are important but believe a "separate examination of the engineering and operating issues involved" to be more appropriate to determine if agency action is warranted. The group stated that "as FRA is aware, railroads cannot operate without conducting switching operations in the approaches of highway-rail crossings. This is a normal part of railroad operations and there is no available technology which would completely eliminate the warning system activations which result from these operations."

FRA recognizes that normal switching operations will activate warning systems in many locations. We agree that there is no realistic means to prevent this from occurring at all locations. However, standing equipment which is not involved in switching activities can be prevented from activating warning systems. A warning system can be designed to accommodate trains, locomotives or other railroad equipment standing within the system's approach circuit. Motion detectors, time-out circuits, and similar technology can accommodate a railroad's operational needs while retaining a credible, functioning warning system at a nearby crossing. If such technology is not in place, a railroad must take measures to prevent activation of the nearby warning system. Many railroads presently have operating rules prohibiting just such a result. Rule 103(D) of the General Code of Operating Rules provides that "automatic crossing signals must not be actuated unnecessarily by open switch or permitting equipment to stand within the controlling circuit." Similarly, NORAC Rule 138(b) provides that to "* * * avoid unnecessary operation of automatic highway crossing protection * * * [E]ngines or cars must not be allowed to stand longer than necessary."

FRA is therefore revising this section to provide that interference with normal functioning of the warning system includes trains, locomotives or other railroad equipment standing within the system's approach circuit where the warning system is not designed to accommodate those activities. Normal train movements or switching operations are not considered to be interference with the warning system operations. This revision is directed to situations such as when a car or other rail equipment is set out on an approach circuit thereby activating the warning system. If the warning system at that crossing is equipped with a time-out circuit, cut-out circuit, motion detector, or motion sensor, the system will deactivate, permitting traffic to proceed through the crossing. This provision affects operations at those crossings not so equipped. Standing railroad equipment not involved in active switching will not be allowed to keep a warning system activated.

Maine DOT suggested that FRA consider requiring track gangs performing maintenance activities within crossing circuitry to disconnect the warning system when working. Many crossings are equipped with cut-out switches which enable a worker to disable the automatic warning system in such a situation. FRA supports the use of these devices provided they are utilized under appropriately rigorous controls established by the railroad. Other than use of such cut-out circuits designed to enable a worker to safely disable a warning system, FRA is strongly opposed to allowing railroad employees unfamiliar with warning system circuitry to actually adjust and modify operation of the warning system. Allowing unqualified employees to modify the circuitry would jeopardize the safety of both employees and the travelling public.

*Final Rule*

The rule requires that the normal functioning of any system shall not be

interfered with in testing or otherwise without first taking measures to provide for the safety of highway traffic. Interference includes, but is not limited to:

(1) Trains, locomotives or other railroad equipment standing within the system's approach circuit, other than normal switching operations, where the warning system is not designed to accommodate those activities; and

(2) Not providing alternative methods of maintaining safety for the highway user while testing or performing work on the warning systems or on track and other railroad systems or structures which may affect the integrity of the warning system.

The intent of the rule is to ensure that railroads provide alternative methods of maintaining safety whenever the normal functioning of a warning system is interfered with. Those situations include testing or performing other work on the warning systems or on track and other railroad systems or structures which may affect the integrity of the warning system. As stated in the NPRM, "in some circumstances, nearby track work could activate a crossing warning system. FRA does not believe that 'taking measures to provide for the safety of highway traffic' in this context includes chaining a gate in the 'up' position while allowing warning lights to continue."

*Section 234.211 Locking of Warning System Apparatus*

This section as proposed provides that highway-rail grade crossing warning system apparatus shall be secured against unauthorized entry. The rule provides the carrier with discretion as to the specific manner in which the warning system housings are secured. The rule requires that all external housings of warning system apparatus be kept locked or sealed. This includes warning system houses, flashing light signals, gate mechanisms, and bell or stationary audible warning system housings.

The labor/management group supports this section as proposed. There were no other specific comments.

*Final Rule*

This section is adopted as proposed.

*Section 234.213 Grounds*

This section as proposed requires that each circuit that affects the proper functioning of a highway-rail grade crossing warning system be kept free of any ground or combination of grounds which will permit a flow of current equal to or in excess of 75 percent of the release value of any relay or electromagnetic device in the circuit. This requirement does not apply to circuits that include track rail, alternating current power distribution circuits that are grounded in the interest of safety, and any common return wires of grounded common return single break circuits.

The labor/management group supports this section as proposed. There were no other specific comments.

*Final Rule*

This section is adopted as proposed.

*Section 234.215 Standby Power System*

The proposed rule requires that if alternating current power is used as the primary source of power, a standby battery must be provided. The proposal also requires that an indicator or alarm be used to indicate when the alternating current power is off. The proposal also requires that the battery be designed and maintained to provide at least 48 hours of normal operations of the crossing warning device when primary battery-charging current is removed.

In drafting the proposed rule, FRA was addressing the most common type of crossing installation in the nation—a battery-operated system in which the batteries are constantly being recharged by alternating current from a commercial or private source. In these systems, if the supply of alternating current is interrupted, the batteries continue to operate the system. If alternating current is restored before the batteries are discharged there is no interruption in operation. However if alternating current is not restored in time to recharge the batteries before they are fully discharged, warning system operations will be interrupted. FRA recognizes that systems other than the typical system addressed in the proposed section are in operation or may be in the development stage. We do not want these rules to hinder development of possible alternative equipment and systems.

Various commenters, including the labor/management group, Consolidated Rail Corporation, LIRR, NJ Transit, and APTA, opposed all or part of the proposal. The Maine Department of Transportation and the New York State Department of Transportation supported the 48-hour battery capacity provision. Labor/management commented that it would be difficult and very expensive (approximately $180 million) to meet the proposed requirements for battery capacity. Commenters stated that the indicator light or alarm requirement would be difficult and expensive to implement and maintain because of the number of locations that would require installation (as many as 50,000) and the high probability of vandalism to such installations. After reviewing the comments, FRA has deleted the power-off indicator requirement.

FRA recognizes that different crossings have different back-up power needs. A crossing tied into commercial power in a large metropolitan area does not necessarily need 48 hour back-up power. If power were to fail in that area, the failure would likely be for a relatively short period of time. This contrasts to crossings in rural areas where, if there is a power failure, discovery of the failure itself may take a relatively long time. FRA is therefore revising the rule in recognition of the variety of crossing situations. Availability of automatic notification of warning system problems is also a factor. For instance, by linking warning devices to a digital data network, information concerning primary power status and the unit's operational status can be almost instantaneously communicated to a railroad control center. FRA wishes to provide flexibility for railroads and their suppliers to develop and deploy cost effective technology that can provide advances in both safety and efficiency. Given those facts and the industry's testimony about the capabilities of the back-up power devices being employed, FRA has shifted to a straight-forward performance standard: FRA will require that a standby source of power be provided to ensure the highway-rail grade crossing warning system continues to function normally if there is an interruption in primary power. We will not require that a specific type of back-up power be available, nor will we establish a minimum period for standby capacity. Those decisions will be left up to the railroads or the authorities installing new systems. Also left to a railroad or the installing authority is installation of a conventional power-off indicator or indicators based on new or developing technologies. While installation of these devices is optional, railroads remain responsible for ensuring that warning systems remain operational.

FRA continues to stress that it is vital for a warning system to be equipped with a standby source of power to continue providing warning to the highway user in cases of primary power loss. FRA will vigorously enforce this provision. If investigation or testing reveals that there is no standby power at a crossing sufficient to enable the system to continue functioning normally, FRA will take appropriate enforcement action. Similarly, if a

power interruption results in use of the standby power source to such an extent that power is depleted and the warning system is not operating normally, FRA will take appropriate enforcement action under this section. If primary or standby power is not available for any reason, FRA expects a railroad to provide portable power or provide warning for highway users in accordance with §§ 234.105 or 234.107.

*Final Rule*

This section requires that a standby source of power be provided of sufficient capacity to operate the warning system during any period of primary power interruption.

*Section 234.217 Flashing Light Units*

The proposed rule requires that each flashing light unit be positioned and aligned in accordance with installation plans. Several commenters, including the labor/management group, remarked that installation plans typically do not include detailed specifications for the alignment of light units. Labor/management group recommended that the rule be amended to require that light units be "properly" positioned and aligned. It is not practical to require a specific distance for the alignment of each flashing light unit because of varying conditions (i.e., road curvature, fixed obstructions, intersections, etc.) at each crossing. Maintainers have been ensuring proper positioning of lights for many years without the benefit of alignment specifications. While a standard based on "properly positioned and aligned" is somewhat vague, FRA is adopting the recommended language rule by requiring that each flashing light unit be "properly" positioned and aligned. Compliance and enforcement of this section will be based on the good judgment of both maintainers and inspectors. The requirement that the light be visible to a highway user approaching the crossing has been added to this section. This basic requirement is being added to this section in lieu of the focusing requirement contained in the NPRM's proposed § 234.253.

The proposed rule also requires that each flashing light unit be maintained to prevent dust and moisture from entering the interior of the unit. FRA has revised this section to require that reflectors, as well as roundels, be clean and in good condition. The Wisconsin Central Railroad commented that it is impossible to keep dust out of roundels because each light unit is vented. We agree; however, while it may be impossible to keep all dust out of roundels, excessive dust will not be a problem if the roundels and reflectors are cleaned periodically.

Additionally, the proposed rule requires light units to flash alternately at a rate of 35 to 55 times per minute. The labor/management group commented that the flashing rate is adequately addressed in the MUTCD. It further commented that proper maintenance of the equipment which controls the flash rate is covered appropriately under other sections, including 234.205. The Association of American Railroads Signal Manual, published in 1991 recommends a flash rate of 45 to 65 times per minute for solid state flashers rather than the 35 to 55 times per minute as required by the MUTCD. FRA does not perceive a safety advantage of one standard over the other. Therefore the rule will be revised to require that light units flash alternately at a rate of 35 to 65 times per minute.

*Final Rule*

Paragraph (a) of this section requires that each flashing light unit shall be properly positioned and aligned and visible to a highway user approaching the crossing. Paragraph (b) requires that each flashing light unit be maintained to prevent dust and moisture from entering the interior of the unit. Roundels and reflectors shall be clean and in good condition. Paragraph (c) requires that all light units shall flash alternately. The number of flashes per minute for each light unit shall be 35 minimum and 65 maximum.

*Section 234.219 Gate Arm Lights and Light Cable*

The proposed rule requires that each gate arm light be visible to approaching motorists. The rule also required that lights and light wires be secured to the gate arm. The labor/management group suggested that the proposed rule be modified to reflect a maintenance requirement. FRA concurs with this recommendation and is revising the rule to require that each gate arm light be maintained in such condition to be properly visible to approaching highway users.

*Final Rule*

This section requires that each gate arm light be maintained in such condition to be properly visible to approaching highway users and that lights and light wire be secured to the gate arm.

*Section 234.221 Lamp Voltage*

The rule requires that lamp voltage be maintained at no less than 85 percent of its prescribed rating. The National Transportation Safety Board has recommended that FRA establish a standard for minimum lamp voltage at highway-rail grade crossing warning systems. There is a consensus that it is impossible to maintain lamp voltage at the full rating of the lamp, at all warning system installations. The State of Oregon Public Utility Commission commented that the rule should require that voltage be maintained at 95 percent of the lamp's prescribed rating. FRA agrees that 95 percent, or even 90 percent of the lamp's rating is a desirable voltage and should be maintained when possible. However, it is not a realistic minimum standard, particularly at locations where there is great distance from the source of the lamp voltage to the farthest lamp (i.e., lights supported by cantilever on expansive highway) or at older installations where light cable upgrades would be required at substantial expense.

All other commenters were supportive of the 85 percent minimum requirement. The section will ensure that the lamp voltage is sufficient to provide suitable illumination of the lamp.

*Final Rule*

This section requires that each lamp shall be maintained at not less than 85 percent of the prescribed rating for the lamp.

*Section 234.223 Gate Arm*

The proposed rule requires that each gate arm, when in the downward position, extend across each lane of approaching highway traffic and be maintained in a condition sufficient to be clearly viewed by approaching highway users. The proposed rule also requires that each gate arm start its downward motion not less than three seconds after flashing lights begin to operate and assume the horizontal position in a minimum of five seconds before the arrival of any train at the crossing.

The labor/management group commented that the rule should be modified to reflect a requirement for maintenance of gate arms in accordance with the design of the warning system. They believe that it would be inappropriate to establish universal criteria for gate arm operation because of the variation in warning system designs, particularly at locations utilizing four quadrant gates or other special applications. While FRA does not want to impede the development or use of special applications, we do believe it is important to establish minimum standards for gate arm operations. FRA has revised this section

to make clear that, in four-quadrant gate installations, the three second and five second requirements apply only to entrance gates, (the gates closest to oncoming traffic).

New Jersey Transit commented that there is no demonstrated need for the requirement that gates assume the horizontal position at least five seconds before the arrival of any train at the crossing. We disagree. It is important for the highway user to have more than a minimal warning of approaching trains. We do not believe that sufficient warning is provided by only requiring that gates reach the horizontal position before arrival of the train at the crossing. The five second requirement helps to ensure that the highway user who attempts to cross at the last opportunity will be able to clear the crossing or vacate a stalled vehicle. It will not have any impact on the design of grade crossing warning systems.

*Final Rule*

This section requires that each gate arm, when in the downward position, shall extend across each lane of approaching highway traffic and shall be maintained in a condition sufficient to be clearly viewed by approaching highway users. Each gate arm shall start its downward motion not less than three seconds after flashing lights begin to operate and shall assume the horizontal position at least five seconds before the arrival of any train at the crossing. At those crossings equipped with four quadrant gates, the timing requirements of this section apply to entrance gates only.

*Section 234.225 Activation of Warning System*

As proposed, this section requires that a warning system activate to provide no less than 20 seconds warning time before the crossing is occupied by rail traffic. The labor/management group recommended that this section refer to a maintenance, rather than a design requirement. Accordingly, they suggested that the rule be modified to require that the system be maintained to activate in accordance with the design of the warning system. FRA has determined that while drafting this section in terms of maintenance requirements may be appropriate, there remains a need to maintain a minimum activation standard for warning systems. We note that the 20 second period is consistent with the design requirement of the MUTCD. In light of the labor/management group comments FRA is revising this section to provide that the warning system be maintained to activate in accordance with the design of the warning system, but in no event shall it provide less than 20 seconds warning time.

*Final Rule*

This section requires that a highway-rail grade crossing warning system be maintained to activate in accordance with the design of the warning system, but in no event shall it provide less than 20 seconds warning time.

*Section 234.227 Train Detection Apparatus*

Subsection (a) of this section as proposed requires that train detection apparatus detect the presence of a train or car when any part of a train detection circuit is occupied. In addition, subsection (b) of the proposed rule requires that when a grade crossing equipped with a warning system is fouled by a train or car, the warning system would continue to operate until such train or car clears the roadway. Subsection (c) of the proposal requires that when there are no other movements within the limits of the warning circuit, the warning system shall discontinue operation after the train or car passes the point of fouling the crossing. Subsection (d) requires that if the presence of sand, rust, dirt, grease, or other foreign matter is known to prevent effective shunting, appropriate action under § 234.105 must be taken to safeguard motor vehicle operation.

Various parties suggested that different portions of the rule be modified. The labor/management group recommended that the rule be modified to reflect the requirement for maintenance of train detection apparatus rather than addressing "design standards." FRA has considered this suggestion and revised the rule to provide that the train detection apparatus be maintained to detect the presence of rail equipment in any part of a train detection circuit, in accordance with the design of the warning system. This new subsection (a) replaces proposed subsections (a), (b), and (c). It will serve the same purpose as the sections replaced, but will do so in a clearer and more straightforward manner.

There were no comments regarding proposed paragraph (d) which provides that if the presence of sand, rust, dirt, grease, or other foreign matter is known to prevent effective shunting, a railroad shall take appropriate action under § 234.105 to safeguard vehicle operation. This section, renumbered as paragraph (b), remains unchanged.

*Final Rule*

Subsection (a) requires that train detection apparatus be maintained to detect a train or railcar in any part of a train detection circuit, in accordance with the design of the warning system. Subsection (b) provides that if the presence of sand, rust, dirt, grease, or other foreign matter is known to prevent effective shunting, a railroad shall take appropriate action under § 234.105, "Activation failure," to safeguard highway users.

*Section 234.229 Shunting Sensitivity*

As proposed, this section requires that each train detection circuit that controls a highway-rail grade crossing warning system will detect the presence of a shunt of 0.06 ohm resistance when the shunt is connected across the track rails of the circuit, including fouling sections of turnouts. The labor/management group commented that the proposed rule should be modified to reflect the testing requirements of warning systems based on certain technologies. The group noted that certain types of constant warning time systems may not detect the "presence" of a shunt. The group believes it would be more appropriate to require that the detection systems be maintained to detect the "application" of a shunt. The group believes that warning systems currently in use are designed so that they will meet that criteria. Southern Pacific also commented that constant time warning devices should be taken into account in drafting this section.

FRA agrees with the commenters and has modified the section accordingly. "Application of a shunt" is replacing "presence of a shunt" in the final rule. In the interest of clarity the text "including fouling sections of turnouts" has been deleted and "of any part" of the circuit added to the final rule.

FRA notes that the labor/management group stated that they believe warning systems currently in use "could be tested for compliance without using multiple shunts to simulate train movements or performing other complex tests of questionable value." We agree that multiple shunts may not be necessary to test for compliance with this section, however, multiple shunts may indeed be needed to perform operational tests.

*Final Rule*

This section requires that each highway-rail grade crossing train detection circuit shall detect the application of a shunt of 0.06 ohm resistance when the shunt is connected across the track rails of the circuit.

*Section 234.231 Fouling Wires*

This section is meant to assure the detection of a train operating through turnouts located within the limits of train detection circuits. If one wire or rail plug were broken, a dangerous condition would be prevented if the other wire or rail plug continues to be effective.

This section as proposed requires that each set of fouling wires located in a highway-rail grade crossing warning system train detection circuit consist of at least two discrete conductors, and requires that each conductor be of sufficient conductivity and maintained in such condition to ensure proper operation of the train detection apparatus when the circuit is shunted.

The labor/management group recommended that the proposal be modified to accord with existing technology. The group stated that "certain train detection apparatus, particularly motion sensing equipment, is designed to prevent the system from assuming the most restrictive state under certain conditions, including some instances when the train detection circuit is shunted." We agree with the comments and, therefore, in lieu of requiring that the train detection apparatus be in its most restrictive state, have revised the section to require that each conductor be maintained in such condition to ensure proper operation of the train detection apparatus when the train detection circuit is shunted.

*Final Rule*

This section requires that each set of fouling wires in a highway-rail grade crossing train detection circuit shall consist of at least two discrete conductors. The section requires that each conductor be of sufficient conductivity and be maintained in such condition to ensure proper operation of the train detection apparatus when the train detection circuit is shunted.

*Section 234.233 Rail Joints*

This provision provided that each rail joint located within the limits of a highway-rail grade crossing train detection circuit shall be bonded by means other than joint bars to ensure electrical conductivity. The labor/management group, the only party to comment on this section, recommended that it be modified to reflect maintenance requirements. The group also recommended that this section be changed to reflect that it apply only to non-insulated rail joints. FRA concurs in the recommendations and has revised the section accordingly.

*Final Rule*

This section requires that each non-insulated rail joint located within the limits of a highway-rail grade crossing train detection circuit be bonded by means other than joint bars and the bonds shall be maintained in such condition to ensure electrical conductivity.

*Section 234.235 Insulated Rail Joints*

This provision provided that each insulated rail joint used to separate train detection circuits within the limits of a highway-rail grade crossing shall prevent current from flowing between rails separated by the insulation in an amount sufficient to cause a failure of any train detection circuit.

The labor/management group, the only party commenting on this provision, recommended that the section be revised to reflect the requirement for maintenance of insulated rail joints. FRA agrees and the final rule is revised accordingly.

*Final Rule*

This section requires that each insulated rail joint used to separate train detection circuits of a highway-rail grade crossing be maintained to prevent current from flowing between rails separated by the insulation in an amount sufficient to cause a failure of the train detection circuit.

*Section 234.237 Switch Equipped With Circuit Controller*

This section as proposed requires that when a switch equipped with a switch circuit controller connected to the point is interconnected with highway-rail grade crossing warning system circuitry, such switch shall be maintained so that the warning system can be cut out only when the point is within one-half inch of the full reverse position.

The only party commenting on this section, the labor/management group, supported the proposal.

*Final Rule*

This section is adopted as proposed.

*Section 234.239 Tagging of Wires and Interference of Wires or Tags With Signal Apparatus*

This section as proposed requires that each wire be tagged or otherwise so marked that it can be identified at each terminal. Tags and other marks of identification shall be made of insulating material and so arranged that tags and wires do not interfere with moving parts of the apparatus.

The only party commenting on this section, the labor/management group, supported the proposal.

*Final Rule*

This section is adopted as proposed.

*Section 234.241 Protection of Insulated Wire; Splice in Underground Wire*

This section as proposed requires that insulated wire be protected from mechanical injury. The rule prohibits insulation from being punctured for test purposes. A splice in underground wire will be required to have insulation resistance at least equal to the wire spliced.

The only party commenting on this section, the labor/management group, supported the proposal.

*Final Rule*

This section is adopted as proposed.

*Section 234.243 Wire on pole line and aerial cable*

This section as proposed requires that wire on a pole line be securely attached to an insulator that is properly fastened to a crossarm or bracket supported by a pole or other support. The rule requires that the wire not interfere with, or be interfered with by, other wires on the pole line. Aerial cable is required to be supported by messenger wire. Open-wire transmission line operating at 750 volts or more shall not be placed less than 4 feet above the nearest crossarm carrying active warning system circuits.

The only party commenting on this section, the labor/management group, supported the proposal.

*Final Rule*

This section is adopted as proposed.

*Section 234.245 Signs*

The proposed rule requires that each sign mounted on a highway-rail grade crossing signal post be maintained in good condition and visible to the motorist. Signs mounted on the mast could include crossbucks, "number of tracks" etc. The proposal also stated that standards for such signs are found in Part VIII ("Traffic Control Systems for Railroad-Highway Grade Crossings") of the MUTCD. After consideration, FRA is deleting from this section the informational reference to the MUTCD. It is sufficient that the information is available through this notice.

The labor/management group supported the proposal. The ATA recommended that railroads be required to post information at the crossing to expedite malfunction reporting. As discussed above (see § 234.5) FRA is in favor of the posting of such information, but requiring such posting is beyond the scope of this rulemaking.

*Final Rule*

This section requires that each sign mounted on a highway-rail grade crossing signal post shall be maintained in good condition and be visible to the highway user.

*Inspections and Tests*

*Section 234.247 Purpose of Inspections and Tests; Removal From Service of Relay or Device Failing To Meet Test Requirements*

The proposed rule requires that certain FRA-required tests be made to determine whether apparatus and equipment are maintained in a condition to perform their intended function. An electronic device, relay, or other electromagnetic device that fails to meet the requirements of specified tests will be required to be removed from service and not restored to service until its operating characteristics are in accordance with the limits within which such device or relay is designed to operate.

The only party commenting on this section, the labor/management group, supported the proposal.

*Final Rule*

FRA is revising the first sentence of this section to eliminate the redundant and possibly confusing terms "apparatus" and "equipment" and to clarify which tests are being referred to. This section therefore provides that the inspections and tests set forth in §§ 234.249 through 234.271 shall be made to determine if the warning system and its component parts are maintained in a condition to perform their intended function. Any electronic device, relay, or other electromagnetic device that fails to meet the requirements of tests required by this part shall be removed from service and shall not be restored to service until its operating characteristics are in accordance with the limits within which such device or relay is designed to operate.

*Section 234.249 Ground Tests*

As proposed, this section requires a test for grounds on each energy bus furnishing power to circuits that affect the safety of highway-rail grade crossing warning system operation. The rule requires that the test be made when an energy bus is placed in service, and at least once each month thereafter.

The rule will assist in maintaining the integrity and safety of the warning system. As provided in § 234.213, tests would not be required on circuits that include track rail, alternating current power distribution circuits that are grounded in the interest of safety, and common return wires of grounded common return single break circuits.

There was no opposition to the proposed rule. The labor/management group, the only party commenting, supported the rule as proposed.

*Final Rule*

This section is adopted as proposed.

*Section 234.251 Standby Power*

The proposed section, entitled "Battery voltage." requires that battery voltage be checked at the battery, with battery-charging current removed, at least once each month to determine battery capability for instances of battery-charging current loss. There was no opposition to the proposed rule. However, FRA is amending this section to reflect changes to § 234.215.

*Final Rule*

This section requires that standby power be tested at least once each month.

*Section 234.253 Flashing Light Units and Lamp Voltage*

The proposed rule requires that lamp voltage be tested when installed and at least once every twelve months, with battery-charging current removed and with battery charging current restored, to determine the lamp voltage. Each flashing light unit would be required to be inspected at installation and once every twelve months for alignment, focus, and frequency of flashes in accordance with installation specifications. The exterior of each flashing light unit would be required to be inspected for dust and damage to roundels to ensure visibility of the light unit, at least once each month.

Labor/management recommended that the rule should be modified to reflect current practices in the maintenance, inspection and testing of flashing light units. Since the plans kept at crossing locations typically do not address the alignment or focus of flashing light units, they believe it would be more appropriate to have the requirements based on the installation specifications, which would reflect the design of the system. They commented that the term "focus" should be eliminated from the rule. Light units are focused initially in the manufacturing process, and the focus should be adjusted thereafter only in a shop environment. In accordance with the current practices, the group recommended that the requirements under subsection (c) include the words "for proper visibility." This requirement will more appropriately address the intent of the rule with regard to the proper operation of the light units. We agree with the comments and have revised the rule accordingly.

*Final Rule*

This section requires that each flashing light unit be inspected when installed and at least once every 12 months for proper alignment and frequency of flashes in accordance with installation specifications. Lamp voltage will be required to be tested when installed and at least once every 12 months thereafter. Each flashing light unit will be inspected for proper visibility, and for dirt and damage to roundels and reflectors at least once each month.

*Section 234.255 Gate Arm and Gate Mechanism*

There was no opposition to the proposed rule. The final rule will remain as proposed.

*Final Rule*

This section requires that each gate arm and gate mechanism be inspected, and gate arm movement be observed for proper operation, at least once each month. Hold-clear devices (devices that keep the gate arms in the vertical position when the warning system is not activated) shall be tested for proper operation at least once every 12 months.

*Section 234.257 Warning System Operation*

The labor/management group supported the proposed rule. There was no opposition. The final rule will remain as proposed.

*Final Rule*

Paragraph (a) of this section requires that a highway-rail grade crossing warning system be tested for proper operation when the warning system is placed in service and thereafter at least once each month and whenever it is modified or disarranged. For purposes of paragraphs (a) and (b), "disarranged" includes situations in which a relay, circuit board, or other electronic device is replaced with another; two or more conductors in a cable are severed; a cable or conductor in a train detection system is replaced with another; or wires are removed at the same time from more than one terminal of a relay, electronic device, terminal board, or other vital component of a train detection system. The extent of testing the warning system for proper operation will be dependent on the degree of modification or disarrangement.

Paragraph (b) also requires that when a warning bell or other stationary

audible warning device is used, it be checked for proper operation when installed. Thereafter it must be tested at least once each month and whenever modified or disarranged.

*Section 234.259 Warning Time*

The proposed rule requires that a crossing warning system be tested for prescribed warning time at least once every three months. The labor/management group originally concurred in this section as proposed. The group later revised its comment. They state that it would be more appropriate to test warning time once each year, or when the warning system is modified in connection with changes in authorized train speeds. The LIRR commented that testing should only be required when a system is installed or disarranged. Labor/management and the Wisconsin Central Railroad request that testing of warning times using automatic recording devices should be an acceptable method of performing this test.

FRA has reviewed its proposal in light of the comments received. After consideration, FRA has determined that extending the testing period from three months to one year is appropriate in conjunction with requiring that testing be performed whenever the warning system is modified because of a change in train speeds. FRA also notes that under the requirements of § 234.257, "Warning system operation", warning time must be tested if the warning system is modified in such a manner that the warning time might be affected. FRA also agrees that electronic devices which accurately determine actual warning time may be substituted for other tests.

The labor/management group expressed confusion regarding the type of testing permitted under this section. The group stated that "although the rule itself permits testing of the adequacy of warning time by calculation based on the fastest allowable train speed, the preamble creates confusion by its reference to testing with an actual train movement or 'simulation of a train movement'." The group also stated that "section 234.259, as written, permits calculation as a complying testing technique * * *." This conclusion is unfounded. The section-by-section analysis of the section stated that "[testing] can be accomplished by observation of a train movement, if practical, or by calculation and simulation of a train movement. Calculation alone is not testing. It is merely a determination of design criteria. Only when the results of that calculation are combined with actions that determine that the mechanical, electrical or electronic system functions as intended, can an adequate test be done.

*Final Rule*

This section requires that each crossing warning system shall be tested for the prescribed warning time at least once every 12 months, and when the warning system is modified because of a change in train speeds. Electronic devices that accurately determine warning time will be an acceptable means of meeting the requirements of this provision.

*Section 234.261 Highway Traffic Signal Pre-emption*

The proposed rule requires that highway traffic signal pre-emption interconnections, for which a railroad has maintenance responsibility, be tested at least once each month. The pre-emption of a highway traffic signal requires an electrical circuit between the control relay of the crossing warning system and the controller assembly of the highway traffic signal. The railroad will only be responsible for the maintenance and testing of its interconnections. The State of West Virginia noted that this section "requires testing of the highway traffic signal preemption but doesn't include any notification requirement. If the preempt fails to work and the fault is on the highway side of the equipment, we need to be notified so that repairs can be initiated." Although it is beyond the scope of the present rulemaking to require notification of state highway departments when a signal maintainer discovers a malfunction of the highway traffic signal preemption equipment, FRA expects that such notifications would be routinely made. Nothing in this rulemaking is intended to preempt any local requirements that mandate notification to appropriate officials. However, we note that the railroad is not responsible for the controller assembly of the highway traffic signal and therefore the signal maintainer is not always aware of a malfunction of such equipment.

*Final Rule*

The final rule will remain as proposed.

*Section 234.263 Relays*

The labor/management group supported the proposed rule. There was no opposition. The final rule will remain as proposed.

*Final Rule*

Paragraph (a) of this section requires that (except for certain relays listed in paragraph (b)) each relay that affects the proper functioning of a crossing warning system shall be tested at least once every four years.

Paragraph (b)(1) requires that alternating current vane type relays, direct current polar type relays, and relays with soft iron magnetic structure shall be tested at least once every two years. Paragraph (b)(2) requires that alternating current centrifugal type relays shall be tested at least once every 12 months.

*Section 234.265 Timing Relays and Timing Devices*

The labor/management group supported the proposed rule. There was no opposition. The final rule will remain as proposed.

*Final Rule*

This section requires that each timing relay and timing device be tested at least once every twelve months. The timing shall be maintained at not less than 90 percent nor more than 110 percent of the predetermined time interval, which shall be shown on the plans or marked on the timing relay or timing device.

Timing relays and timing devices are essential components of time-out circuits which are primarily used for train switching movements at warning system installations. A time-out circuit de-activates a crossing warning system after a predetermined amount of time after a train movement has occupied the detection circuit in approach to the grade crossing.

*Section 234.267 Insulation Resistance Tests, Wires in Trunking and Cables*

The labor/management group supported the proposed rule. There was no opposition. The final rule will remain as proposed.

*Final Rule*

Paragraph (a) of this section requires that insulation resistance tests be made when wires or cables are installed and at least once every ten years thereafter. Paragraph (b) requires that insulation resistance tests be made between all conductors and ground, between conductors in each multiple conductor cable, and between conductors in trunking. Such tests must be performed when wires, cables, and insulation are dry. Paragraph (c) provides that, subject to the requirements of paragraph (d), when insulation resistance of wire or cable is found to be less than 500,000 ohms, prompt action must be taken to repair or replace the defective wire or

cable. Until such defective wire or cable is replaced, insulation resistance tests must be made annually. Paragraph (d) provides that a circuit with a conductor having an insulation resistance of less than 200,000 ohms shall not be used.

*Section 234.269 Cut-Out Circuits*

The proposed rule requires that each cut-out circuit be tested at least once every three months to determine that the circuit functions as intended. Labor/management group commented that the rule should be clarified by changing all references of cut-out circuits to "switch" cut-out circuits. They asked for clarification concerning the type of cut-out circuits this provision applies to.

For purposes of this section, a cut-out circuit is any circuit which overrides the operation of automatic warning systems. This includes both switch cut-out circuits and devices which enable personnel to manually override the operation of automatic warning systems.

*Final Rule*

This section requires that each cut-out circuit shall be tested at least once every three months to determine that the circuit functions as intended. For purposes of this section, a cut-out circuit is any circuit which overrides the operation of automatic warning systems. This includes both switch cut-out circuits and devices which enable personnel to manually override the operation of automatic warning systems.

*Section 234.271 Insulated Rail Joints, Bond Wires, and Track Connections*

The proposed rule requires that each insulated rail joint, bond wire, and track connection located within the limits of a highway-rail grade crossing train detection circuit be inspected at least once every three months. Insulated rail joints are used to prevent current from flowing between rails. Bondwires and track connections ensure continuity of a train detection circuit.

The labor/management group supported the proposed rule. The only other commenter on this proposal, the Wisconsin Central Railroad, commented that the requirement for inspection every three months is nearly impossible to meet, given the large geographical territories some signal maintainers have. Wisconsin Central suggests that this inspection should be extended to every six months. Because of the effect that damage to bonds, track connections and insulated rail joints due to vandalism, track equipment and other conditions can have on the integrity of the warning system, it is imperative that those components be inspected more often than twice a year. FRA notes that the three month inspection schedule is generally consistent with present industry inspection standards.

*Final Rule*

This section is adopted as proposed.

*Section 234.273 Results of Tests*

This section as proposed requires that results of tests made in compliance with this part be recorded on preprinted or computerized forms provided by the railroad, or by electronic means, approved by the Associate Administrator for Safety. Records must show the name of the railroad having maintenance responsibility for the warning system, AAR/DOT inventory number, place and date, equipment tested, results of tests, repairs, replacements, adjustments made, and condition in which the apparatus was left. Each record must be signed or electronically coded by the employee making the test and be filed in the office of a supervisory official having jurisdiction. Additionally, the proposal requires that records be made available to FRA as provided by 49 U.S.C. 20107 (formerly section 208 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437). Each record must be retained until the next record for that test is filed but in no case less than one year from the date of the test. If a railroad elects to use an electronic means for recording and signing results of tests, such means must be approved by FRA prior to use.

Only two parties specifically commented on this section. Labor/management group and New Jersey Transit commented that test results should be permitted to be retained at the highway-rail grade crossing location or at the office of an official. FRA has determined that a more centralized location is needed for the retention of the results of tests. In some instances the control housings of warning systems are destroyed when there is an accident at a grade crossing. If the records of tests are also destroyed, an effective investigation of the accident would be precluded. Additionally, retaining test results at the office of an official permits more effective monitoring of rule compliance by the railroad and FRA. The final rule will not be changed as suggested. FRA is adding notice similar to that contained in § 234.109 that records required to be kept shall be made available to FRA as provided by 49 U.S.C. 20107 (formerly section 208 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437).

*Final Rule*

This section is adopted as proposed with additional language as stated above.

**Regulatory Impact**

*E.O. 12866 and DOT Regulatory Policies and Procedures*

This rule has been evaluated in accordance with existing policies and procedures, and is considered to be significant under DOT policies and procedures (44 FR 11034, February 26, 1979) because it initiates a new regulatory program. This regulatory document was subject to review under E.O. 12866. FRA has prepared and placed in the rulemaking docket a regulatory evaluation addressing the economic impact of this rule. A copy of the regulatory evaluation may be inspected and copied in Room 8201, 400 Seventh Street, SW., Washington, DC 20590.

In the regulatory analysis accompanying the NPRM, FRA analyzed grade crossing malfunction data which had been submitted in accordance with the requirements of 49 CFR 234.9. The FRA's preliminary review and analysis of those data indicated that there is a correlation between false activations at a grade crossing and accidents occurring at the same crossing in the week following the false activation. Because the data had not yet been subjected to the careful testing and scrutiny FRA would have wished had it had more time perform further analyses, FRA invited comments on the data and methodology used in its analysis.

The AAR responded to the request that commenters review FRA's preliminary analysis. The AAR concluded that the data did not support the FRA's preliminary conclusions. After a review of FRA's data and AAR's analysis of that data, FRA agrees with the AAR's conclusion.

In its regulatory analysis FRA posited that the benefits of this rule would arise because the number of grade crossing signal malfunctions would decrease due to compliance with maintenance, inspection and testing requirements of Subpart D, grade crossings would be made safer during periods of warning system malfunction due to compliance with Subpart C. FRA further estimated that the costs of §§ 234.105 and 234.107 would be reduced because the railroads would repair warning systems more rapidly under the provisions of § 234.103.

It appears that activation failures now cost about $4.4 million per year in accidents. In these accidents the highway user doesn't know a train is

coming, enters the crossing and is struck by a train. This rule should reduce that cost to about $1.3 million per year.

It is not as clear how many accidents are attributable to false activations. The FRA's best estimate, based on educated estimates of its staff, is that false activations cause about $10.9 million a year in accident costs. In these accidents the highway user thinks the signal is "crying wolf", ignores a valid warning, and is struck by a train. This rule should reduce the annual cost to about $3.3 million.

This rule will prevent malfunctions, reduce their duration, and make crossings safer during a malfunction.

The total cost of this rule, discounted over twenty years, will be about $80 million and the total benefit will be about $150 million. Benefits will be about 1.9 times costs.

*Regulatory Flexibility Act*

FRA certifies that this rule will not have a significant impact on a substantial number of small entities. There are no substantial economic impacts for small units of government, businesses, or other organizations.

*Paperwork Reduction Act*

The rule contains information collection requirements. FRA is submitting these information collection requirements to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The section that contains information collection requirements is § 234.273. The estimated time to fulfill the requirement of that section is five minutes for each record.

*Environmental Impact*

FRA has evaluated these regulations in accordance with its procedure for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act and related directives.

*Federalism Implications*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, "Federalism," and it has been determined that the rule has sufficient federalism implications to warrant the preparation of a Federalism Assessment. FRA recognizes that currently a small number of states have statutes mandating to some extent maintenance, inspection and testing procedures for railroads operating within those states. In general, this rule will preempt those requirements. In an effort to maintain state expertise and involvement in this critical safety area, FRA is including grade crossing warning system inspection functions within its State Participation Program. FRA has also provided in §§ 234.105 and 234.107 that, in instances of grade crossing warning system malfunctions, "a locomotive's audible warning device shall be activated in accordance with railroad rules." This provision preempts local "whistle ban" ordinances to the extent they would otherwise prohibit the use of horns or whistles in such situations. This minimal intrusion into an area in which certain State and local governments have become involved is necessary to protect the travelling public and train crews from possible injury or death at grade crossings with malfunctioning warning systems. A copy of the Federalism Assessment has been placed in the public docket located in Room 8201, 400 Seventh Street, S.W., Washington, D.C. 20590.

**List of Subjects**

*49 CFR Part 212*

Intergovernmental relations, Investigations, Railroad safety.

*49 CFR Part 234*

Railroad safety, Highway-rail grade crossings.

**The Rule**

In consideration of the foregoing, FRA amends chapter IIb of Title 49, Code of Federal Regulations as follows:

## PART 212—[AMENDED]

1. The authority citation for part 212 is revised due to recodification of title 49 of the United States Code to read as follows:

**Authority:** 49 U.S.C. 20103, 20106, 20105, and 20113 (formerly Secs. 202, 205, 206, and 208, of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 431, 434, 435, and 436)); and 49 CFR 1.49.

2. Section 212.231, "Inapplicable qualification requirements," is redesignated § 212.235, and new §§ 212.231 and 212.233 are added to read as follows:

### § 212.231 Highway-rail grade crossing inspector.

(a) The highway-rail grade crossing inspector is required, at a minimum, to be able to conduct independent inspections of all types of highway-rail grade crossing warning systems for the purpose of determining compliance with Grade Crossing Signal System Safety Rules (49 CFR Part 234), to make reports of those inspections, and to recommend institution of enforcement actions when appropriate to promote compliance.

(b) The highway-rail grade crossing inspector is required, at a minimum, to have at least four years of recent experience in highway-rail grade crossing construction or maintenance. A bachelor's degree in engineering or a related technical specialization may be substituted for two of the four years of this experience requirement. Successful completion of an apprentice training program under § 212.233 may be substituted for the four years of this experience requirement.

(c) The highway-rail grade crossing inspector shall demonstrate the following specific qualifications:

(1) A comprehensive knowledge of highway-rail grade crossing nomenclature, inspection techniques, maintenance requirements, and methods;

(2) The ability to understand and detect deviations from:

(i) grade crossing signal system maintenance, inspection and testing standards accepted in the industry; and

(ii) the Grade Crossing Signal System Safety Rules (49 CFR Part 234);

(3) Knowledge of operating practices and highway-rail grade crossing systems sufficient to understand the safety significance of deviations and combinations of deviations from § 212.231(c)(2) (i) and (ii);

(4) Specialized knowledge of the requirements of the Grade Crossing Signal System Safety Rules (49 CFR Part 234), including the remedial action required to bring highway-rail grade crossing signal systems into compliance with those Rules;

(5) Specialized knowledge of highway-rail grade crossing standards contained in the Manual on Uniform Traffic Control Devices; and

(6) Knowledge of railroad signal systems sufficient to ensure that highway-rail grade crossing warning systems and inspections of those systems do not adversely affect the safety of railroad signal systems.

(d) A State signal and train control inspector qualified under this part and who has demonstrated the ability to understand and detect deviations from the Grade Crossing Signal System Safety Rules (49 CFR Part 234) is deemed to meet all requirements of this section and is qualified to conduct independent inspections of all types of highway-rail grade crossing warning systems for the purpose of determining compliance with Grade Crossing Signal System Safety Rules (49 CFR Part 234), to make reports of those inspections, and to recommend institution of enforcement

actions when appropriate to promote compliance.

**§ 212.233 Apprentice highway-rail grade crossing inspector.**

(a) An apprentice highway-rail grade crossing inspector shall be enrolled in a program of training prescribed by the Associate Administrator for Safety leading to qualification as a highway-rail grade crossing inspector. The apprentice inspector may not participate in investigative and surveillance activities, except as an assistant to a qualified State or FRA inspector while accompanying that qualified inspector.

(b) Prior to being enrolled in the program the apprentice inspector shall demonstrate:

(1) Working basic knowledge of electricity;

(2) The ability to use electrical test equipment in direct current and alternating current circuits; and

(3) A basic knowledge of highway-rail grade crossing inspection and maintenance methods and procedures.

## PART 234—[AMENDED]

3. The authority citation for Part 234 is revised to read as follows:

**Authority:** 49 U.S.C. 20103, 20107, 20108, 20111, 20112, 20114, 21301, 21302, 21304, and 21311 (formerly Secs. 202, 208, and 209 of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 431, 437, and 438, as amended)); 49 U.S.C. 20901 and 20102 (formerly the Accident Reports Act (45 U.S.C. 38 and 42)); and 49 CFR 1.49 (f), (g), and (m).

4. Section 234.1 is revised to read as follows:

**§ 234.1 Scope.**

This part imposes minimum maintenance, inspection, and testing standards highway-rail grade crossing warning systems. This part also prescribes standards for the reporting of failures of such systems and prescribes minimum actions railroads must take when such warning systems malfunction. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

5. Section 234.3 is revised to read as follows:

**§ 234.3 Application.**

This part applies to all railroads except:

(a) A railroad that exclusively operates freight trains only on track which is not part of the general railroad system of transportation;

(b) Rapid transit operations within an urban area that are not connected to the general railroad system of transportation; and

(c) A railroad that operates passenger trains only on track inside an installation that is insular; *i.e.*, its operations are limited to a separate enclave in such a way that there is no reasonable expectation that the safety of the public—except a business guest, a licensee of the railroad or an affiliated entity, or a trespasser—would be affected by the operation. An operation will not be considered insular if one or more of the following exists on its line:

(1) A public highway-rail crossing that is in use;

(2) An at-grade rail crossing that is in use;

(3) A bridge over a public road or waters used for commercial navigation; or

(4) A common corridor with a railroad, i.e., its operations are within 30 feet of those of any railroad.

6. Section 234.4 is added to read as follows:

**§ 234.4 Preemptive effect.**

Under 49 U.S.C. 20106 (formerly § 205 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 434)), issuance of these regulations preempts any State law, rule, regulation, order, or standard covering the same subject matter, except a provision directed at an essentially local safety hazard that is consistent with this part and that does not impose an undue burden on interstate commerce.

7. Amend § 234.5 by removing paragraph designations, listing definitions in alphabetical order, and adding the following definitions to read as follows:

**§ 234.5 Definitions.**

* * * * *

*Appropriately equipped flagger* means a person other than a train crewmember who is equipped with an orange vest, shirt, or jacket for daytime flagging. For nighttime flagging, similar outside garments shall be retroreflective. The retroreflective material shall be either orange, white (including silver-colored coatings or elements that retroreflect white light), yellow, fluorescent red-orange, or fluorescent yellow-orange and shall be designed to be visible at a minimum distance of 1,000 feet. The design configuration of the retroreflective material shall provide recognition of the wearer as a human being and shall be visible through the full range of body motions. Acceptable hand signal devices for daytime flagging include "STOP/SLOW" paddles and red flags. For nighttime flagging, a flashlight, lantern, or other lighted signal shall be used.

*Credible report of system malfunction* means specific information regarding a malfunction at an identified highway-rail crossing, supplied by a railroad employee, law enforcement officer, highway traffic official, or other employee of a public agency acting in an official capacity.

* * * * *

*Warning system malfunction* means an activation failure or a false activation of a highway-rail grade crossing warning system.

**§§ 234.15 and 234.17 [Redesignated as § 234.6]**

8. Redesignate the heading and text of § 234.15, and the heading and text of § 234.17, as the heading and text of a new paragraph (a) of § 234.6 and the heading and text of paragraph (b) of § 234.6, respectively; add a new section heading for newly designated § 234.6; and revise the newly designated paragraph (a) of § 234.6 to read as follows:

**§ 234.6 Penalties.**

(a) *Civil penalty.* Any person (including but not limited to a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500, but not more than $10,000 per violation, except that: penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death of injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. Appendix A to this part contains a schedule of civil penalty amounts used in connection with this rule.

* * * * *

9. Designate §§ 234.1 through 234.6 as "Subpart A—General" and designate §§ 234.7 through 234.13 as "Subpart B—Reports."

10. Add new "Subpart C—Response to Reports of Warning System Malfunction," and new "Subpart D—Maintenance, Inspection, and Testing." to read as follows:

**Subpart C—Response to Reports of Warning System Malfunction**



**Subpart D—Maintenance, Inspection, and Testing**

**Maintenance Standards**



**Inspections and Tests**



### § 234.101 Employee notification rules.

Each railroad shall issue rules requiring its employees to report to persons designated by that railroad, by the quickest means available, any warning system malfunction.

### § 234.103 Timely response to report of malfunction.

(a) Upon receipt of a credible report of a warning system malfunction, a railroad having maintenance responsibility for the warning system shall promptly investigate the report and determine the nature of the malfunction. The railroad shall take appropriate action as required by § 234.207.

(b) Until repair or correction of the warning system is completed, the railroad shall provide alternative means of warning highway traffic and railroad employees in accordance with §§ 234.105 or 234.107 of this part.

(c) Nothing in this subpart requires repair of a warning system, if, acting in accordance with applicable State law, the railroad proceeds to discontinue or dismantle the warning system. However, until repair, correction, discontinuance, or dismantling of the warning system is completed, the railroad shall comply with this subpart to ensure the safety of the travelling public and railroad employees.

### § 234.105 Activation failure.

Upon receipt of a credible report of warning system malfunction involving an activation failure, a railroad having maintenance responsibility for the warning system shall promptly initiate efforts to warn highway users and railroad employees at the subject crossing by taking the following actions:

(a) Prior to any train's arrival at the crossing, notify the train crew of the report of activation failure and notify any other railroads operating over the crossing;

(b) Notify the law enforcement agency having jurisdiction over the crossing, or railroad police capable of responding and controlling vehicular traffic; and

(c) Provide for alternative means of actively warning highway users of approaching trains, consistent with the following requirements (see Appendix B for a summary chart of alternative means of warning):

(1) (i) If an appropriately equipped flagger provides warning for each direction of highway traffic, trains may proceed through the crossing at normal speed.

(ii) If at least one uniformed law enforcement officer (including a railroad police officer) provides warning to highway traffic at the crossing, trains may proceed through the crossing at normal speed.

(2) If an appropriately equipped flagger provides warning for highway traffic, but there is not at least one flagger providing warning for each direction of highway traffic, trains may proceed with caution through the crossing at a speed not exceeding 15 miles per hour. Normal speed may be resumed after the locomotive has passed through the crossing.

(3) If there is not an appropriately equipped flagger or uniformed law enforcement officer providing warning to highway traffic at the crossing, each train must stop before entering the crossing and permit a crewmember to dismount to flag highway traffic to a stop. The locomotive may then proceed through the crossing, and the flagging crewmember may reboard the locomotive before the remainder of the train proceeds through the crossing.

(d) A locomotive's audible warning device shall be activated in accordance with railroad rules regarding the approach to a grade crossing.

### § 234.107 False activation.

Upon receipt of a credible report of a false activation, a railroad having maintenance responsibility for the highway-rail grade crossing warning system shall promptly initiate efforts to warn highway users and railroad employees at the crossing by taking the following actions:

(a) Prior to a train's arrival at the crossing, notify the train crew of the report of false activation and notify any other railroads operating over the crossing;

(b) Notify the law enforcement agency having jurisdiction over the crossing, or railroad police capable of responding and controlling vehicular traffic; and

(c) Provide for alternative means of actively warning highway users of approaching trains, consistent with the following requirements (see Appendix B for a summary chart of alternative means of warning):

(1) (i) If an appropriately equipped flagger is providing warning for each direction of highway traffic, trains may proceed through the crossing at normal speed.

(ii) If at least one uniformed law enforcement officer (including a railroad police officer) provides warning to highway traffic at the crossing, trains may proceed through the crossing at normal speed.

(2) If there is not an appropriately equipped flagger providing warning for each direction of highway traffic, or if there is not at least one uniformed law enforcement officer providing warning, trains with the locomotive or cab car leading, may proceed with caution through the crossing at a speed not exceeding 15 miles per hour. Normal speed may be resumed after the locomotive has passed through the crossing. In the case of a shoving move,

a crewmember shall be on the ground to flag the train through the crossing.

(3) In lieu of complying with paragraphs (c)(1) or (2) of this section, a railroad may temporarily take the warning system out of service if the railroad complies with all requirements of § 234.105, "Activation failure."

(d) A locomotive's audible warning device shall be activated in accordance with railroad rules regarding the approach to a grade crossing.

**§ 234.109 Recordkeeping.**

(a) Each railroad shall keep records pertaining to compliance with this subpart. Records may be kept on forms provided by the railroad or by electronic means. Each railroad shall keep the following information for each credible report of warning system malfunction:

(1) Location of crossing (by highway name and DOT/AAR Crossing Inventory Number);

(2) Time and date of receipt by railroad of report of malfunction;

(3) Actions taken by railroad prior to repair and reactivation of repaired system; and

(4) Time and date of repair.

(b) Each railroad shall retain for at least one year (from the latest date of railroad activity in response to a credible report of malfunction) all records referred to in paragraph (a) of this section. Records required to be kept shall be made available to FRA as provided by 45 U.S.C. 20107 (formerly § 208 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437)).

## Subpart D—Maintenance, Inspection, and Testing

### Maintenance Standards

**§ 234.201 Location of plans.**

Plans required for proper maintenance and testing shall be kept at each highway-rail grade crossing warning system location. Plans shall be legible and correct.

**§ 234.203 Control circuits.**

All control circuits that affect the safe operation of a highway-rail grade crossing warning system shall operate on the fail-safe principle.

**§ 234.205 Operating characteristics of warning system apparatus.**

Operating characteristics of electromagnetic, electronic, or electrical apparatus of each highway-rail crossing warning system shall be maintained in accordance with the limits within which the system is designed to operate.

**§ 234.207 Adjustment, repair, or replacement of component.**

(a) When any essential component of a highway-rail grade crossing warning system fails to perform its intended function, the cause shall be determined and the faulty component adjusted, repaired, or replaced without undue delay.

(b) Until repair of an essential component is completed, a railroad shall take appropriate action under § 234.105, "Activation failure," or § 234.107, "False activation," of this part.

**§ 234.209 Interference with normal functioning of system.**

(a) The normal functioning of any system shall not be interfered with in testing or otherwise without first taking measures to provide for safety of highway traffic that depends on normal functioning of such system.

(b) Interference includes, but is not limited to:

(1) Trains, locomotives or other railroad equipment standing within the system's approach circuit, other than normal train movements or switching operations, where the warning system is not designed to accommodate those activities.

(2) Not providing alternative methods of maintaining safety for the highway user while testing or performing work on the warning systems or on track and other railroad systems or structures which may affect the integrity of the warning system.

**§ 234.211 Security of warning system apparatus.**

Highway-rail grade crossing warning system apparatus shall be secured against unauthorized entry.

**§ 234.213 Grounds.**

Each circuit that affects the proper functioning of a highway-rail grade crossing warning system shall be kept free of any ground or combination of grounds that will permit a current flow of 75 percent or more of the release value of any relay or electromagnetic device in the circuit. This requirement does not apply to: Circuits that include track rail; alternating current power distribution circuits that are grounded in the interest of safety; and common return wires of grounded common return single break circuits.

**§ 234.215 Standby power system.**

A standby source of power shall be provided with sufficient capacity to operate the warning system during any period of primary power interruption.

**§ 234.217 Flashing light units.**

(a) Each flashing light unit shall be properly positioned and aligned and shall be visible to a highway user approaching the crossing.

(b) Each flashing light unit shall be maintained to prevent dust and moisture from entering the interior of the unit. Roundels and reflectors shall be clean and in good condition.

(c) All light units shall flash alternately. The number of flashes per minute for each light unit shall be 35 minimum and 65 maximum.

**§ 234.219 Gate arm lights and light cable.**

Each gate arm light shall be maintained in such condition to be properly visible to approaching highway users. Lights and light wire shall be secured to the gate arm.

**§ 234.221 Lamp voltage.**

The voltage at each lamp shall be maintained at not less than 85 percent of the prescribed rating for the lamp.

**§ 234.223 Gate arm.**

Each gate arm, when in the downward position, shall extend across each lane of approaching highway traffic and shall be maintained in a condition sufficient to be clearly viewed by approaching highway users. Each gate arm shall start its downward motion not less than three seconds after flashing lights begin to operate and shall assume the horizontal position at least five seconds before the arrival of any train at the crossing. At those crossings equipped with four quadrant gates, the timing requirements of this section apply to entrance gates only.

**§ 234.225 Activation of warning system.**

A highway-rail grade crossing warning system shall be maintained to activate in accordance with the design of the warning system, but in no event shall it provide less than 20 seconds warning time before the grade crossing is occupied by rail traffic.

**§ 234.227 Train detection apparatus.**

(a) Train detection apparatus shall be maintained to detect a train or railcar in any part of a train detection circuit, in accordance with the design of the warning system.

(b) If the presence of sand, rust, dirt, grease, or other foreign matter is known to prevent effective shunting, a railroad shall take appropriate action under § 234.105, "Activation failure," to safeguard highway users.

**§ 234.229 Shunting sensitivity.**

Each highway-rail grade crossing train detection circuit shall detect the application of a shunt of 0.06 ohm

resistance when the shunt is connected across the track rails of any part of the circuit.

**§ 234.231 Fouling wires.**

Each set of fouling wires in a highway-rail grade crossing train detection circuit shall consist of at least two discrete conductors. Each conductor shall be of sufficient conductivity and shall be maintained in such condition to ensure proper operation of the train detection apparatus when the train detection circuit is shunted.

**§ 234.233 Rail joints.**

Each non-insulated rail joint located within the limits of a highway-rail grade crossing train detection circuit shall be bonded by means other than joint bars and the bonds shall be maintained in such condition to ensure electrical conductivity.

**§ 234.235 Insulated rail joints.**

Each insulated rail joint used to separate train detection circuits of a highway-rail grade crossing shall be maintained to prevent current from flowing between rails separated by the insulation in an amount sufficient to cause a failure of the train detection circuit.

**§ 234.237 Switch equipped with circuit controller.**

A switch, when equipped with a switch circuit controller connected to the point and interconnected with warning system circuitry, shall be maintained so that the warning system can only be cut out when the switch point is within one-half inch of full reverse position.

**§ 234.239 Tagging of wires and interference of wires or tags with signal apparatus.**

Each wire shall be tagged or otherwise so marked that it can be identified at each terminal. Tags and other marks of identification shall be made of insulating material and so arranged that tags and wires do not interfere with moving parts of the apparatus.

**§ 234.241 Protection of insulated wire; splice in underground wire.**

Insulated wire shall be protected from mechanical injury. The insulation shall not be punctured for test purposes. A splice in underground wire shall have insulation resistance at least equal to that of the wire spliced.

**§ 234.243 Wire on pole line and aerial cable.**

Wire on a pole line shall be securely attached to an insulator that is properly fastened to a crossarm or bracket supported by a pole or other support. Wire shall not interfere with, or be interfered with by, other wires on the pole line. Aerial cable shall be supported by messenger wire. An open-wire transmission line operating at voltage of 750 volts or more shall be placed not less than 4 feet above the nearest crossarm carrying active warning system circuits.

**§ 234.245 Signs.**

Each sign mounted on a highway-rail grade crossing signal post shall be maintained in good condition and be visible to the highway user.

## Inspections and Tests

**§ 234.247 Purpose of inspections and tests; removal from service of relay or device failing to meet test requirements.**

The inspections and tests set forth in §§ 234.249 through 234.271 shall be made to determine if the warning system and its component parts are maintained in a condition to perform their intended function. Any electronic device, relay, or other electromagnetic device that fails to meet the requirements of tests required by this part shall be removed from service and shall not be restored to service until its operating characteristics are in accordance with the limits within which such device or relay is designed to operate.

**§ 234.249 Ground tests.**

A test for grounds on each energy bus furnishing power to circuits that affect the safety of warning system operation shall be made when such energy bus is placed in service and at least once each month thereafter.

**§ 234.251 Standby power.**

Standby power shall be tested at least once each month.

**§ 234.253 Flashing light units and lamp voltage.**

(a) Each flashing light unit shall be inspected when installed and at least once every twelve months for proper alignment and frequency of flashes in accordance with installation specifications.

(b) Lamp voltage shall be tested when installed and at least once every 12 months thereafter.

(c) Each flashing light unit shall be inspected for proper visibility, dirt and damage to roundels and reflectors at least once each month.

**§ 234.255 Gate arm and gate mechanism.**

(a) Each gate arm and gate mechanism shall be inspected at least once each month.

(b) Gate arm movement shall be observed for proper operation at least once each month.

(c) Hold-clear devices shall be tested for proper operation at least once every 12 months.

**§ 234.257 Warning system operation.**

(a) Each highway-rail crossing warning system shall be tested to determine that it functions as intended when it is placed in service. Thereafter, it shall be tested at least once each month and whenever modified or disarranged.

(b) Warning bells or other stationary audible warning devices shall be tested when installed to determine that they function as intended. Thereafter, they shall be tested at least once each month and whenever modified or disarranged.

**§ 234.259 Warning time.**

Each crossing warning system shall be tested for the prescribed warning time at least once every 12 months. Electronic devices that accurately determine actual warning time may be used in performing such tests.

**§ 234.261 Highway traffic signal pre-emption.**

Highway traffic signal pre-emption interconnections, for which a railroad has maintenance responsibility, shall be tested at least once each month.

**§ 234.263 Relays.**

(a) Except as stated in paragraph (b) of this section, each relay that affects the proper functioning of a crossing warning system shall be tested at least once every four years.

(b) (1) Alternating current vane type relays, direct current polar type relays, and relays with soft iron magnetic structure shall be tested at least once every two years.

(2) Alternating current centrifugal type relays shall be tested at least once every 12 months.

**§ 234.265 Timing relays and timing devices.**

Each timing relay and timing device shall be tested at least once every twelve months. The timing shall be maintained at not less than 90 percent nor more than 110 percent of the predetermined time interval. The predetermined time interval shall be shown on the plans or marked on the timing relay or timing device.

**§ 234.267 Insulation resistance tests.**

(a) Insulation resistance tests shall be made when wires or cables are installed and at least once every ten years thereafter.

(b) Insulation resistance tests shall be made between all conductors and

ground, between conductors in each multiple conductor cable, and between conductors in trunking. Insulation resistance tests shall be performed when wires, cables, and insulation are dry.

(c) Subject to paragraph (d) of this section, when insulation resistance of wire or cable is found to be less than 500,000 ohms, prompt action shall be taken to repair or replace the defective wire or cable. Until such defective wire or cable is replaced, insulation resistance tests shall be made annually.

(d) A circuit with a conductor having an insulation resistance of less than 200,000 ohms shall not be used.

**§ 234.269 Cut-out circuits.**

Each cut-out circuit shall be tested at least once every three months to determine that the circuit functions as intended. For purposes of this section, a cut-out circuit is any circuit which overrides the operation of automatic warning systems. This includes both switch cut-out circuits and devices which enable personnel to manually override the operation of automatic warning systems.

**§ 234.271 Insulated rail joints, bond wires, and track connections.**

Insulated rail joints, bond wires, and track connections shall be inspected at least once every three months.

**§ 234.273 Results of tests.**

(a) Results of tests made in compliance with this part shall be recorded on forms provided by the railroad, or by electronic means, subject to approval by the Associate Administrator for Safety. Each record shall show the name of the railroad, AAR/DOT inventory number, place and date, equipment tested, results of tests, repairs, replacements, adjustments made, and condition in which the apparatus was left.

(b) Each record shall be signed or electronically coded by the employee making the test and shall be filed in the office of a supervisory official having jurisdiction. Records required to be kept shall be made available to FRA as provided by 45 U.S.C. 20107 (formerly section 208 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437)).

(c) Each record shall be retained until the next record for that test is filed but in no case for less than one year from the date of the test.

**Appendix A to Part 234—Schedule of Civil Penalties**

Note: A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

| Section | Violation | Willful violation |
|---|---|---|
| **Subpart B—Reports** | | |
| 234.7 Accidents involving grade crossing signal failure | $5,000 | $7,500 |
| 234.9 Grade crossing signal system failure reports | 2,500 | 5,000 |
| 234.11 Railroad rules | 2,500 | 5,000 |
| 234.13 Grade Crossing signal system information | 2,500 | 5,000 |
| **Subpart C—Response to Reports of Warning System Malfunction** | | |
| 234.101 Employee notification rules. | 2,500 | 5,000 |
| 234.103 Timely response to report of malfunction. | 2,500 | 5,000 |
| 234.105 Activation failure: | | |
| (a) failure to notify— | | |
| Train crews | 5,000 | 7,500 |
| Other railroads | 5,000 | 7,500 |
| (b) failure to notify law enforcement agency | 2,500 | 5,000 |
| (c) failure to comply with—. | | |
| Flagging requirements | 5,000 | 7,500 |
| Speed restrictions | 5,000 | 7,500 |
| (d) failure to activate horn or whistle | 5,000 | 7,500 |
| 234.107 False activation: | | |
| (a) failure to notify— | | |
| Train crews | 5,000 | 7,500 |
| Other railroads | 5,000 | 7,500 |
| (b) failure to notify law enforcement agency | 2,500 | 5,000 |
| (c) failure to comply with— | | |
| Flagging requirements | 5,000 | 7,500 |
| Speed restrictions | 5,000 | 7,500 |
| (d) failure to activate horn or whistle | 5,000 | 7,500 |
| **Subpart D—Maintenance, Inspection, and Testing** | | |
| *Maintenance Standards* | | |
| 234.201 Location of plans | 1,000 | 2,000 |
| 234.203 Control circuits | 1,000 | 2,000 |
| 234.205 Operating characteristics of warning system apparatus | 2,500 | 5,000 |
| 234.207 Adjustment, repair, or replacement of component | 2,500 | 5,000 |
| 234.209 Interference with normal functioning of system | 5,000 | 7,500 |
| 234.211 Locking of warning system apparatus | 1,000 | 2,000 |
| 234.213 Grounds | 1,000 | 2,000 |
| 234.215 Standby power system | 5,000 | 7,500 |
| 234.217 Flashing light units | 1,000 | 2,000 |
| 234.219 Gate arm lights and light cable | 1,000 | 2,000 |
| 234.221 Lamp voltage | 1,000 | 2,000 |
| 234.223 Gate arm | 1,000 | 2,000 |

| Section | | Violation | Willful violation |
|---|---|---|---|
| 234.225 | Activation of warning system | 5,000 | 7,500 |
| 234.227 | Train detection apparatus | 2,500 | 5,000 |
| 234.229 | Shunting sensitivity | 2,500 | 5,000 |
| 234.231 | Fouling wires | 1,000 | 2,000 |
| 234.233 | Rail joints | 1,000 | 2,000 |
| 234.235 | Insulated rail joints | 1,000 | 2,000 |
| 234.237 | Switch equipped with circuit controller | 1,000 | 2,000 |
| 234.239 | Tagging of wires and interference of wires or tags with signal apparatus | 1,000 | 2,000 |
| 234.241 | Protection of insulated wire; splice in underground wire. | 1,000 | 2,000 |
| 234.243 | Wire on pole line and aerial cable | 1,000 | 2,000 |
| 234.245 | Signs | 1,000 | 2,000 |
| | *Inspections and Tests* | | |
| 234.247 | Purpose of inspections and tests; removal from service of relay or device failing to meet test requirements | 2,500 | 5,000 |
| 234.249 | Ground tests | 2,500 | 5,000 |
| 234.251 | Standby power | 5,000 | 7,500 |
| 234.253 | Flashing light units and lamp voltage | 1,000 | 2,000 |
| 234.255 | Gate arm and gate mechanism | 1,000 | 2,000 |
| 234.257 | Warning system operation | 2,500 | 5,000 |
| 234.259 | Warning time | 1,000 | 2,000 |
| 234.261 | Highway traffic signal pre-emption | 1,000 | 2,000 |
| 234.263 | Relays | 1,000 | 2,000 |
| 234.265 | Timing relays and timing devices | 1,000 | 2,000 |
| 234.267 | Insulation resistance tests | 2,500 | 5,000 |
| 234.269 | Cut-out circuits | 1,000 | 2,000 |
| 234.271 | Insulated rail joints, bond wires, and track connections | 2,500 | 5,000 |
| 234.273 | Results of tests | 1,000 | 2,000 |

**Appendix B to Part 234—Alternate Methods of Protection Under 49 CFR §§ 234.105(c) and 234.107(c)**

THIS IS A SUMMARY—SEE BODY OF TEXT FOR COMPLETE REQUIREMENTS

| | Flagger for each direction of traffic | Police officer present | Flagger present, but not one for each direction of traffic | No flagger/no police |
|---|---|---|---|---|
| False activation | Normal speed | Normal speed | Proceed with caution—maximum speed of 15 mph. | Proceed with caution—maximum speed of 15 mph. |
| Activation failure | Normal speed | Normal speed | Proceed with caution—maximum speed of 15 mph. | Stop: Crewmember flag traffic and reboard. |

Issued in Washington D.C. on September 27, 1994.

**Jolene M. Molitoris,**

*Administrator.*

[FR Doc. 94–24223 Filed 9–29–94; 8:45 am]

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federal register

Friday
September 30, 1994

Part IV

# Department of the Treasury

Fiscal Service

31 CFR Part 210

Federal Government Participation in the Automated Clearing House; Proposed Rule

**DEPARTMENT OF THE TREASURY**

**Fiscal Service**

**31 CFR Part 210**

**RIN Number 1510–AA39**

## Federal Government Participation in the Automated Clearing House

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to revise regulations which define the responsibilities and liabilities of the Federal Government (Government), Federal Reserve Banks, financial institutions, Receivers and Originators doing business with the Government through the Automated Clearing House (ACH) system. This revision proposes substantive changes to the existing regulations and supersedes the savings allotment provisions of Part 209 because savings allotment and recurring benefit payments formerly under the terms of Part 209 are made by the ACH method under the terms of Part 210.

These revisions are intended to provide a regulatory basis for broader use of the ACH system to meet the future payment, collection, and information flow needs of the Government. These revisions also are intended to bring Government regulations more in line with financial industry rules so as to eliminate, as much as possible, the need for the financial industry to operate under two sets of rules for processing ACH transactions. In general, these revisions accept the private industry *ACH Rules* as promulgated by the National Automated Clearing House Association (NACHA), unless it is determined that, in its role of protecting the public trust, it is not in the best interests of the Government to do so. The exceptions to the *ACH Rules* are cited in these regulations. The Government already uses *ACH Rules* transaction formats and applies many *ACH Rules* to Government entries. These regulations will continue to provide provisions which protect the substantive rights of participants and enumerate their liabilities.

The major reasons for the proposed changes are to provide a clearer and broader framework, and greater leeway for the Department of the Treasury, Financial Management Service (the Service), to make ongoing modifications to policies, Government operating instructions, and interpretations of this regulation. This will permit the Service to manage effectively the transition to fully electronic processing, respond more rapidly to changes in commercial rules and operating procedures, and utilize commercial ACH processes or rules, unless it is determined not to be in the best interest of the Government. It also will provide the Service a regulatory basis for working with the financial community to develop or enhance ACH products and services as they become available in the banking industry, if they are consistent with the terms of the regulation described in this part. This requires a complete rewording of Subpart A and Subpart B.

**DATES:** Comments must be received on or before November 29, 1994.

**ADDRESSES:** Comments may be mailed to the Cash Management Policy and Planning Division, Financial Management Service, U.S. Department of the Treasury, Room 511, Liberty Center, 401 14th Street SW., Washington, DC 20227.

**FOR FURTHER INFORMATION CONTACT:** John Galligan (202) 874–6935 (Director, Cash Management Policy and Planning Division); or Margaret Roy (Principal Attorney) (202) 874–6680.

**SUPPLEMENTARY INFORMATION:**

### Background

Part 210 of Title 31 of the Code of Federal Regulations sets forth the rights and liabilities of the Government, Federal Reserve Banks, financial institutions and recipients where recipients of Government payments authorize the payments to be made by the ACH method. The regulations in this part were promulgated in 1975 and revised in 1976, 1984, 1987, 1989, and 1993.

The Service is revising these regulations to provide the framework necessary to achieve its ACH development strategy which involves the following three objectives: (1) Broaden the use of the ACH network for payments and collections; (2) move closer to industry standards to easily expand Government services within existing networks; and, (3) pursue a paperless environment.

The Service proposes to increase the use of the ACH network by adapting the regulatory framework of Part 210 to the emerging body of ACH products and services. This requires an expansion of the regulation to cover activities that are, or in the future may be, handled over the ACH network, including collections and the movement of information related to monetary transactions. In this way, the Service and Federal program agencies will be in a position to take full advantage of the ACH network to move as many of the Government's transactions as possible to ACH.

Moving closer to industry standards, as set forth by NACHA through the *ACH Rules,* also will enable the Government to expand its use of the ACH network. This will give the Service the flexibility to adopt, when in the best interest of the Government and consistent with legal requirements, those ACH practices and procedures that are proven viable in the commercial sector, and to work within industry rulemaking practices to introduce new practices and procedures. This requires a complete reworking of Subpart A and Subpart B.

The Service, in its pursuit toward a paperless environment, will be able to streamline and automate such diverse payment-related information processes as change requests, authorization activities, and reclamations. In the past, these have been expensive paper-based ancillary ACH activities. Advances in the ACH network have shown the efficiency of automating these processes.

The following methods were used by the Service to determine which revisions to the rules were necessary to achieve its ACH development strategy. First, an ACH work group was established to identify the major differences between the Government and private industry. The work group wrote issue papers discussing the differences along with options for resolving them. Second, a rules impact assessment was developed to determine how the differences in rules affected financial institutions. The assessment involved asking representatives from financial institutions about the impact of the current Government ACH rules and procedures, and an analysis of their responses. Third, the Service conducted a series of Federal agency forums to discuss options to resolve the differences. These efforts provided the basis for making the proposed revisions.

The Service is proposing:

(1) Clarification of the authorization and revocation processes to offer additional consumer protection and to facilitate automated or streamlined authorization procedures, including procedures to authorize debits.

(2) Clarification of the liability of participants with regard to authorizations, revocations, prenotification entries, notification of change entries, and commercial-to-Government entries.

(3) That liabilities be associated with failure to examine and act upon prenotifications that may be originated by the Government.

(4) A regulatory framework for equitable adjustments when a financial

institution either has been enriched, or harmed, as a result of erroneous ACH entries. The provision will allow Federal agencies to abide by industry rules if they have independent authority and choose to do so.

(5) That after due consideration of commercial practices, the Service may publish procedures under which it may authorize reversing entries to correct duplications or errors.

(6) Improvements to the reclamation of post-death benefits portion of the regulation, and a framework for paperless processing of the information and money associated with these transactions.

(7) To substitute certain terms used in the *ACH Rules* for terms which the Government uses in the same way as those defined in the *ACH Rules*, and to include those terms the Government uses differently from the *ACH Rules* or which are not contained in the *ACH Rules*. For example, current Part 210 uses the term "payment date," while the *ACH Rules* use the term "settlement date." Since both of these terms are used in the same way, the Service will use the term "settlement date."

The Service will accept or reject amendments to the NACHA Operating Rules and NACHA Operating Guidelines which may affect Government ACH transactions. Therefore, Section 210.2(a)(4) proposes that "The Service will indicate its acceptance or rejection of amendments to NACHA Operating Rules and NACHA Operating Guidelines in effect on September 27, 1994, by publishing a notice in the **Federal Register** prior to the effective date of the amendments."

**Rulemaking Analysis**

Treasury has determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, a regulatory assessment is not required. It is hereby certified that this revision will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The included changes are expected to result in improvements to the ACH process with advantages to institutions and recipients.

**List of Subjects in 31 CFR Part 210**

Automated Clearing House, banks, banking, electronic funds transfer, Federal Reserve Banks, financial institution, Government employees, wages.

Accordingly, Part 210 of Title 31 of the code of Federal regulations is proposed to be revised, as follows:

## PART 210—FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE

**Subpart—A General**

Sec.



**Subpart B—Reclamations**



**Subpart C—Discretionary Salary Allotments**



**Subpart D—Savings Allotments**



**Subpart E—Definitions**



**Authority:** 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321, 3301, 3302, 3321, 3335 and other provisions of law.

### Subpart A—General

**§ 210.1 Scope of regulations.**

This part governs the way the Federal Government (Government) uses the Automated Clearing House (ACH) network to effect electronic credits and debits, and non-value transactions. This part supersedes the savings allotment provisions of Part 209 of this title by including provisions for savings allotments (available hereunder only to Federal civilian employees). These transactions are made by the ACH payment method under the terms of this part. Regulations requiring the collection and disbursement of all ACH Federal funds via Electronic Funds Transfer (EFT), when cost effective, practicable, and consistent with existing statutes, can be found at Part 206 of this title. Regulations promulgated by the Bureau of the Public Debt governing payments made by the ACH method for principal and interest on Government securities can be found at Part 370 of this title.

**§ 210.2 General.**

(a) *Governing law.* Federal payments and collections made through the ACH method are governed by the terms of this part, the instructions issued under this part, Federal statutes and Regulation E. Federal payments and collections also are governed by the operating rules and guidelines promulgated by the National Automated Clearing House Association (NACHA), in effect on September 27, 1994, only to the extent they do not conflict with this part, the instructions issued under this part, Federal statutes and Regulation E.

(1) This part furthers the Government's obligation to protect the public trust, limits the financial liability of the Government, and ensures clarity in the application of the *ACH Rules* to Government participants.

(2) The Department of the Treasury, Financial Management Service (the Service), is responsible for publishing operating policies, procedures and guidelines for Government payment and collection transactions using the ACH method. These instructions will be published by the Service in its Treasury Financial Manual (TFM) and/or other operating guidelines.

(3) The NACHA operating guidelines may be found in the *ACH Rules* book, published by NACHA and distributed through regional ACH associations.

(4) The Service will indicate its acceptance or rejection of amendments to NACHA Operating Rules and NACHA Operating Guidelines in effect on September 27, 1994, by publishing a notice in the **Federal Register** prior to the effective date of the amendments. Failure to accept or reject prior to the effective date of the amendments will be deemed a rejection of such amendments.

(b) *Breach of warranty, compensation for breach of warranty or errors.* Each participant named under this part warrants to all other parties that it has handled entries in accordance with the requirements stated in this part. This warranty shall be limited to the amount of the payment, with one exception: Agencies may use the compensation rules found in Appendix VIII of the *ACH Rules*. Use of the compensation rules shall be preceded by a written agreement. Funding, authority, and agreements for any such payments will be the responsibility of the agency, not the Department of the Treasury or the Service.

(c) *Arbitration rules in cases of dispute.* Agencies may use arbitration requirements found in Appendix IX of the ACH Rules. Use of the arbitration provisions shall be preceded by a written agreement for their use. Funding for any expenses incurred in following the arbitration requirements will be the responsibility of the agency, not the Department of the Treasury or the Service.

**§ 210.3 Authorizations and revocations of authorizations.**

(a) *Requirements for authorization.* The requirements for authorization to originate and receive credit and debit transactions are as follows:

(1) Every Government Originator shall obtain prior authorization from the Receiver for ACH transactions originated by the Government. The Government Originator shall exercise due diligence in verifying the identity of any Receiver who presents an authorization to the Government.

(2) All Originators sending ACH credits with a value greater than zero to the Government shall enter into an agreement with the Government entity to which the credit is directed prior to transmitting the first credit. Specifications for the agreement can be found in the TFM.

(3) A Receiving Depository Financial Institution (RDFI) shall verify the identity of any Receiver who initiates or executes an authorization through the RDFI to receive credits or debits originated by the Government. The RDFI shall exercise due diligence in such identification, at a minimum applying the standards used for negotiation of financial instruments.

(4) The title of the account designated to receive a payment shall include the name of the Receiver, except as provided as follows:

(i) In the case of discretionary allotments, the allotter may authorize a credit to any other Receiver. The Receiver's agreement is not required for the authorization or revocation;

(ii) In the case of a master account/sub-account structure, the accounts need not include the name of the Receiver. However, a clearly traceable audit trail to the payment shall exist in the sub-account, and the Receiver must retain control over the funds.

(5) Government benefit payments shall be deposited only into a consumer account except under conditions stated in § 210.3(a)(4)(ii). The definition of consumer account includes non-participating depository financial institutions that receive Government payments.

(6) Unless expressly authorized in writing, Originators and Originating Depository Financial Institutions (ODFIs) shall not initiate, under any circumstances, debit entries to the Government. ODFIs shall be subject to the liabilities in § 210.6(e)(2) for any unauthorized debits.

(b) *Terms of Receiver authorizations.* By executing an authorization for a Government ACH participant to initiate credits or debits, a Receiver agrees:

(1) To the provisions of this part;

(2) To provide accurate information;

(3) To verify their identity to the satisfaction of the RDFI or Government Originator, whichever has accepted the authorization;

(4) That any new authorization pertaining to a credit or debit supersedes any previous authorization pertaining to the same credit or debit;

(5) That the Government reserves the right to use reversal entries in the event that it originates duplicate files or makes entries in error; and,

(6) That Government benefits shall be sent to a designated RDFI and that the full amount of the Government benefit shall be credited to either a checking or a savings account, but not both.

(c) *Termination and revocation of authorizations.* An ACH authorization shall remain valid until it is terminated or revoked by—

(1) Receipt by the Government Originator of a written request from the Receiver, unless a later effective date is requested by the Receiver;

(2) A change in the title of an account which removes or adds the name of a Receiver, or otherwise alters the interest of the Receiver of Government credits, except as provided in § 210.3(a)(4)(i) & (ii) of this part;

(3) The death of a Receiver or the death of a beneficiary on whose behalf the Receiver is accepting credits;

(4) Closing of the Receiver's account at the RDFI by the Receiver or by the RDFI. If the RDFI is closing the account, it shall provide 30 days written notice to the Receiver before it takes any action;

(5) Inability of the RDFI to process the item correctly or properly because of incorrect transaction instructions;

(6) Failure to meet any of the conditions specified in the terms of the authorization;

(7) A determination by the Government Originator that the conditions of authorization have changed and accordingly, the authorization is void as of the time of the changed condition;

(8) Return by the RDFI of one or more debit entries originated by the Government for reasons of insufficient funds, stop payment orders, or other similar reasons; or,

(9) The RDFI's insolvency, closure by any State or Federal regulatory authority or by corporate action, or appointment of a receiver, conservator, liquidator or other officer. In each event, the authorization shall remain valid if a successor is named. At the Service's discretion, the Government may temporarily transfer authorizations to another RDFI. The transfer is valid until either a new authorization is executed by the Receiver, or 120 days have elapsed since the insolvency, closure or appointment, whichever occurs first.

(d) *Assignment of benefit payments prohibited.* Except as authorized by law, an ACH authorization shall not be used to assign benefits to a party other than the beneficiary, or someone designated by the Government Originator to act on behalf of the beneficiary.

**§ 210.4 The Government.**

(a) *Timeliness of entries.* Government ACH participants shall forward all ACH transactions they prepare to an ACH Operator site designated by the Federal Reserve Bank. Government ACH participants shall conform with the timing requirements of the Federal Reserve Bank.

(b) *Authorization to receive ACH entries.* Government participants may receive ACH credit entries with a value greater than zero. Prior written authorization from the Service is required, and the Service will direct the Federal Reserve Bank to take appropriate actions. Government participants shall require ODFIs to initiate such credits to the General Account of the Department of the Treasury at a Federal Reserve Bank designated by the Government Participant in the authorization agreement.

(c) *Requirement to post or return ACH entries.* Government participants shall review all ACH credit entries with a value greater than zero, that they receive. If the entries do not balance, are incomplete, are clearly incorrect, or, are incapable of being processed, the Government participants shall advise the Federal Reserve Bank to take appropriate action. Timing of the advice shall be according to Federal Reserve Bank deadlines and instructions. In the event of an unauthorized debit to the Government, the Government participant shall transmit a Return entry to the designated Federal Reserve Bank, in time to effect same-day settlement.

(d) *Timing of settlement by the Government.* Government participants shall make their authorized ACH transactions effective on the designated settlement date.

(e) *Prenotifications.* Government participants may originate ACH Prenotification entries prior to origination of the first ACH credit to a Receiver. Government participants shall originate a Prenotification prior to origination of the first debit to a Receiver. A Government participant that is a Receiver of Prenotifications will verify and respond to Prenotifications according to the *ACH Rules.*

(f) *Notification of Change.* Government participants shall originate and receive Notification of Change entries and Refused Notification of Change entries, except where the Government does not recognize a particular change code. A list of acceptable change codes can be found in the TFM.

(g) *Limited liability of the Government.* The Government will be liable to a Receiver or Originator only for a failure to effect the appropriate credit or debit entries to the Receiver's account. The Government's total liability is limited to the amount of the payment entry, unless the exception in § 210.2(b) applies. The Government will not be liable to any ACH association.

(h) *Losses sustained by financial institutions.* The Government will be liable to financial institutions for losses sustained in processing ACH credit and debit entries originated by a Government participant. The Government's total liability is limited to the amount of the payment entry, unless the exception in § 210.2(b) applies. Financial institutions shall have exercised due diligence, using standard commercial practices, in following the transaction instructions associated with the entry. The provisions of this subsection do not apply to credits and debits received by the RDFI after the death or legal incapacity of the beneficiary. Such credits and debits shall be governed by § 210.10 of this part.

(i) *Acquittance.* The appropriate crediting of the amount of an entry to a Receiver's account shall constitute full acquittance of the Government for the amount of the entry. The crediting of the amount of an entry received by the Federal Reserve Bank and posted to Treasury's General Account shall constitute full acquittance of the ODFI for the amount of the entry. Full acquittance of the ODFI shall not occur if the entries do not balance, are incomplete, are clearly incorrect, or, are incapable of being processed.

**§ 210.5 Federal Reserve Banks.**

(a) *Fiscal Agent role.* Each Federal Reserve Bank serves as a Fiscal Agent of the Government and is authorized to act as the Government's ACH Operator.

(b) *Routing and Transit Numbers.* All routing and transit numbers issued to Government participants require the prior approval of the Service.

(c) *Delivery and funds availability.* The Federal Reserve Banks shall make the Government's ACH entry information available to a financial institution or its agent no later than the opening of business for the financial institution on the settlement date. The Federal Reserve Banks shall make funds available to the financial institution for credit entries at the opening of business for the Federal Reserve Banks on the settlement date as prescribed by the Board of Governors of the Federal Reserve System. The Federal Reserve Banks shall prescribe the medium which will be used.

(d) *Authorization of Federal Reserve Banks to debit or credit financial institutions.* A financial institution that utilizes an account at a Federal Reserve Bank and that transmits ACH transactions to or from a Government participant, shall be deemed to authorize the Federal Reserve Bank to use the account for settlement purposes.

(e) *Federal Reserve Bank liability.* Each Federal Reserve Bank shall be responsible only to the Treasury and shall not be liable to any other party for any loss resulting from the Federal Reserve Bank's action under this part.

**§ 210.6 Financial institutions.**

(a) *Acceptance of the terms of this part.* Financial institution acceptance or transmittal of ACH entries to or from participating Government participants constitutes the financial institution's agreement to the terms of this part, regardless of whether it has executed an authorization.

(b) *Funds availability.* RDFIs shall make Government consumer credit entries available to the Receiver for withdrawal not later than the opening of business (the later of 9:00 a.m. local time or the time the teller facilities, including automatic teller machines, are available for customer account withdrawals).

(c) *RDFI action in response to Government-originated Prenotifications.* Government Originators may send Prenotification transactions to the RDFIs prior to the start of authorized credit or debit entries.

(1) In addition to the responsibilities outlined in the *ACH Rules,* the RDFI shall verify the entry by examining the Receiver's account number and at least one other identifying data element. An example of an identifying data element is the authorizing Receiver's name.

(2) RDFIs that fail to act upon proper and timely Government Prenotifications, and RDFIs that fail to fully verify the identity of the Receiver, shall be held liable to the Government. This liability shall be the lesser of the Government's loss or the amount of the credit or debit transaction(s) in question.

(d) *Financial institution is not designated a Government depositary.* RDFIs to which a Government ACH entry is sent do not become, by such action, a Government depositary and shall not advertise themselves as Government depositaries.

(e) *Financial institution liabilities.* Financial institution liabilities are as follows:

(1) A financial institution shall be liable to the Government for losses sustained by the Government if the Government has correctly handled the entry(ies). This liability is limited to the amount of the entry(ies).

(2) ODFIs shall be liable for all unauthorized debits to the Treasury General Account regardless of timeliness of the return entry. As a remedy, the Service may instruct the Federal Reserve Bank to debit the account utilized by the financial institution.

(3) Financial institutions will be held harmless for the Government's losses if the financial institution notifies the Government Originator of erroneous entries originated by the Government. Such notification shall be by Notification of Change entry. This relief from liability only applies to credits and debits received by the financial institution 10 or more business days after a Notification of Change is provided to the Government Originator.

**§ 210.7 Fraud.**

*Identification of Receivers.* An RDFI that executes an authorization in which the Receiver's signature is forged or in which other information is falsified, shall be liable to the Government for all payments or collections made in reliance on the authorization. The provisions of § 210.3(a) also apply.

## Subpart B—Reclamations

**§ 210.8 General terms of reclamations.**

(a) *General.* Credits originated by Government participants subsequently may be determined to be erroneous because of the death or legal incapacity of the Receiver or death of the beneficiary. The Government reserves the right to recover these credits and hold the RDFI liable for these funds. The terms "reclamation" and "reclaim" refer to the Government's action to recover these benefit payments. Reclamation actions are strictly limited to circumstances that meet the following criteria:

(1) The credit being reclaimed was a benefit payment to a Receiver or beneficiary; and,

(2) The Receiver was deceased or legally incapacitated, or the beneficiary was deceased, on or before the last day of the entitlement period to which the credit applies; and,

(3) The Government participant that originated the entry has requested reclamation; and,

(4) The credit has not been previously remitted to the Government by any source.

(b) *Reclamation by non-Government Originators.* The Government will not accept or be liable for reclamation entries received from non-Government Originators.

**§ 210.9 Knowledge of death or legal incapacity of Receiver or death of beneficiary.**

(a) *Knowledge of death or legal incapacity by an RDFI.* When an RDFI first learns of the death or incapacity of a customer who is a Receiver of Government ACH benefit payments or the death of a customer who is a beneficiary, it shall take the actions required under this part. Knowledge of the death or incapacity may occur by, but is not limited to, any communication with an executor of the deceased Receiver's or beneficiary's estate, family member, or other third party; or any form of notification from the Government. RDFIs are not obligated to undertake extraordinary efforts that fall outside normal business practices to learn of a death or legal incapacity. Extraordinary measures include, but are not limited to, reviewing newspaper obituary notices.

(b) *Actions required when RDFIs are notified of a death or legal incapacity.* When notified of the death or legal incapacity of a Receiver, or the death of a beneficiary, a RDFI shall either return or refuse any ACH entries subsequently received from Government Originators. If an RDFI returns either full or partial payments by check, the Service may assess an administrative fee to cover the expense of processing. Failure to return credits in accordance with these rules shall result in forfeiture of the RDFI's right to limit its liability under the provisions of this part.

(c) *Recovery involving multiple credits that are subject to reclamation.* If the Government erroneously originates a number of credits after the death or legal incapacity of a Receiver or the death of a beneficiary, the sequence of effective recovery of credits does not affect the RDFI's liability.

**§ 210.10 Liabilities/limitations.**

(a) *Rules pertaining to type of account.* There is no exemption from liability for recovery of payments issued erroneously after the Receiver's death or legal incapacity or the beneficiary's death based on the type of account to which the Government credits are made.

(b) *RDFI liability and right to limit liability.* An RDFI shall be liable to the Government for the total amount of each credit received after the death or legal incapacity of the Receiver or the death of the beneficiary, except as provided in paragraphs (e) and (f) of this section. An RDFI may limit its liability if:

(1) The RDFI did not have knowledge of the death or legal incapacity on the effective settlement date of the entry in question, or at the time of withdrawal of credits made after the death or legal incapacity; and

(2) The RDFI fulfills the requirements of this subpart and any relevant procedures published by the Service.

(c) *Determination of the amount of an RDFI's liability.* Except as provided in paragraph (f) of this section, if limitation of liability is available to an RDFI, the amount of its liability for erroneous Government credits received shall be as follows:

(1) The RDFI is liable for the amount of any Federal Government entries settled within 45 days of the Receiver's death or legal incapacity, or the beneficiary's death, minus any amount recovered by the Government Originator;

(2) In addition, the RDFI's liability extends to Federal Government entries settled more than 45 days after the death or legal incapacity of the Receiver or the death of the beneficiary. This additional liability is the lesser of:

(i) An amount equal to the amount of the entries which settled more than 45 days after the death or legal incapacity of the Receiver or the death of the beneficiary;

(ii) An amount equal to the amount in the Receiver's or beneficiary's account as defined in § 210.10(i)(2)(ii).

(d) *Reclamation actions are not directed toward Receiver's account.* This part does not authorize or direct an RDFI to debit the account of a Receiver or any other customer, living or deceased, for the RDFI's liability to the Government under §§ 210.8 through 210.12. The amount in the Receiver's account is only a measure of the RDFI's liability. Nothing in this part shall be construed to affect any right an RDFI may have under State law or the RDFI's contract with a customer to recover amounts equal to those returned to the Government in compliance with this part. A withdrawer may deposit funds to an account and authorize the RDFI to return such monies to the Government.

(e) *Exception to liability rule—person entitled to Government benefits is deceased at the time of authorization.* An RDFI shall not be liable for ACH credit entries sent to a Receiver acting as a fiduciary on behalf of a beneficiary, if the beneficiary was deceased at the time the authorization was executed and the RDFI had no knowledge of the death. The verification and liability provisions of §§ 210.3(a)(3) and 210.7 shall apply.

(f) *Requirement that Government Originators act on notice of death.* An RDFI return of credits to the Government by ACH because of the death of the Receiver or beneficiary will constitute effective notice of death to the Government Originator. The RDFI shall not be liable for any future ACH transaction for that individual from the same Government Originator if the settlement date is more than 10 business days after the settlement date of the return entry.

(g) *Time limit to initiate reclamation actions.* The Government may initiate reclamation actions to recover erroneous credits within 12 months after the date that the Originator receives notice that the Receiver died or became legally incapacitated, or that the beneficiary died. The amount Government Originators can reclaim is the total of all payments made during the 6 years following the date of death or legal incapacity of the Receiver or death of the beneficiary.

(h) *Actions to recover funds from withdrawers.* The RDFI's liability under this part is not affected by any unsuccessful action taken by the Government to recover funds from any party.

(i) *Payment to the Government for reclaimed amounts.* The payments subject to reclamation are:

(1) If the RDFI had knowledge on the settlement date of the death or legal incapacity of the Receiver or the death of the beneficiary and did not timely and properly return the payment(s) by ACH return entry to the Government, the RDFI shall be liable for that entry(ies) and shall return an equal amount to the Government.

(2) If the RDFI had no knowledge on the settlement date of the death or legal incapacity of the Receiver or the death of beneficiary, the RDFI shall be liable for the lesser of:

(i) An amount equal to the amount of the payment(s); or

(ii) An amount equal to the amount in the deceased or legally incapacitated Receiver's account, or the deceased beneficiary's account, up to the amount of the payment. The amount in the account is defined as the account balance when the RDFI received notice of the death or legal incapacity and had reasonable time to take action on it, plus any other additions to the account balance made before the RDFI returns the payment(s). For purposes of this

paragraph, action is taken within a reasonable time if it is taken not later than the close of the business day following the receipt of the reclamation entry(ies). When determining the amount in the account, the RDFI's liability shall not be reduced for debit card withdrawals, automated withdrawals, pre-authorized debits, non-Government reclamations, and forged checks or other comparable instruments, made after the RDFI had knowledge of the death or legal incapacity.

(j) *List of withdrawers.* If the amount paid by the RDFI is less than the full amount of the reclamation, the RDFI shall provide the Government:

(1) A list of withdrawers of any post-death payments and their most recent addresses;

(2) Certification that the RDFI has returned an amount equal to the amount in the account as defined in § 210.10(i)(2)(ii); and,

(3) Certification that the RDFI had no knowledge of the Receiver's death or legal incapacity, or the beneficiary's death, prior to receiving the credit entry(ies) in question.

**§ 210.11 Notice to account holders.**

(a) *Requirement to notify account holder(s).* When the RDFI receives a reclamation, it shall send written notification to the account holder(s) stating that a collection action may be or has been initiated. This notice should be sent no later than the date the RDFI recovers funds from the account.

(b) *Forfeiture of right to limit liability for failure to notify account holder(s).* Failure to provide notice to account holders, as prescribed in § 210.11 shall result in the forfeiture by the RDFI of its ability to limit its liability under this part. The Government may require the RDFI to provide proof that written notice was mailed to joint account holders. Proof may include, but is not limited to, a file copy of the notice, a certified mail receipt, or documentation pertaining to the standard operating procedure of the RDFI that such a notice is routinely sent. If an RDFI is not able to furnish proof of notice in response to a request by the Government, it shall forfeit any right it may have to limit its liability for that payment(s) and the Government may request the Federal Reserve Bank to debit the account of the RDFI for any otherwise unrecovered amount.

**§ 210.12 Erroneous death information, restitution and over recoveries.**

(a) *Reporting corrections or errors to the Government.* If the RDFI learns that the Receiver or beneficiary is not deceased or legally incapacitated, or that the date of death is incorrect, the RDFI shall inform the Government of the error immediately. Until the RDFI is notified otherwise, however, it remains liable for Government credits as specified in § 210.10 of this part.

(b) *Relief from or reduction in liability—error in fact or error in date of death.* The Government Originator will determine whether the report of an error in the fact of a Receiver's death or legal incapacity, or the date of death, is correct. After its review, the Government Originator will certify its determination in writing to the RDFI and inform the RDFI of relief from or change to its liability. If the Government Originator agrees that the original notice of death or legal incapacity was incorrect, or the date of death is materially different from the original notice, it shall stop further reclamation activity that it determines to be inappropriate.

(c) *Restitution by the Government of RDFI funds improperly reclaimed.* When appropriate, the Government Originator will remit to the RDFI any funds incorrectly returned or otherwise received from the RDFI.

(d) *Over/under recoveries.* In the event of an over recovery by the Government for an erroneous credit, the Government Originator will return immediately the excess amount, by appropriate means, to the party suffering the loss. In the event of either an over or under recovery, the Service may instruct the Federal Reserve Bank to credit or debit the reserve account of a financial institution.

## Subpart C—Discretionary Salary Allotments

**§ 210.13 General.**

(a) *Scope.* This subpart applies only to Government discretionary allotments. This part does not supersede, and shall not be used to circumvent, the requirements of particular statutes, Executive Orders or other executive branch regulations; for example, the Office of Personnel Management regulations at 5 CFR Part 550, Subpart C, implementing 5 U.S.C. 5525.

(b) *Required use of the Automated Clearing House method.* Discretionary allotments shall be made by ACH entry, except when the Service determines that other means are more appropriate. "Discretionary allotment" as used herein means an amount the employing agency permits a Government employee to request be deducted from his/her net salary amount and paid to a Receiver. The aggregate amount of discretionary allotments may not exceed the net pay due the employee for each pay period after all deductions required by law are subtracted.

(c) *Head of Government originating agency determines discretionary allotment policy.* Discretionary allotments may be made for any purpose determined appropriate by the head of a Government participant and which are consistent with Title 5, Chapter 55, subchapter III, United States Code, and Title 5, Chapter 1, Part 550, subpart C, Code of Federal Regulations.

(d) *Timing of discretionary allotments.* Discretionary allotment payments shall be made in accordance with the schedule established by the Government Originator, provided such allotment credits are not effected until the related earnings have accrued.

(e) *Payment of discretionary allotments.* Discretionary allotments shall be made following the policy and procedures outlined in Subpart A for non-benefit payments, and in conformance with other requirements published by the Service.

## Subpart D—Savings Allotments

**§ 210.14 General.**

(a) *Scope.* This subpart applies only to savings allotments. Provisions for certain other types of allotments, for example, dues to labor organizations, can be found in 5 CFR part 550, subpart C. The regulations in this part do not supersede, and shall not be used to circumvent, the requirements of particular statutes, Executive Orders or other executive branch regulations.

(b) *Required use of the Automated Clearing House method.* Savings allotments shall be made by ACH entry, when cost effective, practicable, and consistent with current statutory authority.

(c) *Policy for savings allotments for Government employees.* Any employee whose place of employment is within the boundaries of the United States or its territories may authorize an allotment of pay for a savings account under the regulations in this part. "Savings account" as used herein means an account (single or joint) for the purchase of shares (other than shares of stock) or for the deposit of savings in any RDFI. The title of the account shall include the name of the authorizing employee. The head of the employing Government participant shall honor requests for allotment of pay for savings accounts if:

(1) The Government employee provides the Government participant with an authorization; and,

(2) The authorization has not been canceled by the employee, in writing, or otherwise terminated or revoked; and,

(3) Not more than two such allotments for any employee are in effect at any time; and,

(4) The amount of salary or wages becoming due an employee for any pay period thereafter is sufficient to cover the allotment(s). In making any determination under this paragraph, all payroll deductions otherwise required shall have precedence over those authorized by this section; and,

(5) The purpose of the allotment is not to circumvent statutes, Executive Orders, and other executive branch regulations, regardless of the manner in which the allotment for savings will be disposed of by the employee (which is at the employee's discretion).

## Subpart E—Definitions

### § 210.15 Definitions.

As used in this part, unless the context otherwise requires:

*Allotment* means a recurring specified deduction from pay of a Government employee for a legal purpose authorized by the employee.

*Allotter* means the employee from whose pay an allotment is made.

*Automated Clearing House or ACH* means a funds transfer system which provides for the interbank clearing of electronic entries for participants.

*Beneficiary* means a natural person who is entitled to receive a benefit payment, or portion thereof, from the Government.

*Benefit Payment* is a credit of funds for any Federal entitlement program or annuity, originated by a Government participant. Benefit payments may be either one-time disbursements or recurring payments. A list of benefit payments is published by the Service in operating guidelines. Only benefit payments are subject to the reclamation provisions of this part.

*Erroneous Payment* means a benefit payment made after the death or legal incapacity of a Receiver or the death of a beneficiary. Erroneous payment is an operational term used by Government participants to refer to the payments described in the preceding sentence. Erroneous payments are subject to the 45-day liability rule of § 210.10 and the reclamation provisions of §§ 210.8 through 210.12.

*Government* means any department, independent establishment, board, office, commission, or other establishment in the executive, legislative (except the Senate and House of Representatives), or judicial branch of the Federal Government, including any wholly-owned or controlled Federal Government corporation, responsible for authorizing and initiating an ACH entry.

*Government Participant* means any Government agency or entity that sends ACH transactions to an ACH operator or receives ACH transactions from an ACH operator.

*National Automated Clearing House Association or NACHA* means the national association of regional member ACH associations, ACH Operators and participating financial institutions located in the United States. NACHA is a rulemaking body for commercial ACH transactions. The rules promulgated by NACHA can be found in the *ACH Rules* published by NACHA and distributed through regional ACH associations. For further information on the *ACH Rules*, call (703) 742–9190 or write to NACHA, 607 Herndon Parkway, Suite 200, Herndon, VA 22070.

*Receiver* means a natural person, corporation, or other public or private entity which is authorized by the Government Originator to receive ACH credit or debit entries from the Government.

*Treasury Financial Manual (TFM)* means the manual issued by the Service containing procedures to be observed by all Government agencies in relation to central accounting, financial reporting, and other Government-wide fiscal responsibilities of the Department of the Treasury. Copies of the TFM are available free to Government agencies. Others who are interested in ordering a copy may call (202) 208–1819 or write the Directives Management Branch, Financial Management Service, Department of the Treasury, Liberty Center (UPC–741), Washington, DC 20227 for further information.

Dated: July 28, 1994.

**Russell D. Morris,**

*Commissioner.*

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Friday
September 30, 1994

Part V

# Department of Agriculture

Agricultural Marketing Service

7 CFR Part 58, et al.
Agency Reorganization of Analytical Testing Services; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 58, 91, 93, 94, 95, and 98

[SD–94–002]

RIN 0581–AB24

## Agency Reorganization of Analytical Testing Services

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

**ACTION:** Final rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) commodity laboratory testing programs under the AMS Science Division were established in August 1993. In order to implement the testing programs under the new regulations, AMS codified the agency reorganization of analytical testing services by consolidating and transferring functions from other Title 7 CFR parts related to testing to the AMS Science Division. An interim final rule to amend the regulations was published in the **Federal Register** on May 10, 1994, and received one comment. The interim final rule provided for reduced laboratory testing fees for certain dairy products based on various factors such as a decrease in minimum test times for certain products from one-half hour to one-quarter hour, a decrease in expenditures for making some test preparations, and a decreased number of procedural steps required for performing certain laboratory analyses. This final rule adopts as final the interim final rule with one additional fee change.

**EFFECTIVE DATE:** September 30, 1994.

**FOR FURTHER INFORMATION CONTACT:** William J. Franks, Jr., Director, Science Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 3507 South Agriculture Building, Washington, D.C. 20090–6456. Telephone (202) 720–5231.

**SUPPLEMENTARY INFORMATION:**

### I. Executive Order 12866 and Executive Order 12778

The Department has determined that this rule is not significant for purposes of Executive Order 12866 and it therefore has not been reviewed by the Office of Management and Budget (OMB).

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

### II. Effect on Small Entities

The Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (U.S.C. 601–612). The fees provided for in this rule reflect a minimal change in the costs currently borne by those entities which utilize certain laboratory services. The rule is designed to provide usual and reasonable fees for laboratory testing that are consistent with costs in time and resources to ensure adequate funding of the laboratory operations of the Science Division.

### III. Background

On August 9, 1993, the agency reorganization of analytical testing under the Science Division and schedules of laboratory fees were published as a final rule in the **Federal Register** (58 FR 42408–42448) after receiving only one comment on the proposal. The fee schedules became effective immediately and were devised to have a single fee for the same test rather than assessing separate laboratory fees for different commodities and their products.

The dairy product laboratory fees for 35 tests or combinations of tests that were listed in former regulations at 7 CFR 58.44 were increased by large percentages in the August 9, 1993 final rule. As a consequence, the dairy industry indicated that it is burdened with testing fees that cannot be assimilated into current purchasing contracts.

The single test laboratory fees for other commodity products did not change as significantly as test fees for dairy products. Prior to the final rule implementation, the dairy testing fees had been revised only slightly since November 2, 1977 (42 FR 57301). The heavy volume of laboratory testing of dairy products in the early 1980's associated with Commodity Credit Corporation purchases diminished the need for periodic fee increases. However, the workload for laboratory testing of dairy products was reduced greatly beginning in 1986. In addition, the dairy testing fees were carried over and not revised from 1988 to 1993 while the Agency prepared a consolidated regulation for laboratory services within the Science Division and updated fees. Consequently, when the new fees were placed in effect, the dairy industry faced substantial increases in testing fees. In response to the various objections generated among dairy processors, and after further consideration of the matter, the agency temporarily restored the dairy testing fees to the applicable charges and hourly rate in effect on April 17, 1989. An interim final rule reducing testing fees was published and effective on May 10, 1994 (59 FR 24318). That rule amended 7 CFR parts 58, 91, 93, 94, 95 and 98. It provided a 30-day comment period which ended June 9, 1994. Only one comment was received recommending that the flavor fee be adjusted and made specific to dairy products.

### IV. Provisions of the Interim Final Rule

The minimum laboratory testing fee was reduced from $17.10 to $8.55. The original minimum fee published on August 9, 1993, was based on current commodity product grading and inspection fees which specify a minimum one-half hour charge. However, some laboratory analyses applying to dairy product grading can be performed within a one-quarter hour and therefore would incur a corresponding $8.55 fee. The laboratory tests with a revised one-quarter hour charge are listed as follows: (1) Titratable acidity, (2) density or specific gravity, (3) scorched particles, (4) net weight per can, and (5) flavor. Analysis time includes the allotted periods for sample tracking, reagent and standard solution preparation, sample preparation and laboratory bench analysis, cleanup, analytical result determination and interpretation with supervisory review, and the time for issuing a test report. The individual laboratory test fee determinations in this rule must necessarily include the length of time spent on tests performed for quality control, quality assurance, and proficiency testing.

The schedules of consolidated fees and charges for the single analyte testings were established in the rule published on August 9, 1993, based on the reasoning that there is, in general, comparable complexity of procedures and similar methodology for different commodities and their products. However, some standard methods or tests for the examination of dairy products have a dissimilar process for testing a given analyte, shorter procedures, decreased complexity of reagent and materials preparation, reduced analyst manipulations with samples and their derivatives, fewer measurements, and/or a lower degree of interpretation required. Consequently, these dairy tests are less complex and would justify a reduction of the fee. The

laboratory fees for dairy products that were lowered in the interim final rule because the tests are less complex are as follows: (1) Fat (cheese), (2) fat (dairy products except cheese), (3) salt titration, (4) peroxide value, (5) free fatty acid, (6) solubility index, (7) whey protein nitrogen, (8) vitamin A (dry milk products), (9) alkalinity of ash, (10) antibiotic, (11) complete Kohman, (12) direct microscopic clump count, (13) proteolytic count, (14) coliform, and (15) *Salmonella* Step 1.

**V. Discussion of Comment**

Since the issuance of the interim final rule on May 10, 1994, only one response was received from another agency within the Department (the Agricultural Stabilization and Conservation Service). That response persuaded the Agricultural Marketing Service to reconsider its fee for flavor in the fee schedule in Table 3 of the earlier rule (58 FR 42408–42448) of August 9, 1993. The response stated that the flavor test fee is too high for testing flavors in dairy products and that a reduction of the flavor analysis fee for dairy products from a three-quarter hour charge to a one-quarter hour charge or lower be considered.

The flavor test charge of three-quarter hour or $25.65 was not specifically directed to dairy products nor modified with the interim final rule issuance. Our records show that 8,900 flavor tests of dairy products were conducted in the Science Division Midwestern Laboratory during Fiscal Year 1993. There was only a limited number of additional flavor testings of dairy products by the Resident Dairy Graders.

The Agency agrees with the respondent's recommendation regarding the dairy flavor test fee. Therefore, the flavor test for dairy products in Table 3 is set at the recommended minimum one-quarter hour charge or corresponding $8.55 fee. Flavor tests for other products will remain at the three-quarter hour charge or $25.65. The one-quarter hour charge is adequate for the dairy flavor test since a battery of other laboratory tests are usually performed in conjunction with this sensory analysis which involve the same preliminary sample preparation steps.

**VI. Effective Date of Rule**

It is found that good cause that exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because:

(1) The interim final rule provided a comment period, and the only comment received was from an agency within the Department.

(2) That comment persuaded the Science Division to lower the dairy flavor test fee.

(3) For the benefit of those using the test, the lower fee should become effective immediately.

**Lists of Subjects**

*7 CFR Part 58*

Food grades and standards, Dairy products, Food labeling, Reporting and recordkeeping requirements.

*7 CFR Part 91*

Administrative practice and procedure, Agricultural commodities, Fees and charges, Laboratories.

*7 CFR Part 93*

Citrus fruits, Fruit juices, Fruits, Laboratories, Nuts, Vegetable.

*7 CFR Part 94*

Eggs and egg products, Laboratories, Poultry and poultry products.

*7 CFR Part 95*

Dairy products, Laboratories, Milk.

*7 CFR Part 98*

Meat and meat products, Laboratories.

Accordingly, the interim final rule amending 7 CFR parts 58, 91, 93, 94, 95 and 98 which was published at 59 FR 24318–24325 on May 10, 1994, is adopted as a final rule with the following change:

## PART 91—SERVICES AND GENERAL INFORMATION

1. The authority citation for part 91 is revised to read as follows:

**Authority:** 7 U.S.C. 1622, 1624.

2. In § 91.37(a), Table 3 is revised to read as follows:

**§ 91.37 Fees for laboratory testing, analysis, and other services.**

(a) * * *

TABLE 3.—SINGLE TEST TIMES AND LABORATORY FEES FOR FOOD ADDITIVES (DIRECT AND INDIRECT)

| Type of analysis | Hours for single test | List fee |
|---|---|---|
| Aflatoxin, (Dairy, Eggs) | 3.5 | $119.70 |
| Alar or Daminozide Residue | 6 | 205.20 |
| Amitraz Residue, GLC | 6 | 205.20 |
| Alcohol (Qualitative) | 2 | 68.40 |
| Alkalinity of Ash | 1.5 | 51.30 |
| Antibiotic, Qualitative (Dairy) | 0.5 | 17.10 |
| Antibiotic, Quantitative | 4 | 136.80 |
| Ascorbates (Qualitative—Meats) | 0.5 | 17.10 |
| Ascorbic Acid, Titration | 1 | 34.20 |
| Ascorbic Acid, Spectrophotometric | 1 | 34.20 |
| Benzene, Residual | 2 | 68.40 |
| Brix, Direct Percent Sucrose | 0.5 | 17.10 |
| Brix, Dilution | 0.5 | 17.10 |
| Butylated Hydroxyanisole (BHA) | 1.5 | 51.30 |
| Butylated Hydroxytoluene (BHT) | 1.5 | 51.30 |
| Caffeine, Micro Bailey-Andrew | 1.5 | 51.30 |
| Caffeine, Spectrophotometric | 1 | 34.20 |
| Calcium | 1.5 | 51.30 |
| Citric Acid, GLC or HPLC | 1.5 | 51.30 |
| Chlorinated Hydrocarbons: | | |
| Pesticides and Industrial Chemicals— | | |
| Initial Screen | 4 | 136.80 |
| Second Column Confirmation of Analyte | 1 | 34.20 |
| Confirmation on Mass Spectrometer | 2 | 68.40 |
| Dextrin (Qualitative) | 0.5 | 17.10 |
| Dextrin (Quantitative) | 3 | 102.60 |

TABLE 3.—SINGLE TEST TIMES AND LABORATORY FEES FOR FOOD ADDITIVES (DIRECT AND INDIRECT)—Continued

| Type of analysis | Hours for single test | List fee |
|---|---|---|
| Filth, Heavy (Dairy) | 2.5 | 85.50 |
| Filth, Heavy (Eggs) | 4 | 136.80 |
| Filth, Light (Eggs) | 2.5 | 85.50 |
| Filth, Light and Heavy (Eggs Extraneous) | 6 | 205.20 |
| Flavor (Dairy) | 0.25 | 8.55 |
| Flavor (Products except Dairy) | 0.75 | 25.65 |
| Fumigants: | | |
| Initial Screen— | | |
| Dibromochloropropane (DBCP) | 1 | 34.20 |
| Ethylene Dibromide | 1 | 34.20 |
| Methyl Bromide | 1 | 34.20 |
| Confirmation on Mass Spectrometer— | | |
| Each individual fumigant residue | 2 | 68.40 |
| Glucose (Qualitative) | 0.75 | 25.65 |
| Glucose (Quantitative) | 1.75 | 59.85 |
| Glycerol (Quantitative) | 3 | 102.60 |
| Gums | 3 | 102.60 |
| High Sucrose Content or Avasucrol—Percent Sucrose (Holland Eggs) | 4 | 136.80 |
| Hydrogen Ion Activity, pH | 0.5 | 17.10 |
| Mercury, Cold Vapor AA | 2.5 | 85.50 |
| Metals—Other Than Mercury, Each Metal | 2 | 68.40 |
| Monosodium Dihydrogen Phosphate | 4 | 136.80 |
| Monosodium Glutamate | 4 | 136.80 |
| Nitrites (Qualitative) | 0.5 | 17.10 |
| Nitrites (Quantitative) | 3 | 102.60 |
| Oxygen | 0.5 | 17.10 |
| Palatability and Odor: | | |
| First Sample | 0.75 | 25.65 |
| Each Additional Sample | 0.5 | 17.10 |
| Phosphatase, Residual | 1 | 34.20 |
| Phosphorus | 2 | 68.40 |
| Propylene Glycol, Codistillation: (Qualitative) | 2 | 68.40 |
| Pyrethrin Residue (Dairy) | 4 | 136.80 |
| Scorched Particles | 0.25 | 8.55 |
| Sodium, Potentiometric | 1 | 34.20 |
| Sodium Benzoate, HPLC | 1.5 | 51.30 |
| Sodium Lauryl Sulfate (SLS) | 8 | 273.60 |
| Sodium Silicoaluminate (Zeolex) | 2 | 68.40 |
| Solubility Index | 0.5 | 17.10 |
| Starch, Direct Acid Hydrolysis | 3 | 102.60 |
| Sugar, Polarimetric Methods | 1 | 34.20 |
| Sugar Profile, HPLC—This profile includes the following components: Dextrose, Fructose, Lactose, Maltose and Sucrose: | | |
| One type sugar from HPLC profile | 3 | 102.60 |
| Each additional type sugar | 0.5 | 17.10 |
| Sugars, Non-Reducing | 3 | 102.60 |
| Sugars, Total as Invert | 2 | 68.40 |
| Sulfites (Qualitative) | 0.75 | 25.65 |
| Sulfur Dioxide, Direct Titration | 1 | 34.20 |
| Sulfur Dioxide, Monier-Williams | 1.5 | 51.30 |
| Toluene, Residual | 2 | 68.40 |
| Triethyl Citrate, GC (Quantitative) | 1 | 34.20 |
| Vitamin A | 2.5 | 85.50 |
| Vitamin A, Carr-Price (Dry Milk) | 1.25 | 42.75 |
| Vitamin D, HPLC (Vitamins D2 and D3) | 8.5 | 290.70 |
| Whey Protein Nitrogen | 0.75 | 25.65 |
| Xanthydrol Test For Urea | 1.5 | 51.30 |
| This is an optional test to the extraneous materials isolation test. | | |

* * * * *

Dated: September 26, 1994.

**Lon Hatamiya,**

*Administrator.*

[FR Doc. 94–24174 Filed 9–29–94; 8:45 am]

BILLING CODE 3410–02–P

federal register

Friday
September 30, 1994

Part VI

# Federal Emergency Management Agency

## Changes to the Hotel and Motel Fire Safety Act National Master List; Notice

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Changes to the Hotel and Motel Fire Safety Act National Master List

**AGENCY:** United States Fire Administration, FEMA.

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodations which meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

**EFFECTIVE DATE:** October 31, 1994.

**ADDRESSES:** Comments on the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, D.C. 20472, (fax) (202) 646–4536. To be added to the National Master List, or to make any other change to the list, see Supplementary Information below.

**FOR FURTHER INFORMATION CONTACT:** John Ottoson, Fire Management Programs Branch, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1272.

**SUPPLEMENTARY INFORMATION:** Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Tuesday, November 29, 1993, 58 FR 62718, and published changes approximately monthly since then.

Parties wishing to be added to the National Master List, or to make any other change, should contact the State office or official responsible for compiling listings of properties which comply with the Hotel and Motel Fire Safety Act. A list of State contacts was published in 58 FR 17020 on March 31, 1993. If the published list is unavailable to you, the State Fire Marshal's office can direct you to the appropriate office. Periodically FEMA will update and redistribute the national master list to incorporate additions and corrections/changes to the list, and deletions from the list, that are received from the State offices.

Each update contains or may contain three categories: "Additions;" "Corrections/changes;" and "Deletions." For the purposes of the updates, the three categories mean and include the following:

"Additions" are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

"Corrections/changes" are corrections to property names, addresses or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

"Deletions" are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

The update to the national master list follows below.

Dated: September 27, 1994.

**Spence W. Perry,**

*Acting General Counsel.*

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST 9/16/94 UPDATE

| Index | Property Name | PO box/Rt No. and Street Address | City | State/zip | Telephone |
|---|---|---|---|---|---|
| **ADDITIONS** | | | | | |
| CA: | | | | | |
| CA1324 . | BEST WESTERN HERITAGE INN. | 4600 CLAYTON ROAD | CONCORD | CA 94521 | (510)686–4466 |
| CA1326 . | ECONO LODGE | 12225 FIRESTONE BLVD | NORWALK | CA 90650–4323 | (310)868–0791 |
| CA1319 . | HOLIDAY INN EXPRESS—ONTARIO. | 1818 E. HOLT BLVD | ONTARIO | CA 91761 | (909)988–8466 |
| CA1325 . | ELDORADO MOTEL | 410 S. CHINA LAKE BLVD | RIDGECREST | CA 93555 | (619)371–2300 |
| CA1321 . | DYNASTY SUITES, RIVERSIDE. | 3735 IOWA AVE | RIVERSIDE | CA | (909)369–8200 |
| CA1320 . | BEST WESTERN POSADA INN | 5005 N. HARBOR DR | SAN DIEGO | CA 92106 | (619)224–3254 |
| CA1323 . | TUSCAN INN | 425 NORTHPOINT ST | SAN FRANCISCO | CA 94133 | (415)561–1100 |
| CA1322 . | DYNASTY SUITES, SANTE FE SPRINGS. | 13530 E. FIRESTONE BLVD | SANTA FE SPRINGS | CA | (310)921–8571 |
| CO: | | | | | |
| CO0280 . | HOLIDAY INN BOULDER | 800 28TH STREET | BOULDER | CO 80303 | (303)443–3322 |
| CO0284 . | COMFORT INN | 8280 HIGHWAY 83 | COLORADO SPRINGS. | CO 80920 | (719)598–6700 |
| CO0278 . | ECONO LODGE—CITY CENTRE. | 714 NORTH NEVADA | COLORADO SPRINGS. | CO 80903 | (719)636–3385 |
| CO0281 . | HOLIDAY INN EXPRESS CRIPPLE CREEK. | 601 EAST GALENA | CRIPPLE CREEK | CO 80813 | (719)689–2600 |
| CO0282 . | COMFORT INN DENVER | 401 17TH STREET | DENVER | CO 80202 | (303)296–0400 |
| CO0279 . | THE CAMBRIDGE HOTEL | 1560 SHERIDAN BLVD | DENVER | CO 80203 | (303)831–1252 |
| CO0283 . | RODEWAY INN DENVER WEST. | 7150 WEST COLFAX AVE | LAKEWOOD | CO 80215 | (303) 238–1251 |
| HI: | | | | | |
| HI0180 .. | MAUI MARRIOTT | 100 NOHEA KAI DR | LAHINA, MAUI | HI 96761 | (808)667–1200 |

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST 9/16/94 UPDATE—Continued

| Index | Property Name | PO box/Rt No. and Street Address | City | State/zip | Telephone |
|---|---|---|---|---|---|
| KS: | | | | | |
| KS0140 . | AMERISUITES | 6800 W 12TH STREET | OVERLAND PARK | KS 66211 | (913)451–2553 |
| ME: | | | | | |
| ME0046 . | FAIRFIELD INN BY MARRIOTT | 125 EDEN ST | BAR HARBOR | ME 04609 | |
| ME0042 . | MOTEL 111 | 470 ALFRED RD | BIDDEFORD | ME 04005 | (207)284–2440 |
| ME0047 . | BEST WESTERN JED PROUTY MOTOR INN. | 52 MAIN ST | BUCKSPORT | ME 04416 | (207)464–3113 |
| ME0048 . | HERITAGE MOTOR INN | 935 CENTRAL ST | MILLINOCKET | ME | (207)423–9777 |
| ME0043 . | HOLIDAY INN PORTLAND WEST. | 81 RIVERSIDE ST | PORTLAND | ME 04103 | (207)774–5601 |
| ME0044 . | RAMADA INN | 1230 CONGRESS ST | PORTLAND | ME 04102 | (207)774–6611 |
| ME0045 . | VILLAGE BY THE SEA HOTEL AND CONFERENCE CTR.. | PO BOX 1107 RT. 1 S | WELLS | ME 04090 | (207)646–1000 |
| MI: | | | | | |
| MI0294 .. | HILTON—ANN ARBOR | 610 HILTON BLVD | ANN ARBOR | MI 48108 | (313)761–7800 |
| MI0295 .. | COMFORT INN—GAYLORD | 137 WEST ST | GAYLORD | MI 49735 | (517)732–7541 |
| MI0297 .. | ECONO LODGE AT THE BRIDGE—MACKINAW CITY. | 412 N. NICOLET | MACKINAW CITY | MI 49701 | (616)436–5026 |
| MI0296 .. | ECONO LODGE LAKESIDE—MACKINAW CITY. | 519 S. HURON | MACKINAW CITY | MI 49701 | (616)436–7111 |
| MI0299 .. | THE ROYCE HOTEL | 31500 WICK RD | ROMULUS | MI 48174 | (313)467–8000 |
| MI0298 .. | PLAZA HOTEL | 16400 J.L. HUDSON DR | SOUTHFIELD | MI 48075 | (810)559–6500 |
| NC: | | | | | |
| NC0341 . | NORTH RALEIGH HILTON | 3415 WAKE FOREST RD | RALEIGH | NC 27609 | (919)872–2323 |
| NJ: | | | | | |
| NJ0188 .. | ECONO LODGE | 3001 PACIFIC AVE | ATLANTIC CITY | NJ 08401 | (609)344–2925 |
| NJ0189 .. | ECONO LODGE | 301 S BLACK HORSE PIKE | BELLMAWR | NJ 08031 | (609)931–2800 |
| NJ0187 .. | BEST WESTERN BORDENTOWN. | 1068 ROUTE 206 | BORDENTOWN | NJ 08505 | (609)298–8000 |
| NJ0190 .. | COMFORT INN | 725 RIVER ROAD | EDGEWATER | NJ 07020 | (201)943–3131 |
| NJ0191 .. | CLARION HOTEL AND TOWERS. | 2055 LINCOLN HWY | EDISON | NJ 08817 | (908)287–3500 |
| NJ0183 .. | BEST WESTERN THE MANSION HOTEL. | 295 SOUTH AVE | FANWOOD | NJ 07023 | (908)654–5200 |
| NJ0193 .. | G.I.F. MOTEL CORP | 750 TONNELLO AVE | JERSEY CITY | NJ 07307 | (201)420–9040 |
| NJ0192 .. | ECONO LODGE | 119 ROUTE 9 S | MARMORA | NJ 08223 | (609)390–3366 |
| NJ0184 .. | BEST WESTERN MURRAY HILL INN. | 535 CENTRAL AVE | NEW PROVIDENCE | NJ 07974 | (908)665–9200 |
| NJ0185 .. | BEST WESTERN THE PALMER INN. | 3499 ROUTE 1 SO | PRINCETON | NJ 08540 | (609)452–2500 |
| NJ0186 .. | BEST WESTERN WESTFIELD INN. | 435 NORTH AV W | WESTFIELD | NJ 07090 | (908)654–5600 |
| NY: | | | | | |
| NY0589 . | FRIENDSHIP INN | 8212 PARK ROAD | BATAVIA | NY 14020 | (716)343–2311 |
| NY0590 . | COMFORT INN | 1156 FRONT STREET | BINGHAMTON | NY 13905 | (607)722–5353 |
| NY0591 . | BEAR ROAD FRIENDSHIP INN | 901 SOUTH BAY ROAD | CICERO | NY 13039 | (315)458–3510 |
| NY0599 . | MIRCROTEL—CARRIER CIRCLE. | 6608 OLD COLLAMER CIRCLE | E. SYRACUSE | NY 13057 | (315)437–3500 |
| NY0592 . | FRIENDSHIP INN | 6037 RT. 96 | FARMINGTON | NY 14425 | (716)924–2300 |
| NY0600 . | MICROTEL VICTOR | 7498 MAIN ST | FISHERS | NY 14564 | (800)278–8884 |
| NY0593 . | COMFORT INN LAKE GEORGE. | I–87 @ EXIT 21 & RT. 9W | LAKE GEORGE | NY 12845 | (518)668–4141 |
| NY0594 . | ECONO LODGE | 227 WEST MAIN ST | MALONE | NY 12953 | (518)483–0500 |
| NY0595 . | ECONO LODGE/MEADOW VIEW MOTEL. | RD #1, BOX 261 | MASSENA | NY 13662 | (315)764–0246 |
| NY0601 . | EASTGATE TOWER | 222 EAST 39TH STREET | NEW YORK | NY 100160911 | (212)687–8000 |
| NY0596 . | ECONO LODGE OF PLATTSBURGH. | 528 RT. 3 | PLATTSBURGH | NY 12901 | (518)563–0833 |
| NY0597 . | ECONO LODGE LONG ISLAND MACARTHUR AIRPORT. | S.R. 454 3055 VETERAN'S MEMORIAL HWY. | RONKONKOMA | NY 11779 | (516)588–6800 |
| NY0598 . | COMFORT SUITES AT VERNON DOWNS. | STUHLMAN ROAD | VERNON | NY 13476 | (318)829–3400 |
| OH: | | | | | |
| OH0544 . | FAIRFIELD INN MIDDLETOWN | 6750 ROOSEVELT PARKWAY | MIDDLETOWN | OH 45044 | (513)424–5444 |
| OH0545 . | FAIRFIELD INN SPRINGFIELD | 1870 W. 1ST ST | SPRINGFIELD | OH 45504 | (513)323–9554 |
| RI: | | | | | |
| RI0035 .. | NEWPORT COMFORT INN AND CONFERENCE CENTER. | 936 W. MAIN RD | MIDDLETOWN | RI 02842 | (401)846–7600 |
| RI0033 .. | SUSSE CHALET SMITHFIELD . | Rt. 116 | SMITHFIELD | RI 02917 | (401)232–2400 |

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST 9/16/94 UPDATE—Continued

| Index | Property Name | PO box/Rt No. and Street Address | City | State/zip | Telephone |
|---|---|---|---|---|---|
| RI0036 .. | JOHNSON AND WALES AIRPORT HOTEL. | 2081 POST RD | WARWICK | RI 02886 | (401)739–3000 |
| RI0034 .. | SUSSE CHALET WARWICK | 36 JEFFERSON BLVD | WARWICK | RI 02888 | (401)941–6600 |
| TN: | | | | | |
| TN0240 . | HOLIDAY INN COVE LAKE | RT 1 BOX 14 | CARYVILLE | TN 37714 | (615)562–8476 |
| TN0241 . | COMFORT INN | 7717 LEE HWY | CHATTANOOGA | TN 37421 | (615)894–5454 |
| TN0242 . | COMFORT INN OF CLARKSVILLE. | 1112 HWY 76/I–24 EXIT 11 | CLARKSVILLE | TN 37043 | (615)358–2020 |
| TN0238 . | WINNERS CIRCLE MOTEL | 3430 FT. CAMPBELL BLVD | CLARKSVILLE | TN 37042 | (615)431–4906 |
| TN0243 . | ECONO LODGE | 2650 WESTSIDE DRIVE | CLEVELAND | TN 37312 | (615)472–3281 |
| TN0244 . | COMFORT INN | 1100 SOUTH JEFFERSON | COOKSVILLE | TN 38501 | (615)528–1040 |
| TN0245 . | COMFORT INN | 901 HWY 51 NORTH | COVINGTON | TN 38019 | (901)475–0380 |
| TN0246 . | COMFORT INN OF DICKSON . | 2325 HWY 465 | DICKSON | TN 37056 | (615)446–2423 |
| TN0237 . | BEST WESTERN COPPER INN | US HWY 64 | DUCKTOWN | TN 37326 | (615)496–5541 |
| TN0248 . | COMFORT INN OF GOODLETTSVILLE. | 925 CONFERENCE DRIVE | GOODLETTSVILLE | TN 37072 | (615)859–5400 |
| TN0249 . | ECONO LODGE RIVERGATE .. | 320 LONG HOLLOW PIKE | GOODLETTSVILLE | TN 37072 | (615) 859–4988 |
| TN0247 . | FRIENDSHIP INN | 650 WADE CIRCLE | GOODLETTSVILLE | TN 37072 | (615) 859–1416 |
| TN0250 . | COMFORT INN | 4624–4628 FAIRLANE DRIVE .. | KINGSPORT | TN 37663 | (615) 234–7447 |
| TN0251 . | COMFORT SUITES | 811 N CAMPBELL STA RD | KNOXVILLE | TN 37922 | (615) 675–7585 |
| TN0252 . | SLEEP INN | 5460 CENTRAL AVENUE PIKE | KNOXVILLE | TN 37912 | (615) 688–7300 |
| TN0253 . | COMFORT INN | 829 S CUMBERLAND STREET | LEBANON | TN 37008 | (615) 444–1001 |
| TN0254 . | FRIENDSHIP INN | 625 N GALLATIN ROAD | MADISON | TN 37115 | (615) 865–2323 |
| TN0255 . | COMFORT SUITES | 3812 AMERICAN WAY | MEMPHIS | TN | (901) – |
| TN0256 . | COMFORT SUITES | 3660 WEST ANDREW JOHNSON HWY. | MORRISTOWN | TN 37814 | (615) 585–4000 |
| TN0258 . | COMFORT SUITES | 2615 ELM HILL PIKE | NASHVILLE | TN 37214 | (615) 883–0114 |
| TN0257 . | ECONO LODGE (NORTH) | 110 MAPLEWOOD LANE | NASHVILLE | TN 37207 | (615) 262–9193 |
| TN0259 . | ECONO LODGE OPRYLAND | 2460 MUSIC VALLEY DRIVE | NASHVILLE | TN 37214 | (615) 889–0090 |
| TN0260 . | COMFORT INN | 323 E EMORY ROAD | POWELL | TN 37849 | (615) 938–5500 |
| TN0236 . | B/W SANDS MOTOR HOTEL | I–65 & US–64 | PULASKI | TN 38478 | (615) 363–4501 |
| TN0261 . | APPLE VALLEY COMFORT INN. | 1850 PARKWAY | SEVIERVILLE | TN 37862 | (615) 428–1069 |
| TN0262 . | COMFORT INN | I 75 AND HWY 68 | SWEETWATER | TN 37874 | (615) 337–3353 |
| TN0263 . | COMFORT INN | 803 S MAIN STREET | SWEETWATER | TN 37874 | (615) 337–6646 |
| TX: | | | | | |
| TX0528 . | ECONO LODGE AIRPORT | 1803 LAKESIDE DR | AMARILLO | TX 79104 | (806) 335–1561 |
| TX0527 . | HOLIDAY INN EXPRESS | 3411 IH–40 WEST | AMARILLO | TX 79109 | (806) 356–6800 |
| TX0524 . | RAMADA INN EAST | 2501 IH–40 E | AMARILLO | TX 79104 | (806) 379–6555 |
| TX0529 . | QUALITY INN SOUTH | 2200 S. IH–35 | AUSTIN | TX 78704 | (512) 444–0561 |
| TX0530 . | COMFORT INN | HWY. 54 E | DALHART | TX 79022 | (806) 249–8585 |
| TX0545 . | BEST WESTERN OF DESOTO | 1135 B. BECKLEY | DESOTO | TX 75115 | (214) 224–8575 |
| TX0538 . | ECONO LODGE | 810 S. ADAMS | FREDRICKSBURG | TX 78624 | (210) 997–3437 |
| TX0531 . | COMFORT INN | 1005 LEANDER RD | GEORGETOWN | TX 78628 | (512) 863–7504 |
| TX0544 . | LA QUINTA INN HOUSTON | 17111 N. FRWY | HOUSTON | TX 770905005 | (713) 444–7500 |
| TX0543 . | HARVEY SUITES DFW | 4550 JOHN CARPENTER FRWY. | IRVING | TX 75063 | (214) 929–4499 |
| TX0539 . | FRIENDSHIP INN | 601 W. HWY. 190 | KILLEEN | TX 76541 | (817) 526–2232 |
| TX0537 . | ECONO LODGE | 117 HWY. 59 LOOP 5 | LIVINGSTON | TX 77351 | (409) 327–2451 |
| TX0525 . | HOLIDAY INN AIRPORT | 2000 S. 10TH ST | MCALLEN | TX 78501 | (210) 686–1741 |
| TX0532 . | COMFORT INN | U.S. 271 & IH–30 | MT. PLEASANT | TX 75455 | (903) 577–7553 |
| TX0533 . | COMFORT INN | 621 CENTRAL PKWY. E | PLANO | TX 75074 | (214) 424–5568 |
| TX0541 . | SLEEP INN PLANO | 4801 W. PLANO PKWY | PLANO | TX 75093 | (214) 867–1111 |
| TX0542 . | SLEEP INN | 2650 N. CENTRAL EXPWY | RICHARDSON | TX 75080 | (214) 470–9440 |
| TX0526 . | ALAMO TRAVELODGE | 405 BROADWAY | SAN ANTONIO | TX 78205 | (210) 222–1000 |
| TX0535 . | COMFORT INN | 4403 IH–10 E | SAN ANTONIO | TX 78219 | (210) 333–9430 |
| TX0534 . | ECONOLODGE O'CONNOR RD.. | 11591 IH–35 N | SAN ANTONIO | TX 78233 | (210) 654–9111 |
| TX0540 . | FRIENDSHIP INN | 1507 IH–35 N | SAN MARCOS | TX 78666 | (512) 396–6060 |
| TX0536 . | COMFORT INN | 1705 HWY. 34 S | TERRELL | TX | (214) 563–1511 |
| VA | | | | | |
| VA0559 . | SHERATON CRYSTAL CITY HOTEL. | 1800 JEFFERSON DAVIS HWY | ARLINGTON | VA 222020000 | (703) 486–1111 |
| VA0563 . | COMFORT INN ASHLAND | 101 COTTAGE GREEN DR | ASHLAND | VA 230050000 | (804) 752–7777 |
| VA0564 . | COMFORT INN | ROUTES 18 & 460 | BLUEFIELD | VA 246050000 | (703) 326–3688 |
| VA0565 . | COMFORT INN | 4433 S. MILITARY HWY | CHESAPEAKE | VA 233210000 | (804) 488–7900 |
| VA0566 . | ECONO LODGE | 800 VIRGINIA AVE | COLLINSVILLE | VA 240780000 | (703) 647–3941 |
| VA0557 . | HOLIDAY INN EXPRESS | | DUMFRIES | VA | (703) 221–1141 |
| VA0560 . | SHERATON RESTON HOTEL . | 11810 SUNRISE VALLEY DRIVE. | RESTON | VA 220910000 | (703) 620–9000 |

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST 9/16/94 UPDATE—Continued

| Index | Property Name | PO box/Rt No. and Street Address | City | State/zip | Telephone |
|---|---|---|---|---|---|
| VA0558 | SHERATON PREMIERE AT TYSONS CORNER. | 8661 LEESBURG PIKE | VIENNA | VA 221820000 | (703) 448–1234 |
| VA0556 | BEST WESTERN WYTHEVILLE INN. | 355 NYE ROAD | WYTHEVILLE | VA | (703) 228–7300 |
| WI: | | | | | |
| WI10206 | SUPER 8 MOTEL | 3002 MILWAUKEE RD | BELOIT | WI 53511 | (608) 365–8680 |
| WI0217 | MILWAUKEE MARRIOTT BROODFIELD. | 375 SOUTH MOORLAND RD | BROOKFIELD | WI 53005 | (414) 786–1100 |
| WI0219 | LILY LAKE RESORT | 7912–328 TH AVE | BURLINGTON | WI 53105 | (414) 537–2848 |
| WI0212 | AMERICAN HOTEL OF CHIPPEWA FALLS. | 11 WEST SOUTH STREET | CHIPPEWA FALLS | WI 54729 | (715) 723–5711 |
| WI0211 | WOOD RIVER INN | 703 HWY 10 | GRANSBURG | WI 54840 | (715) 463–2541 |
| WI0209 | LUXURY SUITES | 2815 RAMADA WAY | GREEN BAY | WI 54304 | (414) 494–8790 |
| WI0220 | MARSHFIELD INN | 116 W. IVES | MARSHFIELD | WI 54449 | (715) 387–6381 |
| WI0210 | MAYVILLE INN | 701 MOUMTAIN DR | MAYVILLE | WI 53050 | (414) 387–1234 |
| WI0213 | QUALITY INN AIRPORT | 5311 SO. HOWELL AVE | MILWAUKEE | WI 53207 | (414) 481–2400 |
| WI0214 | COMFORT INN | 8729 HWY 51 N | MINOCQUA | WI 54548 | (715) 358–2588 |
| WI0218 | RACINE SUPER 8 | 7141 KINZLE AVENUE | RACINE | WI 53406 | (414) 884–0486 |
| WI0205 | SUPER 8 MOTEL | 3402 WILGUS RD | SHEBOYGAN | WI 53081 | (414) 458–8080 |
| WI0207 | SUPER 8 MOTEL | 247 N DIVISION ST | STEVENS POINT | WI 54481 | (715) 341–8888 |
| WI0215 | COMFORT INN | 923 GREENBAY RD | STURGEON BAY | WI 54235 | (414) 743–7846 |
| WI0216 | COMFORT INN | 2111 E MORELAND | WAUKESHA | WI 53186 | (414) 547–7790 |
| WI0221 | RIB MOUNTAIN INN | 2900 RIB MOUNTAIN WAY | WAUSAU | WI 54401 | (715) 443–3384 |
| WI0208 | SUPER 8 MOTEL | 3410 8TH STREET SOUTH | WISCONSIN RAPIDS | WI 54494 | (715) 423–3595 |
| WV: | | | | | |
| WV0163 | KRISTA-LITE MOTEL | RT. 1 BX249A | MARTINSBURG | WV 25401 | (304) 263–0906 |
| WV0164 | MOTEL 81—ECONO LODGE | RT. 2. BX208N | MARTINSBURG | WV 25401 | (304) 274–2181 |
| WV0160 | PIKESIDE MOTEL | 2138 WINCHESTER AVE | MARTINSBURG | WV 25401 | (304) 263–5189 |
| WV0161 | SCOTTISH INNS | 1024 WINCHESTER AVE | MARTINSBURG | WV 25401 | (304) 267–2935 |
| WV0162 | WHEATLAND MOTEL | 1193 WINCHESTER AVE | MARTINSBURG | WV 25401 | (304) 267–2994 |
| WV0159 | WESTON MOTOR INN | RT 2 BOX 184 | WESTON | WV 26452 | (304) 269–1975 |
| CORRECTIONS/ CHANGES | | | | | |
| CO | | | | | |
| CO0194 | QUALITY INN—WEST | 12100 W. 44TH AVE | WHEAT RIDGE | CO 80033 | (303)467–2400 |
| HI | | | | | |
| HI0159 | HILTON WAIKOLOA VILLAGE RESORT. | 69–425 WAIKOLOA DR | KAMUELA | HI 967439791 | (808)885–1234 |
| KS | | | | | |
| KS0112 | HARVEY HOTEL | 549 S. ROCK RD | WICHITA | KS 67207 | (316)686–7131 |
| ME | | | | | |
| ME0035 | HOWARD JOHNSON LODGE | 356 MAIN ST | WATERVILLE | ME 04901 | (207)873–3335 |
| MI | | | | | |
| MI0236 | COMFORT INN—ALMA | 3110 W. MONROE | ALMA | MI 48801 | (517)463–4400 |
| MI0229 | HOLIDAY INN—ALPENA | 1000 US 23 N | ALPENA | MI 49707 | (517)356–2151 |
| MI0063 | HAMPTON INN—ANN ARBOR NORTH. | 2300 GREEN RD | ANN ARBOR | MI 48105 | (313)996–4444 |
| MI0064 | HAMPTON INN—ANN ARBOR SOUTH. | 25 VICTORS WAY | ANN ARBOR | MI 48105 | (313)665–5000 |
| MI0290 | MOTEL 6—ANN ARBOR | 3764 S. STATE ST | ANN ARBOR | MI 48108 | (313)665–9900 |
| MI0252 | HAMPTON INN—AUBURN HILLS. | 1461 N. OPDYKE RD | AUBURN HILLS | MI 48326 | (313)370–0044 |
| MI0219 | HILTON SUITES—AUBURN HILLS. | 2300 FEATHERSTONE | AUBURN HILLS | MI 48326 | (313)334–2233 |
| MI0066 | HOLIDAY INN—AUBURN HILLS. | 1500 OPDYKE RD | AUBURN HILLS | MI 48326 | (313)373–4550 |
| MI0069 | SUPER 8 MOTEL—BARAGA | 790 MICHIGAN AVE | BARAGA | MI 49908 | (906)353–6680 |
| MI0287 | KNIGHTS INN SOUTH—BATTLE CREEK. | 2595 CAPITAL AVE. SW | BATTLE CREEK | MI 490154160 | (616)964–2600 |
| MI0273 | COMFORT INN—BENTON HARBOR. | 1598 MALL DR | BENTON HARBOR | MI 49022 | (616)925–1880 |
| MI0002 | DAYS INN—BENTON HARBOR | RT. 139 2699 MICHIGAN | BENTON HARBOR | MI 49022 | (616)925–7021 |
| MI0230 | HOLIDAY INN—BENTON HARBOR. | 2860 S. MICHIGAN HWY. 139 | BENTON HARBOR | MI 49022 | (616)925–3234 |
| MI0178 | MOTEL 6—BENTON HARBOR | 2063 PIPESTONE | BENTON HARBOR | MI 49022 | (616)925–5100 |
| MI0094 | DAYS INN—CADILLAC | 6001 MILLS | CADILLAC | MI 49601 | (616)775–4414 |
| MI0143 | BUDGITEL INN—CANTON | 41211 FORD RD | CANTON | MI 48187 | (313)981–1808 |
| MI0272 | COMFORT INN—CEDARVILLE | PO BOX 189 210 W. SR–134 | CEDARVILLE | MI 49719 | (906)484–2266 |
| MI0179 | SUPER 8 MOTEL—COLDWATER. | 600 ORLEANS BLVD | COLDWATER | MI 49036 | (517)278–8833 |

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST 9/16/94 UPDATE—Continued

| Index | Property Name | PO box/Rt No. and Street Address | City | State/zip | Telephone |
|---|---|---|---|---|---|
| MI0271 .. | COMFORT INN—DAVISON ..... | 10082 LAPEER RD ..... | DAVISON ..... | MI 48423 | (313)658–2700 |
| MI0127 .. | HAMPTON INN—DEARBORN . | 20061 MICHIGAN AVE ..... | DEARBORN ..... | MI 48124 | (313)436–9600 |
| MI0204 .. | HOLIDAY INN—FAIRLANE ..... | 5801 SOUTHFIELD SERVICE DR. | DETROIT ..... | MI 48228 | (313)336–3340 |
| MI0270 .. | COMFORT INN—DUNDEE ..... | 621 TECUMSEH RD ..... | DUNDEE ..... | MI 48131 | (313)529–5505 |
| MI0006 .. | HOLIDAY INN—TAWAS BAY RESORT. | 300 E. BAY ST ..... | EAST TAWAS ..... | MI 48730 | (517)362–8601 |
| MI0156 .. | COMFORT INN—FARMINGTON HILLS. | 30715 TWELVE MILE RD ..... | FARMINGTON HILLS | MI 48334 | (313)471–9220 |
| MI0155 .. | KNIGHTS INN—FARMINGTON HILLS. | 37527 GRAND RIVER AVE ..... | FARMINGTON HILLS | MI 48335 | (313)477–3200 |
| MI0114 .. | COMFORT INN—FLINT ..... | 2361 AUSTINS PKWY ..... | FLINT ..... | MI 48507 | (313)232–4222 |
| MI0198 .. | DAYS INN—FLINT ..... | 2207 W. BRISTOL RD ..... | FLINT ..... | MI 48507 | (313)239–4681 |
| MI0225 .. | ECONO LODGE—FLINT ..... | 932 S. CENTER RD ..... | FLINT ..... | MI 48503 | (313)744–0200 |
| MI0181 .. | HAMPTON INN—FLINT ..... | 1150 ROBERT T. LONGWAY BLVD. | FLINT ..... | MI 48503 | (313)238–7744 |
| MI0194 .. | DAYS INN—GRAND HAVEN ... | 1500 S. BEACON BLVD ..... | GRAND HAVEN ..... | MI 49417 | (616)842–1999 |
| MI0109 .. | BUDGITEL INN—GRAND RAPIDS. | 2873 KRAFT AVE. SE ..... | GRAND RAPIDS ..... | MI 49512 | (616)956–3300 |
| MI0243 .. | COMFORT INN—GRAND RAPIDS. | 4155 28TH ST ..... | GRAND RAPIDS ..... | MI 49512 | (616)957–2080 |
| MI0141 .. | DAYS INN—GRAND RAPIDS .. | 310 PEARL ST. NW ..... | GRAND RAPIDS ..... | MI 49504 | (616)235–7611 |
| MI0123 .. | QUALITY INN TERRACE CLUB | 4495 28TH ST. SE ..... | GRAND RAPIDS ..... | MI 49512 | (616)956–8080 |
| MI0276 .. | QUALITY INN—HAZEL PARK .. | 1 WEST 9 MILE RD ..... | HAZEL PARK ..... | MI 48030 | (810)399–5800 |
| MI0047 .. | HOLIDAY INN—HOLLAND ..... | 650 E. 24TH ST ..... | HOLLAND ..... | MI 49423 | (616)394–0111 |
| MI0274 .. | COMFORT INN—IRON MOUNTAIN. | PO BOX 807 1555 N. STEPHENSON AVE. | IRON MOUNTAIN ..... | MI 49801 | (906)774–5505 |
| MI0247 .. | BUDGETEL INN—JACKSON ... | 2035 SERVICE DR ..... | JACKSON ..... | MI 49201 | (517)789–6000 |
| MI0291 .. | MOTEL 6—JACKSON ..... | 830 ROYAL DR ..... | JACKSON ..... | MI 49204 | (517)789–7186 |
| MI0166 .. | BUDGETEL INN—KALAMAZOO. | 2203 S. 11TH ST ..... | KALAMAZOO ..... | MI 49009 | (616)372–7999 |
| MI0277 .. | QUALITY INN—KALAMAZOO .. | 5300 S. WESTNEDGE ..... | KALAMAZOO ..... | MI 49008 | (616)382–1000 |
| MI0115 .. | DAYS INN—LANSING SOUTH | 6501 S. PENNSYLVANIA ..... | LANSING ..... | MI 48911 | (517)393–1650 |
| MI0119 .. | HAMPTON INN—LANSING ..... | 525 NORTH CANAL RD ..... | LANSING ..... | MI 489179755 | (517)627–8381 |
| MI0100 .. | KNIGHTS INN—LANSING ..... | 11200 RAMADA DR ..... | LANSING ..... | MI 48911 | (517)394–7200 |
| MI0292 .. | MOTEL 6—LANSING ..... | 7326 W. SAGINAW HWY ..... | LANSING ..... | MI 48917 | (517)321–1444 |
| MI0189 .. | SUPER 8 MOTEL—LANSING .. | 910 AMERICAN RD ..... | LANSING ..... | MI 48911 | (517)393–8008 |
| MI0268 .. | COMFORT INN—LIVONIA ..... | 29235 BUDKINGHAM DR ..... | LIVONIA ..... | MI 48154 | (313)458–7111 |
| MI0232 .. | HOLIDAY INN—LIVONIA WEST. | 17123 LAUREL PARK DR. N ... | LIVONIA ..... | MI 48152 | (313)464–1300 |
| MI0279 .. | QUALITY INN—LIVONIA ..... | 16999 S. LAURAL PART ..... | LIVONIA ..... | MI 48154 | (313)464–0050 |
| MI0210 .. | RAMADA INN—LIVONIA ..... | 30375 PLYMOUTH RD ..... | LIVONIA ..... | MI 48150 | (313)261–6800 |
| MI0190 .. | SUPER 8 MOTEL—LIVONIA .... | 28512 SCHOOLCRAFT ..... | LIVONIA ..... | MI 48150 | (313)425–5150 |
| MI0174 .. | SUPER 8 MOTEL—MACKINAW CITY. | 601 N. HURON ..... | MACKINAW CITY ..... | MI 49701 | (616)436–5252 |
| MI0205 .. | HAMPTON INN—MADISON HEIGHTS. | 32420 STEPHENSON HWY ..... | MADISON HEIGHTS . | MI 48071 | (313)585–8881 |
| MI0103 .. | DAYS INN—MANISTEE ..... | 1462 US 31 S ..... | MANISTEE ..... | MI 49660 | (616)723–8385 |
| MI0200 .. | RAMADA INN—MANISTIQUE .. | PO BOX 485 LAKESHORE DR | MANISTIQUE ..... | MI 49854 | (906)341–6911 |
| MI0233 .. | HOLIDAY INN—MIDLAND ..... | 1500 W. WACKERLY ST ..... | MIDLAND ..... | MI 48640 | (517)631–4220 |
| MI0234 .. | RAMADA INN—MIDLAND ..... | 1815 S. SAGINAW RD ..... | MIDLAND ..... | MI 48640 | (517)631–0570 |
| MI0288 .. | KNIGHTS INN—MONROE ..... | 1250 N. DIXIE HIGHWAY ..... | MONROE ..... | MI 481615223 | (313)243–0597 |
| MI0224 .. | COMFORT INN—MT. PLEASANT. | 2424 S. MISSION ..... | MT. PLEASANT ..... | MI 48858 | (517)772–4000 |
| MI0231 .. | HOLIDAY INN—MT. PLEASANT. | 5665 E. PICKARD ..... | MT. PLEASANT ..... | MI 48858 | (517)772–2905 |
| MI0242 .. | COMFORT INN—MUNISING .... | M–28 EAST ..... | MUNISING ..... | MI 49862 | (906)387–5292 |
| MI0082 .. | COMFORT INN—MUSKEGON . | 1675 E. SHERMAN ..... | MUSKEGON ..... | MI 49444 | (616)739–9092 |
| MI0062 .. | HOLIDAY INN—MUSKEGON HARBOR. | 939 THIRD ST ..... | MUSKEGON ..... | MI 49440 | (616)722–0100 |
| MI0269 .. | COMFORT INN—NEW BUFFALO. | 11539 O'BRIAN CT ..... | NEW BUFFALO ..... | MI 49117 | (616)469–4440 |
| MI0202 .. | COMFORT INN—NEWBERRY . | JCT. M–123 & M–28 ..... | NEWBERRY ..... | MI 49868 | (906)293–3218 |
| MI0036 .. | HAMPTON INN—NORTHVILLE | 20600 HAGGERTY RD ..... | NORTHVILLE ..... | MI 48167 | (313)462–1119 |
| MI0027 .. | HILTON—NOVI ..... | 21111 HAGGERTY RD ..... | NOVI ..... | MI 48375 | (313)349–4000 |
| MI0223 .. | COMFORT INN—OKEMOS ..... | 2209 UNIVERSITY PARK DR ... | OKEMOS ..... | MI 48864 | (517)349–8700 |
| MI0267 .. | COMFORT INN—PETOSKEY .. | 1314 U.S. 31 ..... | PETOSKEY ..... | MI 49770 | (616)347–3220 |
| MI0251 .. | ECONO LODGE—PETOSKEY . | 1858 U.S. 131 S ..... | PETOSKEY ..... | MI 49770 | (616)348–3324 |
| MI0266 .. | COMFORT INN—PORT HURON. | 1700 YEAGER ..... | PORT HURON ..... | MI 48060 | (810)982–5500 |
| MI0041 .. | BUDGETEL INN—ROMULUS .. | 9000 WICKHAM RD ..... | ROMULUS ..... | MI 48174 | (313)722–6000 |

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST 9/16/94 UPDATE—Continued

| Index | Property Name | PO box/Rt No. and Street Address | City | State/zip | Telephone |
|---|---|---|---|---|---|
| MI0118 .. | HILTON SUITES DETROIT METRO. | 8600 WICKHAM RD | ROMULUS | MI 48174 | (313)728–9200 |
| MI0087 .. | BUDGETEL INN—ROSEVILLE | 20675 13 MILE RD | ROSEVILLE | MI 48066 | (313)296–6910 |
| MI0090 .. | KNIGHTS INN—ROSEVILLE | 31842 LITTLE MACK | ROSEVILLE | MI 48066 | (313)294–6140 |
| MI0168 .. | HAMPTON INN—SAGINAW | 2222 TITTABAWASSEE RD | SAGINAW | MI 48604 | (517)792–7666 |
| MI0106 .. | KNIGHTS INN—SAGINAW | 2225 TITTABAWASSEE RD | SAGINAW | MI 48604 | (517)791–1411 |
| MI0289 .. | MOTEL 6—SAGINAW | 6361 DIXIE HWY | SAGINAW | MI 48722 | (517)777–2582 |
| MI0153 .. | COMFORT INN—SAULT STE MARIE. | 4404 I–75 BUSINESS SPUR | SAULT STE MARIE | MI 49783 | (906)635–1118 |
| MI0282 .. | ECONO LODGE—SOUTHFIELD. | 23300 TELEGRAPH RD | SOUTHFIELD | MI 48034 | (313)358–1800 |
| MI0132 .. | HILTON—SOUTHFIELD GARDEN INN. | 26000 AMERICAN DR | SOUTHFIELD | MI 48034 | (313)357–1100 |
| MI0124 .. | BUDGETEL INN—SOUTHGATE. | 12888 REECH RD | SOUTHGATE | MI 48195 | (313)374–3000 |
| MI0099 .. | ECONO LODGE—ST. IGNACE | 927 N. STATE ST | ST. IGNACE | MI 49781 | (906)643–7733 |
| MI0073 .. | HOLIDAY INN - TAYLOR | 20777 EUREKA RD | TAYLOR | MI 48180 | (313)283–2200 |
| MI0121 .. | SUPER 8 MOTEL - TAYLOR | 15101 HURON ST | TAYLOR | MI 48180 | (313)283–8830 |
| MI0065 .. | HAMPTON INN - TRAVERSE CITY. | 100 US 31 N | TRAVERSE CITY | MI 49684 | (616)946–8900 |
| MI0157 .. | HILTON - NORTHVILLE | 5500 CROOKS RD | TROY | MI 48098 | (313)879–2100 |
| MI0126 .. | HOLIDAY INN - TROY | 2737 ROCHESTER CT | TROY | MI 48084 | (313)689–7500 |
| MI0264 .. | COMFORT INN - UTICA | 11401 HALL RD | UTICA | MI 48317 | (313)739–7111 |
| MI0201 .. | BUDGETEL INN - WARREN | 30900 VAN DYKE | WARREN | MI 48093 | (313)574–0550 |
| MI0226 .. | DAYS INN - WARREN | 30000 VAN DYKE AVE | WARREN | MI 48093 | (313)573–7600 |
| MI0120 .. | HAMPTON INN - WARREN | 7447 CONVENTION RD | WARREN | MI 48092 | (313)977–7270 |
| MI0237 .. | HOLIDAY INN - WARREN | 11500 ELEVEN MILE | WARREN | MI 48089 | (313)754–9400 |
| MI0280 .. | QUALITY INN - WARREN | 32035 VANDYKE | WARREN | MI 48093 | (313)264–0100 |
| MI0265 .. | COMFORT INN - WATERFORD | 7076 HIGHLAND RD | WATERFORD | MI 48327 | (313)666–8555 |
| NJ: | | | | | |
| NJ0144 .. | B/W FAIRFIELD EXECUTIVE INN. | 216–234 RT 46 E | FAIRFIELD | NJ 07004 | (201)575–7700 |
| NJ0108 .. | ECONO LODGE OF MANCHESTER. | 2016 RT 37 W | LAKEHURST | NJ 08733 | (908)657–7100 |
| NJ0132 .. | BEST WESTERN MORRISTOWN INN. | 270 SOUTH ST | MORRISTOWN | NJ 07960 | (201)540–1700 |
| NJ0056 .. | QUALITY INN SOMERSET | 1850 EASTON AVE | SOMERSET | NJ 08873 | (908)469–5050 |
| NJ0174 .. | COMFORT INN ATLANTIC CITY WEST. | 7095 BLACK HORSE PIKE | W ATLANTIC CITY | NJ 08232 | (609)645–1818 |
| NY: | | | | | |
| NY0072 . | ECONO LODGE SOUTH | 4344 MILESTRIP RD | BLASDELL | NY 14219 | (716)825–7530 |
| NY0108 . | COMFORT SUITES | 901 DICK RD | BUFFALO | NY 14225 | (716)633–6000 |
| NY0361 . | QUALITY INN | 4217 GENESSE ST | BUFFALO | NY 14225 | (716)633–5500 |
| NY0114 . | RADISSON HOTEL CORNING | 125 DENISON PKWY. E | CORNING | NY 148302786 | (607)962–5000 |
| NY0102 . | COMFORT INN CORTLAND | 2½ LOCUST AVE | CORTLAND | NY 13045 | (607)753–7721 |
| NY0161 . | GLENS FALLS/LAKE GEORGE ECONO LODGE. | 29 AVIATION RD | GLENS FALLS | NY 12801 | (518)793–3491 |
| NY0156 . | ECONO LODGE | CASCADE RD | LAKE PLACID | NY 12946 | (518)523–2812 |
| NY0106 . | COMFORT INN THE POINTE | ONE PROSPECT POINTE | NIAGARA FALLS | NY 14303 | (716)284–6835 |
| NY0155 . | ECONO LODGE | 7708 NIAGARA FALLS BLVD | NIAGARA FALLS | NY 14304 | (716)283–0621 |
| NY0562 . | DARIEN LAKES ECONO LODGE. | 8493 ALLEGENY ROAD | PEMBROKE | NY 14036 | (716)599–3040 |
| NY0103 . | COMFORT INN FAIRGROUNDS. | 7010 INTERSTATE ISLAND RD | SYRACUSE | NY 13209 | (315)453–0045 |
| NY0104 . | COMFORT INN UNIVERSITY | 454 JAMES ST | SYRACUSE | NY13203 | (315)425–0015 |
| NY0312 . | MICROTEL LANCASTER | 50 FREEMAN RD | WILLIAMSVILLE | NY14221 | (716)633–6200 |
| TX: | | | | | |
| TX0381 . | ARLINGTON COMFORT INN AT SIX FLAGS. | 1601 E. DIVISION ST | ARLINGTON | TX 76011 | (817)261–2300 |
| TX0422 . | DALLS CLARION | 1241 W. MOCKINGBIRD LN | DALLAS | TX 75247 | (214)630–7000 |
| TX0080 . | DOUBLETREE HOTEL | 8250 N. CENTRAL EXPWY | DALLAS | TX 75206 | (214)691–8700 |
| TX0394 . | COMFORT INN | 900 YARBROUGH DR | EL PASO | TX 79915 | (915)594–9111 |
| TX0253 . | ECONOLODGE GALVESTON | 2825 61ST ST | GALVESTON | TX 77551 | (409)744–7133 |
| TX0369 . | HARVEY HOTEL NEAR GREENWAY PLAZA. | 2712 SW FRWY | HOUSTON | TX 77098 | (713)523–8448 |
| TX0340 . | HARVEY SUITES HOUSTON MEDICAL CENTER. | 6800 S. MAIN | HOUSTON | TX 77030 | (713)528–7744 |
| TX0338 . | THE HARVEY HOTEL DFW AIRPORT. | 4545 W. JOHN CARPENTER FRWY. | IRVING | TX 75063 | (214)929–4500 |
| TX0285 . | RADISSON ODESSA HOTEL & CONFERENCE CENTER. | 5200 E. UNIVERSITY | ODESSA | TX 797628113 | (915)368–5885 |

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST 9/16/94 UPDATE—Continued

| Index | Property Name | PO box/Rt No. and Street Address | City | State/zip | Telephone |
|---|---|---|---|---|---|
| TX0473 . | COMFORT INN | P O BOX 28 1307 AVE. A | OZONA | TX 76943 | (915)392–3791 |
| TX0474 . | COMFORT INN OF PARIS | 3505 NE LOOP 286 | PARIS | TX 75460 | (903)784–7481 |
| TX0289 . | CLARION HOTEL RICHARDSON. | 1981 N. CENTRAL EXPRWY | RICHARDSON | TX 75080 | (214)64 –4000 |
| TX0477 . | ECONO LODGE EAST | 218 SOUTH W.W. WHITE RD | SAN ANTONIO | TX 78219 | (210)333–3346 |
| TX0107 . | LA QUINTA INN SAN ANTONIO CONVENTION CENTER. | 1001 E. COMMERCE ST | SAN ANTONIO | TX 782053303 | (210)222–9181 |
| TX0309 . | RODEWAY INN FIESTA PARK | 19793 IH–10 WEST | SAN ANTONIO | TX 78257 | (210)698–3991 |
| VA: | | | | | |
| VA0330 . | SHERATON NATIONAL HOTEL | 900 S. ORME STREET | ARLINGTON | VA 222040000 | (703)521–1900 |
| VA0064 . | COMFORT SUITES | 1550 CROSSWAYS BLVD | CHESAPEAKE | VA 233200000 | (804)420–1600 |
| VA0247 . | NORFOLK MARRIOTT WATERSIDE HOTEL. | 235 E MAIN STREET | NORFOLK | VA 235100000 | (804)627–4200 |
| WI: | | | | | |
| WI0066 .. | COUNTRY INN BY CARLSON . | 737 AVON RD | SPARTA | WI 54656 | (608)269–3110 |
| WV: | | | | | |
| WV0001 | KNIGHTS INN | 1599 EDWIN MILLER BLVD | MARTINSBURG | WV 25401 | (304)267–2211 |
| WV0152 | LEISURE INN | INT. I–81 & WV9 EXIT 16 E | MARTINSBURG | WV 25401 | (304)263–8811 |
| **DELETIONS** | | | | | |
| AL: | | | | | |
| AL0229 .. | PERDIDO BEACH HILTON RESORT. | 27200 PERDIDO BEACH BLVD | ORANGE BEACH | AL 36561 | (205)981–9811 |
| HI: | | | | | |
| HI0051 .. | HAWAIIAN REGENT HOTEL KALAKAUA. | 2552 KALAKAUA AVE | HONOLULU, OAHU | HI 96815 | (808)922–6611 |
| HI0151 .. | SHERATON MAUI HOTEL | 2605 KAANAPALI PKWY | LAHAINA, MAUI | HI 967611991 | (808)661–0031 |
| HI0026 .. | THE WESTIN KAUAI | 3610 RICE ST | LIHUE, KAUAI | HI 96766 | (808)245–5050 |
| NY: | | | | | |
| NY0571 . | COMFORT INN AIRPORT | 395 BUELL RD | ROCHESTER | NY 14624 | (716)436–4400 |
| NY0570 . | ECONO LODGE ROCHESTER SOUTH. | 940 JEFFERSON STREET | ROCHESTER | NY 14623 | (716)427–2700 |
| TN: | | | | | |
| TN0150 . | COREY HOTELS INC. HOLIDAY INN. | PO BOX 14 RT. 1 OLD HWY. 25 W. EXIT 134. | CARYVILLE | TN 37714 | (615)562–8476 |
| TN0015 . | WINNERS CIRCLE MOTEL | 3430 FORT CAMPBELL BLVD . | LARKSVILLE | TN 37042 | (615)431–4906 |
| TN0058 . | ECONO LODGE | 853 UNIVERSITY ST | MARTIN | TN 38237 | (901)587–4241 |
| TX: | | | | | |
| TX0401 . | HOLIDAY INN LA PLAZA MALL | 2000 S. 10TH ST | MCALLEN | TX 78501 | (210)686–1741 |

[FR Doc. 94–24221 Filed 9–29–94; 8:45 am]
BILLING CODE 6718–26–U

Friday
September 30, 1994

Part VII

# Federal Emergency Management Agency

State Contacts; Hotel and Motel Fire Safety Act National Master List; Notice

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### State Contacts for the Hotel and Motel Fire Safety Act National Master List

**AGENCY:** United States Fire Administration, FEMA.

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency (FEMA or Agency) gives notice of the State contacts for the Hotel and Motel Fire Safety Act national master list. The offices or officials listed are responsible for compiling the respective State listings of properties which comply with the Hotel and Motel Fire Safety Act, and should be contacted directly for any changes to the national master list.

**EFFECTIVE DATE:** September 30, 1994.

**ADDRESSES:** Comments on the State contact list or the national master list or any changes to the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (fax) (202) 646–4536.

**FOR FURTHER INFORMATION CONTACT:** John Ottoson, Fire Management Programs Branch, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1141.

**SUPPLEMENTARY INFORMATION:** Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Tuesday, November 24, 1992, 57 FR 55314, and makes periodic changes to the list.

Each State and Territory or other participating jurisdiction is responsible for compiling its respective listings of properties which comply with the Hotel and Motel Fire Safety Act. If you own or represent a property in compliance with the Act, and want to include the property in the national master list or to make an addition, deletion, or other change to a listing on the national master list, please contact the appropriate office in the State or jurisdiction where the property is located.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

The State contacts for the national master list follow below.

Dated: September 27, 1994.

**Spence W. Perry,**

*Acting General Counsel.*

STATE CONTACTS FOR HOTEL AND MOTEL FIRE SAFETY ACT MASTER LIST 9/16/94

| State/Contact | Office | Address | Phone | FAX |
|---|---|---|---|---|
| AL—John Robison | Fire Marshal's Office | 135 S Union Street, Room 140, Montgomery, AL 36130–3401. | 205/269–3575 | 205/240–3194 |
| AK—Jack McGary | State Fire Marshal's Office. | 5700 E Tudor Road, Anchorage, AK 99507–1225. | 907/269–5604 | 907/338–4375 |
| AZ—Michael Reichling | Office of the State Fire Marshal. | 1540 W Van Buren Street, Room 235, Phoenix, AZ 85007. | 602/255–4964 | 602/255–4961 |
| AR—Ray Carnahan | Arkansas State Police | Fire Marshal's Section, 3 Natural Resources Drive, Little Rock, AR 72215. | 501/221–8258 | 501/224–5006 |
| CA—Penny Williams | State Fire Marshal | 7171 Bowling Drive, Suite 500, Sacramento, CA 95823. | 916/262–2006 | 916/262–1942 |
| CO—Dean Smith | Colorado Division of Fire Safety. | PO Box 158, Palisade, CO 81526–0158 | 303/464–0728 | 303/464–0729 |
| CT—Sheryl Salvatore | Bureau of State Fire Marshal. | Division of Fire and Building Safety, 294 Colony Street, Meriden, CT 06450. | 203/238–6625 | 203/238–6148 |
| DC—Insp. Fenton | DC Fire Prevention Division. | 613 G Street NW, Room 810, Washington, DC 20001. | 202/673–3344 | 202/628–5306 |
| DE—Diane Towns | State Fire Marshal | RD2, Box 166A, Dover, DE 19901 | 302/739–5665 | 302/739–3696 |
| FL—Debbie Crowder | Division of State Fire Marshal. | Department of Insurance, 101 E Gaines Street, Rm 660, Tallahassee FL 23299–0300. | 904/922–3172 x3629 | 904/922–2553 |
| GA—Sonya Scandret | State Fire Marshal | 2 Martin Luther King Jr. Drive, Suite 620 West, Atlanta, GA 30334. | 404/656–0698 | 404/656–7628 |
| GUAM—Frank Cruz | Fire Department | Pedro's Plaza, 287 W O'Brien Drive, Agana, Guam 96910. | 671/477–3473 | 671/477–4385 |
| HI—August Range | State Fire Council | 3375 Koapaka Street, Suite H425, Honolulu, HI 96819–1869. | 808/831–7748 | 808/831–7750 |
| ID—Lorraine Allen | State Fire Marshal | 500 S 10th Street, Boise, ID 83720 | 208/334–4288 | 208/334–2298 |
| IL—Peter Vina | Illinois State Fire Marshal. | 1035 Stevenson Drive, Springfield, IL 62703–4259. | 217/785–5620 | 217/782–1062 |
| IN—Pauline Strashberry | Office of the State Fire Marshal. | 402 W Washington Street, Room E241, Indianapolis, IN 46204. | 317/232–2222 | 317/232–0146 |
| IA—Sue Mallory | Iowa State Fire Marshal. | Des Moines, IA 50319 | 515/281–5821 | 515/242–6299 |
| KS—Chasity Uhl | State Fire Marshal Department. | 700 SW Jackson Street, Suite 600, Topeka, KS 66603–3714. | 913/296–3401 | 913/296–0151 |
| KY—Lisa Mahoney | Division of Fire Prevention. | 1047 US 127 South, Frankfort, KY 40601 | 502/564–3626 | 502/564–6799 |
| LA—Theresa Stevens | Dept. of Public Safety and Corrections. | 5150 Florida Blvd, Baton Rouge, LA 70806. | 504/925–3647 | 504/925–4241 |
| ME—Karen Peterson | State Fire Marshal's Office. | 317 State Street, Station #52, Augusta, ME 04333–0052. | 207/287–3473 | 207/287–5163 |

STATE CONTACTS FOR HOTEL AND MOTEL FIRE SAFETY ACT MASTER LIST 9/16/94—Continued

| State/Contact | Office | Address | Phone | FAX |
|---|---|---|---|---|
| MD—Kathy Rose | State Fire Marshal's Office. | 106 Old Court Road, Suite 300, Pikesville, MD 21208. | 410/764–4324 | 410/764–4576 |
| MA—Jennifer Meith | State Fire Marshal's Office. | 1010 Commonwealth Avenue, Boston, MA 02215. | 617/566–4500 | 617/566–2600 |
| MI—Cindy Rice | Michigan Fire Marshal Division. | 7150 Harris Drive, Lansing, MI 48913 | 517/322–5469 | 517/322–2908 |
| MN—Theresa Brigleb | State Fire Marshal Division. | 450 N Syndicate, Suite 285, St. Paul, MN 55104. | 612/643–3093 | 612/643–3095 |
| MS—Judy Lowry | Mississippi Emergency Mgmt Agency. | PO Box 4501, Jackson, MS 39296–4501 | 601/960–9013 | 601/352–8314 |
| MO—Theresa Morris | Division Of Fire Safety | 301 W High Street, #860, Jefferson City, MO 65101. | 314/751–2930 | 314/751–1744 |
| MT—Gail Pocha | Fire Prevention and Investigation. | 303 N Roberts, Helena, MT 59620 | 406/444–2050 | 406/444–4722 |
| NE—Lori Lloyd | State Fire Marshal's Office. | 246 S 14th Street, Lincoln, NE 68508–1804. | 402/471–2027 | 402/471–3118 |
| NV—Vicki Stevens | State Fire Marshal's Office. | Capitol Complex, Carson City, NV 89710 | 702/687–4290 | 702/687–5122 |
| NH—John Gregiore | State Of New Hampshire Dept. of Safety. | Division of Fire Service, 91 Airport Road, Concord, NH 03301. | 603/271–3294 | 603/271–3903 |
| NJ—Sue Miller | Bureau of Fire Safety | CN 809, Trenton, NJ 08625 | 609/633–6115 | 609/633–6134 |
| NM—Solomon Gonzales | New Mexico State Fire Marshal's Office. | PO Box Drawer 1269, Santa Fe, NM 87504–1269. | 505/827–3550 | 505/827–3778 |
| NY—Bryant Stevens | Office of Fire Prevention and Control. | 162 Washington Avenue, Albany, NY 12231. | 518/474–6746 | 518/474–3240 |
| NC—Ellen Sullivan | Fire and Rescue Service Division. | 111 Seaboard Avenue, PO Box 26387, Raleigh, NC 27603. | 919/733–5435 | 919/733–9076 |
| ND—Deb Larson | Consumer Protection Division. | PO Box 937, Bismark, ND 58502–0937 | 701/221–6147 | 701/221–6145 |
| OH—Jennifer Bair | Division of State Fire Marshal. | 8895 E Main Street, Reynoldsburg, OH 43068. | 614/752–8200 | 614/752–7213 |
| OK—Caroline Stewart | State Fire Marshal's Office. | 4030 N Lincoln Blvd, Suite 100, Oklahoma City, OK 73105. | 405/424–4371 | 405/424–0926 |
| OR—Benita Cooper | Office of State Fire Marshal. | 4760 Portland Road NE, Salem, OR 97305–1760. | 503/378–3473 | 503/373–1825 |
| PA—Rose Thompson | Pennsylvania Emergency Mgmt Agency. | PO Box 3321, Harrisburg, PA 17105 | 717/783–5061 | 717/772–6917 |
| PR—Eliberto Colon | Puerto Rico Fire Department. | PO Box 13325 | 809/725–3444 | |
| RI—Bill Howe | State Fire Marshal's Office. | 272 W. Exchange Street, Providence, RI 02903. | 401/277–2335 | 401/773–1222 |
| SC—Pam Dewease | Division of State Fire Marshal. | 1201 Main Street, Suite 810, Columbia, SC 29201. | 803/737–0660 | 803/737–0675 |
| SD—Rex Vandenberg | South Dakota Department of Health. | Office of Health Protection, 445 E. Capitol Ave., Pierre, SD 57501–3185. | 605/773–3364 | 605/773–5904 |
| TN—Fred Sims | Division of Fire Protection. | 500 James Robertson Parkway, Volunteer Plaza, 3rd Floor, Nashville, TN 37243. | 615/741–2981 | 615/741–1583 |
| TX—Dennis Frasier | Texas Commission on Fire Protection. | 3006–B Longhorn Blvd, Austin, TX 78768. | 512/873–1875 | 512/873–1740 |
| UT—Deanne Mousley | Office of the Fire Marshal. | 4501 South 2700 West, Salt Lake City, UT 84119. | 801/965–4909 | 801/964–4597 |
| VT—Robert Howe | Fire Prevention Director's Office. | Department of Labor and Industry, Montpelier, VT 05620–3401. | 802/828–2288 | 802/828–2288 |
| VA—Glenn Dean | Dept of Housing & Community Develop.. | 501 N 2nd Street, Richmond, VA 23219–1321. | 804/371–7153 | 804/371–7092 |
| WA—Rubye Mitchell | Department of Community Development. | Fire Protection Services, 4317 6th Avenue SE, PO Box 48350, Olympia, WA 98504–8350. | 206/493–2663 | 206/493–2648 |
| WV—Debbie Hudson | Office of the State Fire Marshal. | Inspection Divislon, 2100 Washington St. E, PO Box 51040, Charleston, WV 25305–0140. | 304/558–2191 | 304/558–2537 |

STATE CONTACTS FOR HOTEL AND MOTEL FIRE SAFETY ACT MASTER LIST 9/16/94—Continued

| State/Contact | Office | Address | Phone | FAX |
|---|---|---|---|---|
| WI—Lynn Lecount | Bureau of Buildings and Structures. | Safety and Building Division, 20 E Washington Avenue, Room 103, Madison, WI 53707. | 608/267–2496 | 608/267–2496 |
| WY—Bruce Jasperson | Dept of Fire Prev. and Electrical Safety. | Herschler Building, 1st Floor West, Cheyenne, WY 82002. | 307/777–7288 | 307/777–7119 |

[FR Doc. 94–24220 Filed 9–29–94; 8:45 am]
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federal register

Friday
September 30, 1994

Part VIII

# Department of Housing and Urban Development

**Office of the Assistant Secretary for Housing-Federal Housing Commissioner**

**24 CFR Parts 200 and 203**
**Nationwide Pre-Foreclosure Sale Procedure; Interim Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Housing-Federal Housing Commissioner**

**24 CFR Parts 200 and 203**

**[Docket No. R–94–1749; FR–2682–I–01]**

**RIN 2502–AE72**

## Nationwide Pre-Foreclosure Sale Procedure

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule sets forth the requirements and procedures that govern the Department's Pre-Foreclosure Sale (PFS) Procedure beginning in Federal fiscal year 1995 (October 1, 1994 through September 30, 1995). The requirements and procedures contained in this interim rule are based on the Pre-Foreclosure Sale Demonstration Program established by a notice published in the **Federal Register**. This interim rule takes into consideration the public comments received on that notice. It also incorporates changes in the PFS requirements and procedures based on the experience of the Department under the Demonstration.

**DATES:** Effective Date: October 31, 1994. Comments due date: November 14, 1994.

**ADDRESSES:** Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** Joseph Bates, Director, Single Family Servicing Division, Office of Insured Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone (202) 708–3680. A telecommunications device for deaf persons (TDD) is available at (202) 708–1112. (These are not toll-free telephone numbers.)

**SUPPLEMENTARY INFORMATION:** The information collection requirements contained in this interim rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced in the **Federal Register**. Information on the estimated public reporting burden is provided later in this Interim Rule under *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, S.W., Room 10276, Washington, D.C. 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, D.C. 20503.

### Background

Sometimes, a mortgagor must confront the twin realities of not being able to meet his or her mortgage obligation *and* static or declining property values. Such a situation makes it virtually impossible for a financially distressed mortgagor to sell the home and, using the proceeds, to fully discharge the mortgage debt. Foreclosure of the mortgage is often the method of resolving these difficulties.

Over the past few years, much interest has been expressed by mortgagors and real estate agents in a transaction known as the "pre-foreclosure sale." In a successful pre-foreclosure sale, neither foreclosure nor conveyance of the property to the Department occur. A third party buys the home from a defaulting mortgagor at its approximate fair market value (with certain adjustments, as approved by the Secretary), which is less than the owner's outstanding indebtedness at the time of sale.

Section 1064 of the McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100–628) amended section 204(a) of the National Housing Act (12 U.S.C. 1710(a)) to authorize HUD to pay a claim to a lender equal to the difference between the fair market sale price and the outstanding indebtedness (with certain adjustments). A successfully completed pre-foreclosure sale benefits the mortgagor, who avoids the stigma of foreclosure on his or her credit record, and also benefits HUD, which can expect to save by not paying foreclosure-related costs. HUD also saves on maintenance costs and marketing expenses for properties which would otherwise be conveyed to the Department following foreclosure. Finally, mortgagees also benefit through incorporating this loss-mitigation technique into their overall loan servicing, by frequently being able to file their claim for insurance benefits sooner, following a successful pre-foreclosure sale, than they would following a post-foreclosure conveyance claim.

On May 29, 1991, the Department published in the **Federal Register**, at 56 FR 24324, a notice which announced a limited demonstration program to gauge the demand for, and the efficacy of, pre-foreclosure sales as a means of assisting qualified mortgagors in avoiding foreclosure of their FHA-insured mortgages and of saving the Department money.

The Department has decided to implement the pre-foreclosure sale procedure nationwide by incorporating it into the overall approach of servicing FHA-insured loans by FHA-approved lender/servicers. The Demonstration now concluding has been successful in that the demand for this alternative to foreclosure was found to be very substantial; the efficacy of the pre-foreclosure sale transaction was found to be cost-beneficial to HUD; and feedback obtained from participating local HUD offices, program coordinators, mortgagees, homeowners and the general public, was quite favorable. By expanding the options available to financially distressed mortgagors and not adversely affecting any mortgagor rights or interests under existing FHA-insured loan servicing regulations, the Department has not only acted responsibly toward the homeowners with FHA-insured mortgages, but also has operated with an eye to the cost-effectiveness of its own policies and procedures. This interim rule will make pre-foreclosure sales an even more efficient servicing tool by streamlining procedures and, in some respects, reducing the Department's cost of following this course of action.

Among the regulatory changes being implemented is a new § 203.370, which provides for the payment of FHA insurance benefits to mortgagees upon the filing of claims following successful pre-foreclosure sales. (It also contains notification and eligibility provisions, noted below.) Other sections governing claim submission, calculation and payment—24 CFR 200.155, 203.360, 203.365, 203.401, 203.402, 203.403, and 203.410—are being amended to recognize the possibility of a pre-foreclosure sale as an outcome of the servicing of a defaulted mortgage.

**Public Comments**

The public was given 60 days to comment on the requirements and procedures set forth in the May 29, 1991 notice that established the Pre-Foreclosure Sale Demonstration discussed above. Comments were received from 22 commenters: 12 mortgagees/servicers, three counseling agencies, two real estate service companies, one national association of real estate sales professionals, one quasi-governmental organization, one financial services company, one local HUD office, and one individual. Below is a listing of the comments received and the Department's responses to those comments.

1. With the exception of one mortgagee, all other comments had at least some positive aspects and were supportive of the fact that HUD was engaging in an effort to mitigate losses through pre-foreclosure sales. Typically, commenters believed that PFS was "overdue," "a much needed program," "an attractive alternative to loan foreclosure," and that the "program nationwide should help reduce foreclosures and encourage sales where the market is not strong." [two mortgage servicers, one real estate service company, one national association of real estate sales professionals]

*Response:* It is because of the overall response of this nature that the Department has decided to implement the pre-foreclosure sale procedure nationwide.

2. Seven commenters stressed the need for trained, proficient professionals to be involved in PFS; e.g., contractors, program administrators, local HUD staff, or HUD Headquarters staff overseeing the Demonstration. [one national association of real estate sales professionals, two real estate service companies, four mortgagees]

*Response:* It has come to HUD's attention that a number of mortgagees have added, or otherwise identified, loss-mitigation teams to their respective servicing staffs, in an effort to improve the responsiveness to mortgagor defaults and to apply alternatives to foreclosure where feasible and cost-beneficial. HUD applauds and encourages these efforts; they comport with the Department's own evolving philosophy regarding foreclosure avoidance and with expanding concepts of "prudent mortgage servicing" and "protecting HUD's interests." The Department expects that the benefits of such an approach will be marked and far-reaching, extending not only to HUD, but also to homeowners and mortgagees. In particular, the move to increase the mortgagees' role in HUD's pre-foreclosure sale procedure is being taken to utilize the mortgagees' growing ability to manage or mitigate loss in a responsible fashion. HUD will provide sufficient information and/or training to its own staff involved in pre-foreclosure sales to enable them to make prudent decisions and to disseminate accurate details about the PFS procedure.

3. One element of the Demonstration that was criticized was the eligibility criterion requiring mortgagors to be at least three months in arrears before they could be considered for the program. It was felt that this was counterproductive to the goal of loss mitigation, and that in many cases, a case-by-case determination of need and qualifications could be performed at virtually any time before allowing mortgagors to become program participants. Several commenters urged that a comprehensive determination be made, using financial statements, etc. [six mortgagees]

*Response:* The experience of the PFS Demonstration has provided the basis for the decision to retain the eligibility criterion pertaining to the defaulted status of a PFS candidate's mortgage loan. There must still be a determination made in every case that the mortgagor is in default, and that, at a minimum, three monthly installments are in arrears. As a practical matter, however, this means that a candidate for PFS could satisfy this criterion as early as the 62nd day of default, i.e., because the third payment can be due and unpaid at that time. Retaining this criterion as the new nationwide PFS procedure as implemented does keep the administration of pre-foreclosure sales from possibly impinging on servicing requirements related to HUD's mortgage assignment program. Notification of the mortgagor of his right to apply for assignment assistance from HUD (which mortgagees are required to perform at or after the third payment is due and unpaid), will occur at a time when homeowners can choose between a course of action directed toward homeownership retention OR one whose objective is to dispose of the property and relieve the mortgagor of his mortgage obligation. It is the Department's intent that defaulting mortgagors make such an informed decision. Permitting participation in the PFS procedure at an earlier juncture will be evaluated in the future, however, and could be implemented if found not to be detrimental.

4. Another element of the Demonstration that received criticism was the allowance of a ten day period for review of the proposed pre-foreclosure sale. [three mortgagees, one real estate service company, one individual]

*Response:* The ten day period for review of the proposed pre-foreclosure sale, as described in the Notice, was reduced to five (5) working days during the Demonstration, and will remain a *maximum* of 5 working days when the function is transferred to the mortgagee. The period might be further reduced (e.g., to three working days) after evaluating the experience of the nationwide PFS procedure.

5. Another criticized provision was the series of cash incentives payable to mortgagors who consummate a pre-foreclosure sale after participating in the program, although several commenters did support this concept. Four commenters opposed seller incentives [two mortgagees, one individual, one quasi-governmental organization]; three supported them [one mortgagee, one real estate services company, one national association of real estate sales professionals]; one supported case-by-case determinations of amounts [a mortgagee]; and one suggested that cash "incentives" be applied toward property improvements only [a real estate services company]. One commenter [a mortgagee] also criticized the expanded deed-in-lieu incentive as being over-generous and inappropriate. Another [a mortgagee] suggested that mortgagors were prepared to pay money towards accomplishing a deed-in-lieu. A third [a mortgagee] suggested that the mortgagor assign any and all refunds of insurance, etc. to HUD as a provision of enrollment in the PFS program.

*Response:* Cash incentives for mortgagors are being reduced for the nationwide implementation of the PFS procedure. The amount payable to a mortgagor who has successfully marketed and sold his home will be $750, with an additional $250 if the time needed to go to closing is 90 days or less from the date the mortgagor was advised that he could participate in the PFS procedure. HUD is retaining the policy of paying incentives to mortgagors in return for a successful pre-foreclosure sale as a means of providing moving assistance or the promise of reimbursement for cosmetic repairs and maintenance undertaken by homeowners who may still be experiencing financial problems. In addition, the Department wishes to encourage the maximum number of interested and qualified mortgagors to take advantage of the PFS option, because of the savings this generates for HUD.

The payment of $500 consideration for a deed-in-lieu of foreclosure to a

good-faith participant in the PFS procedure whose participation does not conclude with a pre-foreclosure sale is being retained. Since the commencement of the Demonstration in 1991, HUD has raised the limit for cash consideration payable for *any* deed-in-lieu from $200 to $500. This was done to motivate mortgagors, and to encourage mortgagees to process deeds-in-lieu in as many appropriate cases as possible, because of the saving HUD experiences in most instances. For mortgagors who have made efforts to market their homes, payment of the maximum amount otherwise authorized will underscore HUD's interest in seeing as many appropriate deeds-in-lieu processed as possible instead of normally costlier foreclosures.

The assignment to the mortgagee of all refunds due the mortgagor (for example from hazard insurance refunds) is being incorporated into the application form for participation in the PFS procedure. The provision will apply to mortgagors in the event their participation concludes with either a pre-foreclosure sale or a deed-in-lieu. The mortgagee will deduct any such refunds received from the mortgagor from their claim for FHA insurance benefits submitted to HUD.

6. There was considerable support for payment of one sort or another to the mortgagee/servicer for the inconvenience of administering the case to facilitate participation by the mortgagor in the PFS program. The method of payment varied from calculating the claim using note rate interest, as though there were a formal forbearance in effect, to following the FNMA $500-to-$1000 payment in each case resulting in a closed PFS. [three mortgagees, one real estate services company, one quasi-governmental organization]

*Response:* With the commencement of the nationwide PFS procedure, HUD will pay an administrative fee to the mortgagees of $1000, via the Single Family Claims process, for each pre-foreclosure sale that goes to settlement ("closes"). This should provide the mortgagees ample motivation to utilize this servicing tool whenever it is appropriate to do so. It will also defray mortgagee expenses related to the duties that must be performed with regard to all participants in the PFS procedure, not just the successful ones. Payment of this administrative fee, and the amount paid, are subject to change in the future, in the sole discretion of the Department.

7. One commenter suggested that HUD consider making it possible for original homeowners to benefit from the program by allowing them to have their mortgages modified to reflect the current, lower value of the property, which would result in a more bearable financial obligation for them. [one individual] Two others suggested that we engineer the program to permit assumptions of the existing loans, after HUD has "bought down" the value of the obligation (involving partial payoff of the mortgagee). [one national association of real estate sales professionals, one mortgagee]

*Response:* "Retention of ownership" and assumption provisions are not being considered as part of the Department's pre-foreclosure sale procedure. The PFS procedure is designed to result in an outright sale at the property's current value, and in cancellation of the original mortgage instrument. If HUD were to implement the "buy down" recommendation, it would in effect be insuring the purchase values of the properties and not the mortgages. Properties depreciate in value for various reasons and it is not practicable for HUD to compensate homeowners for losses in that way. The Department is exploring various other servicing activities designed to assist homeowners to avoid foreclosure, retain their properties, and also to mitigate HUD's losses.

8. Another idea that received considerable support was the performance of a title search early on in the participant's exposure to the program, to eliminate many candidates from the program who would not be approved for either a PFS or a deed-in-lieu. [three mortgagees]

*Response:* The desirability of an early title search is stressed in the latest instructions being issued to mortgagees regarding the PFS procedure. This is especially true in cases where suspicions are aroused that significant secondary liens or encumbrances exist.

9. Several commenters supported the idea of relying on Brokers' Price Opinions (BPOs) either singly, severally, or in combination with appraisals conducted under program auspices. [one quasi-governmental organization, two mortgagees, one real estate services company]

*Response:* HUD is not closing the door regarding the use of BPOs, alone or in conjunction with more formal property appraisals, in the future. However, at this time, appraisals are the only method of establishing property valuation under the PFS procedure. The costs are higher for appraisals, but the reliability may also be greater. The Department also values the fact that the appraisers will be credentialed as well as "neutral" parties, otherwise uninvolved with the sale unlike the BPOs, which are frequently provided by real estate brokers that have a relationship with one or more parties to the sale. This reliability and neutrality is especially important during the initial period when mortgagees are becoming acclimated to their central role in facilitating pre-foreclosure sales. The Department may add BPOs to the PFS procedure after evaluating the performance of appraisers, comparing their cost to BPOs, and taking other factors into account.

10. Several commenters criticized the "70% appraisal of the indebtedness" criterion and the "90% net proceeds of the appraised value" criterion as unworkable in many areas, requiring delays for HUD office intervention to decide whether to waive. Most wanted the formula to change, downward, or at least have the discretion to waive them placed firmly in the hands of the coordinator. [three mortgagees]

*Response:* When preparing the legislation which authorized HUD to engage in pre-foreclosure sales, Congress issued a strong warning that HUD should avoid a "fire sale" atmosphere in administering the PFS program. The Department's experience during the Demonstration supports retaining the 70% criterion, which is the ratio of as-is appraised value to outstanding loan indebtedness. In rare instances, it will be possible for the local HUD Office to grant an inquiring mortgagee a variance from the 70% criterion, based on a consideration of the facts of that case.

The expectation of netting 90% of appraised value was an internal rule of thumb. That figure has been reduced to 87% as more workable and realistic, given the typical transactional costs of pre-foreclosure sales during the Demonstration. Mortgagees will be able to request a variance from the local HUD Office with jurisdiction over the property, to permit a sale that would net less than 87%.

11. Two commenters [two mortgagees] supported the idea of parallel processing of foreclosure while a participant was enrolled in the PFS program. Two commenters [two mortgagees] were also concerned that the deadline for initiation of foreclosure be explicitly lifted in cases involving participation in the PFS program, or else HUD would run the risk of non-cooperation from mortgagees who would expect to be penalized for missing this deadline.

*Response:* If participation in the PFS procedure is unsuccessful and does not result in a sale, a mortgagee has nine months after default or sixty (60) days after the date of termination of PFS

participation, whichever is later, to initiate foreclosure or accept a deed-in-lieu of foreclosure. The mortgagee must also meet conveyance time requirements. If the pre-foreclosure sale does go to closing, neither foreclosure nor conveyance of the property occur; the mortgagee has 30 days after the sale closing date to file its claim. If these time frames cannot be met, the mortgagee must file Form HUD–50012, Extension Request, with the Loan Management Branch of the local HUD Office.

Apart from the issue of obtaining extensions, and the customary timeframes in which to initiate foreclosure, and submit a claim, it is still possible for mortgagees to opt to continue steps leading to foreclosure while a mortgagor is engaged in marketing the property for sale under the PFS procedure. *This decision must be weighed by the mortgagee in light of the cost-effectiveness (i.e., the "loss mitigation perspective") of such actions.* Proceeding with such steps in the face of a mortgagor's participation in the PFS procedure—which has a high likelihood of ending either in the sale of the property or a deed-in-lieu—is *frequently not justified*, because of the outlay of time and money required to accomplish them. In the meantime, the experiences of the PFS procedure will be observed and evaluated. HUD may in the future direct mortgagees to desist from concurrently taking foreclosure-related steps unless certain criteria are met.

Mortgagees are reminded that they must always explain their concurrent foreclosure-related actions to the mortgagors participating in the PFS procedure, because such actions may be misconstrued by the mortgagor and may jeopardize the pre-foreclosure sale.

12. There was a serious division of opinion as to whether mortgagees should be expected to participate in the mechanics of the program. One commenter [a mortgagee] said that HUD shouldn't ask lenders to, or expect that they would, prepare the PFS sale package for submission to the program coordinator. Two other commenters [two mortgagees] indicated that it was appropriate for HUD to designate the mortgagee as a principal player in the administration of the pre-foreclosure sale, as a means of loss-mitigation and appropriate loan servicing.

*Response:* The difference of opinion over the appropriate level of mortgagee participation in the Pre-foreclosure Sale procedure has been resolved by substantially increasing the mortgagees' engagement in the process over what was expected during the Demonstration, and also by significantly increasing the administrative fee payable to mortgagees for facilitating each pre-foreclosure sale. During the course of the Demonstration, many mortgagees did express a willingness to expand the level of their involvement in the pre-foreclosure sale procedure. HUD has decided to implement its nationwide PFS procedure by using the mortgagees in the central role of PFS "facilitators" because of the mortgagees' existing loan servicing role; the savings generated by authorizing mortgagees to carry out the PFS procedure under express HUD procedures and criteria; and the Department's evolving policy that mortgagees explore alternatives to foreclosure, whenever appropriate.

13. Other recommendations included wider circulation of the program's *Information Sheet* [one mortgagee]; quicker nationwide implementation of the program [one mortgagee]; greater publicizing of the PFS alternative to maximize the number of participants [one mortgagee]; combining mandatory notification by lender with other mandatory HUD correspondence that gets sent to mortgagor [one mortgagee]; and relying on the lender for homeownership counseling [one mortgagee].

*Response:* A new PFS *Information Sheet* will be distributed, and be generally available, to real estate brokers, housing counseling agencies, mortgagees, and local HUD offices. Although nationwide implementation of the PFS option is now imminent, during the Demonstration all local HUD offices other than those "officially" designated as being involved in the PFS Demonstration were nonetheless able to activate the pre-foreclosure sale procedure "unofficially" in their jurisdictions, and a significant number did. There will be more publicizing of the nationwide PFS procedure as it starts up.

Many forms have been eliminated or streamlined, and the mandatory notification forms have been combined with other correspondence that mortgagees must send to mortgagors. While it is not appropriate to depend exclusively on lenders to provide homeownership counseling (there is a network of HUD-approved housing counseling agencies whose duties include homeownership counseling), lenders are free to provide homeownership counseling and other information related to pre-foreclosure sales if requested by the mortgagor to do so.

14. Other recommendations also included allowing participants to select their own brokers independently [one national association of real estate sales professionals], and also deciding on how HUD will determine "qualified" real estate brokers to put on the program's referral list [one HUD field office].

*Response:* PFS participants *are* permitted to select their own brokers—the required list of cooperating brokers has been eliminated as too cumbersome for mortgagees to produce and update, and also as possibly confusing to some PFS participants. Thus the issue of whether and how "qualified" are the brokers on the list is rendered moot.

**This Interim Rule**

This interim rule takes into consideration the public comments received on the notice announcing the PFS demonstration published on May 29, 1991, 56 FR 24324. It also incorporates changes in the PFS requirements and procedures based on the Department's experience under the Demonstration.

**Eligibility Criteria**

In order to be eligible for the pre-foreclosure sale procedure, a mortgagor must:

(1) be an owner-occupant in a single family residence that is security for a mortgage insured under 24 CFR part 203, unless otherwise prescribed by the Secretary;

(2) have an account in default with at least three monthly installments past due and unpaid; (The default must be the result of a documentable involuntary reduction in income or an unavoidable increase in his or her expenses, including job relocation.);

(3) have been made aware of the assignment program, as discussed below under *Notification of PFS Procedure*, and have been either turned down for it by HUD, or have decided not to apply for it;

(4) have, at the time application is made to pursue a pre-foreclosure sale, a mortgaged property whose current fair market value, compared to the amount needed to discharge the mortgage, meets the criterion established by the Secretary, unless a variance is granted by the Secretary; and

(5) have received homeownership counseling, as defined by the Secretary, and have executed a certification to that effect.

These criteria are contained in new section 24 CFR 203.370(c).

The Department has decided to continue a policy begun during the PFS Demonstration, under which those mortgagors who are small investors with only one FHA-insured mortgage (e.g., a former owner-occupant who may be renting out the property) can be

considered for PFS eligibility. Under no circumstances, however, will the pre-foreclosure sale option be made available to "walkaways" who have abandoned their mortgage obligations despite their continued ability to pay. Mortgagors determined to be eligible for, and who participate in, the pre-foreclosure sale procedure will *not* be pursued for deficiency judgments by the Department.

**Use of Mortgagees To Facilitate Pre-foreclosure Sales**

The Department is adding the pre-foreclosure sale to the list of existing foreclosure alternatives that can be offered by mortgagees to mortgagors facing financial difficulties and who meet certain qualifying criteria. Although offering the pre-foreclosure sale option to a qualified mortgagor is arguably a part of "normal" servicing under FHA procedures and guidelines which require mortgagees to act prudently and with HUD's interests in mind, the Department is encouraging mortgagees to incorporate pre-foreclosure sales without delay into their overall servicing procedures by paying mortgagees an administrative fee for each successful pre-foreclosure sale that they facilitate. Payment of the administrative fee via the claims process is provided for in 24 CFR 203.402(t), which is being implemented as part of this interim rule.

**Justification of Incentive Paid to Mortgagors**

The Department has decided to retain the practice used during the Demonstration of paying certain cash incentives drawn from sale proceeds to qualified mortgagors who close a pre-foreclosure sale; however, the amount of this incentive is being reduced from that which was used in the Demonstration. Also, in cases where a deed-in-lieu of foreclosure follows bona fide but unsuccessful participation in the PFS procedure, the Department's policy of strongly encouraging mortgagees to offer such mortgagors the full $500 consideration payable for a deed-in-lieu (authorized in HUD Mortgagee Letter 93–16) is being continued.

The Department is aware that other mortgage insurers and financial institutions have not authorized the use of a portion of sale proceeds for consideration payable to the mortgagor, and do not otherwise reward mortgagors who engage in a pre-foreclosure sale or deed-in-lieu of foreclosure, beyond the fact that PFS necessarily precludes the foreclosure. However, the proportion of pre-foreclosure sales occurring in these other agencies and institutions among defaulting mortgagors is generally much lower than the level of participation which HUD would prefer for its nationwide pre-foreclosure sale procedure. Furthermore, although the Department acknowledges that the avoidance of a foreclosure on their credit records is a prime motivation for mortgagors to dispose of their properties via pre-foreclosure sales, HUD has a number of other justifications for offering monetary consideration to participants in the PFS procedure.

—PFS participants must make considerable efforts and undergo significant inconvenience in seeking out buyers, making the property presentable, and allowing the public access to their home as they attempt to reach an approved sale transaction before the participation period has run.

—Cash incentives for expedited pre-foreclosure sales occurring within three months of commencing the PFS procedure represent a small portion of the estimated savings to the Department of interest that would otherwise have to be paid to mortgagees as part of the insurance contract.

—It is HUD's objective to maximize the number of interested participants in pre-foreclosure sales, because of the estimated aggregate savings to the Department that successful pre-foreclosure sales transactions represent. We estimate that the PFS-related consideration will be more than offset by the savings in pre- and post-acquisition costs for the properties affected by participation in the pre-foreclosure sale procedure.

—Mortgagors can request deeds-in-lieu of foreclosure without first attempting to execute pre-foreclosure sales and might request deeds-in-lieu of foreclosure rather than the pre-foreclosure sale option, when they become fully apprised of the efforts involved in the pre-foreclosure sale, as well as possible tax implications. If a mortgagor meets prevailing criteria and the mortgagee is willing to cooperate, a deed-in-lieu of foreclosure can occur. This would benefit the mortgagor but would represent only modest savings to the Department. Therefore, it is in HUD's interest to make the pre-foreclosure sale option as attractive as possible in order to maximize the number of interested participants.

Although payment of such consideration is warranted by the anticipated savings to the Department, HUD acknowledges the need for vigilance to head off abuse of the process by opportunistic parties.

**Deed-In-Lieu of Foreclosure as Feature of the PFS Procedure**

At the time he or she requests to participate in the Pre-Foreclosure Sale procedure, the mortgagor is asked whether there are encumbrances on the mortgage, or whether there are title problems of which he or she is aware. The mortgagee should order a title search during the mortgagor's participation in the PFS procedure. The existence of encumbrances or title problems may preclude or result in a refusal to permit either a pre-foreclosure sale *or* a deed-in-lieu. For those mortgagors who can deliver clear title, but who, despite a good faith effort, do not consummate a pre-foreclosure sale, the mortgagee will customarily process a deed-in-lieu of foreclosure upon the failure of the participant to execute a pre-foreclosure sale. A deed-in-lieu action will leave the mortgagor without a foreclosure on his or her credit history.

**Notification of PFS Procedure**

HUD will circulate an *Information Sheet* on pre-foreclosure sales among mortgagees and housing counseling agencies, and the mortgagees and housing counseling agencies will be encouraged to distribute the document among mortgagors who might be interested in, and possibly qualified to participate in, the Pre-Foreclosure Sale procedure. It will contain basic information about pre-foreclosure sales and will instruct mortgagors or others interested in PFS to contact the homeowner's mortgagee for more information or an application.

Mortgagees are required to notify mortgagors about the pre-foreclosure sale procedure by sending a prescribed communication (HUD–426) when the mortgagors fall two payments behind, and a copy of the *Information Sheet* when the mortgagors become three or more payments in arrears. The requirement that mortgagees provide notification of the pre-foreclosure sale option to mortgagors in default is contained in 24 CFR 203.370(b).

**Commencing the Pre-foreclosure Sale Procedure**

Once a mortgagor is found to be eligible to participate in the pre-foreclosure sale procedure, and is so notified by the mortgagee, the mortgagor may begin marketing the property. Section 203.356(b) requires mortgagees to notify HUD of that change in status of the mortgagor. The mortgagee will also direct the mortgagor to retain the

services of a real estate broker in an attempt to market the property within the established time and price guidelines. These brokers are prohibited from sharing a business interest with the mortgagee or mortgagor (seller).

An appraisal will be ordered by the mortgagee from an appraiser who meets standard eligibility requirements for performing FHA Single Family appraisals. The appraisal will contain "as is" and "as repaired" valuations of the property. Reasonable costs for the property appraisal will be reimbursed through the FHA claims process. Section 203.402(l) has been revised to include the cost of an appraisal performed as part of the Pre-foreclosure Sale procedure. The Department reserves the right, in the future, to authorize mortgagees to substitute or add the use of Broker Price Opinions (BPOs) to the valuation process under the Pre-Foreclosure Sale procedure.

**Homeownership Counseling Responsibilities**

Before a mortgagor's participation in the Pre-foreclosure Sale procedure can be approved by the mortgagee, either a HUD-approved counseling agency located in the mortgagor's geographic area, the mortgagee, or the local HUD Office will be available to do the following:

(1) Provide mandatory "homeownership counseling" to the mortgagor considering the pre-foreclosure sale option. This will include explaining the alternatives available to the mortgagor, including a payment plan negotiated with the lender, foreclosure and deed-in-lieu of foreclosure, the assignment program (if still an option), and changes in household income, expenses, or composition that might have a bearing on the ability of the mortgagor to retain ownership of the property. The homeownership counseling and certification requirement is contained in § 203.370(c)(5).

(2) Advise mortgagors considering a pre-foreclosure sale that they may wish to contact a financial or tax counselor to assess the specific tax consequences (if any) to them of a pre-foreclosure sale.

(3) Assist in executing certifications for the mortgagors to sign before they can be permitted to participate in the pre-foreclosure sale procedure. These certifications shall include statements that:

(a) Homeownership counseling has been received;

(b) The mortgagor understands that any proposed pre-foreclosure sale must be an "arm's length" transaction; i.e., a sale between two unrelated parties that is characterized by a selling price and other conditions which would prevail in an open market environment, without hidden terms or special understandings between any of the parties connected to the transaction, including the appraiser, sales agent, closing agent and mortgagee; and

(c) If the mortgagor has not made application for mortgage assignment, that the assignment program has been explained to him and that he desires to waive any right he has to apply for the program. The provision regarding consideration of (and for) mortgage assignment is contained in 24 CFR 203.370(c)(3). (This waiver applies to assignment rights arising only from his present mortgage default, and only if he is permitted to participate in the Pre-foreclosure Sale procedure.)

**Responsibilities of the Real Estate Broker or the Mortgagor's Attorney**

The real estate broker or the mortgagor's attorney should forward to the mortgagee a copy of the contract of sale made conditional upon approval by HUD or the mortgagee, acting under the Secretary's instructions. The contract package should identify the sales commission, and include the necessary certifications (if they are in the broker's or attorney's possession) that have been signed by the mortgagor. The mortgagee will review the package and render a decision within five (5) days of receiving the completed package.

**Monitoring Responsibilities of HUD Personnel**

The determination by the mortgagee of the mortgagor's eligibility to pursue a pre-foreclosure sale or a deed-in-lieu, as well as the mortgagee's final approval of a proposed sale, shall be reviewed by the appropriate HUD personnel. These reviews may occur at any time, and will be performed on-site by local HUD office or Headquarters personnel. Mortgagees' submission of data pertaining to individual participants in the PFS procedure, as well as monthly Single Family Default Monitoring System (SFDMS) reports, will also be subject to review. The speed and effectiveness with which mortgagees incorporate the pre-foreclosure sale procedure into their overall servicing techniques will be evaluated on-site during mortgagee reviews conducted by HUD staff. A pre-foreclosure sale component will also be incorporated into HUD's regular claim reviews.

**General Responsibilities of Mortgagees**

(1) Mortgagees will be responsible for implementing correct notification procedures (in particular, sending appropriate notices to defaulting mortgagors and providing information as requested to mortgagors about the PFS procedure).

(2) Mortgagees will be responsible for determining the eligibility of mortgagors to participate in the pre-foreclosure sale procedure, including those whose assignment applications are turned down or for whom the opportunity for assignment has expired or been waived.

(3) Mortgagees will be responsible for responsive and timely servicing in taking the necessary steps for, and cooperating with all aspects of, the PFS procedure, including the expediting of sale transactions; the processing of deeds-in-lieu of foreclosure from qualified participants who did not close a pre-foreclosure sale despite a good faith effort; and the timely resumption of appropriate servicing of those loans when participation in the PFS procedure ends and neither a sale nor a deed-in-lieu has occurred.

(4) The mortgagee will have the authority, on a case-by-case basis, to determine the mortgagor's participation deadline (up to four months to obtain a signed contract of sale, or up to six months to go to closing) when it determines that granting that period is in the best interest of the Department.

(5) In determining the eligibility of a mortgagor to participate in the Pre-foreclosure Sale procedure, the mortgagee shall arrange for the valuation of the property according to instructions issued by the Secretary, to assist in determining whether the property's as-is appraised value is at least 70% of the outstanding mortgage indebtedness (principal and accrued interest only) at the time application is made to pursue a pre-foreclosure sale. In cases where the appraised value is less than 70% of the outstanding debt, the mortgagee must obtain local HUD Office approval for a "variance" from this criterion before the mortgagor can be permitted to participate in the pre-foreclosure sale procedure.

(6) The offer to purchase the property should net HUD at least 87% of the appraised value of the property. However, the mortgagee may exercise discretion in cases where the net proceeds would be less than 87%, if the mortgagee believes that it would still be in HUD's best interest to permit the sale to occur. In such cases, the mortgagee must refer the matter to the Chief of Loan Management at the local HUD Office with the recommendation that the sale be approved by granting a "variance" in that case from the "net proceeds" criterion.

**Consideration**

Mortgagors who qualify for the pre-foreclosure sale procedure and who close an approved sale shall be able to retain from the sales proceeds before

disbursement to the mortgagee, the base amount of $750 (seven hundred fifty dollars).

In addition to the base amount, the mortgagor will be able to retain an additional amount of $250 (two hundred fifty dollars) from the proceeds of sale if the closing of an approved pre-foreclosure sale occurs within three (3) months of the commencement of the mortgagor's participation in the pre-foreclosure sale procedure (i.e., from the time the mortgagor is advised in writing that he may participate in the procedure),

If, despite a good faith effort—as determined by the mortgagee—a property does not sell during the mortgagor's period of participation in the PFS procedure, the mortgagee will authorize a title search of the participant's mortgage for title problems and encumbrances (if one was not already performed during the period of participation). If any obstacles to obtaining clear and marketable title are resolved pursuant to instructions from the Secretary, the mortgagee will process a deed-in-lieu of foreclosure from the mortgagor. The mortgagee shall follow prescribed methods of processing the deed-in-lieu and will disburse consideration in the amount of $500 to the mortgagor upon completion of the deed-in-lieu transaction. This consideration is 100% reimbursable to the mortgagee through the FHA claims process.

**Other Provisions**

(1) All sales contracts submitted for consideration under the pre-foreclosure sale procedure shall contain a clause which provides that HUD approval (directly or through the mortgagee, as prescribed by the Secretary) is a pre-condition of the sale.

(2) Purchasers in approved pre-foreclosure sales may qualify for FHA mortgage insurance.

**The Closing of the Pre-Foreclosure Sale; Payment of Claims**

Prior to closing the sale:

(1) The mortgagee will provide to the Closing Agent a list of those parties entitled to receive financial consideration and the amounts payable out of sale proceeds.

(2) The Closing Agent will calculate the net sale proceeds and communicate this data to the mortgagee, so that the mortgagee can ascertain that the actual terms of the transaction are in accordance with the proposed sale that the mortgagee had approved earlier.

If the mortgagee approves the transaction, and closing occurs, the Closing Agent will pay the consideration set forth in the list previously provided by the mortgagee, and will send the net proceeds of sale and a form HUD–1 to the mortgagee.

Upon receipt of the payoff funds, the mortgagee will file a claim for the balance due to it under the terms of the contract for insurance. In addition, an administrative fee of $1,000 will be payable, as part of the claim, to the mortgagee for each approved pre-foreclosure sale that goes to closing. Payment of this fee, which is not subject to debenture interest, will be made under the provisions of Section 204(a) of the National Housing Act (12 U.S.C. 1710(a)), as amended by Section 1064 of the McKinney Homeless Assistance Amendments Act of 1988 (P.L. 100–628).

For proposed pre-foreclosure sales that "fall through," or are sought without positive result, the mortgagee should file its claim under existing procedures for conveyance claims, and in compliance with any additional provisions which may be applicable to conveyance claims that follow a mortgagor's unsuccessful participation in the PFS procedure. Section 203.355 has been amended to include definitions of the "end of participation" in the Pre-foreclosure Sale procedure, so mortgagees can calculate the appropriate timeframe within which they must initiate foreclosure or accept a deed-in-lieu of foreclosure where no actual pre-foreclosure sale has resulted.

**Other Changes**

A conforming amendment is also being made to § 200.155(a). That section provides for the various methods by which a mortgagee may perfect a claim for the payment of mortgage insurance benefits. The case of a pre-foreclosure sale is being added to this list.

Section 203.501 is being added to set forth the Department's policy that mortgagees must consider the financial consequences of their elective servicing action and that HUD expects mortgagees to take those appropriate actions which will generate the smallest financial loss to the Department.

**Other Matters**

*Justification for Interim Rule and for the 45-day Comment Period*

The Department has determined that it is impracticable and contrary to the public interest to have notice and public procedure before making the provisions of this interim rule effective, and that expeditious promulgation of this interim rule provides a benefit to all the parties involved.

A successfully completed pre-foreclosure sale benefits the mortgagor, who avoids the stigma of foreclosure on his or her credit record, and also benefits HUD, which can expect to save by not paying foreclosure-related costs. HUD also saves on maintenance costs and marketing expenses for properties which would otherwise be conveyed to the Department following foreclosure. Mortgagees also benefit through incorporating this loss-mitigation technique into their overall loan servicing, by earning an additional administrative fee and by frequently being able to file claims for insurance benefits sooner, following a successful pre-foreclosure sale, than they would following a post-foreclosure conveyance claim.

Because the requirements and procedures contained in this interim rule are based on the Pre-Foreclosure Sale Demonstration Program established by a notice published in the **Federal Register** on May 29, 1991, at 56 FR 24324, and because this interim rule takes into consideration the public comments received on that notice, the Department believes there is adequate justification for shortening the public comment period to 45 days.

*Sunset Provision*

The Department has adopted a policy of setting a date for expiration of an interim rule unless a final rule is published before that date. Therefore, this interim rule will expire on a date 18 months from the date of publication.

*Environmental Finding*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, D.C. 20410.

*Information Collection Requirements*

The collection of information requirements contained in this interim rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. The public reporting burden for the collection of information requirements contained in this interim rule is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and

completing and reviewing the collection of information. Information on these requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN—NATIONWIDE PRE-FORECLOSURE SALE PROCEDURE

| Description of information collection | Number of respondents | Number of responses per respondent | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|---|
| Disclosure by Applicants | 14,040 | 1 | 14,040 | .50 | 7020 |
| Certifications by Participants | 10,800 | 1 | 10,800 | .05 | 540 |
| Transactional: | | | | | |
| Mortgagees (approving Participation) | 10,800 | 1 | 10,800 | .15 | 1620 |
| Variance Requests | 2,700 | 1 | 2,700 | .25 | 645 |
| Closings | 6,480 | 2.30 | 14,904 | .75 | 11,178 |
| Reporting | 10,800 | 1 | 10,800 | .30 | 3240 |
| Total (annual) burden | 55,620 | | 64,044 | | 24,273 |

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this interim rule before publication and by approving it certifies that this interim rule does not have a significant economic impact on a substantial number of small entities because this interim rule pertains to a limited number of single-family mortgage situations. It expands the options available to financially distressed mortgagors and does not adversely affect any mortgagor rights or interests under existing FHA-insured loan servicing regulations.

*Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this interim rule does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government. The purpose of this interim rule is to implement the requirements and methods of pre-foreclosure sales as a means of assisting qualified mortgagors in avoiding foreclosure of their FHA-insured mortgages and of saving the Department money.

*Executive Order 12606, the Family*

The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this interim rule does not have potential significant impact on family formation, maintenance, and general well-being.

*Semiannual Agenda*

This interim rule was listed as item 1587 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20440), pursuant to Executive Order 12866 and the Regulatory Flexibility Act.

**List of Subjects**

*24 CFR Part 200*

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

*24 CFR Part 203*

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, the Department amends parts 200 and 203 in chapter II of title 24 of the Code of Federal Regulations as follows:

## PART 200—INTRODUCTION

1. The authority citation for part 200 is revised to read as follows:

**Authority:** 12 U.S.C. 1701–1715z–18, 1701s, and 1715z–11; 42 U.S.C. 3535(d), 3543, and 3544.

2. In § 200.155, paragraph (a) is amended by adding at the end the following sentence, to read as follows:

**§ 200.155 Claim requirements.**

(a) * * * The mortgagee may also perfect its claim for the payment of the insurance benefits in the case of a Pre-Foreclosure Sale conducted in accordance with 24 CFR 203.370.

* * * * *

## PART 203—SINGLE FAMILY MORTGAGE INSURANCE

3. The authority citation for Part 203 is revised to read as follows:

**Authority:** 12 U.S.C. 1701q, 1709, 1710, 1715b; 42 U.S.C. 3535(d). In addition, subpart C is also issued under 12 U.S.C. 1715u.

4. Section 203.355 is amended by revising the introductory sentence of paragraph (a); by revising the first sentence of paragraph (c); and by adding a new paragraph (g), to read as follows:

**§ 203.355 Acquisition of property.**

(a) *In general.* Upon default of a mortgage, except as provided in paragraphs (b) through (g) of this section, the mortgagee shall take one of the following actions within nine months from the date of default, or within any additional time approved by the Secretary or authorized by §§ 203.345, 203.346, or 203.650 through 203.660: * * *

* * * * *

(c) *Law prohibiting foreclosures within nine months.* If the laws of the State in which the mortgaged property is located or if Federal bankruptcy law does not permit the commencement of foreclosure within the time limits described in paragraphs (a), (b), and (g) of this section, the mortgagee must commence foreclosure within 60 days after the expiration of the time during which foreclosure is prohibited. * * *

* * * * *

(g) *Pre-foreclosure sale procedure.* Within 60 days of the end of a mortgagor's participation in the pre-foreclosure sale procedure, *or* nine (9) months after default, whichever is later, if no closing of an approved pre-

foreclosure sale has occurred, the mortgagee must obtain a deed-in-lieu of foreclosure, with title being taken in the name of the mortgagee or the Secretary, or commence foreclosure. The end-of-participation date is defined as:

(1) Four months after the date of commencement of participation, if there is no signed Contract of Sale at that time, unless extended by the Commissioner;

(2) Six months after the date of commencement of participation, if there is a signed contract but settlement has not occurred by that date, unless extended by the Commissioner;

(3) The date the mortgagee is notified of the mortgagor's withdrawal from the Pre-foreclosure Sale procedure; or

(4) The date of the letter sent by the mortgagee to the mortgagor prior to the expiration of the customary participation period, terminating the mortgagor's opportunity to participate in the Pre-foreclosure Sale procedure.

5. Section 203.356 is amended by revising the section heading; by redesignating the existing text as paragraph (a); and by adding a new paragraph (b), to read as follows:

**§ 203.356 Notice of foreclosure; reasonable diligence requirements; notice of pre-foreclosure sale.**

* * * * *

(b) The mortgagee must give written notice to the Secretary within the time frame prescribed by the Secretary of the acceptance of any mortgagor into the pre-foreclosure sale procedure.

6. Section 203.360 is amended by revising the section heading; by redesignating the existing text as paragraph (a); and by adding a new paragraph (b), to read as follows:

**§ 203.360 Notice of property transfer or pre-foreclosure sale and application for insurance benefits.**

* * * * *

(b) Within 30 days of the closing of an approved pre-foreclosure sale, the mortgagee shall notify the Commissioner on a form prescribed by him of the pre-foreclosure sale.

7. Section 203.365 is amended by revising paragraph (a), to read as follows:

**§ 203.365 Documents and information to be furnished the Secretary; claims review.**

(a) *Items to be furnished the Secretary.* Within 45 days after the deed is filed for record, in the case of a conveyance claim; or, in the case of a claim arising from a pre-foreclosure sale, within 30 days after the closing of the pre-foreclosure sale, unless extended by the Commissioner, the mortgagee must forward to the Secretary:

(1) A copy of the deed to the Secretary that has been filed for record and the title evidence continued so as to include recordation of the deed; or evidence, as prescribed by the Secretary, of the closing of the pre-foreclosure sale.

(2) Fiscal data pertaining to the mortgage transaction.

(3) Any additional information or data that the Secretary may require.

* * * * *

8. A new § 203.370 is added immediately after § 203.369 and before the undesignated center heading, "Condition of Property", to read as follows:

**§ 203.370 Pre-foreclosure sales.**

(a) *General.* HUD will pay FHA insurance benefits to mortgagees in cases where, in accordance with all regulations and procedures applicable to pre-foreclosure sales, the mortgaged property is sold by the mortgagor, after default and *prior to* foreclosure, at its current fair market value (less adjustments as the Commissioner may deem appropriate) but for less than the mortgage loan amount currently outstanding.

(b) *Notification of mortgagor.* The mortgagee shall give notice, according to prescribed procedures, of the opportunity to be considered for the pre-foreclosure sale procedure to each mortgagor in default. All notices to mortgagors must be in an accessible format, if requested, or if required by the person's known disability, as required by 24 CFR part 9.

(c) *Eligibility for the Pre-foreclosure Sale Procedure.* In order to be considered for the pre-foreclosure sale procedure, a mortgagor:

(1) Must be an owner occupant in a single family residence that is security for a mortgage insured under this part, unless otherwise prescribed by the Secretary.

(2) Must have an account in default, for such period as determined by the Secretary, which default is the result of an adverse and unavoidable financial situation.

(3) Must have been provided notice of the Mortgage Assignment Program (24 CFR 203.650, *et seq*), and either have been found ineligible by HUD, or have made an informed decision not to apply for an assignment.

(4) Must have, at the time application is made to pursue a pre-foreclosure sale, a mortgaged property whose current fair market value, compared to the amount needed to discharge the mortgage, meets the criterion established by the Secretary, unless a variance is granted by the Secretary.

(5) Must have received homeownership counseling, as defined by the Secretary, and have executed a certification to that effect.

9. Section 203.401 is amended by redesignating paragraph (c) as paragraph (d); by adding a new paragraph (c); and by revising the newly redesignated paragraph (d), to read as follows:

**§ 203.401 Amount of payment—conveyed and non-conveyed properties.**

* * * * *

(c) *Pre-foreclosure Sales.* Where a claim for insurance benefits is filed in accordance with this subpart, based on a pre-foreclosure sale approved by or on behalf of the Secretary (under the provisions of § 203.370), the amount of insurance benefits shall be computed by adding to the original principal balance of the mortgage (as increased by the amount of open-end advances made by the mortgagee and approved by the Commissioner) which was unpaid on the date of closing of the pre-foreclosure sale, the amount of all applicable items set forth in § 203.402; provided however that appropriate adjustment shall be made for any such items covered by proceeds of the pre-foreclosure sale.

(d) *Final Payment.* (1) The mortgagee may not file for any additional payments of its mortgage insurance claim after six months from payment by the Commissioner of the final payment except for:

(i) Cases where the Commissioner requests or requires a deficiency judgment.

(ii) Other cases where the Commissioner determines it appropriate and expressly authorizes an extension of time.

(2) For the purpose of this section, the term *final payment* shall mean, in the case of claims filed for conveyed properties, the payment under subpart B of this part which is made by the Commissioner based upon the submission by the mortgagee of all required documents and information filed pursuant to § 203.365. In the case of claims filed under claims without conveyance of title, *final payment* shall mean the payment which is made by the Commissioner based upon submission by the mortgagee of all required documents and information filed pursuant to §§ 203.368 and 203.401(b). In the case of claims filed pursuant to pre-foreclosure sales, *final payment* shall mean the payment which is made by the Commissioner based upon submission by the mortgagee of all required documents and information

filed pursuant to §§ 203.370 and 203.401(d).

10. Section 203.402 is amended by revising the introductory paragraph; by adding a new paragraph (k)(3); by revising paragraph (l); and by adding new paragraphs (s) and (t), to read as follows:

**§ 203.402 Items included in payment—conveyed and non-conveyed properties.**

The insurance benefits paid in connection with foreclosed properties, whether or not conveyed to the Commissioner; and those properties conveyed to the Commissioner as a result of a deed in lieu of foreclosure; and those properties sold under an approved pre-foreclosure sale shall include the following items:

* * * * *

(k) * * *

(3) Where a claim for insurance benefits is being paid following a pre-foreclosure sale, without foreclosure or conveyance to the Commissioner in accordance with § 203.370, an amount equivalent to the sum of:

(i) The debenture interest which would have been earned, as of the date of the closing of the pre-foreclosure sale, on an amount equal to the amount by which an insurance claim determined in accordance with § 203.401(a) exceeds the amount of the actual claim being paid in debentures; plus

(ii) The debenture interest which would have been earned, from the date of the closing of the pre-foreclosure sale to the date when payment of the claim is made, on the portion of the insurance benefits paid in cash if such portion had been paid in debentures, except that if the mortgagee fails to meet any of the applicable requirements of § 203.365 within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(l) Reasonable costs of appraisal under § 203.368(e) or pursuant to § 203.370;

* * * * *

(s) Reasonable costs of the title search ordered by the mortgagee, in accordance with procedures prescribed by the Secretary, to determine the status of a mortgagor meeting all other criteria for approval to participate in the Pre-foreclosure Sale procedure.

(t) The administrative fee as authorized by the Secretary and payable to the mortgagee for its role in facilitating a successful pre-foreclosure sale, said fee not to be subject to the payment of debenture interest thereon.

11. Section 203.403 is amended by adding a new paragraph (d), to read as follows:

**§ 203.403 Items deducted from payment—conveyed and non-conveyed properties.**

* * * * *

(d) With regard to claims filed pursuant to successful pre-foreclosure sales, all amounts received by the mortgagee relating to the sale of the property.

12. Section 203.410 is amended by revising the introductory text in paragraph (a); by removing the word "or" from the end of paragraph (a)(1)(ii); by removing the period at the end of paragraph (a)(1)(iii), and adding in its place "; or"; and by adding a new paragraph (a)(1)(iv), to read as follows:

**§ 203.410 Issue date of debentures.**

(a) Conveyed properties, claims without conveyance, pre-foreclosure sales—Where the property is conveyed to the Commissioner, or the mortgagee or other party acquires title to the property under the claim without conveyance procedure or the pre-foreclosure sale procedure, debenture shall be dated:

* * * * *

(1) * * *

(iv) The property was acquired after default by a third party under the pre-foreclosure sale procedure.

13. A new § 203.501 is added to read as follows:

**§ 203.501 Loss mitigation.**

Mortgagees must consider the comparative effects of their elective servicing actions, and must take those appropriate actions which can reasonably be expected to generate the smallest financial loss to the Department.

Dated: September 12, 1994.

**Jeanne K. Engel,**

*General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.*

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federal register

Friday
September 30, 1994

Part IX

# Department of Housing and Urban Development

**Government National Mortgage Association Guaranteed Multiclass Securities; Notice**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R–94–1698; FR–3555–N–04]

RIN 2503–ZA00

## Government National Mortgage Association Guaranteed Multiclass Securities

**AGENCY:** Government National Mortgage Association, HUD.

**ACTION:** Supplemental Notice for GNMA Multiclass Securities Program.

**SUMMARY:** In its May 26, 1994 **Federal Register** Notice, the Government National Mortgage Association ("GNMA") implemented a new program under which GNMA would guarantee multiclass mortgage-backed securities. The Notice provided for implementation in two stages, the initial stage and the full participation stage. With the completion of the initial stage, GNMA is now commencing the full participation stage of its multiclass securities program. The program is intended to benefit borrowers using federally insured or guaranteed mortgages by increasing investment demand for GNMA guaranteed mortgage-backed securities ("MBS") that are backed by these mortgages, thus reducing financing costs for these mortgages; and raise revenues through the receipt of guarantee and other fees by GNMA.

**DATES:** *Effective date:* September 30, 1994.

*Comments due date:* November 29, 1994.

**ADDRESSES:** Interested persons are invited to submit comments regarding this Notice to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, Washington, D.C. 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address. Facsimile (FAX) comments are *not* acceptable.

**FOR FURTHER INFORMATION CONTACT:** Guy S. Wilson, Vice President, Government National Mortgage Association, Room 6151, 451 Seventh Street, S.W., Washington, D.C. 20410–9000, telephone (202) 401–8970. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–3649. (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:**

### I. Background

GNMA published a Notice in the **Federal Register** on May 26, 1994 (59 FR 27290) ("May 26 Notice") which implemented a new program under which GNMA guarantees real estate mortgage investment conduits ("REMICs"). GNMA began its program with an "initial stage". During the initial stage, participation was limited to firms selected through a Competitive Application Procedure ("CAP"), standard documents were drafted, internal control procedures and information gathering and retention processes were developed, and a Multiclass Securities Guide was produced. This Guide will be updated from time to time to reflect changes in the policies governing the program, in accordance with usual GNMA procedures, and consistent with any regulations established for the program.

GNMA received two comments regarding participation by minority and women-owned firms, both of which recommended that GNMA mandate participation by minority and women-owned businesses. GNMA considered these comments in the development of its policy as discussed below in section IV. One of these comments also recommended that GNMA pay the transaction costs from its guaranty fee. GNMA has decided not to take this approach, for the reasons discussed in section II.

GNMA is now commencing the full participation stage, which GNMA is implementing with the publication of this Notice. Changes in GNMA's multiclass securities program are noted in this Notice. Any provisions in the May 26 Notice that are not revised in this Notice remain in full force and effect.

### II. Program Revisions for Full Participation Stage

#### *A. Types of Eligible Securities*

For the full participation stage, GNMA is expanding its multiclass securities program to include multiclass securities in addition to those issued by trusts electing REMIC status. Section 306(g) of the National Housing Act (12 U.S.C. 1721(g)), authorizes GNMA to guarantee "securities . . . based on or backed by a trust or pool composed of mortgages. * * *" This language does not limit GNMA to any specific type of security so long as it is based on or backed by a trust or pool composed of eligible mortgages. In addition, section 3004 of the Omnibus Budget Reconciliation Act of 1993, which revised GNMA's statutory provisions relating to guaranty fees, referred to fees charged for GNMA's guaranty of "multiclass securities backed by a trust or pool of securities or notes guaranteed by the Association under this subsection. * * *"

#### *B. Sponsors*

GNMA is willing to undertake a variety of transactions, provided that GNMA determines in its sole discretion that they enhance the goals of the program and provide protection against any loss to GNMA for which it would not otherwise be responsible.

The obligations of Sponsors with respect to any particular type of GNMA multiclass securities transaction will be established from time to time by GNMA and will be set forth in the Multiclass Securities Guide. In general:

1. Sponsors are required to demonstrate their capacity to accumulate those MBS needed for a securities issuance as to which GNMA has committed to issue its guaranty.

2. Sponsors are required to represent the structural integrity of the issuance under all cash flow scenarios and demonstrate to GNMA's satisfaction their ability to indemnify GNMA for a breach of this representation. Sponsors are required to have sufficient assets to back their representations and commitments to GNMA, as specifically set forth in the GNMA Multiclass Securities Guide.

3. For transactions involving the distribution of multiclass securities in a public offering, the Sponsors are responsible for assuring that distribution will be by licensed broker-dealers in good standing under the Securities and Exchange Act of 1934.

GNMA requires entities wishing to participate in this program as Sponsors to provide GNMA with certain information and meet certain requirements. Currently, a Sponsor must have minimum capital assets of $250 million in shareholders' equity, evidenced by the Sponsor's most recent audited financial statements. GNMA also requires that Sponsors have had at least one REMIC transaction with the Federal National Mortgage Association ("FNMA") or the Federal Home Loan Mortgage Corporation ("FHLMC"). If an entity that wishes to sponsor GNMA guaranteed transactions has not had this experience, GNMA requires an alternative demonstration of experience, as GNMA determines appropriate. A computer bulletin board, gREX, will be used to announce revisions to this policy.

Entities that would like to obtain application forms or obtain further

information should contact Chemical New York, Inc., 1325 G St., N.W., Suite 640, Washington, D.C. 20005.

*C. Selection of Trustee*

GNMA has determined that the safety, integrity and efficiency of the multiclass securities program will be best served if a limited number of institutions act as trustee. In making this determination, GNMA was particularly mindful of the long-term obligations associated with acting as trustee for multiclass securities.

To secure trustee services, GNMA has requested applications from qualified institutional trustees under a CAP. In the meantime, the trustees approved for the initial stage will continue to serve as trustees for multiclass securities transactions. Trustee services must include tax administration as well as customary securities administrative and payment functions. Trustees approved pursuant to the CAP will be authorized to serve with respect to securities issued during the period (not more than five years) specified in the request for applications. Once a trustee is assigned to a specific transaction, it will continue to act as trustee for the life of the security, unless removed in accordance with the Trust Agreement. Sponsors will use trustees approved pursuant to the CAP. Trustees will be paid from funds related to the transaction.

*D. Trust Counsel and Accounting Firms*

Trust counsel selected by the Sponsor will provide customary securities and tax opinions on the transactions, in accordance with GNMA's requirements.

Accounting firms selected by the Sponsor will perform customary procedures with respect to financial information included in the offering documents and as part of the closing process, in accordance with GNMA's requirements. GNMA currently requires entities wishing to participate in GNMA guaranteed transactions to submit certain information to GNMA. Interested parties may obtain the appropriate forms from Chemical New York, Inc. ("Chemical Bank") at the address set out in section II.B. above.

*E. The Guaranty Fee*

GNMA will (1) make such multiclass guaranty fee adjustments as it determines, in GNMA's sole discretion, to be appropriate to fulfill the objectives of the program, and (2) establish and adjust from time to time such guaranty fees as it determines to be appropriate for other types of multiclass securities transactions in accordance with the objectives of the program. Guaranty fees and changes in guaranty fees will be announced on gREX (described below).

*F. Information Distribution System (gREX)*

GNMA has established a multiclass securities bulletin board, named "gREX", which is operated by GNMA's Information Agent, which at present is Chemical Bank. Financial information and offering circular disclosure information for multiclass securities transactions will be posted on gREX. Interested parties may obtain gREX software by contacting Chemical Bank at 1–800–2341–REX, or at the address set out in section II.B. above. Users must pay for their connect time and software.

*G. Eligible MBS*

The May 26, 1994 Notice identified eligible MBS as GNMA I MBS backed by single family mortgages that were issued on or after February 1, 1993. GNMA intends to expand the program to include other MBS and perhaps other securities. Announcements of additional eligible securities will be made on gREX.

*H. Distribution Date*

With the expansion of eligible collateral and securities, GNMA may vary the distribution date, referred to as the "Payment Date" in the May 26, 1994 Notice, based on the type of multiclass transaction. Announcements of any changes in the distribution date of multiclass securities will be made on gREX.

*I. Transaction Expenses*

During the initial stage, GNMA had no liability for payment of any fees or expenses, other than those of GNMA's Legal Advisor, in connection with the GNMA guaranty of multiclass securities. One commentor suggested that GNMA include the transaction expenses in its guaranty fee, citing the practice of FNMA and FHLMC. GNMA notes that these entities have different programs from GNMA in that both of these entities issue securities as well as guaranteeing the securities.

GNMA has decided to continue the initial stage approach. Therefore, GNMA will not be liable for transaction expenses, other than the Legal Advisor's fees. Subject to GNMA requirements, during the full participation stage, the Sponsors generally will select the program participants to be used for each transaction and negotiate the fees (other than those of the Financial Advisor) to be paid to the other program participants.

**III. Combination of Outstanding MBS**

There are a large number of outstanding MBS in current principal amounts that are not large enough to be traded efficiently in the current MBS market. In addition, there are certain multiclass securities transactions that can be effected most efficiently if the trust issuing the multiclass securities is funded by GNMA MBS having large outstanding principal amounts. As necessary, to facilitate other multiclass securities transactions, to enhance the secondary market for MBS and to raise revenues through the receipt of guarantee fees by GNMA, GNMA is implementing a program to permit the combination of MBS into a new GNMA combined multiclass security entitled to the payments on the underlying MBS. The guaranty fees to be charged to effect combination transactions will be established by GNMA from time to time and announced on gREX.

**IV. Participation by Minority and Women-Owned Firms**

*A. Sponsor Responsibilities*

Pursuant to Executive Order 12138 of May 18, 1979, 3 CFR, 1979 Comp., p. 393, as amended, and Executive Order 12432 of July 14, 1983, 3 CFR, 1983 Comp., p. 198, GNMA anticipates meaningful participation by minority and women-owned businesses ("MWOBs") and minority and women-owned law firms ("MWOLFs") in the GNMA multiclass securities program. Sponsors are required to develop and implement a plan that sets goals for meaningful participation by MWOBs as Co-sponsors. Also, Sponsors are required to ensure that the trust counsel they engage for transactions develop and implement a plan that sets goals for meaningful participation by MWOLFs.

1. Co-sponsor Participation

GNMA considers meaningful participation for MWOB Co-sponsors to be the use of one of the following two options. Sponsors may increase the level of participation by Co-sponsors.

*a. Best Efforts Option.* Under the Best Efforts Option, the Co-sponsor is provided the opportunity to sell at least 10 percent of the transaction, computed on the basis of the original principal balance, for a 24-hour period, prior to the Sponsor's or other's marketing of the allocated percentage of the transaction.

*b. Underwriting Option.* Under the Underwriting Option, the Co-sponsor is provided the opportunity to acquire, at the option of the Co-sponsor, at least 10 percent of the transaction, at prices negotiated between the Sponsor and the Co-sponsor. In addition to the sales

price, and in lieu of a schedule of discounts, the Sponsor pays the Co-sponsor an amount equal to 1/8th of 1 percent of the principal amount purchased.

2. Trust Counsel Participation

GNMA considers meaningful participation of MWOLFs to be at least ten percent of the billing for the work completed for each transaction.

*B. Minority and Women-Owned Businesses as Sponsors*

GNMA encourages MWOBs to become Sponsors, either individually or as joint venturers, by providing a 15 percent reduction in the GNMA guaranty fee for transactions closed and securities sold solely by MWOB Sponsors and Co-sponsors.

*C. Certification*

Sponsors are required to provide GNMA with two annual certifications:

1. With respect to Co-sponsors:

a. Certification that the Sponsor has developed and implemented a plan that sets goals for meaningful participation by Co-sponsors, and

b. Certification of the extent to which MWOBs have been participants in the Sponsor's transactions as Co-sponsors.

2. With respect to Co-trust Counsel:

a. Certification from trust counsel used for transactions by the Sponsor that the trust counsel has developed and implemented a plan that sets goals for meaningful participation by MWOLFs, and

b. Certification from such trust counsel of the extent to which MWOLFs have been participants in the transactions for the Sponsor.

*D. Applicability*

The requirements described in this Section IV are not applicable to securities that GNMA guarantees under the program described in Section III.

*E. Inclusion in Guide*

This policy on minority participation is included in the GNMA Multiclass Securities Guide.

**V. Delegations of Authority**

The President, each Vice President and each Assistant Vice President of GNMA have been given general signing authority on behalf of GNMA pursuant to the existing GNMA Bylaws, found at 24 CFR Part 310. In addition, the Vice President in charge of multiclass securities has delegated authority to sign all contracts and other documents, instruments and writings that call for execution by GNMA in order to affix the GNMA guaranty on a multiclass securities transaction, to the Director of Multiclass Securities. Further, the Vice President in charge of multiclass securities has delegated authority to execute the Transaction Initiation Letter in the form specified by the Multiclass Securities Guide to the Senior Multiclass Securities Specialist.

**VI. Waiver**

Section 300.13 of Title 24 of the Code of Federal Regulations permits GNMA to waive or alter any of its requirements, to impose additional requirements, to amend or rescind any or all of its regulations. GNMA considers this regulation applicable to the May 26, 1994 Notice, this Notice, the GNMA Multiclass Securities Guide and its multiclass regulations when issued, as well as the existing MBS regulations. The operation of a securities guaranty program requires that GNMA have the ability to revise its requirements and operations in accordance with program objectives and the needs and fluctuations of the financial markets.

**VII. Terms and Conditions for Participants**

As a condition of participation in the program, each participant must agree to the conditions set out below.

*A. Participant Certifications*

Each Sponsor, Co-sponsor, all participating trust counsel and accounting firms, and other persons or entities designated by GNMA from time to time in the Multiclass Securities Guide, must certify as of January 1 each year that neither the corporate nor partnership entity, nor any officer, partner or professional presently employed and who will work on the subject matter of this Notice, has been convicted of, or found liable in a civil action for, fraud, forgery, bribery, falsification or destruction of records, making false statements or any other offense indicating a lack of business integrity that seriously and directly affects the present responsibility of the officer, partner or professional, and no entity or individual to which this certification is applicable is currently suspended or debarred by a State or the Federal government. Participants must report any event which would necessitate a change in this certification to GNMA within 60 days of its occurrence.

Material adverse changes in status including voluntary and non-voluntary terminations, defaults, fines, and agency findings of material non-compliance or non-conformance with agency rules and policies with state and federal agencies and government sponsored enterprises must be reported to GNMA within 60 business days of their occurrence.

*B. Compliance with the GNMA Multiclass Securities Guide*

Participants will comply with the requirements of the GNMA Multiclass Securities Guide.

**VIII. Appropriate Investors**

GNMA guaranteed multiclass securities may not be suitable investments for all investors. No investor should purchase securities of any class unless the investor understands, and is able to bear, the prepayment, yield, liquidity and market risks associated with that class.

**IX. Authority and Full Faith and Credit of the United States**

The General Counsel of the Department of Housing and Urban Development has issued an opinion which concludes that GNMA has the authority to guarantee multiclass securities and that such GNMA guarantees will constitute general obligations of the United States backed by the full faith and credit of the United States.

**X. Other Matters**

*Information Collections*

The information collection requirements contained in this notice and the associated forms for application for participation in the program have been submitted to the Office of Management and Budget ("OMB") for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). HUD has published a notice of that information collection approval request on September 28, 1994 (59 FR 49410), which invited public comment on them. That notice requested expedited review of these requirements by OMB. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.**

*Executive Order 12866, Regulatory Planning and Review*

This Notice was reviewed by OMB under Executive Order 12866 as a significant regulatory action. Any changes made in this Notice as a result of that review are clearly identified in the docket file for this Notice, which is available for public inspection in the Office of HUD's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

*Environmental Review*

A Finding of No Significant Impact with respect to the environment has been made for the May 26 Notice in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, D.C. 20410. This Notice merely amends the May 26 Notice.

*Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this Notice does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government. This notice only affects participants and investors in GNMA guaranteed single and multiclass securities industry. States and their political subdivisions would not be affected.

*Executive Order 12606, the Family*

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this Notice does not have potential significant impact on family formation, maintenance, and general well-being because it only affects participants and investors in GNMA guaranteed single and multiclass securities.

*Lobbying Activities*

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by a final rule codified as 24 CFR Part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read Part 86, particularly the examples contained in Appendix A of the regulation.

Any questions about that rule should be directed to the Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–3000. Telephone: (202) 708–3815; TDD number (202) 708–1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

**Authority:** Section 309, National Housing Act (12 U.S.C. 1723).

Dated: September 23, 1994.

**Dwight P. Robinson,**

*President.*

[FR Doc. 94–24360 Filed 9–29–94; 8:45 am]

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# Reader Aids

**Federal Register**

Vol. 59, No. 189

Friday, September 30, 1994

## INFORMATION AND ASSISTANCE

**Federal Register**

| | |
|---|---|
| Index, finding aids & general information | 202–523–5227 |
| Public inspection announcement line | 523–5215 |
| Corrections to published documents | 523–5237 |
| Document drafting information | 523–3187 |
| Machine readable documents | 523–3447 |

**Code of Federal Regulations**

| | |
|---|---|
| Index, finding aids & general information | 523–5227 |
| Printing schedules | 523–3419 |

**Laws**

| | |
|---|---|
| Public Laws Update Service (numbers, dates, etc.) | 523–6641 |
| Additional information | 523–5230 |

**Presidential Documents**

| | |
|---|---|
| Executive orders and proclamations | 523–5230 |
| Public Papers of the Presidents | 523–5230 |
| Weekly Compilation of Presidential Documents | 523–5230 |

**The United States Government Manual**

| | |
|---|---|
| General information | 523–5230 |

**Other Services**

| | |
|---|---|
| Data base and machine readable specifications | 523–3447 |
| Guide to Record Retention Requirements | 523–3187 |
| Legal staff | 523–4534 |
| Privacy Act Compilation | 523–3187 |
| Public Laws Update Service (PLUS) | 523–6641 |
| TDD for the hearing impaired | 523–5229 |

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## FEDERAL REGISTER PAGES AND DATES, SEPTEMBER



## CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**1 CFR**

11.....48989

**Proclamations:**

6717.....47057
6718.....47525
6719.....47779
6720.....48379
6721.....48381
6722.....48987
6723.....49149
6724.....49333
6725.....49569
6726.....49777
6727.....49779

**Administrative Orders:**

Presidential Determinations:
No. 94–31 of July 1, 1994 (Amended by No. 94–47 of Sept. 9, 1994).....48553
No. 94–45 of August 31, 1994.....46889
No. 94–46 of September 8, 1994.....47229, 49292
No. 94–47 of September 9, 1994.....48553
No. 94–48 of September 9, 1994.....48555
No. 94–50 of September 19, 1994.....49781
No. 94–51 of September 21, 1994.....49783

**Executive Orders:**

5327 (Revoked in part by PLO 7039).....48568
July 2, 1910 (Revoked in part by PLO 7079).....45234
12710 (See DOT rule September 8).....46720
12926.....47227
12927.....47781
12928.....48377

**5 CFR**

Ch. LIX.....49335
213.....46895
316.....46985
532.....49571
731.....47527
734.....48765

**Proposed Rules:**

213.....49034
532.....46201
1650.....46934

**7 CFR**

51.....49338
58.....50120
91.....50120
93.....50120
94.....50120
95.....50120
98.....50120
300.....46321, 48990
301.....46721, 46899, 48777
318.....48990
319.....46321
400.....47783
457.....45971, 49151, 49157, 49166
905.....48780
916.....45183, 46902
917.....45183, 46902
920.....45617
922.....45184, 49341
923.....49341
924.....49341
928.....45186
929.....46906
932.....46907
944.....45617, 46907
945.....46721
947.....45187, 48783
948.....48785
955.....45188
967.....49571
980.....46911
981.....46321
998.....46912
1004.....49343
1036.....48557, 49344
1106.....48786
1137.....46157
1230.....46323
1421.....47528
1468.....47530, 48787
1700.....46723
1944.....49346
1956.....46158

**Proposed Rules:**

46.....46772
201.....47286
319.....46572
457.....48827
905.....46361
906.....45241
928.....45630
944.....46361
981.....46203
1250.....46936
1413.....46937, 49214
1421.....46937
1468.....47564
1718.....49594
1767.....45631
1770.....47097
3402.....48978

**Proposed Rules:**
210.....50112

**32 CFR**

104.....49817
155.....48565
199.....49817
220.....49000
351.....47538
516.....45974
552.....45212
701.....46760
776.....45213

**33 CFR**

20.....45757
100.....47539, 49821
117.....46172, 46333, 47540, 47541, 49822
165.....45227, 46173, 46335, 46336, 46918, 46919, 47542, 47543, 49197
334.....48801
402.....45228

**Proposed Rules:**
Ch. I.....47576
100.....46208
117.....45252, 46209, 47577, 49228, 49875
120.....46211
128.....46211
165.....46378

**34 CFR**

600.....47801
602.....46174
628.....46174
667.....46174
682.....46174

**Proposed Rules:**
Ch. VI.....49036
645.....45964
668.....49766
685.....49623

**36 CFR**

242.....45924
1191.....48542

**Proposed Rules:**
701.....48580
702.....48193

**37 CFR**

1.....45757, 47082

**Proposed Rules:**
1.....49876

**38 CFR**

3.....45975, 46337
4.....46338
14.....47082
17.....49579
36.....48565, 49199

**Proposed Rules:**
3.....46379
8.....45254
21.....45644

**39 CFR**

111.....47085
491.....45625

**Proposed Rules:**
111.....45652, 47827, 48194

**40 CFR**

9.....46339, 47384, 50042
52.....45230, 45231, 45233, 45976, 45978, 45980, 45985, 46175, 46176, 46178, 46180, 46182, 46552, 46553, 46556, 46557, 46562, 46763, 46764, 46766, 46920, 46924, 46929, 47088, 47254, 47256, 47258, 47260, 47261, 47263, 47544, 47546, 47801, 47804, 47806, 47807, 48174, 48392, 48395, 48399, 48403, 49003, 49208
60.....47264, 49466, 49581
63.....46339, 48175
70.....48802
80.....48472
81.....45978, 45980, 45985, 47088, 47807, 48395, 48399, 48403, 48405, 49003
85.....45626, 48472
86.....48472, 50042
88.....48472, 50042
112.....49005
148.....47982
172.....45600
180.....46190, 46352, 46353, 49351, 49824, 49825
185.....46768, 49825
186.....49825
260.....47982
261.....47982
264.....47982
265.....47982
266.....47982
268.....47980
271.....47982
272.....45986
282.....49211
300.....45628, 46354, 46569, 47384, 48178
600.....48472
766.....46355
799.....45629, 46355

**Proposed Rules:**
Ch. I.....46780, 46947
9.....49108
51.....49877
52.....45653, 46015, 46019, 46212, 46213, 46380, 46479, 46601, 46602, 46780, 46948, 47104, 47287, 47288, 47578, 47580, 47827, 48195, 48410, 48411, 48415, 48416, 48582, 48839, 49229, 49361
60.....46381, 46602, 46780, 48198, 48228, 48258, 48259
61.....48259
70.....46948, 47105, 47828, 48845, 49882
81.....46019, 46380, 46479, 47104, 48415, 48416, 49361
82.....49108
85.....47581, 48664, 49230
122.....49037
123.....49037
131.....49037
132.....49037
152.....47289
156.....47582
158.....48416
180.....49370, 49372
260.....47583
261.....47583
273.....47583
372.....49888
700.....45526
720.....45526
721.....45526, 49484
723.....45526
725.....45526
745.....45872, 47832, 49373, 49890

**41 CFR**

105–72.....47268
301–1.....46192
301–7.....46192
301–8.....46192
301–11.....46192
301–16.....46192
301–17.....46192
302–6.....46357

**Proposed Rules:**
101–20.....46951

**42 CFR**

405.....46500, 49826
410.....49826
411.....49826
412.....45330
413.....45330, 49826
417.....49834
435.....48805
436.....48805
456.....48811
466.....45330
482.....45330, 46500
485.....45330, 46500
489.....45330
494.....49826
1003.....48566

**Proposed Rules:**
121.....46482

**43 CFR**

3720.....47815
3730.....47815
3800.....47815
3810.....47815
3820.....47815
3830.....47815
3850.....47815

**Public Land Orders:**
4522 (Revoked in part by 7086).....48568
7086.....48568
7087.....48568
7079.....45234
7080.....45234
7081.....45987
7082.....47096
7083.....48179
7084.....48406
7085.....48406
7088.....49843
7089.....49843
7090.....49844

**Proposed Rules:**
39.....46952
403.....46801
432.....49623
2800.....46806
2810.....46806
2880.....46806

**44 CFR**

**Proposed Rules:**
64.....49353
65.....49581
67.....48261, 49623
152.....48277

**Proposed Rules:**
67.....49583

**45 CFR**

1602.....49584

**Proposed Rules:**
1307.....46806
1608.....49891
1621.....49893

**46 CFR**

10.....49294
12.....49294
67.....49844
298.....47548

**Proposed Rules:**
Ch. I.....47576
28.....47034
30.....48845

**47 CFR**

24.....46195
32.....46930
61.....48826
64.....46357, 46769, 48826
69.....48826
73.....46930, 46931, 46932, 46933, 48826, 49006, 49213, 49354, 49585, 49847
76.....46358
90.....45988

**Proposed Rules:**
2.....49466
36.....46606
64.....46806
73.....46385, 47111, 48281, 48846
90.....49230

**48 CFR**

10.....46019
13.....46021
22.....46020
45.....45657
52.....45657, 46019, 46020
1801.....46358, 46359
1807.....46358
1815.....46358, 46359
1825.....46359
1844.....46359
1852.....46359
5232.....46213
5252.....46213
5552.....46022
9903.....48568, 48569

**Proposed Rules:**
5.....47112
7.....47112
10.....47112
15.....47112
16.....47112
17.....47112
19.....46385
31.....47776, 47777
37.....47112
44.....47112
45.....47778, 47583
46.....46386, 47112
52.....46385, 47112, 47583
53.....49037
601.....47584
602.....47584
603.....47584
604.....47584
605.....47584
606.....47584
608.....47584
609.....47584

610.....47584
613.....47584
614.....47584
615.....47584
616.....47584
617.....47584
619.....47584
622.....47584
623.....47584
625.....47584
627.....47584
628.....47584
631.....47584
632.....47584
633.....47584
634.....47584
636.....47584
637.....47584
639.....47584
642.....47584
643.....47584
647.....47584
649.....47584
651.....47584
652.....47584
653.....47584
670.....47584

**49 CFR**

106.....49128
107.....49128
110.....49128
130.....49128
171.....48762, 49128
172.....48548, 49128
173.....49128
174.....48548, 49128
175.....49128
176.....49128
177.....49128
178.....49128
179.....49128
180.....49128
212.....50086
234.....50086
382.....49585
391.....49585
571.....49010, 49355, 49586
1249.....49847

**Proposed Rules:**

Ch. III.....46892
Ch. IV.....47576
28.....49374
192.....46219, 49896
195.....46219, 49896
215.....49374
225.....49375
229.....47676
231.....47676
232.....47676
538.....48589
567.....49038, 49044
571.....49375, 49901
582.....46952
1039.....47292
1145.....47292

**50 CFR**

17.....45989, 46710, 46715, 48136, 48406, 49025, 49032, 49752, 49848, 49860
20.....45235, 45588, 48569, 49303
204.....46126
285.....46569, 48575
301.....46126, 49591
371.....47283
638.....47563
641.....49356
642.....49356
651.....47815
663.....46126
671.....46126
672.....45239, 46126, 49592, 49863
675.....46126, 46570, 46771, 49032, 49593, 49864
676.....46126
677.....46126
685.....46933
695.....49357

**Proposed Rules**

13.....47212
14.....47212
17.....45254, 45659, 46022, 46219, 46607, 46611, 47112, 47293, 47294, 48154, 49045, 49907, 49908
20.....46320
23.....46023, 49046
100.....45924
227.....46808
285.....48847
405.....45255
424.....45661
611.....46810
638.....46387, 48591, 49377, 49384
640.....48591
642.....46387, 48591, 49384
644.....46612
646.....47833
654.....49908
658.....46810
659.....46387, 48591, 49384
675.....49051
676.....49637
677.....46816
678.....48847

## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

**H.R. 4624/P.L. 103–327**

Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995 (Sept. 28, 1994; 108 Stat. 2298; 40 pages)

**Last List September 28, 1994**

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