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Vol. 62 No. 66

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Monday  
April 7, 1997

# Federal Register

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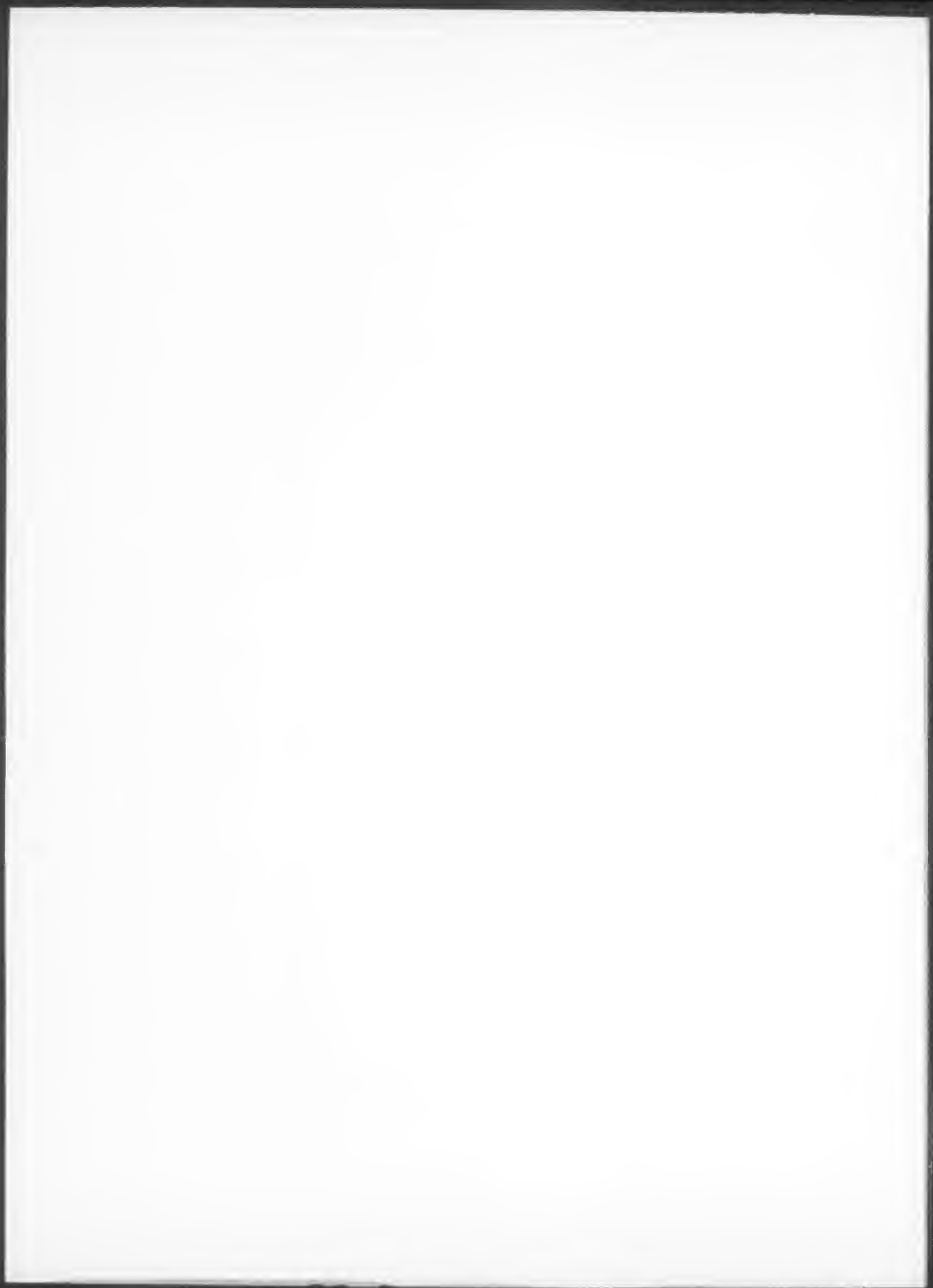
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Monday  
April 7, 1997

# federal register

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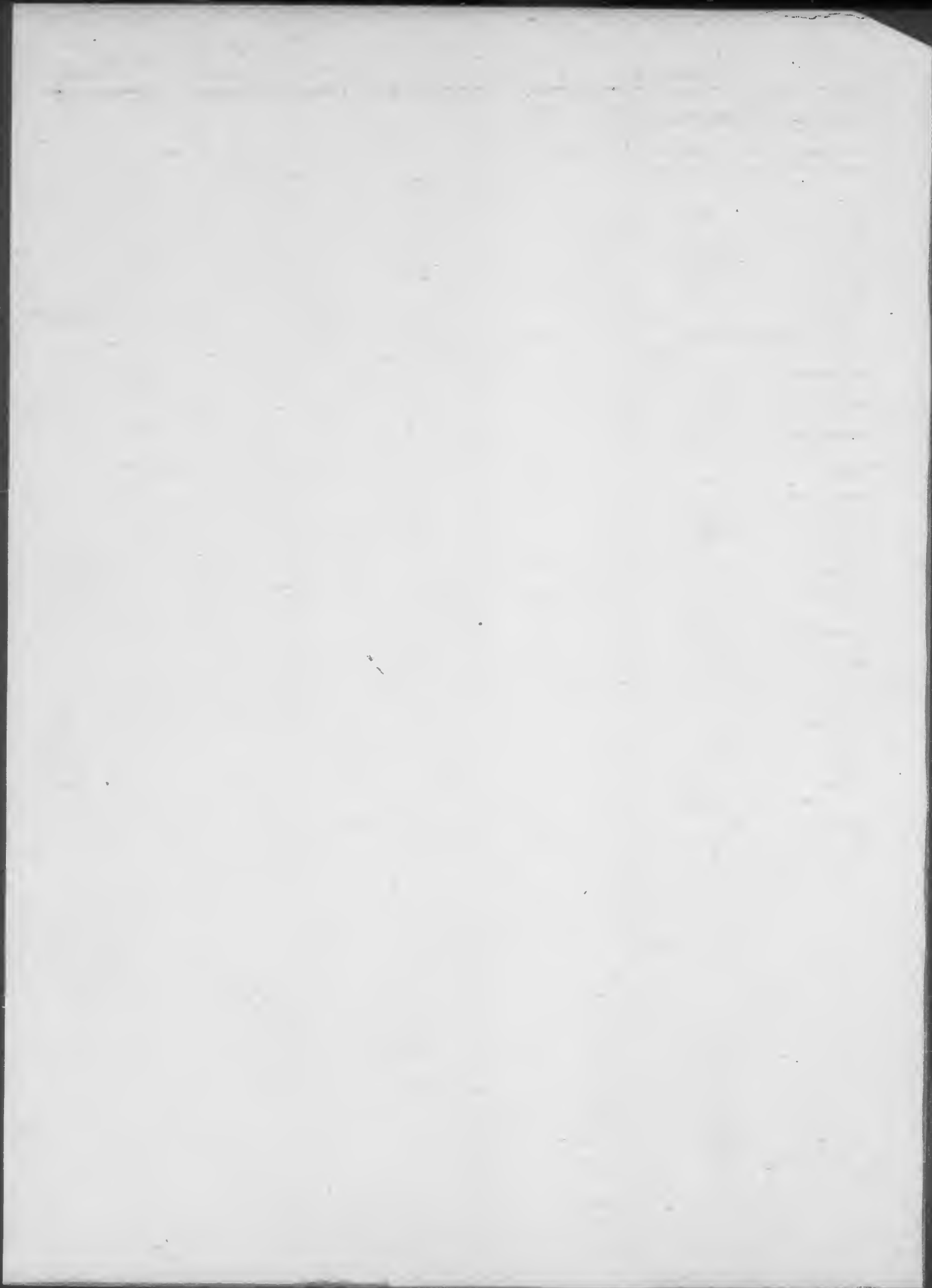
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# Rules and Regulations

Federal Register

Vol. 62, No. 66

Monday, April 7, 1997

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

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

RIN 3206-AH59

#### Prevailing Rate Systems; Abolishment of San Joaquin, California, Nonappropriated Fund Wage Area; Correction

**AGENCY:** Office of Personnel Management.

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

**SUMMARY:** This document contains a correction of the final rule abolishing the San Joaquin, California, nonappropriated fund (NAF) Federal Wage System (FWS) wage area.

**EFFECTIVE DATE:** February 21, 1997.

**FOR FURTHER INFORMATION CONTACT:** Frank Derby, (202) 606-2848.

**SUPPLEMENTARY INFORMATION:** This document contains a correction of a regulation that was published as an interim rule on September 17, 1996 (61 FR 48817) and adopted as final without changes on January 22, 1997 (62 FR 3195). The effective date section had an incorrect date for the conversion of NAF wage employees from the San Joaquin, CA, NAF wage schedule to the Sacramento, CA, NAF wage schedule.

#### List of Subjects in 5 CFR Part 32

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

Office of Personnel Management.

James B. King,  
Director.

Accordingly, 5 CFR Part 532 is corrected by making the following correcting amendment:

## PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

**Authority:** 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. On page 3195, second column, the second sentence of the effective date section is corrected to read: "Employees currently paid rates from the San Joaquin, CA, NAF wage schedule will continue to be paid from that schedule until their conversion to the Sacramento, CA, NAF wage schedule on April 19, 1997, the effective date of the next Sacramento, CA, wage schedule."

[FR Doc. 97-8719 Filed 4-4-97; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### Rural Business-Cooperative Service

### Rural Utilities Service

### Farm Service Agency

### 7 CFR Parts 1901, 1940, 1951, 2003, and 3570

RIN 0575-AC10

#### Community Facilities Grant Program

**AGENCY:** Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

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

**SUMMARY:** The Rural Housing Service (RHS), formerly the Rural Housing and Community Development Service (RHCDS), a successor agency to the Farmers Home Administration (FmHA), promulgates a new regulation for Community Facilities Grants (CFG). This action implements legislation which authorizes grants for developing essential community facilities. RHS also amends its existing regulations that are to be utilized in administering Community Facilities grants. The intended effect of this action is to publish regulations and application processing procedures to implement this new grant program.

**DATES:** These interim regulations are effective April 7, 1997. Comments must be received on or before June 6, 1997.

**ADDRESSES:** Submit written comments in duplicate to the Director, Regulations and Paperwork Management Division, Rural Housing Service, U.S. Department of Agriculture, Stop 0743, 1400 Independence Ave. SW., Washington, DC 20250-0743. Comments may also be submitted via the Internet by addressing them to "comments@rus.usda.gov" and must contain "Grants" in the Subject. All comments will be made available for public inspection during regular work hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Barton, Loan Specialist, Community Programs Division, Rural Housing Service, U.S. Department of Agriculture, Stop 3222, South Agriculture Building, 1400 Independence Avenue SW., Washington, DC 20250-3222, telephone (202) 720-1504.

#### SUPPLEMENTARY INFORMATION:

##### Classification

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

##### Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It has been determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

##### Civil Justice Reform

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule.

### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal Mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

### Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. § 605(b), the Rural Housing Service (RHS) certifies that this rule will not have a significant economic impact on a substantial number of small entities due to the small amount of funds being infused into the economy. Because it also will not require small entities to do more than large entities to participate in the program, a Regulatory Flexibility Analysis has not been prepared.

### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the Agency announces its intention to seek Office of Management and Budget (OMB) approval of new reporting and recordkeeping requirements. These requirements have been approved by emergency clearance by OMB under OMB Control Number 9575-0173.

The Agency offers direct and guaranteed loans for the development of essential community facilities in rural areas. This rule will add a CFG program to the services currently available. Many rural communities have experienced significant economic stress over the years. The economies of most rural communities were dependent upon the agricultural sector. In many cases, the problems caused by the structural changes in agriculture have been exacerbated by other factors such as

isolation, inadequate child care, closing of many small manufacturing plants, and lack of health care. At the same time, rapidly developing technology, such as telecommunications, has brought new opportunities. Unfortunately, many rural communities have suffered such severe economic constraints for so long that they are unable to provide their residents with the basic services needed to improve their quality of life. The Community Facilities (CF) programs assist these poorest rural communities with financial resources to develop or improve health care facilities, child care centers, schools, libraries, fire and rescue buildings and equipment, town halls, street improvements, and so on. When these basic services become available to residents, the community becomes stronger and better equipped to continue its economic and community development efforts.

The information requested by the Agency is vital to making prudent lending, monitoring, and servicing decisions. The Agency must determine that the applicant is eligible and the project is financially feasible before making a loan or awarding a grant. Annual audits and certain other management reports are required to ensure that the project remains viable and that the services are being provided. Other information may be required for servicing loans.

The public burden for the CF loan programs has been previously approved by OMB. The Agency intends to establish a new information collection docket for 7 CFR part 3570, subpart B, which will contain only those additional items required for the CF grant program.

### Public Burden in 7 CFR Part 3570, Subpart B

At this time, the Agency is requesting OMB clearance of the following burden:

Form RD 3570-3, "Agreement for Administrative Requirements for Community Facilities Grants." This document serves as the contract between the Agency and the grantee. The agreement sets forth the rights and responsibilities of both parties to the grant. The grantee reads and signs the form.

Paragraph 3570.11(c). This paragraph requires grant applicants to certify, in writing, that they are unable to finance the proposed project from their own resources, through commercial credit at reasonable rates and terms, or other funding sources without CFG program assistance. This helps meet the statutory intent that these grants are awarded

only to the neediest rural communities who have no other financial resources.

*Estimate of Burden:* Public reporting burden for this collection is estimated to range from 15 minutes to 1 hour per response.

*Respondents:* Associations, public entities, nonprofit corporations, and federally recognized Indian tribes seeking CFG funding to provide essential community facilities to the residents of the poorest rural communities.

*Estimated Number of Respondents:* 200.

*Estimated Number of Responses per Respondent:* 1.7.

*Estimated Total Annual Burden on Respondents:* 234 hours.

The subject regulation is published for public review and comment. Additional copies of the interim rule or copies of the referenced forms may be obtained from Barbara Williams, Regulations and Paperwork Management Division, at (202) 720-9734. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized, included in the request for OMB approval, and will become a matter of public record. Comments should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, and to Barbara Williams, Regulations and Paperwork Management Division, U.S. Department of Agriculture, Rural Housing Service, Stop 0743, 1400 Independence Avenue SW., Washington, D.C. 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this rule.

### Intergovernmental Review

This program is listed in the Catalog of Federal Domestic Assistance under number 10.766 and is subject to the

provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The Agency has conducted intergovernmental consultation in the manner delineated in RD Instruction 1940-J.

#### Discussion of Interim Rule

It is the policy of the Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for public comment notwithstanding the exemption of 5 U.S.C. 553 with respect to such rules.

The purpose of this rule is to implement section 763 of Pub. L. 104-127 which amends section 306(a) of the Consolidated Farm and Rural Development Act (CONACT). This statutory amendment created Community Facilities (CF) grants, and specifically authorized up to \$10 million per fiscal year for this program. In creating the CF grant program, Congress recognized that many rural poverty-stricken communities are not eligible for RHS's direct or guaranteed CF loan programs and, therefore, have no access to assistance for essential community facilities such as health care, public safety, and fire protection services.

Due to the recent natural disasters that have occurred in the southern and midwestern areas, many of our poorest rural communities are faced with devastation. Many communities are in emergency situations as a result of the tornadoes and flooding and need assistance in restoring basic services to their residents. These grant funds will help at a time when they are the most needed.

#### Background

However, this action is to comply with public law and any delay would be contrary to the public interest. Comments are being solicited on this interim final rule and will be considered in development of the final rule. The Department is making this action effective immediately upon publication in the *Federal Register*.

The CF grant program will work in conjunction with the CF loan programs. For those poverty-stricken communities, the grant program will provide the minimum amount sufficient for feasibility purposes to bridge the gap enabling communities to afford the Agency's loan programs. Failure to implement this rule as quickly as possible denies access to this essential program for these communities.

There is no historical data available to quantify benefits. However, the benefit to be derived from the program is the

opportunity to invest in essential community facilities in rural areas, thereby improving the availability and expertise of services in rural communities so rural residents can enjoy an improved quality of life.

The interim rule describes the procedures for applying for and obtaining this grant assistance. The Agency is providing for public comment to allow those who wish to suggest alternative rule provisions or courses of action in implementing this program an opportunity to express their views.

CFG funds shall be awarded to eligible associations, units of general local government, nonprofit corporations, and federally recognized Indian tribes. These same applicants are eligible to apply for other CF financial assistance.

The statute requires that CFG funds be used to provide the Federal share of the cost of developing specific essential community facilities in rural areas. The amount of the CFG funds for a facility shall not exceed 75 percent of the cost of developing the facility and provide for a graduated scale for the amount of the Federal share, with higher Federal shares for facilities in communities that have lower community population and income levels. The Agency has developed a scale to predetermine grant funding percentages based on population, project location, and the income of the community being served by the facility. The Agency has further determined that to better utilize limited funds available under the program, the maximum amount of grant assistance is further limited to the minimum amount sufficient for feasibility purposes to provide for facility operation and this amount shall not exceed 50 percent of a State's annual allocation or \$50,000, whichever is greater.

#### Eligibility

Grants may be made to associations, federally recognized Indian Tribes, nonprofit corporations, and public bodies serving rural areas. Rural area determinations will be made to ascertain the eligibility of the applicant and the proposed facility. The procedure established in this rule to determine eligible grant areas is based on density requirements used by the Agency in other programs.

In accordance with section 306(a)(19)(B)(ii) of the CONACT, CFG funds may be used to pay up to 75 percent of the cost to develop the essential community facility. The remaining 25 percent becomes the applicant's responsibility. Other funding participation through either leveraging, local fundraising, other CF

financial assistance, or applicant contribution will enable CFG funds to reach a broader range of rural economic development efforts. The 25 percent requirement must be in accordance with 7 CFR part 3015, "Uniform Federal Assistance Regulations," 7 CFR part 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," or 7 CFR part 3019, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," as applicable. Under 7 CFR parts 3015, 3016, and 3019, matching funds, with certain exceptions, cannot come from another Federal grant program.

No Federal funds for this program will be granted to an applicant who has an outstanding delinquent Federal debt until the delinquent account has been paid in full. Funds will not be granted to an applicant if an outstanding judgment has been obtained by the United States in a Federal Court (other than in the United States Tax Court), which has been recorded, unless it has been paid in full or otherwise satisfied.

Definitions referenced in the interim final rule are based on working definitions used by the Agency or other Federal agencies for similar programs. The term "rural" and "rural area" and "primarily" were taken from related program regulations also under authority of the CONACT. The essential community facility must be located in a rural area and serve primarily rural areas. "Rural" and "Rural Area" in this context means a city, town, or unincorporated area that has a population of 25,000 inhabitants or less. "Primarily" refers to the majority of the residents and businesses being served by the facility which must be at least 51 percent rural.

#### Application Process

Since the Agency is adding CFG funds to the services it currently offers, applicants need only submit one application to apply for CF financial assistance. Application requirements include submission of an "Application for Federal Assistance" and other supporting documentation which is consistent with each program. The application process is a two-stage procedure to determine applicant eligibility, project priority status, and funding availability. The supporting documentation required is necessary for the Agency to determine if the applicant is eligible, if the proposed grant purposes are eligible, and to help the

Agency select the best applications for funding.

#### Project Selection

With respect to the CFG program, section 306(a)(19)(B)(iii) of the CONACT requires use of a graduated scale so that rural communities with low populations and low income levels receive more funds. The type of graduation used is left to the Agency to determine. Therefore, the Agency has determined that eligible projects are those located in rural communities with populations of 25,000 or less and serving primarily rural communities where the median household income of the area to be served is below the higher of the poverty line or 80 percent of the State nonmetropolitan median household income. Population and income are used to determine how much grant assistance an applicant is eligible for and to assign points to prioritize projects for funding selections. The Agency has developed graduated scales using the above criteria. Using these graduated scales, the rural communities with low populations and low income levels have the greatest chance of being selected for funding and will get the highest share of grant funds.

Projects will be selected based on a priority point system, set out in the regulation. Preference is given to projects located in rural areas with low populations and low income levels. A project located in a rural community with a population of 5,000 or less will receive 30 points, one with between 5,001 and 15,000 residents will be given 20 points, and one with up to the maximum 25,000 population will be awarded 10 points. A similar scale has been designed for the median household income of the project's service area. Eligible communities will have incomes below the poverty line or specific percentages of their State's nonmetropolitan median household income. Thirty points will be assigned to those projects serving communities with median household incomes below the higher of the poverty line or 60 percent of the Statewide figure, 20 points to those projects serving communities with median household incomes below the higher of the poverty line or 70 percent of the Statewide figure, and 10 points to those projects serving communities with median household incomes below the higher of the poverty line or 80 percent of the Statewide figure. Points will be added if the project is for health care or public safety and is identified in the State strategic plan. In cases of special need, discretionary points may be given for situations such as geographic

distribution of grant funds, loss of a community facility due to an accident or natural disaster, or for any projects leveraging funds from other sources. The Agency believes that this system will ensure that CFG assistance is awarded to the neediest, most rural communities as required by the authorizing legislation.

After each project has been rated, points will be totaled and ranked with all other applications in the State so that grants are awarded competitively. This selection method is considered the best method for the CFG program due to the large number of applications expected and the limited grant funds available.

The Agency monitors and evaluates each project it approves in accordance with 7 CFR parts 3015, 3016, and 3019. Monitoring typically involves site visits by Agency personnel, telephone conversations, and evaluation of the grantee's written activity reports. Activity reports are used to evaluate projects and must be in a measurable form. Termination of grant provisions is in accordance with 7 CFR parts 3015, 3016, and 3019. These provisions are consistent with other Agency programs.

#### Miscellaneous

Recipients are subject to all applicable Federal laws, Federal and United States Department of Agriculture (USDA) policies, regulations, and procedures applicable to Federal financial assistance. Requirements concerning civil rights, the environment, debarment and suspension, etc., have been listed in this rule. These restrictions are consistent with other Agency programs.

#### List of Subjects

##### 7 CFR Part 1901

Civil rights, Compliance reviews, Fair housing, Minority groups.

##### 7 CFR Part 1940

Administrative practice and procedure, Agriculture, Allocations, Grant Programs—Housing and community development, Loan programs—Agriculture, Rural areas.

##### 7 CFR Part 1951

Account servicing, Grant programs—Housing and community development, Reporting requirements, Rural areas.

##### 7 CFR Part 2003

Organization and functions (government agencies).

##### 7 CFR Part 3570

Accounting, Administrative practice and procedure, Conflicts of interests, Environmental impact statements, Fair housing, Grant programs—Housing and

community development, Loan programs—Housing and community development, Rural areas, Subsidies.

Therefore, chapters XVIII and XXXV of title 7, Code of Federal Regulations, are amended as follows:

#### PART 1901—PROGRAM-RELATED INSTRUCTIONS

1. The authority citation for part 1901 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 40 U.S.C. 442; 42 U.S.C. 1480, 2942.

#### Subpart E—Civil Rights Compliance Requirements

2. Section 1901.204 is amended by adding a paragraph (a)(28) to read as follows:

##### § 1901.204 Compliance reviews.

(a) \* \* \*

(28) Community Facilities Grants in part 3570, subpart B, of this title.

\* \* \* \* \*

#### PART 1940—GENERAL

3. The authority citation for part 1940 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

#### Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

4. Section 1940.592 is added to read as follows:

##### § 1940.592 Community facilities grants.

(a) *Amount available for allocations.* See § 1940.552(a).

(b) *Basic formula criteria, data source, and weight.* See § 1940.552(b).

(1) The criteria used in the basic formula are:

(i) State's percentage of National rural population—50 percent.

(ii) State's percentage of National rural population with income below the poverty level—50 percent.

(2) Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF).

SF (criterion (b)(1)(i) × 50 percent) + (criterion (b)(1)(ii) × 50 percent)

(c) *Basic formula allocation.* See § 1940.552(c). States receiving administrative allocations do not receive formula allocations.

(d) *Transition formula.* The transition formula for Community Facilities Grants is not used.

(e) *Base allocation.* See § 1940.552(e). States receiving administrative allocations do not receive base allocations.

(f) *Administrative allocation.* See § 1940.552(f). States participating in the formula base allocation procedures do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g).

(h) *Pooling of funds.* See § 1940.522(h). Funds will be pooled at midyear and yearend. Pooled funds will be placed in the National Office reserve and will be made available administratively.

(i) *Availability of the allocation.* See § 1940.552(i).

(j) *Suballocation by State Director.* See § 1940.552(j).

(k) *Other documentation.* Not applicable.

## PART 1951—SERVICING AND COLLECTIONS

5. The authority citation for part 1951 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

### Subpart E—Servicing of Community and Insured Business Programs Loans and Grants

#### § 1951.201 [Amended]

6. Section 1951.201 is amended by adding the words "and grants" after the words "Community Facility loans."

## PART 2003—ORGANIZATION

7. The authority citation for part 2003 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480; Public Law 100—82.

### Subpart A—[Amended]

8. Exhibit A of subpart A, paragraph 2, under the heading of Assistant Administrator—Community and Business Programs is amended by adding the words "and grants" after the words "community facility loans."

9. Chapter XXXV, title 7, Code of Federal Regulations is amended by adding a new part 3570 to read as follows:

## PART 3570—COMMUNITY PROGRAMS

### Subpart A—[Reserved]

### Subpart B—Community Facilities Grant Program

#### Sec.

- 3570.51 General.
- 3570.52 Purpose.
- 3570.53 Definition.
- 3570.54 Equal opportunity and fair housing.
- 3570.55–3570.56 [Reserved]

3570.57 Authorities, delegations, and redelegation.

3570.58–3570.59 [Reserved]

3570.60 Processing preapplications, applications, and completing grant dockets.

3570.61 Eligibility for grant assistance.

3570.62 Use of grant funds.

3570.63 Limitations.

3570.64 Determining the maximum grant assistance.

3570.65 Project selection priorities.

3570.66 [Reserved]

3570.67 Applications determined ineligible.

3570.68–3570.69 [Reserved]

3570.70 Other considerations.

3570.71 Application review, approval and obligation of funds.

3570.72–3570.75 [Reserved]

3570.76 Planning and performing development.

3570.77–3570.79 [Reserved]

3570.80 Grant closing and delivery of funds.

3570.81–3570.82 [Reserved]

3570.83 Audits.

3570.84 Grant servicing.

3570.85 Programmatic changes.

3570.86 Subsequent grants.

3570.87 Grant suspension, termination, and cancellation.

3570.88 Management assistance.

3570.89 [Reserved]

3570.90 Exception authority.

3570.91 Regulations.

3570.92 [Reserved]

3570.93 Regional Commission grants.

3570.94 Forms and exhibits

3570.95–3570.99 [Reserved]

3570.100 OMB control number.

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989.

### Subpart A—[Reserved]

### Subpart B—Community Facilities Grant Program

#### § 3570.51 General.

(a) This subpart outlines Rural Housing Service (RHS) policies and authorizations and sets forth procedures for making essential Community Facilities (CF) grants authorized under section 306(a)(19) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(19)).

(b) Funds allocated for use in accordance with this subpart are also to be considered for use by Native American tribes within a State regardless of whether State development strategies include Indian reservations within the State's boundaries. Native American tribes residing on such reservations must have equal opportunity along with other rural residents to participate in the benefits of these programs.

(c) Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to Agency employees, members of their families, close relatives, or business or

close personal associates is subject to the provisions of part 1900, subpart D, of this title. Applications for assistance are required to identify any relationship or association with an RHS employee.

(d) Copies of all forms referenced in this subpart are available in the Agency's National Office or any Rural Development field office.

(e) An outstanding judgment obtained against an applicant by the United States in a Federal Court (other than in the United States Tax Court) shall cause the applicant to be ineligible to receive any grant or loan until the judgment is paid in full or otherwise satisfied. Agency grant funds may not be used to satisfy the judgment.

(f) Grants made under this subpart will be administered under, and are subject to parts 3015, 3016, and 3019 of this title, as appropriate, and established Agency guidelines.

(g) The income data used to determine median household income must be that which accurately reflects the income of the population to be served by the proposed facility. The median household income of the service area and the nonmetropolitan median household income for the State will be determined using income data from the most recent decennial Census of the United States.

#### § 3570.52 Purpose.

The purpose of the Community Facilities grant program is to assist in the development of essential community facilities in rural areas. The Agency will authorize grant funds on a graduated basis. Eligible applicants located in small communities with low populations and low median household incomes may receive a higher percentage of grant funds. The amount of grant funds provided for a facility shall not exceed 75 percent of the cost of developing the facility.

#### § 3570.53 Definitions.

**Agency.** The Rural Housing Service (RHS), an agency of the U.S. Department of Agriculture, or a successor agency.

**Approval Official.** An official who has been delegated loan or grant approval authorities within applicable programs, subject to certain dollar limitations.

**Community facility (CF) (essential).**

The term "facility" refers to both the physical structure financed and the resulting service provided to rural residents. An essential community facility must:

- (1) Serve a function customarily provided by a local unit of government;
- (2) Be a public improvement needed for the orderly development of a rural community;

(3) Not include private affairs or commercial or business undertakings (except for limited authority for industrial parks);

(4) Be within the area of jurisdiction or operation for the public bodies eligible to receive assistance or a similar local rural service area of a not-for-profit corporation; and

(5) Be located in a Rural area, county, or multi-county area depending on the type of essential community facility.

**Grantee.** An entity with whom the Agency has entered into a grant agreement under this program.

**Instructions.** Agency internal procedure available in any Rural Development Office and variously referred to as Rural Development Instruction, RD Instruction, and FmHA Instruction.

**Nonprofit Corporations.** Any organization or entity that is eligible for RHS financial assistance in accordance with 7 CFR § 1942.17(b)(1)(B)(ii).

**Processing office.** The office designated by the State program official to accept and process applications for CF projects.

**Project cost.** The cost of completing the proposed community facility. (Facilities previously constructed will not be considered in determining project costs.) Total project costs will include only those costs eligible for CF assistance.

**Poverty line.** The level of income for a family of four, as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

**Public body.** Any State, county, city, township, incorporated town or village, borough, authority, district, economic development authority, or Native American tribe on a Federal or State reservation, or other federally recognized Indian tribe in rural areas.

**RHS.** The Rural Housing Service, an agency of the United States Department of Agriculture, or a successor agency.

**Rural areas.** The terms "rural" and "rural area" mean any city, town, or unincorporated area with a population of 25,000 inhabitants or less according to the latest decennial Census of the United States.

**RUS.** The Rural Utilities Service, an agency of the United States Department of Agriculture, or a successor agency.

**Service area.** The area reasonably expected to be served by the facility financed by the Agency.

**State.** The term "State" means each of the 50 States, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the

Republic of Palau, and the Federated States of Micronesia.

**State Director.** The term "State Director" means, with respect to a State, the Director of the Rural Development State Office.

**Statewide nonmetropolitan median household income.** The median household income of all rural areas of a State.

**Strategic plan.** A plan developed by each State for Rural Development initiatives and the type of assistance required. Plans shall identify goals, methods, and benchmarks for measuring success in carrying out the plan.

#### § 3570.54 Equal opportunity and fair housing.

The Agency will administer the program in accordance with equal opportunity and fair housing legislation and applicable Executive Orders. Federal statutes provide for extending RHS financial assistance without regard to race, color, religion, sex, national origin, age, disability, and marital or familial status. The participant must possess the capacity to enter into legal contracts under State and local statutes. All activities under this subpart shall be accomplished in accordance with title VI of the Civil Rights Act of 1964, the Civil Rights Act of 1968 (Fair Housing Act), the Rehabilitation Act of 1973, and all other Federal laws and Executive Orders prohibiting discrimination in Federal programs. To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250, or call 1-800-245-6340 (voice) or (202) 720-1127 (TDD).

#### §§ 3570.55-3570.59 [Reserved]

#### § 3570.60 Processing preapplications, applications, and completing grant dockets.

(a) Preapplications and applications for grants will be developed in accordance with applicable portions of §§ 1942.2, 1942.104, 1942.105, and 1980.851 of this title. For combination proposals, only one preapplication package and one application package should be prepared and submitted.

(b) Financial information contained in preliminary engineering and architectural reports will be prepared without considering grant assistance.

(c) The application package will be reviewed by the processing office for eligibility, the maximum amount of grant funds allowable, and scored for selection priority.

#### § 3570.61 Eligibility for grant assistance.

The essential community facility must primarily serve rural areas with

populations of 25,000 or less, where the median household income in the areas to be served by the proposed facility is below the higher of the poverty line or 80 percent of the State nonmetropolitan median household income.

(a) **Eligible applicant.** An applicant must be:

(1) A public body, such as a municipality, county, district, authority, or other political subdivision of a State;

(2) A nonprofit corporation or an association. Applicants other than utility-type applicants must have significant ties with the local rural community. Such ties are necessary to ensure to the greatest extent possible that a facility under private control will carry out a public purpose and continue to primarily serve rural areas. Ties may be evidenced by items such as:

(i) Association with, or controlled by, a local public body or bodies, or broadly based ownership and control by members of the community; or

(ii) Substantial public funding through taxes, revenue bonds, or other local Government sources or substantial voluntary community funding, such as would be obtained through a community-wide funding campaign; or

(3) A federally recognized Indian tribe on a Federal or State reservation.

(b) **Eligible facilities.** Essential community facilities:

(1) Must be located in rural areas, except for utility-type services, such as telecommunications or hydroelectric, serving both rural and nonrural areas. In such cases, RHS funds may be used to finance only that portion serving rural areas, regardless of facility location.

(2) Must be necessary for orderly community development and consistent with the State's strategic plan.

(c) **Credit elsewhere.** Applicants must be unable to finance the proposed project from their own resources, through commercial credit at reasonable rates and terms, or other funding sources without grant assistance under this subpart and certify to such status in writing.

(d) **Economic feasibility.** All projects financed under the provisions of this section must be based on satisfactory sources of revenues. The amount of CF grant assistance must be the minimum amount sufficient for feasibility purposes which will provide for facility operation and maintenance, reasonable reserves, and debt repayment.

(e) **Legal authority and responsibility.** Each applicant must have, or will obtain, the legal authority necessary for construction, operation, and maintenance of the proposed facility. The applicant shall be responsible for operating, maintaining, and managing



the facility and providing for its continued availability and use at reasonable rates and terms. This responsibility shall be the applicant's even though the facility may be operated, maintained, or managed by a third party under contract or management agreement.

#### § 3570.62 Use of grant funds.

Grant funds up to 75 percent of the cost of developing specific essential community facilities in rural areas may be used:

(a) To supplement financial assistance authorized in accordance with part 1942, subparts A and C, and part 1980, subpart I of this title. Funding for the balance of the project shall consist of other CF financial assistance, applicant contribution, or loans and grants from other sources.

(b) To assist in developing essential community facilities in rural areas as contained in §§ 1942.17(d)(1), 1942.112, and 1980.813 of this title.

#### § 3570.63 Limitations.

(a) Grant funds may not be used to:

- (1) Pay any annual recurring costs, including purchases or rentals that are generally considered to be operating and maintenance expenses;

- (2) Construct or repair electric generating plants, electric transmission lines, or gas distribution lines to provide services for commercial sale;

- (3) Refinance existing indebtedness;

- (4) Pay interest;

- (5) Pay for facilities located in cities or towns in excess of 25,000, except as noted in § 3570.61(b)(1);

- (6) Pay any costs of a project when the median household income of the population to be served by the proposed facility is above the higher of the poverty line or 80 percent of the nonmetropolitan median household income of the State;

- (7) Pay project costs when other loan funding for the project is not equal to, or less than, the current intermediate interest rate for CF loans (as contained in part 1810, subpart A, Exhibit B of this title, available in any Rural Development office);

- (8) Pay an amount greater than 75 percent of the cost to develop the facility;

- (9) Pay costs to construct facilities to be used for commercial rental where the applicant has no control over tenants and services offered;

- (10) Construct facilities primarily for the purpose of housing State, Federal, or quasi-Federal agencies; and

- (11) Pay for any purposes restricted by §§ 1942.17(d)(2), 1942.112(b), and 1980.814 of this title.

(b) Grant assistance will be provided on a graduated scale with higher grant funds going to small communities with the lowest median household income.

Grant assistance is limited to the following percentages of eligible project costs:

(1) 75 percent when the proposed project is:

- (i) Located in a rural community having a population of 5,000 or less; and

- (ii) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 60 percent of the State nonmetropolitan median household income.

(2) 55 percent when the proposed project is:

- (i) Located in a rural community having a population of 15,000 or less; and

- (ii) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 70 percent of the State nonmetropolitan median household income.

(3) 35 percent when the proposed project is:

- (i) Located in a rural community having a population of 25,000 or less; and

- (ii) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 80 percent of the State nonmetropolitan median household income.

(4) Grant assistance cannot exceed the applicable percentages contained in this section and may be further limited due to the availability of grant funds or by the maximum grant assistance allowable determined in accordance with § 3570.64.

#### § 3570.64 Determining the maximum grant assistance.

(a) *Responsibility.* State Directors are responsible for determining the applicant's eligibility for grant assistance. A "Worksheet for Computing Maximum Grant Assistance" (available in any Rural Development office) will be used to record the maximum allowable grant for each Community Facilities project.

(b) *Maximum grant assistance.* Grant assistance cannot exceed the lower of:

- (1) Qualifying percentage of eligible project cost determined in accordance with § 3570.63(b);

- (2) Minimum amount sufficient to provide for economic feasibility as determined in accordance with § 3570.61(d); or

- (3) Either 50 percent of the annual State allocation or \$50,000, whichever is

greater, unless an exception is made by the RHS Administrator in accordance with § 3570.90.

#### § 3570.65 Project selection priorities.

Applications are scored on a priority basis. Points will be distributed as follows:

(a) *Population priorities.* The proposed project is located in a rural community having a population of:

- (1) 5,000 or less—30 points;

- (2) Between 5,001 and 15,000—20 points; or

- (3) Between 15,001 and 25,000—10 points.

(b) *Income priorities.* The median household income of the population to be served by the proposed project is:

- (1) Below the higher of the poverty line or 60 percent of the State nonmetropolitan median household income—30 points;

- (2) Below the higher of the poverty line or 70 percent of the State nonmetropolitan median household income—20 points; or

- (3) Below the higher of the poverty line or 80 percent of the State nonmetropolitan median household income—10 points.

(c) *Other priorities.* Points will be assigned for one or more of the following initiatives:

- (1) Project is identified in the State strategic plan—10 points;

- (2) Project is for health care—10 points;

- (3) Project is for public safety—10 points.

(d) *Discretionary.* (1) The State Director may assign up to 15 points to a project, in addition to those that may be scored under paragraphs (a) through (c), of this section. These points are to address unforeseen exigencies or emergencies, such as the loss of a community facility due to an accident or natural disaster or the loss of joint financing if Agency funds are not committed in a timely fashion. In addition, the points will award projects benefitting from the leveraging of funds in order to improve compatibility and coordination between the Agency and other agencies' selection systems and for those projects that are the most cost effective.

(2) In selecting projects for funding at the National Office level, additional points will be awarded based on the priority assigned to the project by the State Office. These points will be awarded in the manner shown below. Only the three highest priority projects for a State will be awarded points. The Administrator may assign up to 30 additional points to account for geographic distribution of funds,

(3) In selecting projects for funding at the National Office level, additional points will be awarded based on the priority assigned to the project by the State Office. These points will be awarded in the manner shown below. Only the three highest priority projects for a State will be awarded points. The Administrator may assign up to 30 additional points to account for geographic distribution of funds,

emergency conditions caused by economic problems or natural disasters, and leveraging of funds.

Priority	Points
1 .....	5
2 .....	3
3 .....	1

**§§ 3570.66–3570.69 [Reserved]**

**§ 3570.70 Other considerations.**

Each application must contain the comments, necessary certifications, and recommendations of appropriate regulatory or other agency or institution having expertise in the planning, operation, and management of similar facilities as required by part 1942, subparts A and C, and part 1980, subpart I, of this title. Proposals for facilities financed in whole or in part with Agency funds must be coordinated with appropriate Federal, State, and local agencies as required by the following:

- (a) Intergovernmental review.
- (b) Civil rights compliance requirements.
- (c) Environmental requirements.
- (d) Governmentwide debarment and suspension.
- (e) Restrictions on lobbying.
- (f) Excess capacity or transfer of employment.
- (g) National Historic Preservation Act of 1966.
- (h) Uniform Relocation Assistance and Real Property Acquisition.
- (i) Floodplains and wetlands.
- (j) Flood or mudslide hazard area precautions.
- (k) Civil Rights Impact Analysis.

**§§ 3570.71–3570.75 [Reserved]**

**§ 3570.76 Planning and performing development.**

Planning and performing development will be handled in accordance with §§ 1942.9, 1942.18, and 1942.126 of this title.

**§§ 3570.77–3570.79 [Reserved]**

**§ 3570.80 Grant closing and delivery of funds.**

(a) The Agency's policy is that grant funds will not be disbursed from the Treasury until they are actually needed by the applicant and all borrower funds and other CF financial assistance are expended.

(1) Agency or other loan funds will be disbursed before the disbursal of any Agency grant funds except when:

- (i) Interim financing of the total estimated amount of loan funds needed during construction is arranged;
- (ii) All interim funds have been disbursed; and

(iii) Agency grant funds are needed before any other loan can be closed.

(2) If grant funds are available from other agencies and are transferred for disbursement by RHS, these grant funds will be disbursed in accordance with the agreement governing such other agencies' participation in the project.

(3) Any grant funds remaining will be handled in accordance with § 1942.17(p)(6) of this title.

(b) If the grant is made in connection with other CF financial assistance, grant closing must occur simultaneously with loan closing.

(c) Agency grant funds will be disbursed in accordance with §§ 1942.17(p)(2) and 1942.123 of this title.

(d) Payment for construction will be made in accordance with §§ 1942.17(p)(5) and 1942.127 of this title.

(e) An "Agreement for Administrative Requirements for Community Facilities Grants" will be signed by the grantee. For grants that supplement Agency loan funds, the grant should be closed simultaneously with the closing of the loan. However, when grant funds will be disbursed before loan closing, as provided in paragraph (a)(1) of this section, the grant will be closed not later than the delivery date of the first advance of grant funds.

**§§ 3570.81–3570.82 [Reserved]**

**§ 3570.83 Audit requirements.**

Audits will be conducted in accordance with § 1942.17(q)(4) of this title. The audit requirements apply only to the years in which grant funds are received. Audits must be prepared in accordance with Generally Accepted Government Auditing Standards (GAGAS) using the publication, "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."

**§ 3570.84 Grant servicing.**

Grants will be serviced in accordance with part 1951, subparts E and O of this title.

**§ 3570.85 Programmatic changes.**

The grantee shall obtain prior approval for any change to the objectives of the project. (For construction projects, a material change in approved space utilization or functional layout shall be considered such a change.) Failure to obtain prior approval of changes to the approved project or budget can result in suspension, refund, or termination of grant funds.

**§ 3570.86 [Reserved]**

**§ 3570.87 Grant suspension, termination, and cancellation.**

Grants may be suspended or terminated for cause or convenience in accordance with parts 3015, 3016, or 3019 of this title, as applicable.

**§ 3570.88 Management assistance.**

Grant recipients will be supervised, to the extent necessary, to ensure that facilities are constructed in accordance with approved plans and specifications and to ensure that funds are expended for approved purposes.

**§ 3570.89 [Reserved]**

**§ 3570.90 Exception authority.**

The Administrator may, in individual cases, make an exception to any non-statutory requirement or provision of this subpart if the Administrator determines that application of the requirement or provision would adversely affect the Government's financial interest and shows how the adverse impact will be eliminated or minimized if the exception is made. Requests for exceptions must be made in writing by the approval official.

**§ 3570.91 Regulations.**

Grants under this part will be in accordance with parts 3015, 3016, or 3019, as applicable, of this title and any conflicts between those parts and this part will be resolved in favor of the applicable parts 3015, 3016, or 3019, as applicable.

**§ 3570.92 [Reserved]**

**§ 3570.93 Regional Commission Grants.**

(a) Grants are sometimes made by Federal Regional Commissions for projects eligible for RHS assistance. RHS has agreed to administer such funds in a manner similar to administering RHS assistance.

(b) The transfer of funds from a Regional Commission to RHS will be based on specific applications determined to be eligible for an authorized purpose in accordance with the requirements of RHS and the Regional Commission.

(c) The Appalachian Regional Commission (ARC) is authorized under the Appalachian Regional Development Act of 1965, as amended, to serve the Appalachian region. ARC grants are handled in accordance with the ARC Agreement (RUS Bulletin 1780–25) which applies to all ARC grants administered by RHS. Therefore, a separate Project Management Agreement between RHS and ARC is not needed for each ARC grant.

(d) Other Federal Regional Commissions are those authorized under Title V of the Public Works and Economic Development Act of 1965. Grants by these commissions are handled in accordance with a separate Project Management Agreement between the respective Regional Commission and RHS for each Commission grant administered by RHS (guide 1 of part 1942, subpart G). The agreement should be prepared by the RHS State Director and the appropriate Commission official when the State Director receives a notice from the Commission of the amount of the grant to be made.

(e) When the Agency has funds in the project, no charge will be made for administering grant funds.

(f) When RHS has no loan or grant funds in the project, an administrative charge will be made pursuant to the Economy Act of 1932, as amended (31 U.S.C. 1535). A fee of 5 percent of the first \$50,000 and 1 percent of any amount over \$50,000 will be paid RHS by the commission.

**§§ 3570.94–3570.99 [Reserved]**

**§ 3570.100 OMB control number.**

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0173.

Dated: March 28, 1997.

**Inga Smulkstys,**

*Deputy Under Secretary, Operations and Management, Rural Development.*

Dated: March 28, 1997.

**Dallas R. Smith,**

*Acting Under Secretary, Farm and Foreign Agricultural Service.*

[FR Doc. 97–8743 Filed 4–4–97; 8:45 am]

BILLING CODE 3410–XV–U

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 96–NM–105–AD; Amendment 39–9988; AD 97–07–14]

RIN 2120–AA64

**Airworthiness Directives; Airbus Model A320 Series Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD),

applicable to certain Airbus Model A320 series airplanes, that requires modification of an area on the front spar of the wing center section by installing shims and new fasteners to reinforce pressure floor fittings. This amendment is prompted by a report from the manufacturer indicating that full-scale fatigue testing on the test model revealed fatigue cracking in this area. The actions specified by this AD are intended to prevent fatigue cracking in this area, which can reduce the structural integrity of fuselage frame 36 and the wing center section.

**DATES:** Effective May 12, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 12, 1997.

**ADDRESSES:** The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes was published in the *Federal Register* on January 21, 1997 (62 FR 2982). That action proposed to require modification of an area on the front spar of the wing center section by installing shims and new fasteners to reinforce pressure floor fittings.

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

The commenter supports the proposed rule.

**Conclusion**

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 adoption of the rule as proposed.

**Cost Impact**

The FAA estimates that 5 Airbus Model A320 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 13 work hours per airplane to accomplish the required actions, and that the average labor rate is \$60 per work hour. Required parts will cost approximately \$576 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$6,780, or \$1,356 per airplane.

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

**Regulatory Impact**

The regulations 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

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

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

**Adoption of the Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§39.13 [Amended]**

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

**97-07-14 Airbus Industrie: Amendment 39-9988. Docket 96-NM-105-AD.**

**Applicability:** Model A320 series airplanes as listed in Airbus Service Bulletin A320-57-1013, Revision 1, dated September 29, 1992; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD.

The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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

To prevent fatigue cracking in the rib flange of the front spar side of the wing center section, and consequent reduced structural integrity of fuselage frame 36 and the wing center section, accomplish the following:

(a) Prior to the accumulation of 16,000 total landings, or within 3 months after the effective date of this AD, whichever occurs later, modify the rib flange on the front spar of the wing center section by installing shims and new fasteners to reinforce pressure floor fittings, in accordance with Airbus Service Bulletin A320-57-1013, Revision 1, dated September 29, 1992.

**Note 2:** Modification of the rib flange accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A320-57-1013, dated April 12, 1989, is considered acceptable for

compliance with the modification required by this AD.

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

(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) The modification shall be done in accordance with Airbus Service Bulletin A320-57-1013, Revision 1, dated September 29, 1992, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1-3	1	September 29, 1992.
4-11	Original	April 12, 1989.

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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 12, 1997.

Issued in Renton, Washington, on March 27, 1997.

**Darrell M. Pederson,**  
Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.  
[FR Doc. 97-8422 Filed 4-4-97; 8:45 am]

**BILLING CODE 4910-13-U**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 96-NM-127-AD; Amendment 39-9987; AD 97-07-13]

**RIN 2120-AA64**

**Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model CN-235 Series Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain CASA Model CN-235 series airplanes, that requires replacement of the center wing attachment rods with new rods. This amendment is prompted by a report from the manufacturer indicating that these rods failed during a full-scale fatigue test. The actions specified by this AD are intended to prevent fatigue failure of these rods, which consequently could reduce the structural integrity of the wing-to-fuselage attachment.

**DATES:** Effective May 12, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 12, 1997.

**ADDRESSES:** The service information referenced in this AD may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Greg Dunn, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2799; fax (206) 227-1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain CASA Model CN-235 series airplanes was published in the Federal Register on January 27, 1997 (62 FR 3834). That action proposed to require replacement of the center wing attachment rods with new rods.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

#### Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

#### Cost Impact

The FAA estimates that 1 CASA Model CN-235 series airplane of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per airplane to accomplish the required actions, and that the average labor rate is \$60 per work hour. Required parts will cost approximately \$1,485 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$2,205 per airplane.

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

#### Regulatory Impact

The regulations 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

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

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

#### Adoption of the Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### §39.13 [Amended]

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

97-07-13 **Construcciones Aeronauticas, S.A. (CASA):** Amendment 39-9987. Docket 96-NM-127-AD.

**Applicability:** Model CN-235 series airplanes; as listed in CASA Service Bulletin SB-235-53-21M, Revision 1, dated November 21, 1994 (military airplanes), and CASA Service Bulletin SB-235-53-21, Revision 3, dated November 30, 1994 (non-military airplanes); certificated in any category.

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

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

To prevent fatigue from causing the center wing attachment rods to fail, which consequently could reduce the structural integrity of the wing-to-fuselage attachment, accomplish the following:

(a) Prior to the accumulation of 16,000 total landings, replace center wing attachment rods having CASA part number (P/N) 35-22058-0003 or 35-22067-0001 with new rods having CASA P/N 35-22067-0003, in accordance with CASA Service Bulletin SB-235-53-21M, Revision 1, dated November 21, 1994 (for military airplanes); or CASA Service Bulletin SB-235-53-21, Revision 3, dated November 30, 1994 (for non-military airplanes); as applicable.

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

(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.

(d) The replacement shall be done in accordance with CASA Service Bulletin SB-235-53-21M, Revision 1, dated November 21, 1994; or CASA Service Bulletin SB-235-53-21, Revision 3, dated November 30, 1994; as applicable. 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 Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 12, 1997.

Issued in Renton, Washington, on March 27, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service. [FR Doc. 97-8423 Filed 4-4-97; 8:45 am]

BILLING CODE 4910-13-U

#### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 95-ANE-56; Amendment 39-9978; AD 97-07-04]

RIN 2120-AA64

#### Airworthiness Directives; Rolls-Royce plc RB.211-524 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to Rolls-Royce plc RB.211-524 series turbofan engines, that requires initial and repetitive borescope inspections of the head section and meterpanel assembly of the combustion liner, and replacement, if necessary, with serviceable parts. In addition, this AD allows an optional installation of a front combustion liner with a strengthened head section as a terminating action to the inspection

requirements. This amendment is prompted by reports of engine fires due to premature engine combustor distress. The actions specified by this AD are intended to prevent engine combustor liner deterioration due to thermal fatigue, which can result in combustor liner and case burn-through and engine fire.

**DATES:** Effective June 6, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 6, 1997.

**ADDRESSES:** The service information referenced in this AD may be obtained from Rolls-Royce North America, Inc., 2001 South Tibbs Ave., Indianapolis, IN 46241; telephone (317) 230-3995, fax (317) 230-4743. This information may be examined at the Federal Aviation Administration (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:** Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (617) 238-7148, fax (617) 238-7199.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Rolls-Royce plc (R-R) RB.211-524 series turbofan engines was published in the *Federal Register* on November 13, 1996 (61 FR 58147). That action proposed to require initial and repetitive borescope inspections of the head section and meterpanel assembly of the combustion liner, and replacement, if necessary, with serviceable parts. In addition, this AD proposed an optional installation of a strengthened head section C263 material as a terminating action to the inspection requirements.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. Since publication of the NPRM, R-R has issued Revision 3 to Service Bulletin No. RB.211-72-B482, dated September 27, 1996, that differs from Revision 2, referenced in the NPRM, by editorial changes only. This final rule references Revision 3 of the SB. The FAA has determined that air safety and the public interest require

the adoption of the rule with the change described previously.

There are approximately 250 engines of the affected design in the worldwide fleet. There are currently no domestic operators of Rolls-Royce plc RB.211-524G or -524H series turbofan engines. The FAA estimates that it will take approximately 8 work hours per engine to accomplish the required actions, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact per engine per inspection is estimated to be \$480.

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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

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

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

#### Adoption of the Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

97-07-04 Rolls-Royce plc: Amendment 39-9978. Docket 95-ANE-56.

*Applicability:* Rolls-Royce plc (R-R) Models RB.211-524G and -524H turbofan engines that have not been modified in accordance with R-R Service Bulletin (SB) No. RB.211-72-9764, Revision 2, dated November 10, 1995, installed on but not limited to Boeing 747-400 and 767-300 series aircraft.

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

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

To prevent engine combustor liner deterioration due to thermal fatigue, which can result in combustor liner and case burn-through and engine fire, accomplish the following:

(a) Perform initial and repetitive borescope inspections of the engine combustor liner head section in accordance with the intervals listed in Section 1.C. Compliance (1), and the procedures described in Section 1.D. Action (1) of R-R SB No. RB.211-72-B482, Revision 3, dated September 27, 1996. Prior to further flight, remove combustors that do not meet the return to service criteria specified in Section 1.E. Acceptance Limits of the SB and replace with serviceable parts.

(b) Perform initial and repetitive borescope inspections of the meterpanel in accordance with the intervals listed in Section 1.C. Compliance (2), and the procedures described in Section 1.D. Action (2) of R-R SB No. RB.211-72-B482, Revision 3, dated September 27, 1996. Prior to further flight, remove combustors that do not meet the return to service criteria specified in Section 1.E. Acceptance Limits of the SB and replace with serviceable parts.

(c) Installation of a front combustion liner with a strengthened head section in C263 material in accordance with R-R SB No. RB.211-72-9764, Revision 2, dated November 10, 1995, constitutes terminating action to the inspection requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive,

if any, may be obtained from the Engine Certification Office.

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

a location where the requirements of this AD can be accomplished.

(f) The actions required by this AD shall be done in accordance with the following R-R SBs:

Document No.	Pages	Revision	Date
RB.211-72-B482 .....	1	3 .....	September 27, 1996.
	2	2 .....	March 11, 1996.
	3	3 .....	September 27, 1996.
	4	2 .....	March 11, 1996.
	5	3 .....	September 27, 1996.
	6	2 .....	March 11, 1996.
	7-8	3 .....	September 27, 1996.
	9	2 .....	March 11, 1996.
	Total Pages: 9.		
RB.211-72-9764 .....	1	2 .....	November 10, 1995.
	2	Original .....	August 20, 1993.
	3	2 .....	November 10, 1995.
	4-6	1 .....	August 25, 1995.
	7-30	Original .....	August 20, 1993.
	1	Original .....	August 20, 1993.
Supplement .....			
Total Pages: 31.			

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 Rolls-Royce North America, Inc., 2001 South Tibbs Ave., Indianapolis, IN 46241; telephone (317) 230-3995, fax (317) 230-4743. 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.

(g) This amendment becomes effective on June 6, 1997.

Issued in Burlington, Massachusetts, on March 26, 1997.

James C. Jones,  
Acting Manager, Engine and Propeller  
Directorate, Aircraft Certification Service.  
[FR Doc. 97-8474 Filed 4-4-97; 8:45 am]  
BILLING CODE 4910-13-U

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 96-ANE-43; Amendment 39-9977; AD 97-01-04]

RIN 2120-AA64

#### Airworthiness Directives; Textron Lycoming and Superior Air Parts, Inc.

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

**SUMMARY:** This document publishes in the Federal Register an amendment adopting Airworthiness Directive (AD) 97-01-04 that was sent previously to all known U.S. owners and operators of certain Textron Lycoming TIO-540,

LTIO-540, and IO-540 series reciprocating engines with certain Superior Air Parts, Inc. Parts Manufacture Approval (PMA) replacement cylinder assemblies installed by individual letters. This AD requires removal from service of affected cylinder assemblies for higher time cylinder assemblies and replacement with serviceable parts, and initial and repetitive dye penetrant inspections for mid-time cylinder assemblies, or replacement with serviceable parts. This amendment is prompted by a report of an inflight engine failure of a Textron Lycoming TIO-540 reciprocating engine with affected Superior Air Parts, Inc. PMA cylinder assemblies installed. The actions specified by this AD are intended to prevent cylinder head separation, inflight loss of power, possible engine failure, and fire.

**DATES:** Effective April 22, 1997 to all persons except those persons to whom it was made immediately effective by priority letter AD 97-01-04, issued on December 27, 1996, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 22, 1997.

Comments for inclusion in the Rules Docket must be received on or before June 6, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96-ANE-43, 12 New England Executive Park, Burlington, MA 01803-5299.

The applicable service information may be obtained from Superior Air Parts, Inc., 14280 Gillis Road, Dallas, TX 75244-3792; telephone (800) 400-5949, fax (972) 702-8723. 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:** M. Monica Merritt, Aerospace Engineer, Special Certification Office, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Ft. Worth, TX 76137-4298; telephone (817) 222-5196, fax (817) 222-5136.

**SUPPLEMENTARY INFORMATION:** On December 27, 1996, the Federal Aviation Administration (FAA) issued priority letter airworthiness directive (AD) 97-01-04, applicable to Textron Lycoming Models TIO-540-A2C, -J2B, -F2BD, -J2BD, -N2BD, -R2AD, -S1AD, and LTIO-540-J2B, -F2BD, -J2BD, N2BD, -R2AD, and IO-540-M1B5D reciprocating engines, with Superior Air Parts, Inc. Parts Manufacture Approval (PMA) part number SL54000-A1, -A2, -A2P, -A20P, and A21P series replacement cylinder assemblies installed, with serial numbers 001 through 650. That action was prompted by a report from the Australian Civil Aviation Authority (CAA) of a New Piper Company Model PA31-350 aircraft, with a Textron Lycoming TIO-540 engine installed, that suffered an inflight engine failure. An examination

of the engine revealed that a Superior Air Parts, Inc. PMA part numbers SL54000 series replacement cylinder assembly experienced a cylinder head separation. A soap leak check of the other 5 cylinders detected bubbles in 2 cylinders indicating a crack. Superior Air Parts has reported 12 fractured cylinders from the field. The cause of the cylinder head fractures and separations appears to be that the design of the PMA cylinder wall thickness is too thin. This condition, if not corrected, could result in cylinder head separation, in-flight loss of power, possible engine failure, and fire.

The FAA has reviewed and approved the technical contents of Superior Air Parts, Inc. Mandatory Service Bulletin (MSB) No. 96-002, Revision A, dated December 17, 1996, that describes procedures for dye penetrant inspections of cylinder assemblies for cracking.

Since the unsafe condition described is likely to exist or develop on other engines of the same type design, the FAA issued priority letter AD 97-01-04 to prevent cylinder head separation, in-flight loss of power, possible engine failure, and fire. The AD requires removal of cylinders from engines with 300 or more hours Time in Service (TIS) since installation of the affected cylinder assemblies on the effective date of this AD within 5 hours TIS after the effective date of this AD, and replacement with serviceable parts. For engines with 245 hours or more TIS since installation of the affected cylinder assemblies on the effective date of this AD, this AD requires an initial dye penetrant inspection within 5 hours TIS after the effective date of this AD, followed by repetitive dye penetrant inspections at intervals not to exceed 25 hours TIS until reaching the 300 hours TIS limit, upon which the cylinder assemblies must be removed from service. Instead of the dye penetrant inspections, operators may optionally remove affected cylinder assemblies and replace with serviceable parts. Cylinder assemblies with less than 245 hours TIS since installation of the affected cylinder assemblies on the effective date of this AD must begin the dye penetrant inspections upon reaching 250 hours TIS since installation of the affected cylinder assemblies. The actions are required to be accomplished in accordance with the MSB described previously.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD

effective immediately by individual letters issued on December 27, 1996, to all known U.S. owners and operators of certain Textron Lycoming TIO-540, LTIO-540, and IO-540 series reciprocating engines with certain Superior Air Parts, Inc. PMA replacement cylinder assemblies installed. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to Section 39.13 of part 39 of the Federal Aviation Regulations (14 CFR part 39) to make it effective to all persons.

#### 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 96-ANE-43." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612,

it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

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

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

#### Adoption of the Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### §39.13 [Amended]

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

**97-01-04 Textron Lycoming and Superior Air Parts, Inc.: Amendment 39-9977.**  
Docket 96-ANE-43.

*Applicability:* Textron Lycoming Models TIO-540-A2C, -F2BD, -J2B, -J2BD, -N2BD, -R2AD, -S1AD, and LTIO-540-J2B, -F2BD, -J2BD, N2BD, -R2AD, and IO-540-M1B5D reciprocating engines, with Superior Air Parts, Inc. Parts Manufacture Approval (PMA) part numbers SL54000-A1, -A2, -A2P, -A20P, and A21P replacement cylinder assemblies installed, with serial numbers 001 through 650. These engines are installed on but not limited to the following aircraft: Bellanca DW-1 (Eagle), The New Piper Aircraft Co. PA-31 and PA-32 series, Riley Aircraft Cessna 310 conversion, and Twin Commander Aircraft Corp. 700 series.

**Note 1:** This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the



requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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

To prevent cylinder head separation, inflight loss of power, possible engine failure, and fire, accomplish the following:

(a) Within 5 hours Time in Service (TIS) after the effective date of this AD, for engines with 300 or more hours TIS since installation of the affected cylinder assemblies on the effective date of this AD, remove from service affected cylinder assemblies and replace with serviceable parts.

(b) Within 5 hours TIS after the effective date of this AD, for engines with 245 hours but less than 300 hours TIS since installation of the affected cylinder assemblies on the effective date of this AD, accomplish the following:

(1) Perform an initial dye penetrant inspection for cracks in accordance with Superior Air Parts, Inc. Mandatory Service Bulletin (MSB) No. 96-002, Revision A, dated December 17, 1996, or remove and replace with a serviceable part.

(2) Thereafter, perform repetitive dye penetrant inspections for cracks at intervals not to exceed 25 hours TIS since last inspection, in accordance with Superior Air Parts, Inc. MSB No. 96-002, Revision A, dated December 17, 1996, or remove and replace with a serviceable part.

(3) Prior to further flight, remove from service cylinder assemblies found cracked during dye penetrant inspections and replace with serviceable parts.

(4) Upon accumulating 300 hours TIS since installation of the affected cylinder assemblies, prior to further flight remove from service affected cylinder assemblies and replace with serviceable parts.

(c) For engines with less than 245 hours TIS since installation of the affected cylinder assemblies on the effective date of this AD, accomplish the following:

(1) Upon accumulating 250 hours TIS since installation of the affected cylinder assemblies, perform an initial dye penetrant inspection for cracks in accordance with Superior Air Parts, Inc. MSB No. 96-002, Revision A, dated December 17, 1996, or remove and replace with a serviceable part.

(2) Thereafter, perform repetitive dye penetrant inspections for cracks at intervals not to exceed 25 hours TIS since last inspection, in accordance with Superior Air Parts, Inc. MSB No. 96-002, Revision A, dated December 17, 1996, or remove and replace with a serviceable part.

(3) Prior to further flight, remove from service cracked cylinder assemblies and replace with serviceable parts.

(4) Upon accumulating 300 hours TIS since installation of the affected cylinder assemblies, prior to further flight remove from service affected cylinder assemblies and replace with serviceable parts.

(d) For the purpose of this AD, a serviceable part is defined as a cylinder assembly other than a Superior Air Parts, Inc. PMA part number SL54000 -A1, -A2, -A2P, -A20P, and A21P replacement cylinder assembly, with serial numbers 001 through 650.

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

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

(f) Special flight permits in accordance with Sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) may not be issued.

(g) The actions required by this AD shall be accomplished in accordance with the following Superior Air Parts, Inc. MSB:

Document No.	Pages	Revision	Date
96-002	1-4	A	December 17, 1996.
Total pages 4.			

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 Superior Air Parts, Inc., 14280 Gillis Road, Dallas, TX 75244-3792; telephone (800) 400-5949, fax (972) 702-8723. 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.

(h) This amendment becomes effective April 22, 1997, to all persons except those persons to whom it was made immediately effective by priority letter AD 97-01-04, issued December 27, 1996, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on March 26, 1997.

James C. Jones,

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

[FR Doc. 97-8476 Filed 4-4-97; 8:45 am]

BILLING CODE 4910-13-U

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### 27 CFR Part 4

[T.D. ATF-388; Ref. Notice Nos. 581, 749 and 793]

RIN 1512-AB08

#### Gamay Beaujolais Wine Designation (92F-042P)

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

**ACTION:** Treasury Decision, Final Rule.

**SUMMARY:** This final rule amends the wine labeling regulations to allow use of the term "Gamay Beaujolais" on American wine labels for a period of 10 years. From the time this final rule takes effect until the end of the phase-out period, a wine which derives not less than 75 percent of its volume from Pinot noir grapes, Valdiguié ("Napa Gamay") grapes, or a combination of both varieties, may use "Gamay Beaujolais"

as a type designation of varietal significance. However, from January 1, 1999, until the end of the phase-out period, brand labels using the designation "Gamay Beaujolais" must also bear in direct conjunction therewith the varietal names Pinot noir and/or Valdiguié, along with the following statement on the brand or back label: "Gamay Beaujolais is made from at least 75 percent Pinot noir and/or Valdiguié grapes." After the expiration of the phase-out period, the term "Gamay Beaujolais" will no longer be recognized as a designation for American wines.

**EFFECTIVE DATE:** This final rule is effective May 7, 1997.

**FOR FURTHER INFORMATION CONTACT:** Thomas B. Busey, Wine, Beer and Spirits Regulation Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, Telephone: (202) 927-8230.

**SUPPLEMENTARY INFORMATION:****The Federal Alcohol Administration Act**

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), vests broad authority in the Director, ATF, as a delegate of the Secretary of the Treasury, to prescribe regulations intended to prevent deception of the consumer, and to provide the consumer with adequate information as to the identity and quality of the product.

Regulations which implement the provisions of section 105(e) as they relate to wine are set forth in title 27, Code of Federal Regulations, part 4 (27 CFR part 4). Section 4.23(b) provides that the name of a single grape variety may be used as the type designation of a grape wine if the wine is labeled with an appellation of origin, and if not less than 75 percent of the wine is derived from grapes of that variety, the entire 75 percent of which was grown in the labeled appellation of origin area. Section 4.23(d) provides that the names of two or more grape varieties may be used as the type designation for a wine if all of the grapes used to make the wine are of the labeled varieties, and the percentage of the wine derived from each variety is shown on the label (with a tolerance of plus or minus 2 percent). Further rules are mandated for the use of varietal designations for wines labeled with multicounty or multistate appellations of origin.

Section 4.23 of the regulations was added by T.D. ATF-370, 61 FR 522 (1996). This section contains a category of type designations of varietal significance for American wines. These names designate wines which have some varietal basis, but which do not meet the requirements for use of a single varietal designation. These designations apply to wines which are composed of a mixture of specific grape varieties. ATF believes these wines demonstrate characteristics of the grape varieties used to produce them and their names imply some grape variety source. This type designation was established in regulations first promulgated in 1996.

Section 4.34(a) requires that the class and type be stated in conformity with the standards of identity in Subpart C, and in the case of still wine, there may appear in lieu of the class designation any varietal (grape type) designation, type designation of varietal significance, semigeneric geographic designation, or geographic distinctive designation to which the wine is entitled. Additionally, § 4.34(b)(1) provides that an appellation of origin disclosing the true origin of the wine shall appear in

direct conjunction with and in lettering substantially as conspicuous as the class and type designation if a grape type (varietal) designation is used under the provisions of § 4.23 or a type designation of varietal significance is used under the provisions of § 4.28.

**History of Gamay Beaujolais Name**

Beaujolais is a region in France known for producing a distinctive type of wine. The "Gamay noir a jus blanc" (otherwise known as the "Gamay") is the predominant grape variety used in the production of Beaujolais wine.

In the 1940s, a grape grown in California was identified by researchers at the University of California at Davis (UCD) as the "Gamay Beaujolais" grape. At that time, it was mistakenly thought that this was the same Gamay grape grown in Beaujolais, France. For decades, American wines made from this grape were labeled as "Gamay Beaujolais."

In the late 1960's, researchers at UCD decided that the grape known as "Napa Gamay" was the true Gamay grape, and that the "Gamay Beaujolais" vine was actually a clone of Pinot noir. The Foundation Plant Material Service (FPMS) at UCD (a service operated in cooperation with UCD which makes virus-free, true type plant material available to the industry), identified the Gamay Beaujolais vine as a clonal selection of the Pinot noir variety.

Notwithstanding the conclusion that the "Gamay Beaujolais" grape was not related to the true Gamay grape variety, ATF's predecessor agency decided to allow wines produced from both the Napa Gamay and Pinot noir grape varieties to be labeled as "Gamay Beaujolais," pending a final resolution of the many controversies related to the names of grape varieties which had been erroneously identified in the United States. In the 1980s, ATF began the process of evaluating many of these varietal names, in order to formulate an authoritative list of grape varieties used to produce American wines.

**Winegrape Varietal Names Advisory Committee**

In 1982, ATF established the Winegrape Varietal Names Advisory Committee (referred to as the "Committee") to conduct an examination of the hundreds of grape variety names and synonyms in use in the United States. (47 FR 13623, March 31, 1982). According to its charter, the Committee was to advise the Director of the grape varieties and subvarieties which are used in the production of wine, to recommend appropriate label designations for these varieties, and to

recommend guidelines for approval of names suggested for new grape varieties. Their recommendations were restricted to the names of grapes used in producing American wines. The Committee's final report, presented to the Director in September 1984, contained the Committee's findings regarding use of the most appropriate names for domestic winegrape varieties.

The final report of the Winegrape Varietal Names Advisory Committee concluded as follows:

At present, there are substantial plantings of two varieties which include the name Gamay. Neither are the true Gamay (or one of its several clones) grown in Europe. Gamay Beaujolais is a clone of Pinot Noir, and Napa Gamay is an as yet unidentified variety, which is neither Gamay nor Pinot noir.

The Committee accepted the recommendation of its subcommittee that the names "Napa Gamay" and "Gamay Beaujolais" should be phased out. They noted that since Napa Gamay and Gamay Beaujolais (Pinot noir) were two distinctively different varieties, wine made from a blend of both grapes should not be labeled with one varietal designation. *Id.* at 27-29. The Subcommittee on Gamay Beaujolais actually recommended that "the wine known as 'Gamay Beaujolais' be considered a limited semi-generic wine produced from the grape variety Pinot noir and the grape currently known as 'Napa' Gamay, either singly or in combination with each other." The Committee's Final Report stated that the Committee had "considered a suggestion that the term Gamay Beaujolais be allowed for use on domestic wine labels as a 'semi-generic' non-varietal designation," but made no recommendation on that issue due to the conclusion that "the suggestion is outside the mandate of the Committee, which is limited solely to varietal names." The Committee did, however, note this suggestion for "possible consideration" by ATF.

**Notice No. 581**

On the basis of the recommendations contained in the Committee's final report, ATF issued Notice No. 581 on February 4, 1986 (51 FR 4392). That notice proposed the addition of subpart J, American Grape Variety Names to part 4. The new subpart was to contain a list of every grape varietal name authorized for use in the production of American wines. ATF received 156 written comments in response to this notice.

With respect to use of the name "Gamay Beaujolais," Notice No. 581 proposed that it should be permitted as an alternate grape variety name for future use only for a period of five years.

During the period of its continued use, Notice No. 581 proposed that the actual name of the grape, either Pinot noir or Napa Gamay, should appear on the label in direct conjunction with the designation "Gamay Beaujolais." After the passage of five years, Gamay Beaujolais could no longer be used as a label designation.

#### Comments to Notice No. 581

The proposal to phase out use of Gamay Beaujolais proved controversial. Only a few respondents concurred with ATF's proposal, while 27 respondents objected to some part of the proposal. Many commenters suggested that Gamay Beaujolais was well known to consumers as a light, red, young, fruity wine, and that consumers did not view it as a varietal wine. Some commenters stated that consumer recognition of Gamay Beaujolais was good; that the wine was popular; that consumers knew what they were buying, and that elimination of the designation would serve no consumer purpose. Winery proprietors and grape growers cited the large market for this wine and argued that elimination of the designation would have a severe economic impact on their businesses.

Louis P. Martini, a member of the Winegrape Names Advisory Committee, submitted a comment in opposition to the proposed 5-year phase-out period. He suggested that "[t]o remove this name from wine labels would effectively remove this wine from the market." Other industry members advocated a longer phase-out period, or objected to the phase-out altogether. On the other hand, one consumer advocate suggested that five years was too long a phase-out period, and the French Government opposed any recognition of the term "Gamay Beaujolais" in the regulations.

#### Notice No. 749

Because the comments on Notice No. 581 varied widely in their approach to the proposals, and because a lengthy period of time had passed since the issuance of Notice No. 581, ATF decided to open the issue of grape varietal names to additional public comment. Thus, on September 3, 1992, ATF issued Notice No. 749 (57 FR 40380), seeking comment on new and revised proposals relating to grape variety names.

By this time, UCD had determined that the grape known as "Napa Gamay" was not the Gamay grape of France. The "Napa Gamay" grape variety was positively identified by the FPMS as Valdiguié, although it is not widely known by this name in the United

States. In Notice No. 749, ATF proposed that "Napa Gamay" be considered a synonym for the prime name Valdiguié and requested comments on whether Napa Gamay should be phased out in the future. ATF also announced that the "Gamay Beaujolais" issue would be the subject of a separate notice of proposed rulemaking.

#### Notice No. 793

On April 5, 1994, ATF published Notice No. 793 (59 FR 15878) in the *Federal Register* proposing specific conditions for the use of Gamay Beaujolais as a wine label designation. The 90-day comment period closed on July 5, 1994.

ATF stated that the evidence considered by ATF established that "Gamay Beaujolais" was not a true varietal name, and that the two grape varieties which have been called "Gamay Beaujolais" in this country are not Gamay grapes. Thus, ATF concluded that Gamay Beaujolais should not be listed in subpart J of 27 CFR part 4 as a grape variety name. On the basis of the comments to Notice Nos. 581 and 749 and current trade and consumer recognition of the name, ATF stated that many consumers viewed Gamay Beaujolais as a type of red wine which may be described as light and fruity. However, ATF also believed that many consumers associated the designation "Gamay Beaujolais" with a wine produced from the Pinot noir or Napa Gamay grape varieties. Therefore, instead of phasing out the use of the designation "Gamay Beaujolais" as proposed in Notice No. 581, ATF proposed in Notice No. 793 to specifically allow the continued use of Gamay Beaujolais under § 4.34, relating to class and type designations. Section 4.34 was selected for placement of the Gamay Beaujolais designation because § 4.28 and the type designations of varietal significance it established did not exist in 1994.

As previously discussed, existing regulations provided that a wine was not entitled to a varietal type designation unless 75 percent of its volume is derived from grapes of that variety. Accordingly, ATF proposed to allow the use of the designation "Gamay Beaujolais" only where the wine derived not less than 75 percent of its volume from Pinot noir grapes or Napa Gamay grapes. Wine labels bearing the designation "Gamay Beaujolais" would also have been required to bear a varietal type designation (Pinot noir or Napa Gamay) and an appellation of origin. Furthermore, the proposed amendment to § 4.34 specified that the optional designation "Gamay

Beaujolais" must appear in direct conjunction with the varietal type designation and the appellation of origin, and must appear in lettering of substantially the same size and kind.

#### T.D. ATF-370

On January 8, 1996, ATF issued T.D. ATF-370 (61 FR 522), a final rule on the issue of grape variety names for American wines. ATF issued a comprehensive list of grape variety names approved for use on American wine labels. The final rule took effect on February 7, 1996. The name "Napa Gamay" is listed as a synonym for "Valdiguié"; however, "Napa Gamay" may only be used on labels of wines bottled prior to January 1, 1999. The name "Gamay Beaujolais" was not listed as an approved varietal name. Instead, the preamble noted that ATF has made Gamay Beaujolais the subject of a separate rulemaking proceeding. The preamble also stated that "[i]n the interim, ATF will permit domestic wineries to use Gamay Beaujolais as a designation. Such wine must derive at least 75 percent of its volume from Pinot noir, from Valdiguié (Napa Gamay), or from a mixture of these grapes." 61 FR at 532.

#### Comments to Notice No. 793

There were 237 comments submitted in response to Notice No. 793. 211 comments were in favor of allowing the continued use of the designation "Gamay Beaujolais" on wine labels, while 26 were opposed to any use of "Gamay Beaujolais" on American wine labels.

#### Comments in Favor of Proposal

The Wine Institute, American Vintners Association, winegrape growers associations, wine grape growers, wine producers, and wine wholesalers submitted comments in favor of allowing continued use of "Gamay Beaujolais" on American wine labels. However, many of these commenters took issue with some of ATF's proposals.

Some commenters suggested that the designation "Gamay Beaujolais" had lost any varietal significance, and it should not be restricted to wines made from Pinot noir or Napa Gamay grapes. Thus, for example, the American Vintners Association suggested that any light, red, young, fruity wine should be allowed the designation "Gamay Beaujolais" as long as the actual grape variety is shown on the label.

The vast majority of comments received by ATF came from wholesalers, vineyard proprietors, and wineries who supported the recognition

of "Gamay Beaujolais" in the regulations. However, these commenters opposed ATF's proposal that a wine labeled with the designation "Gamay Beaujolais" must derive 75 percent of its volume from either the Napa Gamay or Pinot noir grape variety. The comments noted that the longstanding industry practice was to blend the two grape varieties in the production of "Gamay Beaujolais" wine, and that the blend of the two distinct grape varieties should be considered as meeting the 75 percent requirement found in the regulations.

Most of the comments in favor of allowing a blend of Pinot noir and "Napa Gamay" grapes also brought up the issue of whether varietal percentages should be required on the label. ATF did not propose such a requirement in Notice No. 793, because the regulations at § 4.23 do not require a listing of percentages where 75 percent of the wine is derived from a single grape variety. However, under § 4.23(d), percentages must be listed on the label whenever two or more grape varieties are used as the type designation for a wine.

The commenters who raised this issue were opposed to listing the percentage of grape varieties on the label. Instead, they suggested that the varietal names "Pinot noir" and "Napa Gamay" be listed on the label in descending order by volume, without requiring that the percentages be shown. The Wine Institute suggested that this option would allow "the broadest amount of winemaking flexibility in achieving the Gamay Beaujolais style and minimizing consumer confusion that could result from a multiple varietal label."

While many commenters in favor of retention of the term "Gamay Beaujolais" stated that consumer recognition of this wine was good, none of the comments offered specific evidence, such as consumer surveys, on what consumers understood to be the varietal significance of the term. The Wine Institute submitted a label dating back to at least 1950, showing that the use of this name on American wine labels went back several decades, and submitted evidence tending to show that consumers had positive views about "Gamay Beaujolais" wines. However, some of this evidence actually tended to support the conclusion that some American consumers consider "Gamay Beaujolais" to be a style of wine similar to French Beaujolais wines. This evidence did not support ATF's premise in Notice No. 793 that American consumers were aware that wines labeled as "Gamay Beaujolais" were made from Pinot noir or Valdiguié grapes.

#### Comments in Opposition to Use of Gamay Beaujolais

Of the 26 comments received in opposition to the continued use of Gamay Beaujolais on wine labels, 13 were from importers and 4 from foreign producers-exporters. The remaining 9 comments are discussed in more detail below.

Most of these commenters strongly opposed the use of "Gamay Beaujolais" on American wine labels, stating that American wineries were continuing to use the term because they wanted to take unfair advantage of the Beaujolais name. Secondly, these commenters believed that use of the term "Gamay Beaujolais," even when modified with a geographical appellation of origin and a varietal type designation, was highly misleading and confusing to consumers, since it was being used to describe a wine that was not made from Gamay grapes, and did not originate in Beaujolais, France. However, like the comments supporting the proposal, none of the opposing comments provided specific evidence, such as consumer surveys, on the consumer's perception of the term. Finally, it was argued that continued use of the term "Gamay Beaujolais" on American wine labels constituted a violation of ATF regulations and the United States Government's commitment to prevent any erosion of protected appellations of origin.

The Delegation of the Commission of the European Communities (now the European Union) commented that the proposal would confuse and mislead consumers, since it allows "the use of the optional designation 'Gamay Beaujolais' for wine which is recognized by BATF as originating neither from a true 'Gamay' grape variety nor from the 'Beaujolais' area of France." Their comment also argued that any recognition of the designation "Gamay Beaujolais" for American wines would violate Item III of the Exchange of Letters between the EC and the United States dated July 26, 1983, as well as provisions of the Uruguay Round Agreement on Trade Related Aspects of Intellectual Property (TRIPS). This argument was based on the premise that the proposed rule would erode protection of the nongeneric designation "Beaujolais." Instead, the comment suggested implementing the shortest possible transition period for allowing the term pending its outright prohibition. The Comité Vins, the European Community association representing the Community's entire wine industry and trade, and the Federation des Exportateurs de Vins et

Spiritueux de France (FEVS) filed similar comments in opposition to the proposed rule.

The Agricultural Attache from the French Embassy also made similar arguments, and suggested that the proposed rule would essentially create a new semigeneric designation to the detriment of a French appellation of origin already recognized by U.S. regulations.

Separate comments from the Union Viticole du Beaujolais (representing French Beaujolais growers) and the Federation Des Syndicats de Négociants-Eleveurs de Grande Bourgogne (representing Beaujolais and Burgundy wine merchants) strongly opposed the proposed rule as misleading to consumers and in violation of U.S. international commitments.

A comment on behalf of the Deutscher Weinfonds (DW), stated that while the DW had no direct interest in this matter, it felt strongly, "as a matter of principle, that distinctive geographical designations, and distinctive grape varieties, particularly those recognized by BATF in its regulations, should in no way be diluted or compromised."

The National Association of Beverage Importers, Inc. (NABI), a trade association representing importers of wine, beer, and distilled spirits, filed a comment representing the views of the majority of its members. NABI stated that the Brown-Forman Beverage Company and Heublein, Inc. did not agree with its comment. NABI stated that use of the designation "Gamay Beaujolais" in accordance with the proposed rule was misleading to consumers, since it would be used to designate a wine produced from grapes which were not Gamay grapes, and since the product had nothing to do with the protected geographical designation "Beaujolais." NABI argued that the proposed erosion of the term "Beaujolais" was in violation of international agreements, as well as ATF's own regulations, since "Beaujolais" is recognized as a distinctive designation in 27 CFR 4.24(c). NABI recommended that ATF adopt its earlier proposal to phase out the use of the term over a five-year period commencing with the publication of the final rule.

Finally, the law firm of Ropes & Gray submitted a comment on behalf of its clients the Institut National des Appellations d'Origine ("INAO") and the Union Interprofessionnelle des Vins du Beaujolais ("UIVB"). Shortly prior to publication of Notice No. 793, the INAO and UIVB had petitioned ATF to eliminate recognition of the designation

"Gamay Beaujolais" on American wine labels. Their comment in response to Notice No. 793 argued that recognition of "Gamay Beaujolais" as a labeling term would erode the protection of the distinctive designation "Gamay Beaujolais," and would essentially create a new semigenic wine designation. The INAO and UIVB argued that there is no objective evidence that establishes that consumers are not misled by use of the labeling designation "Gamay Beaujolais." They suggested that even if an accurate appellation of origin and varietal designation appeared on the label in conjunction with the designation "Gamay Beaujolais," consumers might still erroneously believe that the wine is made from a combination of, for example, Pinot noir and Gamay grapes, or that consumers will still be misled into believing that the wine is similar to French Beaujolais wines.

The INAO and UIVB also argued that ATF's recognition of the name "Gamay Beaujolais" is in violation of the international obligations of the United States, and stated that such recognition would undermine the protection accorded the distinctive name "Beaujolais," and create a new semigenic name.

#### Discussion of Comments

In Notice No. 793, ATF proposed the continuance of the name "Gamay Beaujolais" on American wine labels, premised on the belief that American consumers had come to associate this term with a wine made from Pinot noir and Valdiguié ("Napa Gamay") grapes. ATF recognized that the use of this term to designate these grapes arose from an initial classification error; however, ATF reasoned that if consumer recognition of the term was based on its new secondary meaning in the United States, then the term would not mislead the American consumer if used in direct conjunction with an appellation of origin, as well as a varietal type designation. Thus, the most important issue in determining whether the regulations should continue to authorize use of the name "Gamay Beaujolais" on American wine labels was whether American consumers were aware that the term has a secondary meaning referring to wines made from Pinot noir and Valdiguié grapes.

Many of the commenters in opposition to Notice No. 793 challenged ATF's assumption that consumers understood the true varietal basis of "Gamay Beaujolais" wines. While the commenters in favor of continuing the use of "Gamay Beaujolais" stated that

there was good consumer recognition of the term, they did not provide evidence that many American wineries had voluntarily disclosed the true grape varieties in "Gamay Beaujolais" wines on the label. Without this labeling information, the fact that the designation had appeared on American wine labels for decades did not establish that consumers knew that the wines were actually made from Pinot noir or Napa Gamay grapes.

Upon careful consideration of the comments, ATF has concluded that none of the commenters were able to provide any competent and reliable consumer perception evidence showing that the average American consumer was knowledgeable enough to recognize that "Gamay Beaujolais" was a wine made from the Pinot noir and "Napa Gamay" grape varieties. In fact, some of the commenters in favor of the proposed rule (such as the American Vintners Association) actually took a contrary position on this matter, and argued that American consumers did not associate "Gamay Beaujolais" with a particular grape variety or varieties. These commenters suggested that the American consumer actually associated the designation "Gamay Beaujolais" with a style of wine making.

While the comments (of both those supporting and opposing the proposal) did not provide direct evidence of consumer understanding of the varietal significance of the term "Gamay Beaujolais," ATF believes that there is a legitimate basis for its belief that the wine industry and knowledgeable consumers associate the term with a wine produced from Pinot noir and/or Valdiguié ("Napa Gamay") grapes. It is ATF's understanding that the term "Gamay Beaujolais" is not used to designate French Beaujolais wines or other French wines made from Gamay noir grapes. While wine experts thus immediately know that the term "Gamay Beaujolais" is used to refer to a wine which is not made from Gamay grapes, it is not apparent whether the average American consumer is as knowledgeable on this issue. For example, in Jancis Robinson's *Vines, Grapes, and Wines*, (Alfred A. Knopf, New York 1986) at 227, under the listing of "Gamay Beaujolais," the true meaning of this name is explained in a forthright manner, although the author goes on to state that "these facts are not widely known among ordinary wine drinkers."

Because the comments did not shed much light on the issue of consumer perception, ATF reviewed articles in the popular press to see whether these articles provided consumers with

accurate information about the identity of "Gamay Beaujolais" wines. Many of these articles indicated that knowledgeable wine writers were aware of the varietal composition of "Gamay Beaujolais" wines. For example, an article by Gerald Boyd in the July 15, 1992 edition of the *San Francisco Chronicle* entitled "Lighten Up with Young Gamays and Pinots" states that "[l]ong thought the true grape of Beaujolais, Gamay Beaujolais is in fact a clone of Pinot Noir." Frank Prial of the *New York Times* stated as follows in an article entitled "Wine Talk" dated January 16, 1991: "Gamay beaujolais and Napa gamay are fairly popular California grapes, but neither is actually gamay; gamay beaujolais is an inferior clone of the pinot noir grape, and Napa gamay is probably a little-used grape from the South of France called valdiguié."

These examples reflect that there is a fairly widespread knowledge among knowledgeable wine writers that "Gamay Beaujolais" wines are not made from Gamay noir grapes. On the other hand, some of these articles suggested that the labeling of these wines was confusing. For example, in the March 28, 1990 edition of the *Washington Post*, in an article entitled "All-American Beaujolais," Ben Giliberti explained the true identity of the "Gamay Beaujolais" and "Napa Gamay" grapes, and then stated "Regardless of grape variety, most domestic bottlings are labeled gamay beaujolais—a confusing situation that one hopes will be rectified by labeling authorities in the near future." In an article entitled "French Beaujolais Needn't Fear that California Clone," in the July 18, 1991 edition of the *Atlanta Constitution*, writer Bruce Galphin explains that "it has been widely known for years that gamay Beaujolais is a clone (mutated form) of pinot noir" but also states that the situation is "confusing to Americans learning about wine."

#### Conclusion

After carefully reviewing the comments, as well as commentary by wine experts such as Jancis Robinson, and articles in the popular press such as the ones cited above, ATF has concluded that the industry and wine experts understand the term "Gamay Beaujolais" to have varietal significance when used on American wine labels, even though the term initially arose from a classification error. However, ATF has concluded that while the term has thus acquired a secondary meaning in the United States to refer to a wine made from Pinot noir and/or "Napa Gamay" grapes, the average consumer

may not understand this varietal significance of the term unless additional information is provided. Thus, ATF has concluded that the unqualified use of the term "Gamay Beaujolais" on wine labels may tend to mislead consumers as to the varietal identity of the wine.

In Notice No. 793, ATF proposed permanently to allow use of the term "Gamay Beaujolais" in conjunction with a true varietal designation—either Pinot noir or Valdiguié ("Napa Gamay"). However, there were several good points that were raised in opposition to this proposal. Several commenters suggested that ATF was merely codifying a historical error, and that erroneous varietal designations should not be allowed merely because such designations were supplemented with additional truthful information. The INAO and UVB suggested that the juxtaposition of the term "Gamay Beaujolais" with "Pinot noir," for example, might further confuse the consumer, and mislead the consumer into believing that the wine was a blend of "Gamay Beaujolais" and Pinot noir grapes.

ATF has reevaluated its proposal in light of these comments. While ATF still believes that the name "Gamay Beaujolais" has consumer recognition in the United States, we also recognize that it is not the correct name for these two grape varieties, and that the average consumer should not be expected to have technical knowledge about grape classification issues in order to understand a wine label.

Since the establishment of the Winegrape Varietal Names Advisory Committee in 1982, it has been ATF's goal to eliminate the use of incorrect grape variety names in the labeling of American wines, even where those names have been used on a longstanding basis in the United States. The final rule on varietal names eliminated the usage of many names that had been used in the United States for a long time, where those names did not accurately reflect the recognized names of the grape varieties in question. See T.D. ATF-370 (61 FR 522). This same logic dictates that use of the name "Gamay Beaujolais" should be phased out in the United States.

Thus, ATF has decided that the regulations should not provide permanent recognition of the labeling designation "Gamay Beaujolais." The original classification and naming errors made with respect to the "Gamay Beaujolais" (Pinot noir) and "Napa Gamay" (Valdiguié) grapes should not be compounded by allowing the name "Gamay Beaujolais" to be used indefinitely to designate wines made

from two separate grape varieties, neither of which is a true Gamay grape. The purpose of the rulemaking project on varietal names was to rectify the errors made in the past with respect to classification of American wine grape varieties, and to ensure that American consumers were not misled as to the true identity of American varietal wines. This is all the more important since varietal names have assumed increasing importance in the marketing of wines.

Accordingly, ATF has decided that it will terminate recognition of the labeling designation "Gamay Beaujolais" within 10 years. During this phase-out period, interim labeling requirements will ensure that consumers are adequately informed as to the varietal content of the wine. ATF has concluded that it is necessary to allow a period of time in which wineries can continue to use the labeling designation "Gamay Beaujolais," as long as this designation is qualified in a manner that will allow consumers to be educated as to what the varietal significance of the term really is.

#### Interim Labeling Requirements

This final rule provides that ATF will temporarily recognize the name "Gamay Beaujolais" as a type designation of varietal significance. This means that the name has varietal significance, but it does not fit the requirements for a varietal designation. In this case, the name is used to designate a wine where not less than 75 percent of the volume of the wine is derived from Pinot noir grapes, Valdiguié ("Napa Gamay") grapes, or a combination of both.

As previously explained, § 4.28, relating to type designations of varietal significance, did not exist in 1994, at the time Notice No. 793 was published. Upon consideration of the comments received in response to this notice and the regulatory structure adopted as a result of the varietal name rulemaking, ATF has determined that the type of wine described as Gamay Beaujolais is a better fit in § 4.28, rather than as a separate class and type designation in § 4.34.

ATF will allow a period of 10 years from the issuance of this final rule for wineries to phase out the use of the term "Gamay Beaujolais." To the extent that consumers have formed a loyalty to or preference for the wine that they know as "Gamay Beaujolais," this transition period will allow them time to learn more information about the varietal content of the wine. It will also allow wineries and grape growers time to make any necessary changes in their planting and marketing plans.

Pursuant to the existing regulations, an appellation of origin must also appear in direct conjunction with any type designation of varietal significance. This will ensure that consumers are not misled as to the origin of the wine. However, ATF also believes that some further information on the label is necessary in order to ensure that the consumer is not misled as to the varietal content of the wine. These requirements will be discussed in further detail below.

#### Interim Definition of "Gamay Beaujolais"

In Notice No. 793, ATF proposed that the designation "Gamay Beaujolais" could only be used where the wine met the requirements for use of either the Pinot noir or Valdiguié ("Napa Gamay") varietal designation. In that case, the designation would have to be qualified by the use of a single varietal designation, signifying that 75 percent of the wine was derived from either Pinot noir or Valdiguié ("Napa Gamay") grapes. However, the comments received from American wholesalers, growers of Pinot noir and Valdiguié grapes, and American wineries who produced "Gamay Beaujolais" wines were overwhelmingly opposed to this proposal. These comments pointed out that it had been ATF's longstanding policy to allow the Pinot noir and Valdiguié grape varieties to be combined to make up the regulatory 75 percent requirement. Many comments stressed that it was important for wineries to have the flexibility to adjust percentages in order to arrive at the most desirable blend. For example, the California Association of Winegrape Growers stated that restricting the term to only one of these grape varieties would "unduly restrict(s) the winemakers ability to creatively blend to consumer taste."

Since the use of the term "Gamay Beaujolais" is being phased out over the next 10 years, and since the comments establish that the term is well recognized in the wine industry as referring to wines made from a combination of Pinot noir and Valdiguié ("Napa Gamay") grapes, ATF has decided to define the term in a way that incorporates the *status quo* over the past several decades. Thus, ATF is defining the term "Gamay Beaujolais" to mean an American wine which derives at least 75 percent of its volume from Pinot noir grapes, Valdiguié grapes, or a combination of both. However, since the term will refer to a blend of two separate unrelated grape varieties, ATF believes that it is all the more important to ensure that there is sufficient

information on the brand label, in direct conjunction with the designation "Gamay Beaujolais" to ensure that consumers are not misled as to the varietal content of the wine. These requirements are discussed below.

It should be noted that there were a few comments questioning ATF's exclusion of wines made with true Gamay noir grapes from the definition of "Gamay Beaujolais." The evidence clearly indicates that American "Gamay Beaujolais" wines have been made from grapes that were not true Gamay grapes. In T.D. ATF-370, ATF noted that it was listing the true Gamay grape as "Gamay noir," in order to distinguish it from other wines which were labeled "Gamay" in the past. 61 FR 532. The true Gamay grape is a relative newcomer to the United States, and there is no reason to create any confusion between the wine known as "Gamay Beaujolais" and wines made from the true "Gamay noir" grape. Accordingly, wineries producing wines from the true Gamay noir grape and meeting the applicable percentage requirements for use of a single varietal type designation, may designate their wines as "Gamay noir" but not as "Gamay Beaujolais."

Finally, wineries producing wine that meets the requirements for a single varietal designation of either Pinot noir or Valdiguié ("Napa Gamay") may of course choose to use these varietal designations in lieu of the type designation "Gamay Beaujolais." However, in accordance with the regulations at § 4.23, the name "Napa Gamay" will no longer be accepted for wines bottled on or after January 1, 1999; instead, the varietal name "Valdiguié" must be used to designate these wines.

#### Interim Labeling Statements

The final rule will allow the use of the "Gamay Beaujolais" designation where there appears on the brand label, in direct conjunction therewith, the names of the grape variety or grape varieties used to satisfy the regulatory definition of "Gamay Beaujolais" (i.e., Pinot noir and/or Valdiguié). These varietal names must appear on a separate line from the "Gamay Beaujolais" designation, and must be separated from "Gamay Beaujolais" by the required appellation of origin. Where two varietal names are listed, they shall appear on the same line, in order of predominance.

The appellation of origin shall appear either on a separate line between the name "Gamay Beaujolais" and the grape variety name(s), or on the same line as the grape variety name(s) in a manner that qualifies the grape variety name(s). Furthermore, the following statement shall also appear on the brand or back

label: "Gamay Beaujolais is made from at least 75 percent Pinot noir and/or Valdiguié grapes."

In Notice No. 793, ATF proposed a rule that would allow the name "Gamay Beaujolais" only where the wine met the standards for use of either the Pinot noir varietal designation, or the Valdiguié ("Napa Gamay") varietal designation, and where the type designation "Pinot noir" or Valdiguié ("Napa Gamay") appeared in direct conjunction with the designation "Gamay Beaujolais." As previously discussed, ATF has now concluded that during the 10-year phase-out period, it is reasonable to allow the existing industry practice of blending Pinot noir and "Napa Gamay" grapes to make up the 75 percent requirement for use of the "Gamay Beaujolais" designation. This is in accordance with the longstanding trade practice and industry understanding of the term "Gamay Beaujolais," as well as the longstanding policy of ATF and its predecessor agency.

However, since the term "Gamay Beaujolais" is now being defined to include a blend of two separate grape varieties, ATF believes that it is necessary to require more than just the appearance of one or two grape varieties on the brand label, in direct conjunction with the designation "Gamay Beaujolais." The INAO and UIVB suggested that the use of two names such as "Gamay Beaujolais" and "Pinot noir" on a brand label might confuse consumers into believing that these two names represented separate grape varieties which had gone into the wine. ATF believes that this comment has merit. In other words, ATF is concerned that the appearance of the designations "Gamay Beaujolais," "Pinot noir," and "Valdiguié" together on a brand label might confuse some consumers, and tend to create a misleading impression that these three names each represented grape varieties that had been used in the production of the wine.

Thus, the final rule will require that the varietal designations Pinot noir and/or Valdiguié appear on the brand label in direct conjunction with the designation "Gamay Beaujolais," but on a separate line from "Gamay Beaujolais," and separated from "Gamay Beaujolais" by the required appellation of origin. The appellation of origin shall appear either on a separate line between the name "Gamay Beaujolais" and the grape variety name(s), or on the same line as the grape variety name(s) in a manner that qualifies the grape variety name(s). This will ensure that the consumer is not misled into believing that Gamay Beaujolais represents just

one of two or three grape varieties used in producing the wine.

Where the wine is made from both Pinot noir and Valdiguié grapes, the two grape varieties shall appear on the same line, in order of predominance. Below are four examples of type designations on brand labels that will be allowed under the requirements of the final rule:

**GAMAY BEAUJOLAIS, 1992 CALIFORNIA, PINOT NOIR/VALDIGUIÉ**

**GAMAY BEAUJOLAIS, NAPA VALLEY VALDIGUIÉ**

**1994 GAMAY BEAUJOLAIS, SONOMA COUNTY PINOT NOIR**

**GAMAY BEAUJOLAIS, CALIFORNIA, VALDIGUIÉ & PINOT NOIR**

This requirement should leave no room for confusion on the part of the consumer as to the varietal content of the wine.

#### Additional Labeling Statement

Notwithstanding the above, ATF believes that because "Gamay Beaujolais" wines are in something of a unique category, the consumer should be provided with more specific information as to the meaning of this designation. The vast majority of comments received in response to Notice No. 794 were in opposition to any requirement that grape variety percentages be listed on labels. These commenters cited the need for flexibility in the blending of grapes. ATF recognizes that if the regulations require wineries to list the percentage of each grape variety used in the blend, wineries will have to obtain new labels, as well as new certificates of label approval, for each different blend of "Gamay Beaujolais" wine.

In response to these comments, ATF is not requiring wineries to put grape percentages on the brand label, as they would be required to do if the wine were labeled with more than one grape variety under section 4.23(d). ATF recognizes that the Gamay Beaujolais designation is not a multiple varietal designation, but is instead a type designation of varietal significance, which is indicative of a certain varietal content. The regulations will define what that varietal content is, and knowledgeable industry members and consumers are already aware of these requirements.

However, in order to ensure that consumers are more specifically informed as to the varietal significance of the term "Gamay Beaujolais," the final rule will require the following statement to appear on the brand or back label: "Gamay Beaujolais is made from at least 75 percent Pinot noir and/

or Valdiguié grapes." ATF believes that this statement adequately informs the consumer as to the traditional meaning of the term "Gamay Beaujolais" as used on American wine labels for the past several decades. Wineries may use this statement without having to receive new certificates of label approval each time the percentages of grape varieties in their blends change.

ATF believes that these new requirements will ensure that during the period of the phase-out, consumers will be adequately informed about the varietal content of the wine. Furthermore, "Gamay Beaujolais" wines will continue to be labeled with an appellation of origin to ensure that consumers are adequately informed as to the origin of the grapes. ATF believes that knowledgeable consumers are already on notice that "Gamay Beaujolais" wines are not made from the "Gamay noir" grape. The interim labeling requirements will, however, help to educate all consumers as to the meaning of the term "Gamay Beaujolais," and ensure that consumers have sufficient information as to what that term means.

#### Length of Phase-Out Period

Since ATF did not specifically propose the option of phasing out use of the name "Gamay Beaujolais" in Notice No. 793, we did not solicit comments on the issue of the appropriate length of a phase-out period. However, when ATF first proposed to phase out use of this term in 1986, many wineries and grape growers suggested that this proposal would impose an undue economic burden on growers of Napa Gamay grapes. It was suggested that American consumers had come to know the term "Gamay Beaujolais" as referring to a particular type of wine, and that the market for this wine would be severely impacted if it were not labeled under the "Gamay Beaujolais" designation.

ATF's statutory mandate under the FAA Act is to regulate the use of terms on wine labels so as to avoid misleading the consumer. ATF recognizes that wineries who produce "Gamay Beaujolais" wines may have to make some marketing and labeling changes in connection with the phasing out of this term. ATF also recognizes that some wineries may have relied upon ATF's previous recognition of this term in making economic decisions regarding the planting of grapes and the marketing of wines. Many of the commenters to Notice No. 581 suggested that a 5-year phase-out period would impose an undue economic burden on growers and wineries, due to the necessary adjustments with respect to planting

and marketing decisions. Although a phase-out was not even proposed in Notice No. 793, ATF received one comment from a grape grower discussing the substantial investment in "Napa Gamay" grapes, and the cost and time that is involved in replanting vineyards.

Accordingly, ATF has decided to allow the use of the term "Gamay Beaujolais" on wine labels for 10 years from the date of publication of this final rule. On the one hand, wineries and grape growers have been on notice since the formation of the Advisory Committee in 1982 that the continued use of the name "Gamay Beaujolais" was in doubt. Thus, even though ATF did not specifically propose a phase-out in Notice No. 793, that issue has certainly been aired sufficiently to put all interested parties on notice that the future of the designation "Gamay Beaujolais" was uncertain.

On the other hand, since ATF proposed to continue to allow the use of this name in 1994, many domestic wineries may have relied upon this proposal in deciding to continue production of this wine, as have grape growers in the cultivation of the grapes used to make this wine. ATF wants to ensure that any such wineries and grape growers are given sufficient time to make any necessary changes required by this final rule. Many comments to the 1986 notice expressed concern that the market for "Napa Gamay" grapes would be severely affected by the elimination of the "Gamay Beaujolais" designation. ATF believes a reasonable phase-out period is necessary to avoid these economic consequences.

Accordingly, American wineries may continue to use this term for a period of ten years, subject to the requirements previously discussed, in order to afford them adequate time to make any necessary changes in the marketing of their wines and the planting of their vineyards. ATF believes that this interim position will ensure that consumers who read the label will not be misled as to the true varietal composition or geographic origin of the wines in question. In fact, the interim rule will ensure that American consumers receive a great deal of information as to the meaning of the term "Gamay Beaujolais" on American wine labels. By the end of the ten-year period, consumers who enjoy "Gamay Beaujolais" wines will have sufficient information about the product that they will be able to make an educated choice about the product once the labeling terminology changes.

#### Effective Date

The regulatory definition of "Gamay Beaujolais" as a type designation of varietal significance, which essentially codifies the past agency practice on this issue, will take effect May 7, 1997. Since this definition does not involve any change in past administrative practice, ATF does not believe that the new definition, in and of itself, will necessitate any labeling changes.

However, the new requirements imposed by the final rule with respect to additional information on labels will necessitate labeling changes. These requirements are effective for wines bottled on or after January 1, 1999. This will provide wineries with ample time to make any necessary changes to the labeling of "Gamay Beaujolais" wines. Furthermore, this effective date will coincide with the date on which the name "Napa Gamay" will no longer be authorized on wine labels. Pursuant to T.D. ATF-370, the name "Napa Gamay" is listed as a synonym for the prime name "Valdiguié;" however, the name "Napa Gamay" may only be used for wines bottled prior to January 1, 1999. Since this final rule will require wineries to make changes to existing labels, ATF believes that it would be unduly burdensome to require industry members to change their labels twice. Accordingly, the final rule will allow wineries to begin compliance with the interim labeling requirements for "Gamay Beaujolais" at the same time that the term "Napa Gamay" must be phased out.

#### Geographic Name Issues

ATF would like to clarify that it does not agree with those commenters who suggested that use of the "Gamay Beaujolais" designation is misleading as to the origin of the wine, or that ATF's prior or interim policy with respect to this name is in violation of the international obligations of the United States.

Two separate issues were raised with respect to the incorporation of the geographic name "Beaujolais" into the designation "Gamay Beaujolais." On the one hand, as previously noted, commenters opposed to the use of "Gamay Beaujolais" and commenters in favor of the use of "Gamay Beaujolais" have separately suggested that recognition of this term would constitute the authorization of a new semigeneric designation for American wines. Commenters opposed to use of the term "Gamay Beaujolais" have also suggested that use of the term is in violation of the FAA Act and its implementing regulations, because the



United States has already recognized the term "Beaujolais" as a nongeneric distinctive designation for wines, and thus the term "Beaujolais" may not appear anywhere on the label of a wine originating anywhere outside of Beaujolais, France. These issues will be addressed separately.

#### Regulations

ATF regulations at 27 CFR 4.24 provide several different categories of names of geographic significance. Section 4.24(a) provides that certain names, such as Vermouth and Sake, are generic names which originally had geographic significance, but which are also designations of a class or type of wine. Such names may be used to label wines coming from any geographic area.

Section § 4.24(b) also establishes semigeneric names of geographic significance which are also designations of a class or type of wine. Semigeneric designations may be used to designate wines of an origin other than that indicated by the name only if there appears in direct conjunction an appropriate appellation of origin disclosing the true place of origin of the wine, and if the wine so designated conforms to the standard of identity, if any, for such wine contained in the regulations, or to the trade understanding of such class or type. Examples of semigeneric names which are also type designations are burgundy, champagne, and sherry.

Finally, § 4.24(c) provides that if a name of geographic significance has not been found by the Director to be generic or semigeneric, it may be used only to designate wines of the origin indicated by such name. Furthermore, if the Director finds that such a name is known to the consumer and to the trade as the designation of a specific wine of a particular place or region, distinguishable from all other wines, then the name shall be deemed a distinctive designation of a wine. The names "American" and "French" are nongeneric names that are not distinctive designations of specific grape wines. The names "Bordeaux Blanc" and "Medoc" are nongeneric names that are also distinctive designations of specific grape wines.

In 1990, ATF issued a new part 12 in the regulations, listing examples of foreign nongeneric names of geographic significance. In keeping with the policy of the past several decades, the name "Beaujolais" was recognized as a foreign nongeneric name of geographic significance which has also been recognized as a distinctive designation of a specific grape wine. See 27 CFR 12.31(b).

#### Semigeneric Name Issue

The name "Beaujolais" has long been recognized by the United States as a nongeneric name that is also a distinctive designation of a specific grape wine. This means that the name "Beaujolais," standing alone, can only be used to designate a wine that is produced in Beaujolais, France. However, certain commenters have suggested that "Gamay Beaujolais" has become a semigeneric name that represents that a wine is made using the same production methods that are used in the production of Beaujolais wines. The suggestion has thus been made that ATF should authorize "Gamay Beaujolais" as a semigeneric name.

ATF has never sanctioned the use of the name "Gamay Beaujolais" as a semigeneric designation. The geographic designation "Beaujolais," standing on its own, is a distinctive designation that has been recognized by American regulations for decades. There is no evidence that this term, standing alone, has lost its meaning as a distinctive, nongeneric geographic designation. To the extent that many comments in opposition to recognition of the name "Gamay Beaujolais" are based on the premise that the name would constitute a new semigeneric designation, ATF has concluded that such criticism is unfounded. The incorporation of a geographic name as part of a varietal designation, or as part of a designation of varietal significance, is completely different from the recognition of a geographical name in and of itself as a type of wine which has lost its geographical significance. If ATF decided to allow the designation "Beaujolais" to appear by itself on labels of wines originating outside of Beaujolais, France, then that would be a change in the status of the designation "Beaujolais" as a nongeneric, distinctive designation of geographic significance. However, the incorporation of the name "Beaujolais" as part of a varietal designation, or as part of a designation of varietal significance, does not mean that a new semigeneric designation has been created. This final rule in no way changes the recognition accorded the designation "Beaujolais" as a nongeneric name under § 4.24(c).

#### Use of Geographic Names in Varietal Designations

Many comments to Notice No. 793 suggested that the incorporation of geographic names in varietal designations is somehow in violation of the regulations governing the use of such geographic names on wine labels.

ATF does not agree with these comments.

Many European geographic terms were originally incorporated into American varietal names for the purpose of conveying to the American consumer that these were the same grape varieties that were grown in the European geographic area referenced by the name. While our historical records are not clear on this issue, it seems likely that the distinctive designation "Beaujolais" was allowed as part of the original "Gamay Beaujolais" designation only as a descriptive term similar to "French Colombard" or "Johannisberg Riesling." In other words, it was meant to convey one meaning—that this was the same "Gamay" grape as was grown in Beaujolais, just as the "French Colombard" was the same Colombard grape grown in France, and the "Johannisberg Riesling" was the same Riesling grape grown in Johannisberg.

It should be noted that ATF has never taken the position that the incorporation of a geographic name in a varietal name is contrary to the regulations in § 4.24 which govern the use of names of geographic significance. For example, § 4.24(c)(2) specifically recognizes that the word "French" is a nongeneric name; it cannot be used on a wine label to designate a wine that originates outside of France. However, "French Colombard" is different from the single word "French," in the same way that "Gamay Beaujolais" is different from the single word "Beaujolais." Thus, ATF does not agree with those commenters who suggested that ATF would be violating its own regulations by authorizing the use of a name of varietal significance that incorporated the name of a distinctive designation. The incorporation of a geographic name as part of a varietal name or a designation of varietal significance is different from the use of that same geographical name standing alone on a wine label.

When ATF first proposed the establishment of Part 12, to list examples of foreign nongeneric names of geographic significance, it took the position that certain foreign denominations of origin that were identical to or similar to American grape varietal designations should not be published as examples of nongeneric names. When ATF promulgated these regulations in T.D. ATF-296, however, we concluded as follows:

After consideration of the comments, ATF agrees that names of bonafide geographically demarcated areas or names which are used to designate a wine product from a particular country should be recognized as nongeneric

even if they are similar or identical to varietal names. In this regard, ATF believes that any potential for consumer confusion concerning the origin of the wine is obviated by the fact that the wine labeling regulations provide that the names of grape varieties may be used as a type designation of a wine only if the wine is also labeled with an appellation of origin. 27 CFR 4.23a. In addition, any questions concerning the potential for consumer confusion as to the identity of the wine that may arise when a foreign nongeneric name is similar or identical to a varietal name will be resolved by ATF on a case-by-case basis.

55 FR at 17966

This same issue was presented when various foreign producers and governments objected to the use of foreign geographical terms in American grape varietal names. In T.D. ATF-370, ATF specifically rejected any blanket prohibition of foreign geographical terms in grape variety names, stating that it had already announced in Notice No. 749 that "there is no reason to deny use of a grape variety name to American winemakers simply because that name bears a resemblance to a foreign name of geographic significance." 61 FR at 534. ATF noted that the requirement to use an appellation of origin in direct conjunction with a grape variety name would prevent confusion between an American varietal wine and a wine labeled with a foreign appellation of origin. Finally, ATF restated its position that "any questions concerning the potential for consumer confusion as to the identity of wine which may arise when a foreign geographic term is similar or identical to a varietal name would be resolved by ATF on a case-by-case basis." 61 FR at 534.

In the final rule on grape variety names, ATF announced that it was phasing out use of the term "Johannisberg Riesling," since that grape variety was known by two other names which did not incorporate geographical references—"Riesling" and "White Riesling," and these names were more correct than "Johannisberg Riesling." 61 FR at 530. On the other hand, since the name French Colombar had become well known to the American consumer, it was retained as a synonym for the prime name "Colombar." ATF did not believe that this name would mislead consumers as to the origin of the wine, as long as an appellation of origin appeared in direct conjunction with the name, in compliance with the requirements of § 4.34(b).

When ATF's predecessor agency originally allowed American wineries to use the name "Gamay Beaujolais" on labels, the decision was not made with the intention to thereby create a new

semigeneric designation or to imply that the wine made from these grapes was somehow the same as wine coming from Beaujolais, France. Furthermore, since an appellation of origin has always been required to appear in direct conjunction with the varietal name, we do not believe that consumers have been misled about the origin of the wine.

ATF does not agree that it is precluded by the FAA Act or its implementing regulations from approving the use of a grape varietal name or a type designation of varietal significance which incorporates a geographic reference, as long as that name is an accurate designation for the grape variety, or is a recognized name of varietal significance, and is known to the consumer. However, we agree that varietal names and type designations of varietal significance which incorporate geographic terms must be evaluated on a case-by-case basis to determine whether there is a potential for consumer confusion. In the case at hand, since there is no evidence that French wines are labeled as "Gamay Beaujolais," and since it appears that American consumers associate this name with American wines, ATF does not believe that the name causes confusion as to the geographic origin of the wine.

#### International Issues

It should be noted that while ATF has decided to phase out use of the name "Gamay Beaujolais," we do not believe that either our past policy on this issue or our interim policy during the "phase-out" period is in violation of the international obligations of the United States.

The provisions in TRIPS on geographical indications do afford certain protections for names of wines and distilled spirits in Articles 22 and 23. However, those protections are subject to the provisions in Article 24 that address and sanction the continued use of names in existence on or after the effective dates of the TRIPS provisions. Article 24(4) states as follows:

Nothing in this Section shall require a Member to prevent continued and similar use of a particular geographical indication of another Member identifying wines or spirits in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of that Member either (a) for at least ten years preceding the date of adoption of the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations or (b) in good faith preceding that date.

Under this paragraph, an industry member that has been using the

designation "Gamay Beaujolais" under the prescribed conditions is entitled to continue that use on the "same or related" wines after the effective date contained in the TRIPS provision. Additionally, Article 24(6) provides as follows:

Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member. Nothing in this section shall require a Member to apply its provisions in respect of a geographical indication of any other member with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Member as of the date of entry into force of the Agreement Establishing the MTO.

This paragraph is not restricted to the continued use by a particular person or entity. Thus, under the provisions of the first sentence, since the designation "Gamay Beaujolais" is the term customary in the common language of the United States to describe the wine at issue, ATF's interim maintenance of the *status quo* with respect to the definition of "Gamay Beaujolais" wines does not violate TRIPS. It is also arguable that the second sentence in Article 24(6), which allows the continued use of grape variety names existing as of January 1, 1995, applies to "Gamay Beaujolais" since ATF has determined that this name is a type designation of varietal significance. Furthermore, the final rule does not change the definition of "Gamay Beaujolais" which has been applied by the agency since well before January 1, 1995.

Finally, even if the general application of Article 24(6) were disregarded for a moment, the proposal does not contradict the provision of Article 24(3) which provides that a Member shall not diminish the protection of geographical indications that existed in that member immediately prior to the date of entry into force of the agreement establishing the World Trade Organization. ATF's maintenance of the *status quo* constitutes an interim continuance of the existing practices governing the production of the wine bearing the designation Gamay Beaujolais. Thus, no protection has been diminished. Accordingly, ATF's maintenance of the *status quo* with respect to Gamay Beaujolais is consistent with the obligations of the United States under the TRIPS provisions.

### The Wine Accord

Several commenters suggested that the continued use of the designation "Gamay Beaujolais" is contrary to the commitment in Item III of the United States-European Economic Community Wine Accord of 1983. In relevant part, that item states:

The EEC also notes with satisfaction the willingness of the U.S. to work within the regulatory framework of 27 CFR § 4.24(c)(3) to prevent erosion of non-generic designations of geographic significance indicating a wine-growing area in the EEC.

The United States fulfilled the letter and spirit of this commitment in the promulgation of 27 CFR Part 12—Foreign Nongeneric Names of Geographic Significance Used in the Designation of Wines in T.D. ATF-296, 55 FR 17967, April 30, 1990. Furthermore, at the time the commitment was made in the Wine Accord of 1983, the use of the designation "Gamay Beaujolais" on wines originating from other than the Beaujolais region of France was clearly established. Finally, even if the name "Gamay Beaujolais" were considered to be a nongeneric designation of geographic significance indicating a wine-growing area in the European Union, nothing in ATF's policy with respect to this designation erodes the Beaujolais appellation of origin in France since ATF's actions have merely maintained the *status quo* use of this designation, with further restrictions, pending the termination of the 10-year phase-out period. Thus, ATF's actions have not violated the commitments of the Wine Accord of 1983.

### Miscellaneous Labeling Issues

Several commenters suggested that American producers of Gamay Beaujolais are deliberately trying to create an association between their wines and French Beaujolais wines by using the descriptive term "Nouveau" to modify the designation "Gamay Beaujolais." The term "Beaujolais Nouveau" is used to designate the Beaujolais wine first released from each year's vintage, prior to any aging. French law prohibits the release of Beaujolais Nouveau wine until the third Thursday in November of each year, and the release of these wines on the third Thursday in November is an occasion which receives much publicity and attention throughout the world.

Commenters such as INAO and UIVB suggested that the promotion of American "Gamay Beaujolais Nouveau" wines, often released on the same day in November as the French Beaujolais Nouveau wines, is evidence of an

attempt by American wineries to create a false association with true Beaujolais wines. A comment from Georges Duboeuf, who exports French Beaujolais wines to the American market, made a similar argument with respect to the use of the term "Nouveau" to describe American Gamay Beaujolais wines. Mr. Duboeuf suggested that the popularity of French Beaujolais Nouveau wines had been skyrocketing in the United States, and that American wineries were trying to "perpetrate [a] hoax on the American consumer to improve their sales" of Gamay Beaujolais wines by appropriating the term "Nouveau" to describe their products. Mr. Duboeuf stated that "[w]ine produced in California can never be Beaujolais Nouveau though they may try to appropriate the name."

ATF believes that these comments have raised valid issues regarding individual labels approved by ATF for "Gamay Beaujolais" wines. For example, some wineries have labeling statements that compare their wines to Beaujolais wines from France. Other wines are labeled as "Gamay Beaujolais Nouveau," in an apparent attempt to create a comparison to "Beaujolais Nouveau" wines.

In general, ATF allows additional information on wine labels that is truthful, accurate and specific. Thus, it is not misleading for a winery to truthfully explain the type of production method used to make the wine at issue. Nor is it generally misleading to use a descriptive term such as "Nouveau" on a wine label. However, ATF will examine each application for label approval for "Gamay Beaujolais" wine received in the next 10 years to ensure that the label, taken as a whole, does not create the misleading impression that the wine is somehow the same as or similar to Beaujolais or "Beaujolais Nouveau" wines.

### Litigation

It should be noted that on February 21, 1996, the INAO and UIVB filed a complaint in the United States District Court for the District of Columbia. The two plaintiffs are organizations chartered under French law, and they allege that ATF's approval of domestic wine labels bearing the designation "Gamay Beaujolais" is contrary to the FAA Act and its implementing regulations. Plaintiffs also argue that ATF's approval of this term violates the international obligations of the United States. It is ATF's belief that the issues raised by the plaintiffs have also been raised in the comments submitted in this rulemaking proceeding, and are

comprehensively addressed in this final rule.

### Regulatory Flexibility Act

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule will allow domestic wineries to continue to use the labeling designation "Gamay Beaujolais" for a period of 10 years, although additional information on labels will be required. ATF believes that this phase-out period provides ample time for affected wineries to make any necessary labeling and marketing changes, especially in view of the fact that ATF first proposed in 1986 to phase out use of the name "Gamay Beaujolais." Thus, by the time that the phase-out period will have expired, American wineries will have had over 20 years from the first phase-out proposal to make any necessary adjustments to the labeling and marketing of their wines. Furthermore, even after use of the name is phased out, wineries will still be able to produce the same wine, using the Pinot noir and/or Valdiguié name(s). By that time, consumers will have learned (if they do not already know) that the name "Gamay Beaujolais" has been used to designate a wine made from Pinot noir and Valdiguié grapes. Presumably, consumer loyalty to this product will continue even after it is marketed under a different name. Thus, the final rule will not have a significant economic impact on a substantial number of small entities.

Accordingly, a regulatory flexibility analysis is not required because the final rule is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities, or (2) to impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

### Paperwork Reduction Act

The collection of information contained in this final regulation has been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(d)) under control number 1512-0482. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

**Executive Order 12866**

It has been determined that this regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this final rule is not subject to the analysis required by this Executive Order.

**Drafting Information**

The principal author of this document is Thomas Busey, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

**List of Subjects in 27 CFR Part 4**

Advertising, consumer protection, Customs duties and inspections, Imports, Labeling, Packaging and containers, Wine.

**Authority and Issuance**

Accordingly, 27 CFR Part 4, Labeling and Advertising of Wine, is amended as follows:

**Paragraph 1.** The authority citation for Part 4 continues to read as follows:

**Authority:** 27 U.S.C. 205.

**Par. 2.** Section 4.28 is amended by adding a new paragraph (e) to read as follows:

**§ 4.28 Type designations of varietal significance.**

\* \* \* \* \*

(e)(1) *Gamay Beaujolais*. An American wine which derives at least 75 percent of its volume from Pinot noir grapes, Valdiguié grapes, or a combination of both.

(2) For wines bottled on or after January 1, 1999, and prior to [10 years from date of publication], the name "Gamay Beaujolais" may be used as a type designation only if there appears in direct conjunction therewith, but on a separate line and separated by the required appellation of origin, the name(s) of the grape variety or varieties used to satisfy the requirements of paragraph (e)(1) of this section. Where two varietal names are listed, they shall appear on the same line, in order of predominance. The appellation of origin shall appear either on a separate line between the name "Gamay Beaujolais" and the grape variety name(s) or on the same line as the grape variety name(s) in a manner that qualifies the grape variety name(s). The following statement shall also appear on the brand or back label: "Gamay Beaujolais is made from at least 75 percent Pinot noir and/or Valdiguié grapes."

(3) The designation "Gamay Beaujolais" may not be used on labels of American wines bottled on or after April 9, 2007.

Signed: February 21, 1997.

**John W. Magaw,**  
Director.

Approved:

**Dennis M. O'Connell,**  
Acting Deputy Assistant Secretary  
(Regulatory, Tariff & Trade Enforcement).  
[FR Doc. 97-8808 Filed 4-4-97; 8:45 am]

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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 915**

[SPATS No. IA-009-FOR]

**Iowa Regulatory Program**

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

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

**SUMMARY:** OSM is approving a proposed amendment to the Iowa regulatory program (hereinafter referred to as the "Iowa program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Iowa proposed revisions to its rules pertaining to the prompt repair or compensation for material damage caused by subsidence to non-commercial buildings and occupied residential dwellings and related structures and the replacement of drinking, domestic and residential water supplies that have been adversely impacted by underground coal mining operations. The amendment is intended to revise the Iowa program to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** April 7, 1997.

**FOR FURTHER INFORMATION CONTACT:** Michael C. Wolfrom, Regulatory Program Specialist, Office of Surface Mining, Mid-Continent Regional Coordinating Center, Alton Federal Building, 501 Belle Street, Alton, Illinois 62002. Telephone: (618) 463-6460.

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Iowa Program
- II. Submission of the Program Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments
- V. Director's Decision
- VI. Procedural Determinations

**I. Background on the Iowa Program**

On January 21, 1981, the Secretary of Interior conditionally approved the Iowa program, effective April 10, 1981. General background information on the

Iowa program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Iowa program can be found in the January 21, 1981, *Federal Register* (46 FR 5885). Subsequent actions concerning Iowa's program and program amendments can be found at 30 CFR 915.10, 915.15, and 915.16.

**II. Submission of the Proposed Amendment**

By letter dated December 4, 1996 (Administrative Record No. IA-424), and pursuant to SMCRA, Iowa submitted a proposed amendment. The amendment was in response to a May 20, 1996, letter (Administrative Record No. IA-420) that OSM sent to the State in accordance with 30 CFR 732.17(c).

OSM announced receipt of the proposed amendment in the December 26, 1996, *Federal Register* (61 FR 67967), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on January 27, 1997.

During its review of the amendment, OSM identified concerns relating to Iowa Administrative Code (IAC) 40.4(10), Definitions for "material damage" and "occupied residential dwelling and structures related thereto"; IAC 40.38(3)(a), Pre-subsidence survey; IAC 40.38(3)(b), Subsidence control plan; IAC 40.64(7), Repair of damage; and IAC 40.64(8), Drinking, domestic, or residential water supply. OSM notified Iowa of these concerns by telephone facsimile (fax) on January 10, 1997 (Administrative Record No. IA-431), and by telephone on February 20, 1997 (Administrative Record No. IA-434).

By letters dated February 3 and 24, 1997 (Administrative Record Nos. IA-430 and IA-433, respectively), Iowa responded to OSM's concerns by submitting additional explanatory information and/or revisions to its proposed program amendment.

Iowa proposed additional revisions to IAC 40.4(10), Definitions for "material damage" and "occupied residential dwelling and structures related thereto"; IAC 40.38(3)(a), Pre-subsidence survey; IAC 40.38(3)(b), Subsidence control plan; IAC 40.64(7), Repair of damage; and IAC 40.64(8), Drinking, regulation, IAC 40.64(9), pertaining to subsidence control. These additional revisions concerned the correction of citation references, cross-references, and typographical errors. Therefore, the public comment period was not reopened.

**III. Director's Findings**

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

findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording

changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

Topic	State regulations	Federal counterpart regulations
Definitions: "Drinking, domestic or residential water supply," "Material damage," "Non-commercial building," "Occupied residential dwelling and structures related thereto," and "Replacement of water supply".	IAC 40.4(10) .....	30 CFR 701.5.
Hydrologic information: Probable hydrologic consequences determination .....	IAC 40.38(2) .....	30 CFR 784.14(e)(3)(iv).
Subsidence control plan .....	IAC 40.38(3) .....	30 CFR 784.20.
Subsidence control: Measures to prevent or minimize damage .....	IAC 40.64(6) .....	30 CFR 817.121(a).
Subsidence control: Repair of damage .....	IAC 40.64(7) .....	30 CFR 817.121(c).
Drinking, domestic, or residential water supply .....	IAC 40.64(8) .....	30 CFR 817.41(j).
Subsidence control .....	IAC 40.64(9) .....	30 CFR 817.121(b).

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

The Director notes that the word "reasonable" at IAC 40.64(7)(c)(4)(v) should be "reasonably," and he is requiring Iowa to correct this spelling error before the final rule is promulgated.

**IV. Summary and Disposition of Comments**

*Public Comments*

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

*Federal Agency Comments*

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Iowa program. OSM received only two comments; one from the U.S. Army Corps of Engineers and the other from the U.S. Department of Labor, Mine Safety and Health Administration (Administrative Record Nos. IA-426 and IA-427, respectively). The U.S. Army Corps of Engineers responded that the changes in the State's program were satisfactory. The U.S. Department of Labor, Mine Safety and Health Administration responded that it had no comments regarding the proposed rule.

*Environmental Protection Agency (EPA)*

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*)

None of the revisions that Iowa proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. IA-425). EPA did not respond to OSM's request.

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

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. IA-425). Neither SHPO nor ACHP responded to OSM's request.

**V. Director's Decision**

Based on the above findings, the Director approves the proposed amendment as submitted by Iowa on December 4, 1996, and as revised on February 3 and 24, 1997.

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

As discussed in III. Director's Findings, the Director is requiring Iowa to correct the aforementioned spelling error before the State promulgates the final rule.

The Federal regulations at 30 CFR Part 915, codifying decisions concerning the Iowa program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

**VI. Procedural Determinations**

*Executive Order 12866*

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

*Executive Order 12988*

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

submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

**National Environmental Policy Act**

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

**Paperwork Reduction Act**

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

**Regulatory Flexibility Act**

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

**Unfunded Mandates**

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

**List of Subjects in 30 CFR Part 915**

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 20, 1997.

**Brent Wahlquist,**

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

For the reasons set out in the preamble, 30 CFR Part 915 is amended as set forth below:

**PART 915—IOWA**

1. The authority citation for Part 915 continues to read as follows:

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

2. Section 915.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

**§ 915.15 Approval of Iowa regulatory program amendments.**

Original amendment submission date	Date of final publication	Citation/description
December 4, 1996.	April 7, 1997	IAC 40.4(10); .38 (2) and (3); 64 (6) through (9).

[FR Doc. 97-8788 Filed 4-4-97; 8:45 am]

BILLING CODE 4310-05-M

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 155**

**Oil or Hazardous Material Pollution Prevention Regulations for Vessels**

**CFR Correction**

In Title 33 of the Code of Federal Regulations, parts 125 to 199, revised as of July 1, 1996, page 414, Table 3 in Appendix B to part 155 is corrected by adding brackets and an asterisk around the number 5 in the column entitled "% Recovered Floating oil", under the categories "Offshore" and "6 days" for the entry Non-persistent oils.

BILLING CODE 1505-01-D

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 9**

[FRL-5807-2]

**OMB Approval Numbers Under the Paperwork Reduction Act**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical amendment.

**SUMMARY:** In compliance with the Paperwork Reduction Act, this document displays the Office of Management and Budget (OMB) control numbers issued under the Paperwork

Reduction Act (PRA) for part 258—Criteria for Municipal Solid Waste Landfills.

EFFECTIVE DATE: April 7, 1997.

FOR FURTHER INFORMATION CONTACT: Allen J. Geswein, (703) 308-7261.

**SUPPLEMENTARY INFORMATION:** EPA is today amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. Today's amendment updates the table to accurately display those information requirements promulgated under the Criteria for Municipal Solid Waste Landfills which appeared in the Federal Register on the October 9, 1991 (56 FR 51016). The affected regulations are codified at 40 CFR part 258. EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists the section numbers with reporting and recordkeeping requirements, and the current OMB control numbers. This display of the OMB control number and its 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.

This 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) and (d)(3) of the Administrative Procedure Act (5 U.S.C. 553 (b)(B) and (d)(3)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

**List of Subjects in 40 CFR Part 9**

Environmental protection, Reporting and recordkeeping requirements.

Dated: March 28, 1997.

**Timothy Fields, Jr.,**

*Acting Assistant Administrator, Office of Solid Waste and Emergency Response.*

For the reasons set out in the preamble 40 CFR part 9 is amended as follows:

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, 1344, 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. In § 9.1, the table is amended by adding an entry under the indicated heading to read as follows:

**§ 9.1 OMB approvals under the Paperwork Reduction Act.**

* * * * *	40 CFR citation	OMB control No.
* * * * *	Criteria for Municipal Solid Waste Landfills	
* * * * *	Part 258 .....	2050-0122

[FR Doc. 97-8819 Filed 4-4-97; 8:45 am]  
BILLING CODE 6560-50-P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 27**

[GN Docket No. 96-228; FCC 97-112]

**The Wireless Communications Service ("WCS")**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** On March 31, 1997, the Federal Communications Commission ("Commission") adopted a Memorandum Opinion and Order amending certain rules pertaining to Wireless Communications Service ("WCS") operations in the 2305-2320 and 2345-2360 MHz bands. These amendments are being made in response to certain petitions for reconsideration of the Report and Order in this proceeding which established rules and policies for WCS. The effect of this action is to make minor amendments to the power and out-of-band emission limits imposed on WCS operations.

**EFFECTIVE DATE:** April 7, 1997.

**FOR FURTHER INFORMATION CONTACT:** Josh Roland, Wireless Telecommunications Bureau, (202) 418-0660, or Tom Mooring, Office of Engineering and Technology, (202) 418-2450.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Memorandum Opinion and Order in GN Docket No. 96-228. The complete Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919

M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, N.W., Washington, D.C. 20037. The complete Memorandum Opinion and Order is also available on the Commission's Internet home page (<http://www.fcc.gov>)

**Summary of the Memorandum Opinion and Order**

1. The Omnibus Consolidated Appropriations Act, 1997, Public Law 104-208, 110 Stat. 3009 (1996) ("Appropriations Act") directed the Commission to reallocate the use of frequencies at 2305-2320 megahertz and 2345-2360 megahertz to wireless services that are consistent with international agreements concerning spectrum allocations, and to assign the use of such frequencies by competitive bidding pursuant to Section 309(j) of the Communications Act of 1934. In making these bands of frequencies available for competitive bidding, the Commission was directed to seek to promote the most efficient use of the spectrum and to commence the competitive bidding for the assignment of these frequencies no later than April 15, 1997.

2. On February 19, 1997, the Commission adopted a *Report and Order* in this proceeding establishing the Wireless Communications Service ("WCS"). See *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS")*, GN Docket No. 96-228, *Report and Order*, FCC 97-50, 62 FR 9636 (March 3, 1997). ("*Report and Order*"). Specifically, the Commission allocated the 2305-2320 MHz and 2345-2360 MHz bands to the fixed, mobile, and radiolocation services on a primary basis and maintained the primary allocation for the broadcasting-satellite service (sound) in the 2310-2320 MHz and 2345-2360 MHz bands. WCS licensees will be permitted to provide any of these services. The Commission did not adopt any limitations on transmitter power, except to require that the equipment comply with our radiofrequency ("RF") safety program. The Commission also declined to impose any technical restrictions on WCS licensees aimed at protecting the multipoint distribution service and the instructional television fixed service ("MDS/ITFS") reception because, based on the record before the Commission at that time, the Commission was not persuaded that the operation of WCS facilities would irreparably harm the MDS and ITFS services. The Commission also noted that MDS/ITFS

block downconverters traditionally have employed an inexpensive design that has minimal frequency selectivity, and observed that the industry appears to be converting to newer, more robustly designed downconverters that would not receive WCS signals. The Commission concluded that it would be imprudent to adopt a requirement for WCS licensees to protect MDS/ITFS operations before having a more complete understanding of the nature and extent of problems that may actually arise.

3. Also in the *Report and Order*, in order to protect satellite digital audio radio service ("Satellite DARS" or "DARS") operations in the 2320-2345 MHz band, the Commission adopted stringent out-of-band emission limits that it believed would, at least in the foreseeable future, make mobile operations in WCS spectrum technologically infeasible. Specifically, all emissions into the 2320-2345 MHz band from fixed WCS transmitters must be attenuated below the transmitter output power ("p") by at least 80 + 10 log (p) dB and all emissions from mobile WCS transmitters must be attenuated below p by at least 110 + 10 log (p) dB.

4. On March 10, 1997, the Wireless Cable Association International, Inc. ("WCA") filed an Emergency Motion for Stay and a Petition for Expedited Reconsideration of the *Report and Order*. Concurrent with the adoption of this *Memorandum Opinion and Order*, the Commission is denying WCA's Emergency Motion for Stay, ruling that the Appropriations Act does not afford the Commission the authority to defer the commencement date of the WCS auction. On March 11, 1997, the PACS Providers Forum and DigiVox Corporation ("PPF/DigiVox") jointly filed a Petition for Expedited Reconsideration of the *Report and Order*. On March 13, 1997, the Wireless Telecommunications Bureau placed the petitions on public notice and established an expedited pleading cycle. By this *Memorandum Opinion and Order*, the Commission amends certain aspects of its rules governing the WCS in response to these two petitions for reconsideration.

5. Specifically, based on a better understanding of the potential for WCS operations to interfere with MDS/ITFS reception, the Commission is specifying limits on WCS operating power and is requiring that, for a limited time, WCS licensees assume responsibility under certain circumstances for interference they may cause to MDS/ITFS operations. The Commission also is requiring WCS licensees to provide advance notification to nearby MDS/

ITFS licensees of certain technical parameters and is encouraging voluntary coordination among affected licensees. Additionally, though reaffirming the original out-of-band emission limits as generally appropriate across the broad range of flexible WCS systems and uses, the Commission is adopting an alternative, less stringent out-of-band emission limit for portable WCS transmitters in the 2305-2315 MHz band (the lower portions of Blocks A and B) that meet specific power, duty cycle and other technical restrictions. The Commission believes that providing WCS applicants and licensees with this additional design choice will facilitate certain potentially beneficial uses of WCS spectrum that may not otherwise be feasible, or would incur unnecessary higher costs, under the general, more stringent out-of-band emission limits. The Commission wishes to caution prospective WCS licensees, however, to consider carefully whether their anticipated uses and business plans can be successfully implemented under the additional technical and operational restrictions necessary to qualify for the less stringent out-of-band emission limit. In particular, wide area, full mobility systems and services such as those being provided or anticipated in the cellular and PCS bands are likely to be of questionable feasibility under either the alternative restrictions or the general out-of-band emission limits.

#### WCS Interference to MDS/ITFS

6. MDS and ITFS operate in the 2150-2162 and 2500-2690 MHz bands. Nonetheless, MDS/ITFS downconverters have minimal frequency selectivity and, thus, some models are designed to operate throughout the entire 2.1-2.7 GHz band. In the *Report and Order*, the Commission stated that the digital downconverters to which the MDS/ITFS industry are expected to convert over the next several years are expected to be better designed and not subject to overloading from WCS signals. Nonetheless, in order to better understand the interference concerns of the MDS/ITFS industry, staff from the Commission's Office of Engineering and Technology obtained block diagrams from Pacific Monolithics, a manufacturer of MDS/ITFS equipment, for three of their MDS downconverters. All have similar construction and, according to Hardin Associates, the firm which prepared an Engineering Statement in support of the WCA petition, the downconverter construction for all the major manufacturers is essentially identical. The interference issues raised by the

WCA petition relate to the possibility that WCS signals could overload the Low Noise Amplifier ("LNA") input stage of this equipment. This stage is directly fed by the receive antenna and thus has little or no isolation. Between the receive antenna and the LNA, this equipment does not employ any filtering related to the block of frequencies between 2162 MHz and 2500 MHz. Interference protection from the WCS service to the MDS downconverter would have to be provided at this point to prevent signal overload of the LNA. This could be accomplished by trapping out the WCS signal in the 2305-2360 MHz band or by moving the RF diplexer from the output of the LNA to the input of the LNA. The MDS industry is currently designing equipment to protect against interference caused by high input power from PCS operations in the 1850-1990 MHz band, and it seems reasonable that the industry could also design these downconverters to protect against interference from WCS equipment operating with similar high power levels. The Commission estimates that such a filter is likely to cost about \$5 to \$10 per unit. The Commission believes, however, that filters could not be economically installed in existing units due to the design and construction of these downconverters. A MDS/ITFS subscriber receiving interference would thus have to have the entire unit replaced at a substantially higher unit cost. The Commission notes that MDS/ITFS interference issues have been raised in a petition to deny filed against a number of applications for broadband PCS licensees in the D, E and F blocks. The Commission wishes to make clear that its resolution of MDS/ITFS interference issues with respect to WCS is based solely on the totality of the circumstances presented here.

7. After careful consideration of this issue, the Commission finds that the public interest would be best served by setting limits on WCS operating power. The Commission will therefore restrict WCS fixed, land and radiolocation land stations to 2,000 watts peak EIRP and WCS mobile and radiolocation mobile stations to 20 watts EIRP. Setting maximum power limits on WCS operations will provide MDS/ITFS equipment manufacturers and service providers with the necessary certainty regarding the potential WCS environment to enable them to design and purchase more robust receiving installations, including better designed downconverters. The Commission does not, however, wish to unnecessarily limit the service offerings that can be

provided using WCS spectrum, and therefore does not adopt the 20 watt EIRP power limit suggested by WCA. Instead, as more fully discussed below, the Commission will assign to WCS licensees certain responsibilities to cure actual interference to existing and soon-to-be-installed MDS/ITFS downconverters. With respect to the power limits we are setting, the Commission believes it is unlikely that, in the foreseeable future, any potential WCS operator would consider employing power levels greater than these limits given the considerable economic cost of developing high power transmitters that would comply with the stringent out-of-band emission limits adopted in this proceeding. The Commission also observes that the maximum EIRP of a transmitter station in the MDS and ITFS services with an omnidirectional antenna is limited to 2,000 watts (33 dBW), and that wireless cable service is a potential use for WCS spectrum. In addition, the Commission notes that WCA has concluded that 20 watts EIRP will not cause destructive interference to MDS/ITFS reception. Thus, WCS mobile stations, to the extent mobile services are or become technologically feasible, should be able to operate ubiquitously without substantial risk of interference to MDS/ITFS reception.

8. The Commission agrees with WCA that MDS/ITFS equipment that was designed to operate in a pre-WCS environment should be afforded some degree of protection from interference. The introduction of possibly a large number of transmitters in WCS spectrum will increase the potential for interference to existing MDS/ITFS receivers that were designed with different expectations about the extent and nature of use of nearby bands. Given sufficient notice and time to adjust to allocation changes in nearby bands, licensees might be expected to mitigate interference costs by voluntarily introducing better, more selective receivers in new installations and in the normal replacement of older receivers. Such a response has not been possible in this instance, however, because of the accelerated rule making and licensing procedures that are required for WCS under the Appropriations Act. Considering these circumstances, and that the WCS auction has not yet occurred, the Commission believes it is appropriate and equitable to shift to WCS licensees some of the cost and responsibility for remedying interference to MDS/ITFS operations.

9. Nonetheless, the Commission also believes that the MDS/ITFS industry



should be encouraged to employ equipment in the future which will not require undue power restrictions on users of nearby spectrum. To balance these objectives, the Commission is establishing an interference protection rule for MDS/ITFS receivers, based on aspects of the existing FM blanketing rule. See 47 CFR 73.318. Specifically, WCS licensees will bear full financial obligation to remedy interference to MDS/ITFS block downconverters if all of the following conditions are met: (1) The complaint of interference is received by the WCS licensee prior to February 20, 2002; (2) the MDS/ITFS downconverter was installed prior to August 20, 1998; (3) the WCS operation transmits at 50 or more watts peak EIRP; (4) the MDS/ITFS downconverter is located within a WCS transmitter's power flux density contour of  $-34$  dBW/m<sup>2</sup>; and (5) the MDS/ITFS customer or licensee has informed the WCS licensee of the interference within one year from the initial operation of the WCS transmitter or within one year from any subsequent power increase at the WCS station. If the WCS licensee cannot otherwise promptly eliminate interference caused to MDS/ITFS reception, then that licensee would be required to cease operations from the offending WCS facility. In addition to this blanketing-type rule, the Commission will require WCS licensees, at least 30 days before commencing operations from any new WCS transmission site or with increased power from any existing WCS transmission site, to notify all MDS/ITFS licensees in or through whose licensed service areas they intend to operate of the technical parameters of the WCS transmission facility. The Commission emphasizes, however, that WCS licensees have no obligation to remedy interference unless all of the conditions are met. If the WCS licensees and the MDS and ITFS licensees coordinate voluntarily, the Commission believes that WCS fixed and land stations can generally be located in a manner to avoid causing interference to MDS/ITFS receivers. The Commission expects the WCS and MDS/ITFS licensees to coordinate voluntarily and in good faith to avoid interference problems and to allow the greatest operational flexibility in each other's operations.

10. The Commission believes that the above approach appropriately apportions the burdens and incentives between the WCS and MDS/ITFS licensees. WCS licensees will have an incentive to coordinate voluntarily with the MDS/ITFS industry in order to

prevent interference problems from occurring, and the 30-day notification requirement will afford MDS/ITFS licensees an opportunity to alert their subscribers to the potential for interference and explain what to do in the event it occurs. In turn, MDS/ITFS licensees will have an incentive to develop and use better technology for new receiving installations. The MDS/ITFS industry will have 18 months from the release date of the *Report and Order* in this proceeding to deplete inventories of existing equipment and to design more robust replacement equipment, and WCS licensees will be obligated for five years to remedy actual interference. Beyond that time, it is reasonable to expect the MDS/ITFS industry to bear full financial responsibility for any necessary equipment replacement costs. Further, we believe that basing MDS/ITFS protection on a power flux density contour rather than a restrictive power limitation serves the public interest. This approach will provide WCS licensees with greater flexibility to design and implement new wireless services. WCS licensees operating at power levels higher than 50 watts will have a larger zone within which they will be obligated to remedy interference to MDS/ITFS downconverters, but they will be able to make that choice given the particular characteristics of the market in which they will operate. From its experience in addressing technically analogous issues of blanketing interference caused by FM broadcast transmitters, the Commission believes that the "technological fixes" contemplated by the blanketing-type rule coupled with the 30-day notification requirement will adequately protect MDS/ITFS operations and yet allow WCS substantially greater operational flexibility than would be possible under the power limit approach suggested by the petitioner. The Commission therefore concludes that the approach it adopts here to address concerns about WCS signal overloading of MDS/ITFS downconverters will best serve the overall public interest.

#### WCS Out-of-Band Emission Limits

11. The Commission has dedicated considerable staff engineering expertise and resources to evaluate the proposal set forth by PPF/DigiVox and finds that it is appropriate to adjust the WCS out-of-band limits for systems that comply with certain parameters. Accordingly, the Commission will permit WCS systems that operate in accordance with the specific parameters set forth below to reduce their portable unit emissions into the 2320-2345 MHz band by a

factor not less than  $93 + 10 \log(p)$  dB, where  $p$  is the transmitter power in watts. While this is considerably more permissive than the limit for WCS mobile operations that the Commission adopted in the *Report and Order*, the Commission believes that the specific operating parameters set forth by PPF/DigiVox will limit the potential for such a system to interfere with DARS to a reasonable level generally equivalent to that provided by the stricter limits for more general WCS operations.

12. In authorizing DARS, it was the Commission's desire to ensure a high quality radio service. However, a desire for an interference-free radio service must be balanced with the need to provide reasonable operating parameters for adjacent services. Accordingly, the Commission's intention in determining out-of-band emission limits for WCS into the spectrum used by DARS has been to limit the potential for interference to a reasonable level—not to provide a pure, interference-free environment. In determining the out-of-band emission limits adopted in the *Report and Order* the Commission had to take into consideration the wide flexibility that the Commission providing WCS licensees to provide any services consistent with the Table of Frequency Allocations. Because the Commission is unable to determine the specific operating parameters of a WCS service until the service is actually implemented, the Commission found it appropriate to adopt limits that take into account any possible system configuration. Such limits are necessary to ensure the viability of Satellite DARS, which will operate with very low signal levels at the receive antennas, in a frequency band adjacent to a terrestrial service that will likely employ much higher powers and whose transmitters may be in the immediate vicinity of a DARS receiver. Accordingly, the Commission affirms its decision generally to require WCS operations to reduce their emissions in the 2320-2345 MHz band by not less than  $80 + 10 \log(p)$  dB for fixed, land, and radiolocation land station transmissions and  $110 + 10 \log(p)$  dB for mobile and radiolocation mobile station transmissions, where  $p$  is the transmitter power in watts. The Commission is, however, clarifying that the out-of-band emission limits specified in the *Report and Order* for "fixed operations" pertain to transmissions from fixed, land, and radiolocation land stations and that the emission limits specified for "mobile operations" pertain to transmissions from mobile and radiolocation mobile stations.

13. The Commission recognizes, however, that it is possible to provide a reasonable level of protection to DARS by taking into account a specific WCS system, although it may exceed the out-of-band emission limits adopted in the *Report and Order*. A specific system configuration may have certain attributes that were not taken into account when developing the general emission limits but which reduce its potential to interfere with DARS. For instance, a system may have reduced gain in the direction of Satellite DARS receiver, or the probability of the transmitters of a certain type of WCS system being close enough to interfere with Satellite DARS systems may be very low. PPF/DigiVox has provided a specific set of operating parameters that the Commission can take into account in its analysis of potential interference to DARS. By taking these specific parameters into account, the Commission believes that it is possible for a system to operate with less stringent out-of-band limits than those originally adopted.

14. The system described by PPF/DigiVox is a low power, low mobility portable system that will provide voice and data service from fixed and portable units. No vehicle mounted units would be permitted. In reaching its decision to reduce the out-of-band limits for WCS systems that operate in a manner consistent with that described by PPF/DigiVox, the Commission takes into account both the technical and operational factors specific to the interaction of this specific system and a DARS system. One of the greatest difficulties in performing this type of analysis, however, is the fact that neither system has yet been deployed. Accordingly, the Commission's analysis must take into consideration what it believes to be realistic assumptions about system equipment and operations. While the Commission based its analysis on the record of the proceeding, it recognizes that there is some uncertainty inherent in trying to evaluate two systems that have not yet been deployed and for which equipment designs are not yet final. The Commission also recognizes that the 2320-2345 MHz frequency band is the only spectrum specifically available for provision of Satellite DARS in the United States. Accordingly, if Satellite DARS in this spectrum is subject to excessive interference, the service will not be successful and the American public will not benefit from the service. In contrast, PACS can be provided in other spectrum currently available for use by services including cellular and

PCS. Thus, should the potential for WCS operations to interfere with DARS prove to be greater when the systems are implemented than the Commission's analysis indicates, the Commission would of course revisit this issue and make appropriate adjustments. Specifically, parties should note that per 47 CFR 27.53(c), when emissions outside of the authorized bandwidth cause harmful interference, the Commission may, at its discretion, require greater attenuation than that specified in the Rules.

15. PPF/DigiVox questions some of the technical parameters of the DARS system. One area of contention is the Satellite DARS receiver noise temperature used in the analysis. Primosphere used a 200 Kelvin noise temperature in its analysis, which is greater than the 120 Kelvin noise temperature proposed in its application. PPF/DigiVox contends that 370 Kelvins is more realistic. Based on the type of antenna proposed for DARS use and the need for cost effective equipment, the Commission believes that a receiver noise temperature of 250 Kelvins is realistic and that is what the Commission's calculations are based upon.

16. PPF/DigiVox contends that a rise in noise floor from a single interferer of 2 dB should be allowed, rather than the 0.2 dB rise considered by Primosphere. Considering the limited power that the satellite systems will be able to operate with and the potential for a DARS receiver to be affected by more than one interfering source, whether it is another WCS transmitter, out-of-band emissions from another source, or signal blockage, the Commission believes that a 2 dB allowable rise is too great a contribution from a single source. The Commission also, however, believes that a 0.2 dB allowable rise is overly conservative. Accordingly, the Commission has based its calculations on a 1.0 dB allowable rise, which corresponds to a 25% rise in receiver noise. These values are consistent with those used in determining the out-of-band limits adopted in the *Report and Order*.

17. In determining the potential for interference from its portable units, PPF/DigiVox takes into account a number of factors. These include the duty cycle of the WCS handset, the antenna pattern of a Satellite DARS antenna, isolation due to differences in polarization between DARS and WCS, and losses due to the proximity of a WCS portable unit to the head of the user. Users of portable units for the system described by PPF/DigiVox will generally be to the side and, in many instances, slightly below the roof of an

automobile. The Commission therefore agrees with PPF/DigiVox that the antenna pattern can be taken into account in performing an interference analysis. While antenna patterns can vary greatly, thereby affecting the strength of the undesired signal into the DARS receiver, the Commission believes that the values proposed by DigiVox are reasonable. The Commission also agrees that the isolation realized between the circularly polarized DARS signal and the linearly polarized WCS operations can be taken into consideration. The Commission disagrees, however, with the contention that the out-of-band limits should be reduced by 9 dB due to the duty cycle of the WCS handset. Because the symbol time used by DARS is shorter than the WCS burst of 312 microsecond, the DARS data will be disrupted by the WCS operations. While it may be possible for the DARS operators to employ error correction techniques that take into account the limited duty cycle of the WCS operations, any reduction in interference potential does not correlate directly to the reduction in power claimed by PPF/DigiVox. The Commission does believe, however, that DARS operators will be able to use the duty cycle to their advantage and are therefore requiring WCS operations to employ a 12.5% duty cycle in order to qualify for the reduced out-of-band emission limits. Finally, the Commission does not agree that any isolation can be assumed for energy absorbed by the human head. As Primosphere points out (pg. 7), the subscriber's head often will not be positioned between the WCS transmitter and the Satellite DARS receiver and, in some positions, may add to, rather than subtract from, undesired radiation. No statistical information was provided as to the probability of head loss occurring, or of its magnitude at those times. Due to the mobility of the hand-held units, it is highly unlikely that head loss is always present.

18. In its analysis, PPF/DigiVox assumes a separation of 12 feet between the WCS user and the DARS receiver. The Commission has reviewed the statistical analysis provided in support of this assumption and, while the Commission does not necessarily agree with all aspects of the analysis, 12 feet is a reasonable distance to assume in evaluating the potential interaction of DARS listeners and users of portable WCS operations as described by PPF/DigiVox. While the Commission believes that there will be interference to the DARS service from these WCS operations, the Commission believes

that actual instances of interference will be sufficiently limited as to not unduly jeopardize the commercial viability of DARS. Based on this analysis, the Commission finds it reasonable to allow portable WCS units that meet the criteria described in paragraph 16 to reduce their emission into the 2320–2345 MHz band by only  $93 + 10 \log(p)$  dB.

19. PPF/DigiVox has also requested that the Commission relax the out-of-band limits for base stations used in the type of system they describe. PPF/DigiVox bases its argument on the relative gain of the WCS antenna with respect to the position of the DARS receiver. As pointed out by Primosphere, depending on the exact antenna employed by the WCS station, the greatest potential for interference is not directly under the antenna as claimed by PPF/DigiVox. Although the path loss does increase as the DARS receiver moves away from the WCS base station, the gain of the WCS antenna will also increase. It is not possible to determine the precise relationship between these two factors without knowing the gain pattern for the specific antenna to be employed. In addition, if the Commission made such an adjustment, the Commission would have to require that any WCS licensee operating under the reduced emission limits use an antenna meeting those characteristics. The Commission also notes that in its evaluation, PPF/DigiVox considered a separation of 24 feet between its base station and a DARS receiver directly underneath. The system described by PPF/DigiVox may employ antennas mounted as low as 25 feet. If a DARS antenna is mounted on the roof of a vehicle it will be closer than 24 feet to the WCS antenna, resulting in reduced path loss. Accordingly, fixed WCS stations will continue to be required to reduce their emissions into the 2320–2345 MHz band by  $80 + 10 \log(p)$  dB.

20. For the reasons discussed above, the Commission is permitting WCS Block A and B licensees to employ portable devices (defined for the purposes of this decision as transmitters designed to be used within 20 centimeters of the body of the user) that transmit in the 2305–2315 MHz band only to attenuate all emissions into the 2320–2345 MHz band by a factor of not less than  $93 + 10 \log(p)$  dB and to employ base stations that transmit in the 2350–2360 MHz band only to attenuate all emissions into the 2320–2345 MHz band by a factor of not less than  $80 + 10 \log(p)$  dB. These less stringent out-of-band emission limits may be used only if the average portable transmit

power is limited to 25 mW, the peak portable transmit power is limited to 200 mW, the portable devices employ means to limit the power to the minimum necessary for successful communications, the portable devices have a duty cycle of 12.5% or less, and the portable devices use time division multiple access ("TDMA") technology. In addition, the Commission prohibits the installation of vehicle-mounted units, requires that transmitting antennas employ linear polarization or another polarization that provides equivalent or better discrimination with respect to a Satellite DARS antenna, requires that the average base station transmit output power be limited to 800 mW, and requires that base station antennas be located at a height of at least 8 meters (26.25 feet) above ground.

21. Accordingly, it is ordered, that Part 27 of the Commission's Rules is amended, as set forth below, and that, in accordance with the Omnibus Consolidated Appropriations Act, 1997, Public Law 104–208, 110 Stat. 3009 (1996), these Rules shall be effective immediately upon publication in the Federal Register. This action is taken pursuant to Sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 157(a), 303(c), 303(f), 303(g), and 303(r) and the Omnibus Consolidated Appropriations Act, 1997, Public Law 104–208, 110 Stat. 3009 (1996).

Furthermore, it is ordered, that the petitions for reconsideration are granted, to the extent described above and denied in all other respects.

#### List of Subjects in 47 CFR Part 27.

##### Radio.

Federal Communications Commission.  
William F. Caton,  
Acting Secretary.

#### Rule Changes

Part 27 of title 47 of the Code of Federal Regulations is amended as follows:

#### PART 27—WIRELESS COMMUNICATIONS SERVICE

1. The authority citation for part 27 continues to read as follows:

**Authority:** 47 U.S.C. 154, 301, 302, 303, 307, 309, and 332.

2. Section 27.4 is amended by adding the definitions for Base Station, Portable Device, Radiolocation Land Station, Radiolocation Mobile Station, Time Division Multiple Access, and Time Division Multiplexing in alphabetical order to read as follows:

#### § 27.4 Terms and definitions.

\* \* \* \* \*

**Base station.** A land station in the land mobile service.

\* \* \* \* \*

**Portable device.** Transmitters designed to be used within 20 centimeters of the body of the user.

\* \* \* \* \*

**Radiolocation land station.** A station in the radiolocation service not intended to be used while in motion.

**Radiolocation mobile station.** A station in the radiolocation service intended to be used while in motion or during halts at unspecified points.

\* \* \* \* \*

**Time division multiple access (TDMA).** A multiple access technique whereby users share a transmission medium by being assigned and using (one-at-a-time) for a limited number of time division multiplexed channels; implies that several transmitters use one channel for sending several bit streams.

**Time division multiplexing (TDM).** A multiplexing technique whereby two or more channels are derived from a transmission medium by dividing access to the medium into sequential intervals. Each channel has access to the entire bandwidth of the medium during its interval. This implies that one transmitter uses one channel to send several bit streams of information.

\* \* \* \* \*

3. Section 27.50 is added to subpart C to read as follows:

#### § 27.50 Power limits.

(a) Fixed, land, and radiolocation land stations transmitting in the 2305–2320 MHz and 2345–2360 MHz bands are limited to 2000 watts peak equivalent isotropically radiated power (EIRP).

(b) Mobile and radiolocation mobile stations transmitting in the 2305–2320 MHz and 2345–2360 MHz bands are limited to 20 watts EIRP peak power.

(c) Peak transmit power shall be measured over any interval of continuous transmission using instrumentation calibrated in terms of rms-equivalent voltage. The measurement results shall be properly adjusted for any instrument limitations, such as detector response times, limited resolution bandwidth capability when compared to the emission bandwidth, etc., so as to obtain a true peak measurement for the emission in question over the full bandwidth of the channel.

4. Section 27.53 is revised to read as follows:

#### § 27.53 Emission limits.

(a) The power of any emission outside the licensee's frequency band(s) of

operation shall be attenuated below the transmitter power (p) within the licensed band(s) of operation, measured in watts, by the following amounts:

(1) *For fixed, land, and radiolocation land stations:* By a factor not less than  $80 + 10 \log(p)$  dB on all frequencies between 2320 and 2345 MHz;

(2) *For mobile and radiolocation mobile stations:* By a factor not less than  $110 + 10 \log(p)$  dB on all frequencies between 2320 and 2345 MHz;

(3) *For fixed, land, mobile, radiolocation land and radiolocation mobile stations:* By a factor not less than  $70 + 10 \log(p)$  dB on all frequencies below 2300 MHz and on all frequencies above 2370 MHz; and not less than  $43 + 10 \log(p)$  dB on all frequencies between 2300 and 2320 MHz and on all frequencies between 2345 and 2370 MHz that are outside the licensed bands of operation;

(4) Compliance with these provisions is based on the use of measurement instrumentation employing a resolution bandwidth of 1 MHz or less, but at least one percent of the emission bandwidth of the fundamental emission of the transmitter, provided the measured energy is integrated over a 1 MHz bandwidth;

(5) In complying with the requirements in § 27.53(a)(1) and § 27.53(a)(2), WCS equipment that uses opposite sense circular polarization from that used by Satellite DARS systems in the 2320–2345 MHz band shall be permitted an allowance of 10 dB;

(6) When measuring the emission limits, the nominal carrier frequency shall be adjusted as close to the edges, both upper and lower, of the licensee's bands of operation as the design permits;

(7) The measurements of emission power can be expressed in peak or average values, provided they are expressed in the same parameters as the transmitter power;

(8) Waiver requests of any of the out-of-band emission limits in paragraphs (a)(1) through (a)(7) of this section shall be entertained only if interference protection equivalent to that afforded by the limits is shown;

(9) In the 2305–2315 MHz band, if portable devices comply with all of the following requirements, then paragraph (a)(2) of this section shall not apply to portable devices, which instead shall attenuate all emissions into the 2320–2345 MHz band by a factor of not less than  $93 + 10 \log(p)$  dB:

(i) The portable device has a duty cycle of 12.5% or less, with at most a 312.5 microsecond pulse every 2.5 milliseconds;

(ii) The portable device must employ time division multiple access (TDMA) technology;

(iii) The nominal peak transmit output power of the portable device is no more than 200 milliwatts (25 milliwatts average power);

(iv) The portable device operates with the minimum power necessary for successful communications;

(v) The nominal average base station transmit output power is no more than 800 milliwatts when the base station antennas is located at a height of at least 8 meters (26.25 feet) above the ground;

(vi) Only fixed and portable devices and services may be provided; vehicle-mounted units are not permitted; and

(vii) Transmitting antennas shall employ linear polarization or another polarization that provides equivalent of better discrimination with respect to a DARS antenna;

(10) The out-of-band emissions limits in paragraphs (a)(1) through (a)(9) of this section may be modified by the private contractual agreement of all affected licensees, who shall maintain a copy of the agreement in their station files and disclose it to prospective assignees or transferees and, upon request, to the Commission.

(b) *For WCS Satellite DARS operations:* The limits set forth in § 25.202(f) of this chapter shall apply, except that Satellite DARS operations shall be limited to a maximum power flux density of  $-197$  dBW/m<sup>2</sup>/4 kHz in the 2370–2390 MHz band at Arecibo, Puerto Rico.

(c) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

5. Section 27.58 is added to read as follows:

**§ 27.58 Interference to MDS/ITFS receivers.**

(a) WCS licensees shall bear full financial obligation to remedy interference to MDS/ITFS block downconverters if all of the following conditions are met:

(1) The complaint is received by the WCS licensee prior to February 20, 2002;

(2) The MDS/ITFS downconverter was installed prior to August 20, 1998;

(3) The WCS fixed or land station transmits at 50 or more watts peak EIRP;

(4) The MDS/ITFS downconverter is located within a WCS transmitter's free space power flux density contour of  $-34$  dBW/m<sup>2</sup>; and

(5) The MDS/ITFS customer or licensee has informed the WCS licensee of the interference within one year from

the initial operation of the WCS transmitter or within one year from any subsequent power increase at the WCS station.

(b) Resolution of complaints shall be at no cost to the complainant.

(c) Two or more WCS licensees collocating their antennas on the same tower shall assume shared responsibility for remedying interference complaints within the area determined by paragraph (a)(4) of this section unless an offending station can be readily determined and then that station shall assume full financial responsibility.

(d) If the WCS licensee cannot otherwise eliminate interference caused to MDS/ITFS reception, then that licensee must cease operations from the offending WCS facility.

(e) At least 30 days prior to commencing operations from any new WCS transmission site or with increased power from any existing WCS transmission site, a WCS licensee shall notify all MDS/ITFS licensees in or through whose licensed service areas they intend to operate of the technical parameters of the WCS transmission facility. WCS and MDS/ITFS licensees are expected to coordinate voluntarily and in good faith to avoid interference problems and to allow the greatest operational flexibility in each other's operations.

[FR Doc. 97-8909 Filed 4-4-97; 8:45 am]  
BILLING CODE 6712-01-P

**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

**49 CFR Part 1**

[OST Docket No. 1; Amdt. 1-285]

**Organization and Delegation of Powers and Duties; Delegation to the Director, Transportation Administrative Service Center**

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

**ACTION:** Final rule.

**SUMMARY:** The Secretary of Transportation rescinds the authority of the Assistant Secretary for Administration to operate the Working Capital Fund, as found in 49 CFR 1.59(d). The authority to operate the Working Capital Fund is hereby delegated to the Director, Transportation Administrative Service Center (TASC). This requires a change to the Code of Federal Regulations (CFR).

**EFFECTIVE DATES:** This rule is effective April 7, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert F. Stokes, TASC Business Support Office, Department of Transportation, (202) 366-5143, 400 Seventh Street SW., Washington, DC 20590, or Ms. Gwyneth Radloff, Office of the General Counsel, C-50, (202) 366-9305, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** The Secretary of Transportation has been given the authority to operate a Working Capital Fund (WCF) as prescribed in Pub.L. 89-670, October 15, 1966, revised by Pub.L. 97-449, January 12, 1983, 49 U.S.C. § 327. The Secretary had delegated this authority to the Assistant Secretary for Administration, as found in 49 CFR § 1.59. In November 1995, as part of the Secretary's consolidation of common administrative services in the Office of the Secretary into a single organization, the Secretary of Transportation established TASC. By administrative order, he assigned the Director, TASC, the responsibility of operating the WCF.

This rule amends 49 CFR § 1.59(d) by deleting the authority of the Assistant Secretary for Administration to operate

the WCF. The rule establishes the authority of the Director, TASC, to operate the WCF by adding a new paragraph under 49 CFR § 1.64, Authority to Operate the Working Capital Fund.

This rule is being published as a final rule and is being made effective on the date of publication. It relates to departmental management, organization, procedure, and practice. For this reason, the Secretary for good cause finds; under 5 U.S.C. § 553 (b)B and (d)(3), that notice, and public procedure on the notice are unnecessary and that this rule should be made effective in less than 30 days after publication.

#### List of Subjects in 49 CFR Part 1

Authority-delegations (Government agencies), organization and functions (Government agencies).

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended to read as follows:

#### **PART 1—[AMENDED]**

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

Authority: 49 U.S.C. 322; Pub. L. 101-552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. Section 1.59 is amended by revising paragraph (d) to read as follows:

#### **§ 1.59 Delegations to the Assistant Secretary for Administration.**

\* \* \* \* \*

(d) *Special funds.* Except as otherwise delegated, establish or operate, or both, such special funds as may be required by statute or by administrative determination. This excludes the Working Capital Fund (49 U.S.C. 327).

\* \* \* \* \*

3. A new § 1.64 is added as follows:

#### **§ 1.64 Delegations to the Director, Transportation Administrative Service Center.**

The Director, Transportation Administrative Service Center (TASC), is delegated authority to operate the Working Capital Fund (49 U.S.C. 327).

Issued in Washington, DC, this 28th day of March 1997.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 97-8756 Filed 4-4-97; 8:45 am]

BILLING CODE 4910-62-P

## Proposed Rules

Federal Register

Vol. 62, No. 66

Monday, April 7, 1997

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

### FEDERAL TRADE COMMISSION

#### 16 CFR Part 432

#### Request for Comments Concerning Rule Relating To Power Output Claims for Amplifiers Utilized in Home Entertainment Products

**AGENCY:** Federal Trade Commission.

**ACTION:** Request for public comments.

**SUMMARY:** The Federal Trade Commission ("Commission") is requesting public comments on its Rule relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products ("Amplifier Rule" or "Rule"). The Commission, as a part of its systematic review of all current Commission regulations and guides, is requesting comments about the overall costs and benefits of the Rule and its overall regulatory and economic impact. The Commission further seeks information about whether certain requirements of the Rule should be modified in light of technological and other changed circumstances. Lastly, the Commission requests information about issues involving amplified sound systems such as powered speakers for home computers and other home sound systems and sound amplifiers utilized in automobile entertainment products.

**DATES:** Written comments will be accepted until June 6, 1997.

**ADDRESSES:** Comments should be directed to: Secretary, Federal Trade Commission, Room H-159, Sixth and Pennsylvania Ave., NW., Washington, DC 20580. Comments about the Amplifier Rule should be identified "16 CFR Part 432—Comments."

**FOR FURTHER INFORMATION CONTACT:** Robert E. Easton, Esq., Special Assistant, Division of Enforcement, Bureau of Consumer Protection, (202) 326-3029 or Dennis Murphy, Economist, Division of Consumer Protection, Bureau of Economics, Federal Trade Commission, Washington, DC 20580, (202) 326-3524.

**SUPPLEMENTARY INFORMATION:** The Commission has determined, as part of

its oversight responsibilities, to review its rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The reviews also seek information on whether technological developments impact upon the rules. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission.

#### A. Background

The Amplifier Rule was promulgated on May 3, 1974 (39 FR 15387), to assist consumers in purchasing power amplification equipment for home entertainment purposes by standardizing the measurement and disclosure of various performance characteristics of the equipment. Prior to the Rule, sellers were making power, distortion and other performance claims based on many different technical test procedures, or on no recognized test procedures. The Rule establishes uniform test standards and disclosures so that consumers can make more meaningful comparisons of performance attributes.

The products within the scope of the Rule are defined as:

Sound power amplification equipment manufactured or sold for home entertainment purposes, such as for example, radios, record and tape players, radio-phonograph and/or tape combinations, component audio amplifiers and the like.<sup>1</sup>

The Rule makes it an unfair method of competition and an unfair or deceptive act or practice for manufacturers and sellers of sound power amplification equipment for home entertainment purposes to fail to disclose certain performance information in connection with direct or indirect representations of power output, power band, frequency or distortion characteristics.<sup>2</sup>

These disclosures must be made clearly, conspicuously and more prominently than any other representation or disclosures.<sup>3</sup> The Rule also sets out standard test conditions for performing the measurements that

support the required performance disclosures.<sup>4</sup> Further, the Rule prohibits representations of performance characteristics if they are not obtainable when the equipment is operated by the consumer in the usual and ordinary manner without the use of extraneous aids,<sup>5</sup> e.g., cooling fans.

When the Rule was promulgated in 1974, there were very few self-amplified (powered) speakers for use with home computers or home entertainment systems or external amplifiers for home computers used for home entertainment purposes. In 1997, however, there are numerous and sophisticated systems of this nature. The Commission has tentatively determined that while such systems are not specifically mentioned in the Rule, such amplified (powered) speakers and other similar sound amplification equipment when used for home entertainment purposes are within the scope and purpose of the Rule. The Commission has further tentatively determined that such equipment falls within the definition used in the Rule and is sufficiently similar to the examples given in the Rule as to alert manufacturers and sellers of the coverage. The Commission, however, seeks additional information concerning its tentative determinations, and addresses several questions below to these issues.

In 1974, amplified sound systems for automotive use were also in the formative stages of development. By 1997, such automotive amplified sound systems achieved a stage of technical sophistication on a par with many home entertainment sound amplification systems. Advertising for automotive sound amplification systems in recent years has often referred to the claimed power output (in watts) of the system using a variety of terms, including "Peak Power," "Total Power," and "RMS." Because the Commission wishes to learn whether the non-uniform disclosure of power output is resulting in consumer deception, confusion, and inability to make informed decisions, the Commission addresses several questions below to this issue.

<sup>1</sup> 16 CFR 432.1.

<sup>2</sup> Id. at 432.2. The required disclosures relate to: Minimum sine wave continuous average power output; load impedance in Ohms; rated power band or frequency response; and rated percentage of maximum total harmonic distortion.

<sup>3</sup> Id.

<sup>4</sup> Id. at 432.3.

<sup>5</sup> Id. at 432.5.

**B. Issues for Comment**

At this time, the Commission solicits written public comments on the following questions:

(1) Is there a continuing need for the Rule?

(a) What benefits has the Rule provided to purchasers of the products or services affected by the Rule?

(b) Has the Rule imposed costs on purchasers?

(2) What changes, if any, should be made to the Rule to increase the benefits of the Rule to purchasers?

(a) How would these changes affect the costs the Rule imposes on firms subject to its requirements?

(3) What significant burdens or costs, including costs of compliance, has the Rule imposed on firms subject to its requirements?

(a) Has the Rule provided benefits to such firms?

(4) What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on firms subject to its requirements?

(a) How would these changes affect the benefits provided by the Rule?

(5) Does the Rule overlap or conflict with other federal, state, or local laws or regulations?

(6) Since the Rule was issued, what effects, if any, have changes in relevant technology or economic conditions had on the Rule?

(7) The following questions relate to § 432.3 of the Rule, which specifies standard test conditions for measuring continuous power:

(a) Are there other widely used protocols for testing continuous power that could provide a satisfactory alternative to the § 432.2 requirements?

(b) Given the problems that manufacturers may experience with the test specifications in § 432.3(c) requiring that amplifiers be preconditioned for one hour at one-third power, should there be any modifications to § 432.3(c)?

(8) The Rule currently requires disclosure of maximum harmonic distortion, power bandwidth, and impedance whenever a power claim is made in any advertising, including advertising by retail stores, direct mail merchants, and manufacturers.

(a) Is there a continued need for the Rule to require disclosure of maximum rated harmonic distortion in media advertising, or should such disclosure be required only when maximum rated harmonic distortion exceeds a specified threshold level, such as one percent?

(b) Should certain types of advertising, such as that commonly used by retail stores to present information on prices and basic features

for numerous models of amplification equipment in a limited amount of print space, be exempted from some or all of the power bandwidth, distortion, and impedance disclosures?

(c) If so, what developments have occurred that make these disclosures no longer necessary in such advertising?

(d) If so, which of these disclosures should be exempted from such advertising and why?

(e) Should any such exemptions be extended to advertising by direct mail resellers, who would not have retail outlets where consumers could obtain more detailed pre-purchase information on amplifier specifications?

(9) The Rule currently governs power output claims relating to "sound power amplification equipment manufactured or sold for home entertainment purposes. . . ." The Commission has tentatively concluded that the Rule covers (A) self-powered speakers for use with (i) home computers, (ii) home sound systems, and (iii) home multimedia systems; and (B) other sound power amplification equipment for home computers.

(a) Are there any reasons why power output claims for such equipment should be considered outside the scope of the Rule? If so, please explain.

(b) Are manufacturers and distributors of these products aware that these products are, as the Commission has tentatively determined, within the scope of the Rule? If not, is there a need for the Commission to undertake business and consumer education efforts to publicize the coverage?

(c) Are the standard test conditions set out in the Rule appropriate for such equipment?

(10) Current promotional materials and labeling for self-powered speakers and other sound amplification equipment for home computers systems contain power output claims expressed in a variety of terms, including "Peak Power," "Peak Music Output Power," "Total Power," and "RMS" power.

(a) What test protocols provide the basis for each of these power measurements?

(b) How do power ratings obtained using these protocols compare with the power rating that would be obtained using the FTC continuous power output protocol?

(c) Do power output claims in promotional material and labeling for such self-powered computer speakers rely on measurement methods other than those listed above?

(d) How do any such power claims under (c) above compare with the corresponding FTC power output rating?

(11) The Rule governs sound amplification equipment intended for home entertainment purposes. Thus, the Rule does not apply to automotive sound amplification products. Current promotional materials and labeling for automotive sound amplification equipment contain power output claims expressed in a variety of terms, including "Peak Power," "Total Power," and "RMS" power.

(a) What test protocols provide the basis for each of these power measurements?

(b) How do power ratings obtained using these protocols compare with the power rating that would be obtained using the FTC continuous power output protocol?

(c) Do power output claims in promotional material and labeling for automotive stereo equipment rely on measurement methods other than those listed above?

(d) How do any such power claims under (c) above compare with the corresponding FTC power output rating?

(e) Do any of the sound power claims being made in connection with the sale and advertising of automotive sound amplification products inhibit meaningful comparisons of performance attributes by consumers? If so, please: (i) Identify any such claims and furnish copies of advertising and other material containing such claims, and (ii) supply information establishing how prevalent such claims are (i.e., how widespread and serious the problem is).

(f) If there is a need to take action to increase the ability of consumers to make meaningful comparisons of performance characteristics for automotive sound amplification products, what is the most appropriate vehicle for accomplishing this goal (e.g., voluntary industry standards, consumer education, business education, industry/government public workshops, amending the Amplifier Rule, etc.)?

(g) Regardless of the method favored to improve consumers' ability to compare performance characteristics, would any of the Rule's current testing or disclosure requirements for home sound amplification products have to be modified for use with automotive sound amplification products due to any differences in technology, marketing considerations, or other reasons?

**List of Subjects in 16 CFR Part 432**

Amplifiers; Home entertainment products; Trade practices.

Authority: 15 U.S.C. 41-58.

By Direction of the Commission.  
Donald S. Clark,  
Secretary.

[FR Doc. 97-8795 Filed 4-4-97; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### 27 CFR Part 9

[Notice No. 848]

RIN 1512-AA07

#### Mendocino Ridge Viticultural Area

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms (ATF), is considering the establishment of a viticultural area located within the boundaries of Mendocino County, California to be known as "Mendocino Ridge," under 27 CFR part 9. This proposal is the result of a petition submitted by Mr. Steve Alden on behalf of the Mendocino Ridge Quality Alliance. The entire proposed area consists of about 262,400 acres or approximately 410 square miles with the actual proposed "Mendocino Ridge" viticultural area starting at the 1200 feet elevation line, and encompassing all areas at or above 1200 feet in elevation. Because of the 1200 foot elevation, this proposed area is unique from other coastal viticultural areas. Of the total 262,400 acres, the petitioner estimates that less than one-third, or 87,466 acres, lies above 1200 feet elevation. Of these 87,466 acres, the petitioner asserts that approximately 1500 to 2000 acres or 2% of the narrow timber covered ridge-tops are suitable for grape production. According to the petitioner, there are approximately 75 acres of grapes currently growing within the boundaries of the proposed viticultural area. This 75 acres of grapes is divided among six wineries.

**DATES:** Written comments must be received by May 22, 1997.

**ADDRESSES:** Send written comments to: Chief, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221 (Attn: Notice No. 848). Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Public Reading Room,

Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC.

#### FOR FURTHER INFORMATION CONTACT:

David W. Brokaw, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202) 927-8230.

#### SUPPLEMENTARY INFORMATION:

##### Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been delineated in subpart C of part 9.

Section 4.25a(e)(2), Title 27, CFR, outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

- (a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;
- (b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;
- (c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;
- (d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale, and;
- (e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

##### Petition

Mr. Steve Alden of Alden Ranch Vineyards has petitioned ATF on behalf

of the Mendocino Ridge Quality Alliance to propose the establishment of a new viticultural area located within the boundaries of Mendocino County, California, to be known as "Mendocino Ridge." There are currently six producing vineyards in the proposed "Mendocino Ridge" viticultural area.

The evidence submitted by the petitioner is discussed in detail below. Given the unusual nature of the proposed area, ATF is requesting public comment on specific questions regarding the supporting evidence. It should be noted that the proposed viticultural area would include only the land above a certain elevation within the boundaries described. Thus, ATF wishes to solicit public comment on the following questions about the geographic distinctiveness of the non-contiguous areas in the petition:

1. Do the non-contiguous sites in the proposed viticultural area have such similar climate, soil, and other characteristics that they can be considered as a single or common grape growing region?
2. Is the actual land included within the proposed viticultural area at the 1200 feet (and above) elevation line reasonably distinguishable from the adjacent land that is not included?
3. Does the totality of the geographic evidence regarding the proposed viticultural area support the application of a reasonable proximity rule to exclude widely scattered but otherwise similar locations from being included within the proposed grape-growing region?

##### Evidence That the Name of the Area is Locally or Nationally Known

The petitioner asserts that, the name Mendocino Ridge has been chosen as the name of the proposed viticultural area because the region has been known as producing some of the best and most distinctive Zinfandel wine in the world. In this regard, the petitioner asserts that many books and magazines have historically referred to the proposed viticultural area as the Mendocino Ridge. For example, in 1988 the winery, Kendall-Jackson, wrote: " \* \* \* the vines in the Mariah vineyard are subject to the same complicated climatic variables that have caused wine experts to hail the *Mendocino Coastal Ridge* as one of the world's greatest Zinfandel regions." More recently, in an article published in the February 1994 issue of *Gourmet Magazine*, wine writer Gerald Asher wrote:

In Mendocino there's an equally wide divide between the tense and concentrated Zinfandels produced from old vines planted by turn-of-the-century Italian immigrants



who settled the exposed, high ridges between Anderson Valley and the Pacific and the subtly urbane wines from vineyards almost as old but planted in milder and better-protected sites around Ukiah and in the adjacent McDowell and Redwood valleys. (Emphasis added)

The petitioner further notes that Jed Steele started to make wine from old Mendocino Ridge Zinfandel vines at the Edmeades Vineyard & Winery in Anderson Valley in the early 1970's. Again, the petitioner cites Gerald Asher:

"The revival of California Zinfandel as a serious varietal wine began with the rediscovery of forgotten patches of old vines such as those on the Mendocino Ridge, most of them tucked away among hillside orchards."

The petitioner claims that the six vineyards within the proposed "Mendocino Ridge" are known by locals and wine writers as the "Mendocino Ridge" vineyards and that the area encompasses many named coastal ridges; i.e., McGuire Ridge, Zeni Ridge, Phelps Ridge, Signal Ridge, Campbell Ridge, German Ridge, Hanes Ridge, Adams Ridge, Cliff Ridge, Greenwood Ridge, McAllister Ridge, Brandt Ridge, Lambert Ridge, Mariah Ridge, Fleming Ridge, Mikes Ridge, Yellow Hound Ridge, Johnny Woodin Ridge, and Hog Ranch Ridge, Hog Pen Ridge, Steve's Ridge, Ponds Ridge, Brytan Ridge, and Pearly Ridge. According to the petitioner, the area also encompasses various "mountain peaks"; i.e., Cold Spring Mountain, Lookout Mountain, Bald Hill Dry Bridge Mountain, Eureka Hill, Gualala Mountain, Red Rock Mountain, Snook Mountain and Rockpile Peak. The petitioner notes that these "mountain peaks" are generally no higher than points on the ridge and that these ridges and peaks create the water shed for the Gualala River, Garcia River, Alder Creek, Elk Creek, Greenwood Creek, and the Navarro River. The proposed "Mendocino Ridge" viticultural area encompasses only ridge-tops which reach an elevation of 1200 feet or higher in the Coastal Zone of southwestern Mendocino County. The proposed boundary encompasses approximately 410 square miles or about 262,400 acres which was necessary to include the numerous ridge-tops comprising the grape growing areas. The petitioner stated that to his knowledge no grapes are being grown at the lower elevations below the 1200 foot coastal fog line.

**Historical or Current Evidence That the Boundaries of the Proposed Viticultural Area are as Specified in the Petition**

The petitioner states that, "(m)any articles have been written in prestigious

wine periodicals and books over the years about the unique and distinctive wines produced from grapes grown within the 'Mendocino Ridge' proposed viticultural area." For example, the petitioner cites *Making Sense of California Wine* by Matt Kramer (1992, William Morrow and Co., N.Y.) in which he states:

There aren't many ridge vineyards but, as Spencer Tracy said in Pat and Mike, "What's there is cherce." Even more unexpected is the grape variety: Zinfandel. Such ridge vineyards as Ciapusci Vineyard, Mariah Vineyard, Zeni Vineyard, and DuPratt Vineyard create some of the greatest Zinfandels in California. All are found between 1,400 feet and 2,400 feet in elevation. Jed Steele, the former winemaker for Kendall-Jackson, sought out these grapes and demanded an audience for them. The winery continues to issue named-vineyard Zinfandels from several of these vineyards, all of them extraordinary. (Id. at 218, emphasis added)

The petitioner also cited from *Coastal Ridge Zinfandel*, by Jed Steele Ridge Review, Volume V, No. 1 (1995, The Ridgetimes Press, Mendocino, CA). On page 7 it states:

That certain grape varieties, grown in specific geographical locations, produce distinctive wines that are sought after by appreciators of fine wine is a given phenomenon in the world of viticulture and enology. Illustrations of such situations are Pinot Noir when grown in Burgundy, the White Riesling when grown in the Mosel Valley of Germany, and the Cabernet Sauvignon when grown in the Rutherford-Oakville region of the Napa Valley. Zinfandel, when grown in the Coastal range of Mendocino County, roughly between the points where the Navarro River and Gualala River empty into the ocean, is in my mind such a classic match of grape variety with a particular climate, one that leads to the ultimate in winemaking fruit. (Emphasis added)

As further evidence of historic boundaries, the petitioner claims that, the cultivation of vineyards in the Mendocino Ridge began with the first Italian settlers, who came to the area in the late 1800's to peel tan bark. These Italian immigrants brought with them their grapes of choice: Zinfandel, Alicante-Bouschet, Carignane, Muscat, Palomino, and Malvasia. At one time, before Prohibition, it has been estimated that Greenwood Ridge had some 250 acres of vineyards and Fish Rock Road had another 150 acres of vineyards. According to the petitioner, Italian immigrant families with names like Luccinetti, Pearli, Gianoli, Ciapusci, Soldani, and Zeni homesteaded and planted vines along Fish Rock Road as early as the 1860's. Other Italian immigrants with names like Frati, Tovani, Giusti, Pronsolino, and

Giovanetti homesteaded along Greenwood Ridge around the same time. The following statement by Matt Kramer in *Making Sense of California Wine* (1992) is cited by the petitioner in support of this claim:

The planting of these higher-elevation vineyards is due entirely to an influx of Italian immigrants \* \* \* in the 1890's \* \* \* In Italy, as elsewhere in Europe, grapes were found to perform better on hillsides than on valley floors. Considering their grapes of choice—Zinfandel, Alicante-Bouschet, Carignan, Muscat, Palomino, and Malvasia—they were right. None of these sun-loving varieties could have prospered in the cool, frost-prone Anderson Valley floor. But once above the fog, the sunshine is uninterrupted. The ridge sites rarely see the spring frosts. (Id. at 218)

The petitioner states that Prohibition came and many of these vineyards were removed. Of these original vineyards planted by the Italian immigrants, three have survived and still produce award winning wines to this day. According to the petitioner, both the Ciapusci and Zeni vineyards are still tended and owned by the original families on Fish Rock Road. On Greenwood Ridge Road, the DuPratt vineyard planted in 1916 is producing world class Zinfandel according to the petitioner. In addition, the petitioner states that the Zeni's, Ciapusci's, and DuPratt's all had wineries at their vineyards. Part of the Ciapusci's winery is still standing and parts of an old wine press can be found at the DuPratt vineyard site. The petitioner states that tunnels used for storing wine can be found burrowed into the mountain at the Zeni Vineyard. Three other vineyards, Mariah Vineyards, Greenwood Ridge Vineyards, and Alden Ranch Vineyards have been planted in the past 25 years according to the petitioner.

**Evidence Relating to the Geographical Features (Climate, Soil, Elevation, Physical Features, etc.) Which Distinguish the Viticultural Features of the Proposed Area From Surrounding Areas**

According to the petitioner, the proposed "Mendocino Ridge," viticultural area is shaped like a bulging triangle with its northern apex less than a mile wide at the mouth of the Navarro River. The southern base of the triangle is approximately 15 miles wide as it runs along the Mendocino/Sonoma County line. From north to south the proposed area is 36 miles long. A small segment of the proposed viticultural area overlaps the Anderson Valley viticultural area along its northeastern boundary. The petitioner asserts that this segment has been included in the

proposed "Mendocino Ridge" viticultural area because it is climatically, geologically and enologically the same as the proposed "Mendocino Ridge" area. Again, the petitioner cites Matt Kramer In *Making Sense of California Wine* (1992). On page 218 he states:

Actually, the Anderson Valley is more complicated yet. Everything so far described applies to what might be called Anderson Valley bas. There's also an Anderson Valley haut. The AVA really contains another, hidden appellation. Although not recognized as an AVA, it should be. This "hidden" appellation is the vineyards above the fog line, locally known as the "ridge vineyards." The name is apt: They are found on ridgelines above fourteen hundred feet in elevation. Technically, these vineyards are Anderson Valley AVA. In reality, they are their own world: more sun, no fog, yet subject to the cooling temperatures that come with higher elevation. (Emphasis added)

According to the petitioner, the grape growing region of the proposed viticultural area encompasses the coastal ridge above the 1200 feet elevation entirely within the Coastal Zone in the southwest corner of Mendocino County, California. Less than one third of the entire proposed area, or 87,466 acres, lies above 1200 feet elevation. Of these 87,466 acres, approximately 1500 to 2000 acres or 2% of the narrow timber covered ridge-tops are suitable for grape production according to the petitioner. There are approximately 75 acres of grapes currently growing within the boundaries of the proposed viticultural area. These 75 acres are located in isolated pockets carved out of dense redwood and douglas fir forest along the ridge-tops above the coastal fog line. The petitioner further asserts that summer mornings are characterized by lakes of fog with the ridge-tops protruding like small islands soaking up the cool morning sun.

#### Topography

According to the petitioner, the proposed "Mendocino Ridge" area is characterized by narrow irregular ridges that have a high elevation point of 2736 feet at Cold Spring Mountain. The side-slopes are steep and timber covered, with slopes often exceeding 70%, making these areas unplantable. Because of the steepness and narrowness of the ridge-tops, farmable acreage is at a premium. Rarely, in the proposed viticultural area, does a ridge-top vineyard exceed 30 acres in one continuous block.

According to the petitioner, the "Mendocino Ridge" terrain can be sharply contrasted with the surrounding areas. To the west is the Pacific Ocean.

To the northeast is the valley lowlands of the Anderson Valley viticultural area. The grapes grown in this area are planted in the fertile alluvial soils along the Navarro River. To the southeast are the long, sloping, hillsides of the Yorkville benchland area. Grapes grown in this area have been traditionally planted on the bottom lands and on the hillside benches to the east of Highway 128. To the south is the Sonoma/Mendocino County line and the Sonoma Coast viticultural area.

#### Soils

The petitioner states that, "(t)he soils are unique to this triangle of rugged, timber-covered ridgetop area and have been shown to be distinct from the surrounding area's soils. Climatically, this area sits entirely within the Coastal Zone and receives the cooling influences of the Pacific Ocean which surround these ridges and peaks with fog, making these ridges into cool, sun-soaked islands in the sky. The 'Mendocino Ridge' also receives a significantly greater amount of annual rainfall than the surrounding areas."

The petitioner further asserts that the soils within the proposed "Mendocino Ridge" viticultural area have been identified by the Soil Conservation Service in a National Cooperative Soil Survey, a joint effort of the United States Department of Agriculture and other Federal agencies, State agencies including the Agricultural Experiment Stations and local agencies.

According to the petitioner, the proposed area is dominated by timber type soils and is clearly separated from surrounding soils at the proposed "Mendocino Ridge" boundary. To the west is the Pacific Ocean. To the northeast are the fertile alluvial valley soils of the Anderson Valley and to the southeast are the upland grass range soils of the Yorkville area. To the south is the county line and the Sonoma Coast Appellation.

Moreover, the petitioner states that the proposed "Mendocino Ridge" viticultural area is dominated by soils that fall into the general soil category of Ustic-isomesic type soils. These soils lie mainly between 500 feet and 2000 feet elevation within the zone of coastal influence. The soil does receive some moisture added by the tree canopy which causes water to precipitate from the fog. However, the fog influence is less pronounced at the upper elevations. It is less dense and does not blanket this zone as frequently as at the lower elevations. The soils are dry for part of the summer and there is little variation between summer and winter soil temperatures at 20 inches of depth.

Redwood is the most reliable indicator of this zone. Redwood can often comprise from 15 to 50 percent of the tree canopy with douglass fir, tanoak, and Pacific madrone being the other dominant species. The understory vegetation is often a dense thicket of California huckleberry and tanoak.

The specific soil types that dominate the proposed "Mendocino Ridge" viticultural area are identified by the petitioner as follows:

#### 1. Zeni

This soil is moderately deep and well drained fine-loamy type soil. Typically, the loam surface layer is underlain by a loam subsoil. Soft sandstone is at a depth of 20 to 40 inches. Slopes range from 9 to 75 percent. The vegetation is mainly Douglas fir and redwood. Average pH is 5.7.

#### 2. Yellowhound

This soil is deep and well drained. Typically, the gravelly loam surface is underlain by an extremely gravelly loam subsoil. Hard sandstone is at a depth of 40 to 60 inches. Slopes range from 9 to 100 percent. The vegetation is mainly Douglas fir and redwood. Average pH is 5.6.

#### 3. Ornbaun

This subsoil is deep and well drained, with little or no seasonal fluctuation in soil temperature. Typically, the loam surface layer is underlain by a loam and clay loam subsoil. Soft sandstone is found underneath at a depth of 40 to 60 inches. This soil occurs on hilly and mountainous uplands with slopes of 9 to 75 percent. The vegetation is mainly Douglas fir and redwood. Average pH is not available.

#### 4. Gube

This soil is moderately deep, well drained soil formed in material weathered from sandstone. Gube soils are on mountains and have slopes of 30 to 75 percent. The vegetation is mainly Douglas fir and redwood. Average pH is 5.4.

#### 5. Fish Rock

This soil is a shallow, well drained soil formed in material weathered from sandstone or mudstone. Fish Rock soils are on ridgetops and upper sideslopes of coastal hills and mountains and have slopes of 2 to 30 percent. The vegetation is mainly Douglas fir and redwood. Average pH is 4.8.

#### 6. Snook Series

This soil is a very shallow, somewhat excessively drained soil formed in material weathered from sandstone and

shale. Snook soils are on mountains and have slopes of 30 to 75 percent. The vegetation is mainly Douglas fir and redwood. Average pH is 5.6.

#### 7. Kibesillah

This soil consists of moderately deep, well drained soils formed in material weathered from sandstone. Kibesillah soils are on hills and mountains and have slopes of 9 to 100 percent. The vegetation is mainly Douglas fir and redwood. Average pH is 5.5.

The petitioner contrasts the above soils with the soils to the northeast and southeast of the proposed "Mendocino Ridge" viticultural area. Along the northeast border of the proposed "Mendocino Ridge" viticultural area are the deep alluvial soils of the Anderson Valley and Mendocino viticultural area bottom land. These fertile soils were identified by the USDA soil conservation service of the Mendocino County bottom lands completed in 1973. These soils are: CeB, Cole Clay Loam Wet; JaF, Josephine Loam; TaC, Talmadge; Gravelly Sandy Loam; SeB, San Ysidro Loam; EdA, Esparto Silt Loam, Wet; PbC, Pinole Gravelly Loam; MdB, Maywood Sandy Loam, occasionally flooded and; FcA, Fluvents, frequently flooded. Along the southeast border of the proposed "Mendocino Ridge" viticultural area are the Xeric-mesic soils of the Yorkville corridor east of Highway 128 along the sweeping, grassy, oak studded slopes. These soils are grass, oak, and brush covered. The Yorkville soils are subject to little or no coastal influence, unlike the soils in the proposed "Mendocino Ridge" viticultural area which are dominated by the coastal influence. Soils are usually dry from early June to October. The soil temperature at 20 inches in depth varies by more than 9 degrees between summer and winter unlike the Ustic-isomesic soils of the proposed "Mendocino Ridge" viticultural area which do not vary. The vegetation types commonly found on Xeric-mesic soils are interior live oak, California black oak, Oregon white oak, Eastwood manzanita, toyon rose, bedstraw and annual bromes. The petition contrasts the specific Xeric-mesic type soils of the Yorkville upland area with the soils in the proposed "Mendocino Ridge" viticultural area.

In summary, the soils of the proposed "Mendocino Ridge" viticultural area are dominated by "timber" type soils with redwood, Douglas fir, tanoak, and Pacific madrone being the dominant vegetation. These soils are well drained and have little or no summer to winter soil temperature variations. In contrast, the soils of the surrounding areas are the

deep alluvial Anderson Valley soils to the northeast and the upland rangeland soils of the Yorkville area to the southwest.

#### Climate

The petitioner notes that the proposed "Mendocino Ridge" viticultural area lies entirely within the Coastal Climate Zone as defined by *The Climate Of Mendocino County*, a booklet published by the Mendocino County Farm and Home Advisors Office. The Coastal Climate Zone is cooled by the ocean influence of the Pacific. This Zone is continuous from north to south along the proposed "Mendocino Ridge" boundary and is commonly referred to as the redwood belt. The area is dominated by the influence of the Pacific Ocean at its western border throughout the year, unlike the area to the east of the proposed area which is within the Transitional Climate Zone. "Transitional" means the area's climate is subject to both the ocean's cooling influences and the warmth of the interior areas at different times of the year.

The "Mendocino Ridge" viticultural area is unique from other coastal viticultural areas because of its elevation of 1200 feet or higher. According to the petitioner, the elevation line being at approximately the fog line means that while the valleys may be full of coastal fog, the vineyards are fully exposed to the sun while receiving the cooling influences of the fog.

The proposed "Mendocino Ridge" area has both a rainy and dry season of moderate temperature. The rainy season occurs from November through May. The petitioner states that the average annual temperature for the area is about 53 degrees F., and the average annual precipitation is 75+ inches a year. Because of the area's coastal influence the average length of the growing season is from 275 to 300 days.

The petitioner claims that the climate in the adjacent growing regions are strikingly different. In the Yorkville Area, east of Highway 128, long, sweeping slopes lie within the Transitional Climatic Zone, receiving much more sun and inland weather influences. These inland weather influences mean the Yorkville area's average temperatures are cooler in the winter and hotter in the summer and the growing season is shorter, averaging between 250 and 275 days in length. The average annual precipitation is only 49.46 inches a year. Source: *The Climate of Mendocino County*, Mendocino County Farm and Home Advisors Office, page 10. With regard to

Anderson Valley, it lies under the fog layer, receiving fewer sunlight hours than the proposed "Mendocino Ridge," grape growing areas which are entirely above the fogline. The average annual precipitation is only 40.68 inches a year. Source: *The Climate of Mendocino County*, Mendocino County Farm and Home Advisors Office, page 10.

#### Proposed Boundaries

The boundary lines of the proposed "Mendocino Ridge" viticultural area closely follow the line of Coastal Zone influence, above 1200 feet elevation in the southwest corner of Mendocino County, California. The boundaries of the proposed area may be found on the following U.S. Department of Interior Geological Survey 15 minute series Quadrangle maps: Ornaun Valley Quadrangle, California, 1960, Navarro Quadrangle, California, 1961, Point Arena Quadrangle, California, 1960, Boonville Quadrangle, California, 1959.

#### Public Participation-Written Comments

ATF requests comments from all interested persons. 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. However, assurance of consideration can only be given to comments received on or before the closing date.

ATF will not recognize any submitted material as confidential and comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Comments may be submitted by facsimile transmission to (202) 927-8602, provided the comments: (1) Are legible; (2) are 8½" x 11" in size, (3) contain a written signature, and (4) are three pages or less in length. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of three pages will not be accepted. Receipt of FAX transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

Any person who desires an opportunity to comment orally at a public hearing on the proposed regulation should submit his or her request, in writing, to the Director within the 45-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

**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.

**Regulatory Flexibility Act**

It is hereby certified that this proposed regulation will not have a significant impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that region.

Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have significant 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.

**Drafting Information**

The principal author of this document is David W. Brokaw, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco, and Firearms.

**List of Subjects in 27 CFR Part 9**

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

**Authority and Issuance**

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is proposed to be amended as follows:

**PART 9—AMERICAN VITICULTURAL AREAS**

**Paragraph 1.** The authority citation for part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

**Subpart C—Approved American Viticultural Areas**

**Par. 2.** Subpart C is amended by adding § 9.152 to read as follows:

\* \* \* \* \*

**§ 9.152 Mendocino Ridge.**

(a) *Name.* The name of the viticultural area described in this section is "Mendocino Ridge."

(b) *Approved maps.* The appropriate maps for determining the boundary of the Mendocino Ridge viticultural area are four 1:62,500 scale U.S.G.S. topographical maps. They are titled:

(1) Ornbaun Valley Quadrangle, California, 15 minute series topographic map, 1960;

(2) Navarro Quadrangle, California, 15 minute series topographic map, 1961.

(3) Point Arena Quadrangle, California, 15 minute series topographic map, 1960.

(4) Boonville Quadrangle, California, 15 minute series topographic map, 1959.

(c) *Boundary.* The Mendocino Ridge viticultural area is located within Mendocino County, California. Within the boundary description that follows, the viticultural area starts at the 1200 foot elevation (contour line) and encompasses all areas at or above the 1200 foot elevation line. The boundaries of the Mendocino Ridge viticultural area, using landmarks and points of reference found on appropriate U.S.G.S. maps, follow.

(1) Beginning at the Mendocino/Sonoma County line at the mouth of the Gualala River, where the Gualala River empties into the Pacific Ocean, in section 27 of Township 11 North (T11N), Range 5 West (R5W), located in the southeastern portion of U.S.G.S. 15 minute series map, "Point Arena, California;"

(2) Then following the Mendocino/Sonoma County line eastward to the southeast corner of section 8 in T11N/R13W, on the U.S.G.S. 15 minute map, "Ornbaun Valley, California;"

(3) Then from the southeast corner of section 8 in T11N/R13W directly north approximately 3+ miles to the southwest corner of section 9 in T12N/R13W;

(4) Then proceeding in a straight line in a northwesterly direction to the southwestern corner of section 14 in T13N/R14W;

(5) Then directly north along the western line of section 14 in T13N/

R14W to a point on the western line of section 14 approximately 1/4 from the top where the Anderson Valley viticultural area boundary intersects the western line of section 14 in T13N/R14W;

(6) Then in a straight line, in a northwesterly direction, to the intersection of an unnamed creek and the south section line of section 14, T14N/R15W, on the U.S.G.S. 15 minute series map, "Boonville, California;"

(7) Then in a westerly direction along the south section lines of sections 14 and 15 in T14N/R15W to the southwest corner of section 15, T14N/R15W, on the U.S.G.S. 15 minute series map, "Navarro, California;"

(8) Then in a northerly direction along the western section lines of sections 15, 10, and 3 in T14N/R15W in a straight line to the intersection of the Navarro River on the western section line of section 3 in T14N/R15W;

(9) Then in a northwesterly direction along the Navarro River to the mouth of the river where it meets the Pacific Ocean in section 5 of T15N/R17W;

(10) Then in a southern direction along the Mendocino County coastline to the Mendocino/Sonoma County line to the beginning point at the mouth of the Gualala River in section 27 of T11N/R15W, on the U.S.G.S. 15 minute series map, "Point Arena, California."

Signed: March 13, 1997.

John W. Magaw,  
Director.

[FR Doc. 97-8807 Filed 4-4-97; 8:45 am]

BILLING CODE 4810-31-P

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 926****Surface Coal Mining and Reclamation Operations Under the Federal Lands Program; State-Federal Cooperative Agreements; Montana**

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

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is reopening and extending the comment period on a proposed rule which would amend the cooperative agreement between the Department of the Interior and the State of Montana for the regulation of surface coal mining and reclamation operations on Federal lands

within Montana under the permanent regulatory program.

**DATE: Written comments:** Written comments must be received by 4:00 p.m., m.s.t. on May 7, 1997.

**ADDRESSES:** Written comments should be mailed or hand delivered to Ranvir Singh, Office of Surface Mining Reclamation and Enforcement, Western Regional Coordinating Center, Suite 3320, 1999 Broadway, Denver, CO 80202-5733.

Copies of the Montana program, proposed amendments to the cooperative agreement and the related information required under 30 CFR Part 745 will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed revisions by contacting any one of the following persons:

**Ranvir Singh**, Western Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, CO 80202-5733, Telephone: (303) 844-1489;

**Guy Padgett**, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East "B" Street, Room 2128, Casper, WY 82601-1918, Telephone: (307) 261-6550;

**Jan Sensibaugh**, Montana Department of Environmental Quality, 1520 East Sixth Avenue, Helena, MT 59620-0901, Telephone: (406) 444-5270.

**FOR FURTHER INFORMATION CONTACT:** Ranvir Singh, Western Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, CO 80202-5733, Telephone: (303) 844-1489.

**SUPPLEMENTARY INFORMATION:** On June 4, 1980, the Governor of Montana submitted a request for a cooperative agreement between the Department of the Interior and the State of Montana to give the State primacy in the administration of its approved regulatory program on Federal lands within Montana. The Secretary approved the cooperative agreement on January 19, 1981 (46 FR 20983, April 8, 1981). The text of the existing cooperative agreement can be found at 30 CFR 926.30.

On July 5, 1994, the Governor, pursuant to 30 CFR 745.14, and, at the recommendation of OSM, submitted a proposed revision to the approved cooperative agreement. The proposed revision would streamline the permitting process in Montana by delegating to Montana the sole

responsibility to issue permits for coal mining and reclamation operations on Federal lands under the revised Federal lands program regulations, and would eliminate duplicative permitting requirements, thereby increasing governmental efficiency, which is one of the purposes of the cooperative agreement. This revision would also update the cooperative agreement to reflect current regulations and agency structures.

OSM published a proposed rule which would incorporate the revisions into the cooperative agreement. See 62 FR 1408, January 10, 1997. The public comment period closed on March 11, 1997. OSM is reopening the comment period for an additional 30 days. Anyone wishing to comment should send them to OSM. See **ADDRESSES** above.

Dated: March 31, 1997.

**Mary Josie Blanchard**,  
Assistant Director, Program Support.  
[FR Doc. 97-8786 Filed 4-4-97; 8:45 am]  
BILLING CODE 4310-05-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 944

[SPATS No. UT-032-FOR]

#### Utah Abandoned Mine Land Reclamation Plan

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

**ACTION:** Proposed rule; reopening and extension of public comment period on proposed amendment.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of revisions and additional explanatory information pertaining to a previously proposed amendment to the Utah abandoned mine land reclamation (AMLR) plan (hereinafter, the "Utah plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions and additional explanatory information for Utah's proposed rules pertain to definitions of "eligible lands and water" and "left or abandoned in either an unreclaimed or inadequately reclaimed condition," and general reclamation requirements. The amendment is intended to revise the Utah plan to meet the requirements of the corresponding Federal regulations, to incorporate the additional flexibility afforded by the revised Federal

regulations, to clarify ambiguities, and to improve operational efficiency.

**DATES:** Written comments must be received by 4:00 p.m., m.d.t., April 22, 1997.

**ADDRESSES:** Written comments should be mailed or hand delivered to James F. Fulton at the address listed below.

Copies of the Utah plan, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during the normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Denver Field Division:

**James F. Fulton**, Chief, Denver Field Division, Western Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3300, Denver, Colorado 80202.

**Mark R. Mesch**, Administrator, Abandoned Mine Reclamation Program, Division of Oil, Gas and Mining, 1594 West North Temple, Suite 1210, Box 145801, Salt Lake City, Utah 84114-5801, (801) 538-5340.

**FOR FURTHER INFORMATION CONTACT:** James F. Fulton, Telephone: (303) 844-1424.

#### SUPPLEMENTARY INFORMATION:

##### I. Background on the Utah Plan

On June 3, 1983, the Secretary of the Interior approved the Utah plan. General background information on the Utah plan, including the Secretary's findings and the disposition of comments, can be found in the June 3, 1983, *Federal Register* (48 FR 24876). Subsequent actions concerning Utah's plan and plan amendments can be found at 30 CFR 944.25.

##### II. Proposed Amendment

By letter dated August 2, 1995, Utah submitted a proposed amendment to its plan (administrative record No. UT-1071) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). Utah submitted the proposed amendment at its own initiative and in response to a September 26, 1994, letter (administrative record No. UT-1011) that OSM sent to Utah in accordance with 30 CFR 884.15(b). The provisions of the Utah Administrative Rules (Utah Admin. R.) that Utah proposed to revise and add were: Utah Admin. R. 643-870-500, definitions of "eligible lands and water," "left or abandoned in either an unreclaimed or inadequately reclaimed condition," and "Secretary"; Utah Admin. R. 643-874-100, -110,

-124 through -128, -130 through -132, -140 through -144, -150, and -160, general reclamation requirements for coal lands and waters; Utah Admin. R. 643-875-120 and -122 through -125, -130 through -133, -140 through -142, -150 through -155, -160, -170, -180, -190, and -200, noncoal reclamation; Utah Admin. R. 643-877-141, rights of entry; Utah Admin. R. 643-879-141, -152.200, -153, and -154, acquisition, management, and disposition of lands and water; Utah Admin. R. 643-882-132, reclamation on private land; Utah Admin. R. 643-884-150, State reclamation plan amendments; Utah Admin. R. 643-886-130 through -190, State reclamation grants; and Utah Admin. R. 643-886-232.240, reports.

OSM announced receipt of the proposed amendment in the August 22, 1995, *Federal Register* (60 FR 43577), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. UT-1071-3). Because no one requested a public hearing or meeting, none was held. The public comment period ended on September 21, 1995.

During its review of the amendment, OSM identified concerns relating to the provisions of Utah Admin. R. 643-870-500, definitions of "eligible lands and water" and "left of abandoned in either an unreclaimed or inadequately reclaimed condition"; Utah Admin. R. 643-874-120, -121, -123 through -125, and -128, general reclamation requirements; Utah Admin. R. 643-875-132, certification of completion of reclamation of coal sites; Utah Admin. R. 643-877-120, rights of entry; Utah Admin. R. 643-879-154, disposition of reclaimed land; and Utah Admin. R. 643-882-121 and -122, appraisals. OSM notified Utah of the concerns by letter dated March 26, 1996 (administrative record No. UT-1071-8). Utah responded in a letter dated March 12, 1997, by submitting a revised amendment and additional explanatory information (administrative record No. UT-1071-9).

Utah proposes revisions to and additional explanatory information for Utah Admin. R. 643-870-500, definitions of "eligible lands and water" and "left of abandoned in either an unreclaimed or inadequately reclaimed condition" and Utah Admin. R. 643-874-120, -121, -124, and -125, eligible lands and water.

Specifically, Utah proposes to revise its definition of the term "eligible lands and water" at Utah Admin. R. 643-870-500 to read:

"Eligible lands and water" means lands and water eligible for reclamation or drainage abatement expenditures and are those which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes, and abandoned or left in an [inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal laws. Provided, however, that lands and water damaged by coal mining operations after that date may also be eligible if they meet the requirements specified in R643-874-124. For additional eligibility requirements for water projects, see R643-874-124. For additional eligibility requirements for lands affected by reining operations see R643-874-128. For eligibility requirements for lands affected by mining for minerals other than coal, see R643-875-120.

Utah is also proposing to revise its definition of "left or abandoned in either an unreclaimed or inadequately reclaimed condition" at Utah Admin. R. 643-870-500 to read:

"Left or abandoned in either an unreclaimed or inadequately reclaimed condition" means lands and water:  
Which were mined or which were affected by such mining, wastebanks, processing or other mining processes prior to August 3, 1977, and all mining has ceased; and  
Which continue, in their present condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health and safety of the public; and  
For which there is no continuing reclamation responsibility under State or Federal laws, except as provided in R643-874-124 and R643-874-141.

Utah is not proposing to revise Utah Admin. R. 643-874-120 and -121 by adding the word "coal" to its description of eligible lands and water. Utah states that it considers omission of the word "coal" to be an important statement of policy and explains that its approved plan lists aggressive pursuit of noncoal reclamation as a purpose of the State reclamation program. Utah further offers that its rules at Utah Admin. R. 643-875 regarding noncoal eligibility ensure that the more restrictive noncoal eligibility requirements of SMCRA will be met.

In addition, Utah proposes to add to its rules at Utah Admin. R. 643-874-124 and -125 a reference to Utah Admin. R. 643-874-123, which provides for the reclamation of sites where the forfeited bond is insufficient to pay the total cost of reclamation. Utah Admin. R. 643-874-124 extends the use of AMLR funds for reclamation of interim program and bankrupt surety sites and Utah Admin. R. 643-874-125 requires that those sites determined to be eligible under the criteria provided at Utah Admin. R.

643-874-124 also have the same or more urgent priority as coal sites that qualify as priority 1 or 2 sites under Utah Code Annotated 40-10-25(2), which is the State's counterpart statute to section 403(a) of SMCRA.

### III. Public Comment Procedures

OSM is reopening the comment period on the proposed Utah plan amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 884.15(a), OSM is seeking comments on whether the proposed amendment satisfies the applicable plan approval criteria of 30 CFR 884.14. If the amendment is deemed adequate, it will become part of the Utah plan.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under DATES or at locations other than the Denver Field Division will not necessarily be considered in the final rulemaking or included in the administrative record.

### IV. Procedural Determinations

#### 1. Executive Order 12866

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

#### 2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific State, not by OSM. Decisions on proposed State AMLR plans and revisions thereof submitted by a State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231-1243) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

#### 3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of

the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

#### 4. Paperwork Reduction Act

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

#### 5. Regulatory Flexibility Act

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

#### 6. Unfunded Mandates Reform Act

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

#### List of Subjects in 30 CFR Part 944

Abandoned mine reclamation programs, Intergovernmental relations, Surface mining, Underground mining.

Dated: April 26, 1997.

Richard J. Seibel,  
Regional Director, Western Regional  
Coordinating Center.

[FR Doc. 97-8790 Filed 4-4-97; 8:45 am]

BILLING CODE 4310-05-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 946

[VA-106-FOR]

#### Virginia Regulatory Program

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

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** OSM is reopening the comment period on information submitted by Virginia concerning parts of a proposed amendment to the Virginia regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The information submitted by Virginia for which the comment period is being reopened includes Virginia's technical justification for the proposed use of a 28-degree angle of draw with the rebuttable presumption of causation by subsidence provision. Virginia's proposed amendment is intended to revise the State program to be consistent with the Federal regulations as amended on March 31, 1995 (60 FR 16772).

**DATES:** Comments must be received by 4:00 p.m., on April 22, 1997.

**ADDRESSES:** Written comments should be mailed or hand delivered to Mr. Robert A. Penn, Director, Big Stone Gap Field Office at the first address listed below.

Copies of the Virginia program, the proposed amendment, the technical justification for the 28-degree angle of draw, other information submitted by Virginia, and all written comments received in response to this amendment will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive one free copy of the proposed amendment by contacting OSM's Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (703) 523-4303

Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219, Telephone: (703) 523-8100

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Telephone: (703) 523-4303.

#### SUPPLEMENTARY INFORMATION:

##### I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. Background information on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981, *Federal Register* (46 FR 61085-61115). Subsequent actions concerning the conditions of approval and program amendments can

be found at 30 CFR 946.12, 946.13, 946.15, and 946.16.

##### II. Discussion of the Proposed Amendment

By letter dated May 21, 1996 (Administrative Record No. VA-882), Virginia submitted amendments to the Virginia program concerning subsidence damage. The amendments are intended to make the Virginia program consistent with the Federal regulations as amended on March 31, 1995 (60 FR 16722). Virginia stated that the proposed amendments implement the standards of the Federal Energy Policy Act of 1992, and sections 45.1-243 and 45.1-258 of the Code of Virginia.

The proposed amendment was published in the June 11, 1996, *Federal Register* (61 FR 29506), and in the same notice, OSM opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on July 11, 1996. The public comment period was reopened on July 24, 1996 (61 FR 38422), to accept additional comments on the proposed use of a 28-degree angle of draw with the rebuttable presumption of causation by subsidence provision. That comment period ended on August 8, 1996. On September 12, 1996 (61 FR 48110), OSM announced a scheduled public hearing on the proposed amendments. The hearing was held on September 18, 1996 (Administrative Record Number VA-896).

By letter dated July 11, 1996 (Administrative Record Number VA-894), OSM requested that Virginia provide additional information on the proposed amendments, including technical justification for the use of the 28-degree angle of draw. Virginia responded to that request for additional information by letter dated January 3, 1997 (Administrative Record Number VA-902). OSM is reopening the public comment period on the additional information submitted by Virginia, including the technical justification of the use of a 28-degree angle of draw.

##### III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comment on whether the additional information submitted by Virginia satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Virginia program.

##### Written Comments

Written comments should be specific, pertain only to the issues proposed in

this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under DATES or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

#### IV. Procedural Determinations

##### Executive Order 12866

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

##### Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

##### National Environmental Policy Act

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

##### Paperwork Reduction Act

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

##### Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5

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

##### Unfunded Mandates

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

##### List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 26, 1997.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 97-8789 Filed 4-4-97; 8:45 am]

BILLING CODE 4310-05-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 199

#### Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Program; Nonavailability Statement Requirements

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

**SUMMARY:** This proposed rule revises certain requirements and procedures for the TRICARE Program, the purpose of which is to implement a comprehensive managed health care delivery system composed of military medical treatment facilities and CHAMPUS. Issues addressed in this proposed rule include priority for access to care in military treatment facilities and requirements for payment of enrollment fees. This proposed rule also includes provisions revising the requirement that certain beneficiaries obtain a non-availability statement from a military treatment facility commander prior to receiving certain health care services from civilian providers.

**DATES:** Comments must be received on or before June 6, 1997.

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

**FOR FURTHER INFORMATION CONTACT:** Steve Lillie, Office of the Assistant Secretary of Defense (Health Affairs), telephone (703) 695-3350.

Questions regarding payment of specific claims under the CHAMPUS allowable charge method should be addressed to the appropriate CHAMPUS contractor.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction and Background

###### A. Congressional Action

Section 712 of the National Defense Authorization Act for Fiscal Year 1996 revised 10 U.S.C. 1097(c), regarding the role of military medical treatment facilities in managed care initiatives, including TRICARE. Prior to the revision, section 1097(c) read in part, "However, the Secretary may, as an incentive for enrollment, establish reasonable preferences for services in facilities of the uniformed services for covered beneficiaries enrolled in any program established under, or operating in connection with, any contract under this section." The Authorization Act provision replaced "may" with "shall", which has the effect of directing priority access for TRICARE Prime enrollees over persons not enrolled.

Another statutory provision relating to access priority is 10 U.S.C. 1076(a), which establishes a special priority for survivors of sponsors who died on active duty: they are given the same priority as family members of active duty members. This special access priority is not time-limited, as is the special one-year cost sharing protection given to this category under 10 U.S.C. 1079.

The National Defense Authorization Act for FY 1997, section 734 amended 10 U.S.C. 1080 to establish certain exceptions to requirements for nonavailability statements in connection with payment of claims for civilian health care services. First, the Act eliminates authority for nonavailability statements for outpatient services; NASs have been required for a limited number of outpatient procedures over the past several years. Second, the Act eliminates authority for NAS requirements for enrollees in managed care plans, which has the effect of eliminating NAS requirements for TRICARE Prime enrollees. Finally, the Act gives the Secretary authority to waive NAS requirements based on an



evaluation of the effectiveness of NAS in optimizing use of military facilities.

The National Defense Authorization Act for FY 1996, section 713 requires that enrollees in TRICARE Prime be permitted to pay applicable enrollment fees on a quarterly basis, and prohibits imposition of an administrative fee related to the quarterly payment option.

#### *B. Provisions of the Proposed Rule*

1. Access Priority (proposed revisions to section 199.17(d)). This paragraph explains that in regions where TRICARE is implemented, the order of access priority for services in military treatment facilities is as follows: (1) active duty service members; (2) family members of active duty service members enrolled in TRICARE Prime; (3) retirees, their family members and survivors enrolled in TRICARE Prime; (4) family members of active duty service members who are not enrolled in TRICARE Prime; and (5) all others based on current access priorities. For purposes of access priority, but not for cost sharing, survivors of sponsors who died on active duty are to be given the same priority as family members of active duty service members. This means that if they are enrolled in TRICARE Prime, they have the same access priority as family members of active duty service members, or if not enrolled in TRICARE Prime, they have the same access priority for military treatment facility care as family members of active duty service members who are not enrolled in TRICARE Prime.

The proposed rule also includes a provision explaining that enrollment status does not affect access priority for some groups and circumstances. This provision would allow the commander of a military medical treatment facility to designate for priority access certain individuals, for specific episodes of health care treatment. Such individuals may include Secretarial designees, active duty family members from outside the MTF's service area, foreign military and their family members authorized care through international agreements, DoD civilians with authorizing conditions, individuals on the Temporary Disability Retired List, and Reserve and National Guard members. Additional exceptions may be granted for other categories of individuals, eligible for treatment in the MTF, whose access to care is needed to provide a clinical case mix to support graduate medical education programs, upon approval by the Assistant Secretary of Defense (Health Affairs).

2. Enrollment Fees (proposed revisions to section 199.17(o) and 199.18(c)). These revisions would

eliminate the requirement for a TRICARE Prime enrollee to pay an additional maintenance fee of \$5.00 per installment for those TRICARE Prime enrollees who elect to pay their annual enrollment fee on a quarterly basis. Additionally, these revisions would permit waiver of enrollment fee collection for retirees, their family members, and survivors who are eligible for Medicare on the basis of disability. This group is eligible for TRICARE/CHAMPUS as a secondary payor if they are enrolled in Part B of Medicare, and pay the applicable monthly premium.

3. Nonavailability Statements (proposed revisions to section 199.4(a)). Revisions to this section modify our exiting requirements for beneficiaries to obtain nonavailability statements (NASs). The requirement for beneficiaries to obtain a NAS for selected outpatient procedures is eliminated. Beneficiaries who choose to obtain outpatient care, including ambulatory surgery, from civilian sources remain subject to current TRICARE/CHAMPUS cost sharing rules, but the requirement that the beneficiary obtain a NAS prior to TRICARE/CHAMPUS sharing in the civilian health care costs has been removed.

The requirement for beneficiaries enrolled in TRICARE Prime to obtain a NAS for inpatient care is also eliminated. TRICARE was designed so that the military treatment facility is the first source of specialty care, with TRICARE Prime enrollees having access priority before non-enrolled beneficiaries. In general, TRICARE Prime enrollees obtain care from civilian network providers only when the military treatment facility cannot provide the care because it does not have the capability, or because the enrollee cannot be seen within time frames required by TRICARE Prime access standards. Since the Health Care Finder must authorize all non-emergency specialty care obtained from civilian sources, the NAS requirement for this category of beneficiary is redundant.

Lastly, the revisions would eliminate the requirement that a non-enrolled beneficiary must obtain a NAS for inpatient hospital maternity care before TRICARE/CHAMPUS shares in any costs for related outpatient maternity care. Some diagnostic tests, procedures, or consultations from civilian sources may be required during a course of maternity care and this allows TRICARE/CHAMPUS to share in the costs of the civilian care without requiring the beneficiary to obtain all maternity related care in a civilian setting.

4. Revisions to the Uniform HMO Benefit. We are contemplating minor changes in the copayment structure of the Uniform HMO Benefit, which is used in TRICARE Prime. The proposed rule includes two revisions, which would eliminate copayments for preventive services and for ancillary services. Current provisions include copayments for ancillary services unless they are provided as part of an office visit. This has resulted in multiple copayments in cases where beneficiaries are sent to multiple sites for diagnostic testing pursuant to a visit, which we regard as unfair.

Suggestions for additional minor changes to the Uniform HMO benefit will be considered. We will need to maintain compliance with the statutory requirements of overall budget neutrality and for reduced beneficiary out-of-pocket costs.

5. Other provisions. The proposed rule also includes new provisions regarding two issues. The first is the inapplicability of the TRICARE Prime annual catastrophic cap to out-of-pocket costs incurred under the TRICARE Prime point-of-service option. This is at section 199.18(f)(2). Also, a restatement of current policy, at section 199.17(a)(7), records DoD interpretation of two statutory provisions preempting state laws in connection with TRICARE contracts.

#### *C. Regulatory Procedures*

Executive Order 12866 requires certain regulatory assessments for any "significant regulatory action," defined as one which would result in an annual effort 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.

This proposed rule will impose no additional information collection requirements on the public under the Paperwork Reduction Act of 1980 (44 USC 3501-3511).

This is a proposed rule. Public comments are invited. All comments will be considered. A discussion of the major issues raised by public comments will be included with issuance of the final rule, anticipated approximately 60

days after the end of the comment period.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, and Military personnel. Accordingly, 32 CFR Part 199 is proposed to be amended as follows:

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. Chapter 55.

2. Section 199.2(b) is proposed to be amended by revising the definition of "nonavailability statement" to read as follows:

§ 199.2 Definitions.

\* \* \* \* \*

(b) \* \* \* \* \* Nonavailability statement. A certification by a commander (or a designee) of a Uniformed Services medical treatment facility, recorded on DEERS, generally for the reason that the needed medical care being requested by a non-TRICARE Prime enrolled beneficiary cannot be provided at the facility concerned because the necessary resources are not available in the time frame needed.

\* \* \* \* \*

3. Section 199.4 is proposed to be amended by removing paragraphs (a)(9)(i)(C) and (a)(9)(v)(B) and the note following paragraph (a)(9)(vi), by redesignating paragraph (a)(9)(i)(D) as paragraph (a)(9)(i)(C) and paragraph (a)(9)(v)(A) as paragraph (a)(9)(v), and by revising paragraphs (a)(9) introductory text, (a)(9)(i)(B), and (a)(9)(ii) and by adding new paragraph (a)(10)(vi)(E) to read as follows:

§ 199.4 Basic program benefits.

\* \* \* \* \*

(a) \* \* \* \* \* (9) Nonavailability statements within a 40-mile catchment area. In some geographic locations, it is necessary for CHAMPUS beneficiaries not enrolled in TRICARE Prime to determine whether the required inpatient medical care can be provided through a Uniformed Services facility. If the required care cannot be provided, the hospital commander, or designee, will issue a Nonavailability Statement (DD form 1251). Except for emergencies, a Nonavailability Statement should be issued before medical care is obtained from a civilian source. Failure to secure such a statement may waive the beneficiary's rights to benefits under CHAMPUS.

(i) \* \* \* \* \*

(B) For CHAMPUS beneficiaries who are not enrolled in TRICARE Prime, an NAS is required for services in connection with nonemergency inpatient hospital care if such services are available at a facility of the Uniformed Services located within a 40-mile radius of the residence of the beneficiary, except that a NAS is not required for services otherwise available at a facility of the Uniformed Services located within a 40-mile radius of the beneficiary's residence when another insurance plan or program provides the beneficiary primary coverage for the services. This requirement for an NAS does not apply to beneficiaries enrolled in TRICARE Prime, even when those beneficiaries use the point-of-service option under section 199.17(n)(3).

\* \* \* \* \*

(ii) Beneficiary responsibility. A CHAMPUS beneficiary who is not enrolled in TRICARE Prime is responsible for securing information whether or not he or she resides in a geographic area that requires obtaining a Nonavailability Statement. Information concerning current rules and regulations may be obtained from the Offices of the Army, Navy, and Air Force Surgeons General; or a representative of the TRICARE managed care support contractor's staff, or the Director, OCHAMPUS.

\* \* \* \* \*

(10) \* \* \* \* \*

(vi) \* \* \* \* \*

(E) The beneficiary is enrolled in TRICARE Prime:

3. Section 199.17 is proposed to be amended by adding paragraph (a)(7) and revising paragraphs (d)(1) and (o)(3) to read as follows:

§ 199.17 TRICARE program.

(a) \* \* \* \* \*

(7) Preemption of State laws. Pursuant to 10 U.S.C. 1103 and the fourth proviso of section 8025 of the Department of Defense Appropriations Act, 1994 (Pub. L. 103-139), any state or local law relating to a health insurance, prepaid health plans, or other health care delivery, administration, and financing methods is preempted and does not apply in connection with TRICARE regional contracts. Any such law, or regulation pursuant to such law, is without any force or effect, and State or local governments have no legal authority to enforce them in relation to the TRICARE regional contracts. (However, the Department of Defense may, by contract, establish legal obligations on the part of the TRICARE contractors to conform with requirements similar or identical to

requirements of State or local laws or regulations.)

\* \* \* \* \*

(d) \* \* \* \* \*

(1) Military treatment facility (MTF) care. (i) In general. All participants in Prime are eligible to receive care in military treatment facilities. Participants in Prime will be given priority for such care over other beneficiaries. Among the following beneficiary groups, access priority for care in military treatment facilities where TRICARE is implemented as follows: Active duty service members; active duty service members' dependents who are enrolled in TRICARE Prime; Retirees, their dependents and survivors who are enrolled in TRICARE Prime; Active duty service member's dependents who are not enrolled in TRICARE Prime; and Retirees, their dependents and survivors who are not enrolled in TRICARE Prime. For purposes of this paragraph (d)(1), survivors of members who died while on active duty are considered as among dependents of active duty service members.

(ii) Special provisions. Enrollment in Prime does not affect access priority for care in military treatment facilities for several miscellaneous beneficiary groups and special circumstances. These include Secretarial designees, NATO and other foreign military personnel and dependents authorized care through international agreements, civilian employees under workers' compensation programs or under safety programs, members on the Temporary Disability Retired List (for statutorily required periodic medical examinations), members of the reserve components not on active duty (for covered medical services), active duty dependents unable to enroll in Prime and temporarily away from place of residence, and other beneficiary groups as designated by the ASD(HA). Additional exceptions to the normal Prime enrollment priority access rules may be granted for other categories of individuals, eligible for treatment in the MTF, whose access to care is necessary to provide an adequate clinical case mix to support graduate medical education programs or readiness-related medical skills sustainment activities, to the extent approved by the Assistant Secretary of Defense (Health Affairs).

\* \* \* \* \*

(o) \* \* \* \* \*

(3) Quarterly installment payments of enrollment fee. The enrollment fee required by § 199.18(c) may be paid in quarterly installments, each equal to one-fourth of the total amount. For any beneficiary paying his or her enrollment

fee in quarterly installments, failure to make a required installment payment on a timely basis (including a grace period, as determined by the Director, OCHAMPUS) will result in termination of the beneficiary's enrollment in Prime and disqualification from future enrollment in Prime for a period of one year.

\* \* \* \* \*

4. Section 199.18 is proposed to be amended by revising paragraphs (d)(2)(i) and (f), and by adding paragraph (c)(3), to read as follows:

**§ 199.18 Uniform HMO benefit.**

\* \* \* \* \*

(c) \* \* \*

(3) *Waiver of enrollment fee for certain beneficiaries.* The Assistant Secretary of Defense (Health Affairs) may waive the enrollment fee requirements of this section for beneficiaries described in 10 U.S.C. 1086(d)(2) (i.e., those who are eligible for Medicare on the basis of disability or end stage renal disease and who maintain enrollment in Part B of Medicare).

(d) \* \* \*

(2) \* \* \*

(i) For most physician office visits and other routine services, there is a per visit fee for each of the following groups: dependents of active duty members in pay grades E-1 through E-4; dependents of active duty members in pay grades of E-5 and above; and retirees and their dependents. This fee applies to primary care and specialty care visits, except as provided elsewhere in this paragraph (d)(2) of this section. It also applies family health services, home health care visits, eye examinations, and immunizations. It does not apply to ancillary health services or to preventive health services described in paragraph (b)(2) of this section.

\* \* \* \* \*

(f) *Limit on out-of-pocket under the uniform HMO benefit.* (1) Total out-of-pocket costs per family of dependents of active duty members under the Uniform HMO Benefit may not exceed \$1,000 during the one-year enrollment period. Total out-of-pocket costs per family of retired members, dependents of retired members and survivors under the Uniform HMO Benefit may not exceed \$3,000 during the one-year enrollment period. For this purpose, out-of-pocket costs means all payments required of beneficiaries under paragraphs (c), (d), and (e) of this section. In any case in which a family reaches this limit, all remaining payments that would have been required of the beneficiary under

paragraphs (c), (d), and (e) of this section will be made by the program in which the Uniform HMO Benefit is in effect.

(2) The limits established by paragraph (f)(1) of this section do not apply to out-of-pocket costs incurred pursuant to paragraphs (m)(1)(i) or (m)(2)(i) of § 199.7 under the point-of-service option of TRICARE Prime.

\* \* \* \* \*

Dated: April 1, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97-8611 Filed 4-4-97; 8:45 am]

BILLING CODE 5000-04-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 100

[CGD07-97-010]

RIN 2115-AE46

#### Special Local Regulations; Fort Myers Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to amend the permanent special local regulations for the Fort Myers Beach Offshore Grand Prix. This event, previously scheduled to be held annually on the first Saturday and Sunday of June, will now be held annually during the third Saturday and Sunday of May, between 12 p.m. and 3 p.m. each day (Eastern Daylight Time). These amended regulations are necessary to provide for the safety of life on navigable waters during the event.

**DATES:** Comments must be received on or before May 1, 1997.

**ADDRESSES:** Comments may be mailed to U.S. Coast Guard Group St. Petersburg, 600 8th Ave. SE., St. Petersburg, Florida 33701-5099, or may be delivered to the Operations Department at the same address between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays. The telephone number is (813) 824-7533. Comments will become a part of the public docket and will be available for copying and inspection at the same address.

**FOR FURTHER INFORMATION CONTACT:** LTJG T.J. Stuhreyer, Coast Guard Group St. Petersburg, FL at (813) 824-7533.

#### SUPPLEMENTARY INFORMATION:

##### Background and Purpose

The proposed regulations are needed to provide for the safety of life during

the Fort Myers Beach Offshore Grand Prix because of the permanent change in the date of the event. The event was previously held on the first Saturday and Sunday in June, but will now be held from 12 p.m. EDT to 3 p.m. EDT each day on the third Saturday and Sunday in May. There will be approximately 170 participants and spectator craft associated with the event, which will be held off Fort Myers Beach between Matanzas Pass and Big Carlos Pass. The resulting congestion of navigable channels on the third weekend in May, vice the first weekend in June, creates an extra or unusual hazard in the navigable waters.

#### Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names, addresses, identify the notice (CGD07-97-010) and the specific section of this proposal to which their comments apply, and give reasons for each comment. The Coast Guard will consider all comments received during the comment period. The regulations may be changed in view of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

No public hearing is planned, but one may be held if the written requests for a hearing are received, and it is determined that the opportunity to make oral presentations will add to the rulemaking process. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt should include stamped, self-addressed post cards or envelopes.

#### Regulatory Evaluation

This proposal is not a significant regulatory action under Section 3(f) of the Executive Order 12866 and does not require an assessment of the 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 proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of

DOT is unnecessary. The proposed amended regulation would remain in effect for only 4 hours each day for two days.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal 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 reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

#### Collection of Information

These proposed regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

#### Environmental Assessment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to section 2.B.2.e.(34)(h) of Commandant Instruction M16475.1B, that this action is categorically excluded from further environmental documentation.

#### List of Subjects in 33 CFR Part 100

Regattas and marine parades.

#### Proposed Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, the Coast Guard proposes to be 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.

2. In section 100.717, paragraph (c) is revised to read as follows:

**§ 100.717 Special Local Regulations; Fort Myers Beach, FL.**

\* \* \* \* \*

(c) *Effective Dates:* This section is effective each day from 11 a.m. through

3 p.m. EDT annually during the third Saturday and Sunday of May.

Dated: March 27, 1997.

J.W. Lockwood,  
Rear Admiral, U.S. Coast Guard, Commander,  
Seventh Coast Guard District.

[FR Doc. 97-8744 Filed 4-4-97; 8:45 am]

BILLING CODE 4910-14-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR PART 101

[CC Docket No. 92-297; FCC 97-82]

#### Use of the 28 GHz and 31 GHz Bands for Local Multipoint Distribution Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission adopts a *Second Report and Order*, *Order on Reconsideration and Fifth Notice of Proposed Rulemaking* regarding the use of the 28 GHz and 31 GHz Bands for Local Multipoint Distribution Service (LMDS). The *Second Report and Order* designates an additional 300 megahertz of spectrum in the 31 GHz band to LMDS and adopts service and competitive bidding rules for LMDS. The *Order on Reconsideration* denies petitions for reconsideration of the Commission's dismissal of applications for waiver of the Commission's point-to-point rules governing the 28 GHz band. These portions of the decision will be summarized in a future edition of the *Federal Register*. The *Fifth Notice of Proposed Rulemaking (Fifth NPRM)* seeks comment on specific rules to be applied for the partitioning and disaggregation of LMDS licenses. This action is taken to establish a record from which to consider procedural, administrative and operational rules for partitioning and disaggregating LMDS licenses and to reach an ultimate decision. This *Fifth NPRM* contains new information collections subject to the Paperwork Reduction Act of 1995 (PRA). It will be submitted to the Office of Management and Budget (OMB) for review under the PRA. The general public is invited to comment on the proposed information collections contained in this proceeding.

**DATES:** Comments are due on or before April 21, 1997, and reply comments are due on or before May 6, 1997. Written comments by the public on the proposed information collections are due by April 21, 1997.

**ADDRESSES:** Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554, or via the Internet to [dconway@fcc.gov](mailto:dconway@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** Bob James, Private Wireless Division, (202) 418-0680, Mark Bollinger or Jay Whaley, Auctions Division, (202) 418-0660, or Joe Levin or Jane Phillips, Policy Division, (202) 418-1310. For additional information concerning the information collections contained in this *Fifth NPRM*, contact Dorothy Conway at 202-418-0217, or via the Internet at [dconway@fcc.gov](mailto:dconway@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the *Fifth NPRM* segment of the *Second Report and Order*, *Order on Reconsideration and Fifth Notice of Proposed Rulemaking* in CC Docket No. 92-297, FCC 97-82, adopted March 11, 1997, and released March 13, 1997. The *Second Report and Order* portion of this decision will be summarized in a future edition of the *Federal Register*. The complete text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

#### Paperwork Reduction Act

1. This *Fifth NPRM* contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collections contained in this *Fifth NPRM*, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on this *Fifth NPRM*. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated

collection techniques or other forms of information technology.

OMB Approval Number: 3060-0531.

Title: Redesignation of 27.5 GHz Frequency Band, Establishing Rules and Policies for Local Multipoint Distribution (NPRM CC Docket No. 92-297).

Form No.: N/A.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Respondents: Business or other for-profit.

Number of Respondents: 197.

Estimated Time Per Response: 21 hours.

Total Annual Burden: 3,132.5 hours.

Total Annual Cost: \$205,800.

Needs and Uses: The information requested will be used by FCC personnel to determine whether partitioning and disaggregation applicants are qualified legally and technically to be licensed to use the radio spectrum.

OMB Approval Number: New Collection (which adds respondents to three existing collections 3060-0105, FCC 430; 3060-0068, FCC 702; 3060-0623, FCC 600).

Title: Redesignation of 27.5 GHz Frequency Band, Establishing Rules and Policies for Local Multipoint Distribution (NPRM CC Docket No. 92-297).

Form No.: FCC Forms 430, 600, and 702.

Type of Review: New collection.

Respondents: Potential LMDS applicants.

Number of Respondents; Estimated Time Per Response and Total Annual Burden: If the proposed changes in the Fifth NPRM are adopted the respondents and burden for the FCC Form's 430, 600, and 702 as follows: The FCC 430 has 1,900 respondents, to be increased to 3,433; the estimated time for completion is 2 hours per respondent. The total annual burden for the FCC 430 is now 3,800 hours, and would increase to 6,866 hours. The FCC 600 has 194,769 respondents, which would be increased to 198,053. The estimated time for completion is 4 hours per respondent. The total annual burden is currently 779,076. This figure will be increased to 792,212 hours if the changes proposed in the Fifth NPRM are adopted. The Form 702 has 1,000 respondents, to be increased to 2,644 respondents. The estimated time for completion is 5 hours per respondent. The total annual burden for the FCC 702 is now 5,000 hours and would increase to 13,220 hours.

Needs and Uses: The information will be used by Commission personnel to determine if the licensee is a qualifying entity to obtain a partitioned license or disaggregated spectrum. Additionally, the information will be used by Commission personnel to determine who is using spectrum and thus maintain the integrity of the spectrum.

#### Synopsis of the Fifth Notice of Proposed Rulemaking

2. The Commission has concluded in the *Second Report and Order* that any LMDS licensee will be permitted to partition or disaggregate portions of its authorization. As part of the next phase of our LMDS rulemaking, the Commission is proposing specific procedural, administrative, and operational rules to ensure effective implementation of the general partitioning and disaggregation rules adopted in the *Second Report and Order* for LMDS. It is the Commission's tentative view that a more complete delineation of these partitioning and disaggregation mechanisms, which we hope to achieve in this rulemaking, will ensure realization of the competitive benefits that are at the core of our partitioning and disaggregation policy.

3. In the *Fifth NPRM* we will seek comment as to how various requirements imposed on LMDS licensees (e.g., construction requirements) may be modified if such licensees partition or disaggregate their authorization. We seek comment as to whether partitioning of LMDS licenses should be permitted in a manner similar to the rules for partitioning we have adopted for broadband PCS licensees. In addition, we seek comment as to specific procedural, administrative, and operational rules under which LMDS licensees are permitted to disaggregate their licensed spectrum.

4. We seek comment on the following specific aspects of partitioning and disaggregation, which we will need to address in order to administer the general partitioning and disaggregation rules for LMDS licensees that we have adopted in the *Second Report and Order*. For example, we seek comment as to whether there are any technical or regulatory constraints unique to the LMDS service that would render any aspects of partitioning or disaggregation impractical or administratively burdensome. Further, we recognize that there are special competitive bidding issues, similar to those raised in the broadband personal communications services (PCS) context, that must be resolved if we permit partitioning and disaggregation for LMDS. We address those issues separately in paragraphs 13

through 15, of the *Second Report and Order*.

#### Available License Area

5. In the *Partitioning and Disaggregation Report and Order*, (62 FR 653, January 6, 1997) we found that allowing partitioning of broadband PCS licenses along any service area defined by the parties is the most logical approach. We concluded that allowing the parties to define the partitioned PCS service area would allow licensees to design flexible and efficient partitioning agreements which would permit marketplace forces to determine the most suitable service areas. We also found that requiring PCS partitioning along county lines was too restrictive and might discourage partitioning.

6. We have decided to base LMDS licenses on Basic Trading Area (BTA) geographic service areas, finding that BTAs are logical licensing areas for LMDS because they comprise areas within which consumers have a community of interest. We tentatively conclude that a flexible approach to partitioned areas, similar to the one we adopted for broadband PCS, is appropriate for LMDS. We therefore propose to permit partitioning of LMDS licenses based on any license area defined by the parties. We seek comment on this proposal, and in particular on whether there are any technical or other issues unique to the LMDS service that might impede the adoption of a flexible approach to defining the partitioned license area.

#### Minimum or Maximum Disaggregation Standards

7. We seek comment as to whether we should augment our general rule permitting disaggregation of LMDS spectrum in order to establish minimum disaggregation standards. We seek to determine whether, given any unique characteristics of LMDS, technological and administrative considerations warrant the adoption of such standards. We seek comment as to whether we should adopt standards which would be flexible enough to encourage disaggregation while providing a standard which is consistent with our technical rules and by which we would be able to track disaggregated spectrum and review disaggregation proposals in an expeditious fashion.

#### Combined Partitioning and Disaggregation

8. We seek comment regarding whether combined partitioning and disaggregation should be permitted for LMDS. By "combined" partitioning and disaggregation we refer to circumstances

in which a licensee would be authorized, for example, to obtain a license for a portion of a BTA with only a portion of the 1,150 megahertz license or the 150 megahertz license involved in the disaggregation of spectrum. As another example, the licensee could obtain a license consisting of a partitioned portion of one or more other licenses held by other LMDS providers and a disaggregated portion of one or more other licenses held by other LMDS providers. We tentatively conclude that we should permit such combinations in order to provide carriers with the flexibility they need to respond to market forces and demands for service relevant to their particular locations and service offerings.

#### Construction Requirements

9. In paragraphs 266–272 of the Order we have adopted today we have promulgated a performance standard under which a licensee must make a showing of substantial service at the end of the license term. In the case of partitioned LMDS licenses, we propose that the partitionee must certify that it will satisfy the same construction requirements as the original licensee. The partitionee then must meet the prescribed service requirements in its partitioned area while the partitioner is responsible for meeting those requirements in the area it has retained.

10. In the case of disaggregated LMDS licenses, we propose to adopt rules for LMDS licensees similar to those disaggregation certification rules we have adopted for broadband PCS. (See *Partitioning and Disaggregation Report and Order*, at paras. 61–63.) Under such a certification approach, the disaggregating parties would be required to submit a certification, signed by both the disaggregator and disaggregatee, stating whether one or both of the parties will retain responsibility for meeting the performance requirement for the LMDS market involved. If one party takes responsibility for meeting the performance requirement, then actual performance by that party would be taken into account in a renewal proceeding at the end of the license term, but such performance would not affect the status of the other party's license. If both parties agree to share the responsibility for meeting the performance requirement, then the performance of each of the parties would be taken into account in the respective renewal proceedings.

#### License Term

11. In the Order we have adopted today we established a 10-year license term for LMDS licenses. In this Fifth

NPRM we are proposing that LMDS licenses should be eligible for a license renewal expectancy based upon the criteria established in Section 22.940(a) of the Commission's Rules.

12. In the *Partitioning and Disaggregation Report and Order*, we found that allowing parties acquiring a partitioned license or disaggregated spectrum to "re-start" the license term from the date of the grant of the partial assignment application could allow parties to circumvent our established license term rules and unnecessarily delay service. We seek comment as to whether our LMDS rules should similarly provide that parties obtaining partitioned LMDS licenses or disaggregated spectrum hold their license for the remainder of the original licensee's 10-year license term. In addition, we seek comment as to whether LMDS partitionees and disaggregatees should be afforded the same renewal expectancy as we have proposed for other LMDS licensees. We tentatively conclude that limiting the license term of the partitionee or disaggregatee is necessary to ensure that there is maximum incentive for parties to pursue available spectrum as quickly as practicable.

#### Competitive Bidding Issues

13. Competitive bidding issues similar to those in broadband PCS arise in the context of LMDS partitioning and disaggregation. Our competitive bidding rules for the LMDS service include provisions for installment payments and bidding credits for small businesses and businesses with average annual gross revenues not exceeding \$75 million. We also adopted rules to prevent unjust enrichment by such entities that seek to transfer licenses obtained through use of one of these special benefits.

14. We tentatively conclude that LMDS partitionees and disaggregatees that would qualify for installment payments should be permitted to pay their *pro rata* share of the remaining Government obligation through installment payments. We seek comment on this tentative conclusion. We further invite comment as to the exact mechanisms for apportioning the remaining Government obligation between the parties and whether there are any unique circumstances that would make devising such a scheme for LMDS more difficult than for broadband PCS. Since LMDS service areas are allotted on a geographic basis, in a manner similar to broadband PCS, we propose using population as the objective measure to calculate the relative value of the partitioned area and amount of spectrum disaggregated as the

objective measure for disaggregation, and we seek comment on this proposal.

15. We seek comment regarding whether to apply unjust enrichment rules to small business LMDS licensees, or LMDS licensees with average annual gross revenues not exceeding \$75 million, that partition or disaggregate to larger businesses. Commenters should address how to calculate unjust enrichment payments for LMDS licensees paying through installment payments and those that were awarded bidding credits that partition or disaggregate to larger businesses. Commenters should address whether the unjust enrichment payments should be calculated on a proportional basis, using population of the partitioned area and amount of spectrum disaggregated as the objective measures. We propose using methods similar to those adopted for broadband PCS for calculating the amount of the unjust enrichment payments that must be paid in such circumstances, and we seek comment on this proposal. (See *Partitioning and Disaggregation Report and Order* at paras. 34–35).

#### Licensing Issues

16. We propose that all LMDS licensees who are parties to disaggregation or partitioning arrangements must comply with our technical and service rules established in the Order we are adopting today. We also propose that coordination and negotiation among licensees must be maintained and applied in licensing involving disaggregated or partitioned licenses.

17. We propose to treat the disaggregation and partitioning of LMDS licenses to be types of assignments requiring prior approval by the Commission. We therefore propose to follow existing assignment procedures for disaggregation and partitioning. Under this proposal, the licensee must file FCC Form 702 signed by both the licensee and qualifying entity. The qualifying entity would also be required to file an FCC Form 430 unless a current FCC Form 430 is already on file with the Commission.

#### Administrative Matters

18. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR Sections 1.415 and 1.419, interested parties may file comments on or before April 21, 1997, and reply comments on or before May 5, 1997. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each

Commissioner to receive personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554.

19. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission Rules. See generally 47 CFR Sections 1.1202, 1.1203, and 1.1206(a).

#### Initial Regulatory Flexibility Analysis

20. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this *Fifth NPRM*, but they must have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this *Fifth NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

#### Initial Regulatory Flexibility Act Statement

21. *Need for and Objectives:* Our objectives are to afford licensees the flexibility to disaggregate and partition their licenses so as to: (1) promote efficient use of LMDS spectrum by leaving determinations regarding the correct size of licenses to the licensees, who are in the best position to analyze their business plans, assess new technology, and determine customer demand, (2) encourage more rapid deployment of services in the LMDS spectrum, (3) enable licensees to concentrate on core areas or to deliver services to isolated complexes, such as rural towns or university campuses, that do not lie within major market areas, and (4) provide opportunities for small businesses seeking to enter the multichannel video programming distribution and local telephony marketplaces.

#### 22. Legal Basis for Proposed Rules:

The proposed action is authorized under the Administrative Procedure Act, 5 U.S.C. § 553; and §§ 4(i), 257, 303(g), 303(r), 309(j) and 332(a) of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 257, 303(g), 303(r), 309(j), 332(a).

23. *Description and Estimate of Small Entities Subject to the Rules:* The service regulations we adopt to implement LMDS would apply to all entities seeking an LMDS license, including small entities. In addition, the in-region, temporary eligibility restrictions we adopt would apply to qualifying LECs and cable companies. Finally, the rules we adopt to designate additional spectrum for LMDS in the 31.0-31.3 GHz band would apply to all entities providing incumbent services under existing rules for 31 GHz services. We consider these three groups of affected entities separately below.

#### Estimates of Potential Applicants of LMDS

24. SBA has developed definitions applicable to radiotelephone companies and to pay television services. We are using these definitions that SBA has developed because these categories approximate most closely the services that may be provided by LMDS licensees. The definition of radiotelephone companies provides that a small entity is a radiotelephone company employing fewer than 1,500 persons. (See 13 CFR 121.201, Standard Industrial Classification (SIC) 4812.) The definition of a pay television service is one which has annual receipts of \$11 million or less. (SIC 4841)

25. The size data provided by SBA do not enable us to make an accurate estimate of the number of telecommunications providers which are small entities because it combines all radiotelephone companies with 500 or more employees. We therefore use the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Likewise, the size data provided by SBA do not enable us to make a meaningful estimate of the number of cable and pay television providers which are small entities because it combines all such providers with revenues of \$11 million or less. We therefore use the 1992 Census of Transportation, Communications, and Utilities (Table 2D), conducted by the Bureau of the Census, which is the most

recent information available. This document shows that only 36 of 1,788 firms providing cable and pay television service have a revenue of greater than \$10 million. Therefore, the majority of LMDS entities to provide video distribution and telecommunications services may be small businesses under SBA's definition.

26. The Commission has not developed a definition of small entities applicable to LMDS licensees, which is a new service being licensed in the Order. The RFA amendments were not in effect until shortly before the Fourth Notice of Proposed Rulemaking (*Fourth NPRM*) was released, and no data has been received establishing the number of small businesses associated with LMDS. However, in the Third Notice of Proposed Rulemaking (*Third NPRM*) we proposed to auction the spectrum for assignment and requested information regarding the potential number of small businesses interested in obtaining LMDS spectrum, in order to determine their eligibility for special provisions such as bidding credits and installment payments to facilitate participation of small entities in the auction process. In the Order we adopt criteria for defining small businesses for purposes of determining such eligibility. We will use this definition for estimating the potential number of entities applying for auctionable spectrum that are small businesses.

27. As discussed in Section II.D.2.e of the Order, we adopt criteria for defining small businesses and other eligible entities for purposes of defining eligibility for bidding credits and installment payments. We define a small business as an entity that, together with affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the three preceding years (paras. 345 and 348 of the Order). Additionally, bidding credits and installment payments are available to applicants that, together with affiliates and controlling principals, have average gross revenues for the three preceding years of more than \$40 million but not more than \$75 million (paras. 349 and 358 of the Order).

28. SBREFA was not in effect until the record in the *Third NPRM* closed, and we did not seek comment on the potential number of prospective applicants for LMDS that might qualify as small businesses. Therefore, we are unable to predict accurately the number of applicants for LMDS that would fit the definition of a small business for competitive bidding purposes. However, using the definition of small business we adopted for auction eligibility, we can estimate the number of applicants

that are small businesses by examining the number of applicants in similar services that qualified as small businesses. For example, MDS authorizes non-common carrier services similar to what may be developed through LMDS. The MDS rules provide a similar definition of a small business as an entity that, together with its affiliates, has annual gross revenues for the three preceding years not in excess of \$40 million. A total of 154 applications were received in the MDS auction, of which 141, or 92 percent, qualified as small businesses.

29. We plan to issue 2 licenses for each of the 492 BTAs, excluding New York, that are the geographic basis for licensing LMDS. Thus, 984 licenses will be made available for authorization in the LMDS auction. Inasmuch as 92 percent of the applications were received in the MDS auction were from entities qualifying as small businesses, we anticipate receiving at least the same from LMDS applicants interested in providing non-common carrier services.

30. There is only one company, CellularVision, that is currently providing LMDS video services. Although the Commission does not collect data on annual receipts, we assume that CellularVision is a small business under both the SBA definition and our proposed auction rules.

31. *Reporting, Recordkeeping, and Other Compliance Requirements:* Under the proposal contained in the Fifth NPRM: (1) acquisitions by partitioning or disaggregation will be treated as assignments of a license and will require the parties to seek prior approval of the Commission; (2) the parties will be required to identify which of them will be responsible for complying with the construction requirements set forth in the Second Report and Order we have adopted today, and to submit a certification to that effect, signed by both parties; (3) parties failing to meet their construction requirement obligations will be subject to forfeiture of their license; and (4) licensees afforded bidding preferences and other benefits available to small entities will be subject to the Commission's unjust enrichment rules should they partition or disaggregate to entities that are not small businesses. If adopted, this proposal would apply to all LMDS licensees and all entities that attempt to acquire an LMDS license by means of partitioning or disaggregation. We request comment on how these requirements can be modified to reduce the burden on small entities and still meet the objectives of the proceeding.

32. *Significant Alternatives Minimizing the Significant Economic*

*Impact on a Substantial Number of Small Entities Consistent with the Stated Objectives:* We have not identified any significant alternatives that would minimize the significant economic impact on small entities that are consistent with the stated objectives to allow a flexible approach to partitioning and disaggregation of LMDS. We tentatively conclude that a flexible approach affords providers, including small businesses, the ability to respond to market forces and demands for service relevant to their particular locations and service offerings.

The regulatory burdens we have imposed on LMDS licensees with respect to assignments and buildout certifications, as well as unjust enrichment, are necessary in order to ensure that the public receives the benefits of innovative new services in a prompt and efficient manner. We seek comment on any significant alternatives that are consistent with the objectives in the NPRM.

33. *Federal Rules That Overlap, Duplicate, or Conflict with These Proposed Rules:* None.

#### List of Subjects in 47 CFR Part 101

Communications common carriers, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97-8775 Filed 4-4-97; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AB73

#### Endangered and Threatened Wildlife and Plants, Notice of Reopening of Comment Period on Proposed Endangered Status for the Peninsular Ranges Population of the Desert Bighorn Sheep

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule, notice of reopening of comment period.

**SUMMARY:** The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of reopening of the comment period for the proposed endangered status for the Peninsular Ranges population of desert bighorn

sheep (*Ovis canadensis*). The comment period has been reopened to acquire additional information from interested parties, and to resume the proposed listing action. In addition, the Service is seeking public comment on various articles and reports concerning the distinctiveness and status of bighorn sheep in the Peninsular Ranges.

**DATES:** The public comment period closes May 7, 1997. Any comments received by the closing date will be considered in the final decision on this proposal.

**ADDRESSES:** Written comments, materials and data, and available reports and articles concerning this proposal should be sent directly to the Field Supervisor, Carlsbad Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Peter Sorensen, at the address listed above (telephone 760/431-9440, facsimile 760/431-9618).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Peninsular Ranges population of the desert bighorn sheep occurs along desert slopes of the Peninsular Ranges from the vicinity of Palm Springs, California, into northern Baja California, Mexico. Depressed recruitment, habitat loss and degradation, disease, loss of dispersal corridors, and random events (e.g., drought) affecting small populations threaten the desert bighorn sheep in the Peninsular Ranges.

On May 8, 1992, the Service published a rule proposing endangered status for the Peninsular Ranges population of the desert bighorn sheep (57 FR 19837). The original comment period closed on November 4, 1992. The Service was unable to make a final listing determination regarding the bighorn sheep because of a limited budget, other endangered species assignments driven by court orders, and higher listing priorities. In addition, a moratorium on listing actions (Public Law 104-6), which took effect on April 10, 1995, stipulated that no funds could be used to make final listing or critical habitat determinations. Now that funding has been restored, the Service is proceeding with a final determination for the Peninsular Ranges population of the desert bighorn sheep.

Due to the length of time that has elapsed since the close of the initial comment period, changing procedural



and biological circumstances and the need to review the best scientific information available during the decision-making process, the comment period is being reopened. Moreover, this proposed listing of a population of desert bighorn sheep must be consistent with Service policy published on February 7, 1996, regarding the recognition of distinct vertebrate population segments (61 FR 4722). This policy requires that distinct population segments be discrete from other populations of the species, be biologically and/or ecologically significant to the species, and meet the standards of a endangered or threatened species under section 4(a) of the Act. In this regard, the following recent articles and reports contained in Service files, including other non-cited information, are available for public review:

*Berger, J. 1990.* Persistence of different-sized populations: An empirical assessment of rapid extinctions. *Conservation Biology* 4:91-98.

*Bleich, V. C., J. D. Wehausen, and S. A. Holl 1990.* Desert-dwelling mountain sheep: Conservation implications of a naturally fragmented distribution. *Conservation Biology* 4:383-390.

*Bleich, V. C., J. D. Wehausen, R. R. Ramey II, and J. L. Rechel 1997.* Metapopulation theory and mountain sheep: Implications for conservation. Pages 353-373 in D. R. McCullough, editor. *Metapopulations and Wildlife Conservation*, Island Press, Washington D.C.

*Bighorn Institute 1996.* Summary of the San Jacinto Mountains helicopter survey of Peninsular bighorn sheep. unpublished report, 2 pp.

*Bighorn Institute 1996.* Summary of the Santa Rosa Mountains helicopter survey of Peninsular bighorn sheep. unpublished report, 3 pp.

*Boyce, W. M., P. W. Hedrick, N. E. Muggli-Cockett, S. Kalinowski, M. C. T. Penedo, and R. R. Ramey II 1997.* Genetic variation of major histocompatibility complex and microsatellite loci: A comparison in bighorn sheep. *Genetics* 145:421-433.

*DeForge, J. R., E. M. Barrett, S. D. Ostermann, M. C. Jorgensen, and S. G. Torres 1995.* Population dynamics of Peninsular bighorn sheep in the Santa Rosa Mountains, California. *Desert Bighorn Council Trans.* 39:50-57.

*R. R. Ramey II 1995.* Mitochondrial DNA variation, population structure, and evolution of mountain sheep in the south-western United States and Mexico. *Molecular Ecology* 4:429-439.

*Rubin, E., and W. Boyce 1996.* Results of helicopter survey conducted in Anza-

Borrego Desert State Park, unpublished memo to Steve Torres (CDFG Bighorn Sheep Coordinator) and project collaborators. 6 pp.

*Wehausen, J. D., and R. R. Ramey II 1993.* A morphometric reevaluation of the Peninsular bighorn subspecies. *Desert Bighorn Council Trans.* 37:1-10.

Regarding the above articles and reports, the Service particularly seeks information concerning:

- (1) The biological and ecological distinctiveness of bighorn sheep in the Peninsular Ranges from other populations of bighorn sheep;
- (2) other biological, commercial, or other relevant data on any threat (or lack thereof) to bighorn sheep in the Peninsular Ranges; and
- (3) the current size, number, or distribution of bighorn sheep populations in the Peninsular Ranges.

Written comments may now be submitted until [May 7, 1997] to the Service office in the ADDRESSES section.

#### Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: April 1, 1997.

**Thomas J. Dwyer,**  
Regional Director, Region 1.  
[FR Doc. 97-8779 Filed 4-4-97; 8:45 am]  
BILLING CODE 4310-65-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 229

[Docket No. 970129015-7072-02; I.D. 031997B]

RIN 0684-A184

#### Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations

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

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

**SUMMARY:** NMFS by this action proposes a take reduction plan and implementing regulations to reduce serious injury and mortality of four large whale stocks that occur incidental to certain fisheries. The whales stocks consist of the North Atlantic right whale (*Eubalaena glacialis*), Western North Atlantic stock, humpback whale (*Megaptera*

*novaeangliae*), Western North Atlantic stock, fin whale (*Balaenoptera physalus*), Western North Atlantic stock, and minke whale (*Balaenoptera acutorostrata*), Canadian East Coast stock. Covered by the proposed plan are fisheries: for multiple species, including monkfish and dogfish in the New England Multispecies sink gillnet fishery; for multiple species in the U.S. mid-Atlantic coastal gillnet fisheries; for lobster in the Gulf of Maine and U.S. mid-Atlantic trap/pot fisheries; and for sharks in the Southeastern U.S. Atlantic driftnet fishery. NMFS seeks comments on this proposed plan and the proposed regulations to implement the plan.

**DATES:** Comments on the proposed plan and proposed regulations to implement the plan must be received by May 15, 1997.

**ADDRESSES:** Send comments to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-33226. Copies of the Team Report and draft Environmental Assessment (EA) may be obtained by written request from the Office of Protected Resources, or by telephoning one of the contacts listed under FOR FURTHER INFORMATION CONTACT.

**FOR FURTHER INFORMATION CONTACT:** Kim Thounhurst, NMFS, Northeast Region, 508/281-9368; Bridget Mansfield, NMFS, Southeast Region, 813/570-5312; or Michael Payne, NMFS, Office of Protected Resources, 301/713-2322.

#### SUPPLEMENTARY INFORMATION:

##### Background

Since it was first passed in 1972, one of the underlying goals of the Marine Mammal Protection Act (MMPA) has been to reduce the incidental serious injury and mortality of marine mammals permitted in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate (section 101(a)(2) of the MMPA). The 1994 Amendments to the MMPA reaffirm this Zero Mortality Rate Goal (ZMRG) (section 118 (b)(1)).

To facilitate reduction of incidental serious injury and mortality to high priority marine mammal stocks, section 118(f) requires NMFS to develop and implement a take reduction plan to assist in the recovery or to prevent the depletion of each strategic stock that interacts with a Category I or II fishery. Category I or II fisheries are fisheries that have frequent or occasional incidental mortality and serious injury of marine mammals, respectively. A strategic stock is a stock: (1) For which the level of direct human-caused

mortality exceeds the potential biological removal (PBR) level; (2) which is declining and is likely to be listed under the Endangered Species Act (ESA) in the foreseeable future; or (3) which is listed as a threatened or endangered species under the ESA or as a depleted species under the MMPA. The immediate goal of a take reduction plan (TRP) is to reduce, within 6 months of its implementation, the mortality and serious injury of strategic stocks incidentally taken in the course of commercial fishing operations to below the PBR levels established for such stocks. The long-term goal of the plan is to reduce, within 5 years of its implementation, the incidental mortality and serious injury of strategic marine mammals taken in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate.

NMFS established the Atlantic Large Whale Take Reduction Team (Team or ALWTRT) on August 6, 1996 (61 FR 40819) to prepare a draft Atlantic Large Whale Take Reduction Plan to reduce takes of humpback, fin and right whales, which are listed as endangered species under the ESA (and are thus considered strategic stocks under the MMPA) by commercial fisheries. Although minke whales are not considered strategic at this time, the Team was also asked to consider measures that would reduce takes of minke whales. The Team prepared a report and submitted it to NMFS; a more complete discussion of the Team Report and associated recommendations is provided below.

The New England Multispecies sink gillnet fishery is a Category I fishery that has an historical incidental bycatch of humpback, minke, and possibly fin whales. This gear type has been documented to take right whales in Canadian waters. Additionally, entanglements of right whales in unspecified gillnets have been recorded historically for U.S. waters, although U.S. sink gillnets have not been conclusively identified as having taken right whales. The Gulf of Maine/U.S. mid-Atlantic lobster trap/pot fishery is a Category I fishery that has an historical incidental bycatch of right, humpback, fin and minke whales. The mid-Atlantic coastal gillnet fisheries are considered a Category II fisheries complex that has an historical incidental bycatch of humpback whales. The Southeastern U.S. Atlantic drift gillnet fishery for sharks is a Category II fishery that is believed to be responsible for bycatch of at least one right whale. These fisheries are therefore addressed in this proposed Atlantic Large Whale Take Reduction Plan (ALWTRP or Plan). The pelagic

drift gillnet fishery has recorded takes of large whales, but those interactions are not being addressed in this Plan, since it will be addressed in the Atlantic Offshore Cetacean Take Reduction Plan, which is being developed.

In addition, the Team Report identified several other fisheries operating on the U.S. Atlantic Coast which either use gear similar in construction to gear used by the fisheries covered by this proposed plan, and may therefore represent similar entanglement threat, or which may have documented serious injury or mortality entanglements of right, humpback, fin and/or minke whales. These fisheries include the tuna hand line/hook-and-line fishery, groundfish (bottom) longline/hook-and-line fishery, surface gillnet fishery for small pelagic fishes, pot fisheries other than lobster pot, finfish staked trap fisheries, and weir/stop seine fisheries. Currently, these fisheries are either classified as Category III or are unclassified. NMFS is considering the appropriateness of these classifications and may impose gear-marking requirements and/or restrictions on some or all of these other fisheries in the final plan. NMFS specifically invites comments on whether these other fisheries utilize the same or similar gear as the fisheries considered in this plan, whether the gear is fished in a manner which causes or has the potential to cause serious injury or mortality to marine mammals, whether efficient administration, effective enforcement or similar considerations warrant uniform regulations for similar gear types, and whether the gear-marking requirements and/or other restrictions should apply to all fisheries using similar gear.

The Team was tasked with developing a draft plan for reducing mortality and serious injury to strategic large whale stocks, and minke whales if time permitted, in the specified fisheries. The Team included representatives of NMFS, the Marine Mammal Commission, Maine Department of Marine Resources, Massachusetts Division of Marine Fisheries, Rhode Island Division of Fish and Wildlife, Maryland Department of Natural Resources, Virginia Marine Resources Commission, North Carolina Division of Marine Fisheries, Georgia Department of Natural Resources, Florida Department of Environmental Protection, New England Fishery Management Council, Mid-Atlantic Fishery Management Council, environmental organizations, academic and scientific organizations, and participants in the fisheries considered in this plan. In selecting these team members, NMFS sought an

equitable balance among representatives of resource user and non-user interests.

The team met six times between September 1996 and January 1997 and submitted a report to NMFS on February 5, 1997 (Although the report was entitled "Draft Large Whale Take Reduction Plan", consensus was not reached. Consequently, it is referred to as the "ALWTRT Report" or "Team Report"). While consensus was not reached, the Team provided a significant and useful framework for NMFS to develop this proposed ALWTRP and the associated implementing regulations. The report submitted by the Team includes: (1) A review of the current information on the status of the affected strategic marine mammal stocks; (2) descriptions of the New England multispecies sink gillnet fishery, the mid-Atlantic coastal gillnet fisheries, the Gulf of Maine and U.S. mid-Atlantic lobster trap/pot fisheries, and the Southeastern U.S. Atlantic drift gillnet fishery for sharks; (3) comments on potential measures to reduce the bycatch of large whales; and (4) other comments regarding research needs for implementation of the plan.

NMFS evaluated the Team Report and subsequent comments submitted by team members in developing this proposed ALWTRP. NMFS considered possible take reduction measures in terms of their potential effectiveness toward reaching both the 6-month and the 5-year goals. This ALWTRP includes specific take reduction goals as well as means to monitor progress toward those goals.

#### Take Reduction Goals

Most of the measures in this proposed plan focus on ways to reduce the risk of serious injury and mortality to right whales, both because the right whale's population status is more critical than that of either humpback or fin whales, and because right whales are the only endangered large whale in U.S. Atlantic waters for which PBR is known to be exceeded. The proposed measures are also expected to reduce the risk of serious injury and mortality to humpback and fin whales due to entanglement, and may reduce the same risks for minke whales. There is overlap in several areas where fishing occurs and where right, humpback, fin and minke whales are also known to occur, although concurrent use of these areas by all species does not occur during much of the year. Therefore, certain measures directed at reducing right whale entanglements (such as required gear modifications) are proposed to be expanded to year-round coverage

beginning in 1998 to be effective for all species considered by the Plan.

Some entanglements of large whales were observed by the NMFS sea sampling program; however, most records come from reports from various sources such as small vessel operators. Limitations of the available entanglement data include: (1) Not all observed events are reported; (2) most reports are opportunistic rather than from systematic data collection; consequently, conclusions cannot be made regarding actual entanglement levels; (3) identifying gear type or the fishery involved is often problematic; and (4) identifying the location where the entanglement first occurred is often difficult since the first observation usually occurs after the animal has left the original location.

#### *Right Whales*

Based on data from 1991 through 1995, U.S. fishing gear is estimated to be responsible for approximately 35 percent (6 events) of known human-caused serious injury and mortality to right whales, while Canadian fisheries are estimated to be responsible for 18 percent (3 events); the remaining 47 percent (8 events) is attributed to ship strikes. The MMPA requires that TRPs include measures to reduce takes of strategic marine mammals incidental to U.S. commercial fisheries to below PBR levels.

NMFS estimates that a minimum of 1.2 right whales from the western North Atlantic stock are seriously injured or killed annually by entanglement in U.S. fishing gear. Of those entangled whales, lobster gear is estimated to have entangled an annual average of 0.4 whales over the last 5 years. The Southeastern U.S. drift gillnet fishery for sharks is assumed to have entangled an annual average of 0.2 whales over the same period. Whales entangled in unidentified gillnet gear have been observed. The pelagic drift gillnet fishery is estimated to be responsible for 0.4 fishery-induced mortalities and serious injuries of right whales annually. The remaining known entanglements are from unknown fisheries. With the exception of the swordfish driftnet take, which was documented by the NMFS observer program, these entanglement rates are considered minimum estimates based on known events. Unobserved entanglements are known to occur, based on observed scarred animals. These entanglements may be unobserved because less serious entanglements may be brief in duration, mortality may be rapid, or the entanglement may occur in an area

where there is little sighting effort (and, consequently, lower chances of observation and reporting). NMFS is unable to estimate the number of these unobserved events.

NMFS has determined that to meet the 6-month goal set by the MMPA to reduce takes by commercial fisheries to below the PBR level of 0.4 for this stock, the probability of entanglement of right whales by all U.S. Atlantic fisheries must be reduced by more than 67% (from 1.2 to less than 0.4). Reduction of takes in the pelagic drift gillnet fishery will be considered in the Atlantic Offshore Cetacean Take Reduction Plan (AOCTRP). A draft AOCTRP was submitted to NMFS on November 25, 1996, and publication of the proposed plan in the Federal Register is expected in the near future.

NMFS estimates annual serious injury and mortality rates based on a 5-year period. Expected rates of entanglement during any 6-month period may vary from the 5-year annual average. This variation may be most pronounced where the sample size is particularly small, as is the case with right whale entanglements. Consequently, it will be difficult to establish whether the goal of reducing incidental takes of right whales to below the PBR level is achieved within 6 months of the plan is implemented. Since the PBR level for right whales is 0.4, if more than two serious injuries or mortalities incidental to commercial fishing operations occur within 5 years after the plan is promulgated, then the PBR goal will not have been achieved.

Progress toward the 5-year goal may be more feasible to monitor than that toward the 6-month goal. However, defining the 5-year goal is somewhat more difficult, since at this time, NMFS has not issued a final quantitative definition for ZMRG. NMFS expects to address the regulatory definition of ZMRG in the near future. However, more than one incident of serious injury or mortality in the fisheries covered under the ALWTRP (which does not include all fisheries) during the first 3 years after the plan is implemented would be a strong indicator that the plan was not achieving its goals. Right whale entanglement rates are proposed to be monitored as described below.

#### *Humpback Whales*

NMFS has determined that a reduction in take for the western North Atlantic stock of humpback whales is not required to meet the 6-month goal, because the estimated annual serious injury and mortality level due to entanglement (in the four fisheries groups covered in this plan) for this

stock (3.4 minimum annual average for 1991–1995) is below the stock's PBR level of 9.7.

As with right whales, a quantitative goal to achieve the 5-year goal of ZMRG for humpback whales cannot be prescribed until ZMRG has been defined in terms other than "insignificant levels approaching a zero mortality rate." If entanglement rates are observed to be reduced, progress toward ZMRG would be assumed, but could not be assessed more accurately until ZMRG is defined more precisely. The humpback whale entanglement rate is proposed to be monitored as described below.

#### *Fin Whales*

Although serious injury and mortality due to entanglement has been documented for this stock of fin whales over the 1991–1995 period, none of those events can be conclusively attributed to any of the four fisheries groups covered in this plan, and the estimated total take due to entanglement is below PBR for this stock. Therefore, NMFS has determined that a reduction in take for the western North Atlantic stock of fin whales is not required for these fisheries to meet the 6-month goal. However, entanglement of fin whales in lobster pot gear and gillnet gear has been documented historically, and some reduction in take may be necessary to achieve the ZMRG. As with right and humpback whales, a quantitative goal to achieve the 5-year goal of ZMRG for fin whales cannot be established with numerical precision at this time. However, measures implemented to reduce the entanglement rate of right and humpback whales would also be expected to reduce the entanglement rate for fin whales, facilitating progress of that stock toward ZMRG. Fin whale entanglement rate are to be monitored, as feasible, although it should be noted that known entanglements are rare, and it may be difficult to determine whether there has been a reduction. Additionally, the number of entangled fin whale sightings is likely to be negatively biased because carcasses usually sink immediately and are therefore less likely to be observed.

#### *Minke Whales*

Although minke whales are not considered strategic at this time (human-caused mortality and serious injury are not known to exceed the PBR level of 21 for this stock, and this species is not listed as threatened or endangered under the ESA or as depleted under the MMPA), serious injuries and mortalities incidental to at least two of the fisheries groups covered in this proposed plan are known to

occur. Therefore, the Team was asked to consider measures that would reduce takes of minke whales in these fisheries. In light of the strict time frame available to develop a TRP, the Team did not have time to consider specific needs or measures to reduce entanglements of minke whales. However, measures implemented to reduce the entanglement rate of right and humpback whales may reduce the entanglement rate for minke whales, facilitating progress of that stock toward ZMRG. The minke whale entanglement rate is proposed to be monitored, to the extent feasible. If entanglement rates are observed to be reduced, progress toward ZMRG would be assumed, but could not be assessed more accurately until ZMRG is defined more precisely. As with fin whales, minke entanglement levels are likely to be underestimated because carcasses are likely to sink immediately.

#### Monitoring Strategies

The following strategies for monitoring progress in take reduction were outlined in the Team Report: (1) Collect adequate photographic data to evaluate the incidence of new entanglement scarring and assess presumed mortality levels; (2) expand field survey efforts for a minimum of six years after implementation of gear modifications, to assess population abundance and distribution; and (3) evaluate effectiveness of gear modifications on future entanglement events. The success of the take reduction measures that are implemented will be evaluated at future Team meetings, with subsequent comments and recommendations forwarded to NMFS.

NMFS will continue to monitor entanglements of all large whale species. Assessment of the success in bycatch reduction measures will be based on reports from the NMFS observer program, examination of stranded whales, abundance and distribution surveys, fishermen's reports and opportunistic reports of entanglement events. NMFS is considering expanding field survey efforts to assess population abundance and distribution. The effectiveness of implemented take reduction measures may be most apparent through monitoring the entanglement rate for humpback whales, since this species has the highest known entanglement rate of the large whales on the U.S. Atlantic coast. A decrease in entanglements of humpback whales will be taken as supportive evidence that the risk of entangling right, fin and minke whales has been reduced.

It should be emphasized that not all whale entanglements result in serious injury or mortality. Levels of entanglement-related scarification in the right whale population have been analyzed (Kraus, 1990). Monitoring of scarification and comparison of historic levels in the population, as noted in the Team Report, may help provide a basis for determining whether the various take reduction measures in the final plan are effective in decreasing levels of interaction between whales and fishing gear. This must be considered together with determining the effectiveness of gear modifications (which may leave scars on whales, but not result in serious injuries and mortalities) in decreasing the severity of entanglement-related injuries. The level of non-serious injuries resulting from entanglements will provide further indication of whether the 6-month and 5-year goals of the ALWTRP are being achieved.

Monitoring fishing effort levels in conjunction with assessment of gear effectiveness may provide another indicator of entanglement rates. This will be considered when the Team periodically convenes to evaluate the success of the ALWTRP. If fishing effort is reduced, entanglement risk may also decline, although a linear relationship cannot be assumed. Rather, entanglement risk may decrease by an unknown percentage depending on the degree of overlap between historical fishing effort and whale distribution.

Some marking of lobster pots, gillnets and associated surface gear (e.g., buoys, high-fliers, or flags) is currently required or being considered under Federal or state fishery management plans for the four groups of fisheries covered by this plan. However, most lines and nets in the water column remain unmarked. Most sightings of entangled whales involve gear which cannot be conclusively tracked to a particular fishery or area, due to the fact that only a fragment of line or net is present.

Several entanglement records indicates that whales are capable of dragging gear great distances. In one known instance, a right whale that became entangled in a lobster pot trawl in the Bay of Fundy dragged fragments of the trawl to Cape Cod, Massachusetts, where the whale was struck by a vessel and washed up on the beach. Due to these factors and the low per-gear interaction rate, NMFS believes that the traditional observer program will not be effective in detecting or monitoring large whale entanglements in most fisheries.

To increase the value of information from future entanglement events, NMFS is proposing gear marking requirements

to monitor the effectiveness of this plan and to determine whether entanglements are occurring in gear which has been damaged or displaced by storms or user-group conflicts. NMFS seeks to implement this requirement in as simple a manner as possible as described in the gear modifications section below.

#### Take Reduction Strategies

The primary measures for take reduction discussed in the Team Report include modifications to fishing gear and practices, area restrictions, reduction of inactive fishing gear as marine debris, and improved disentanglement efforts. Supplementary initiatives for take reduction contained in the Team Report include fisher education and outreach, better monitoring of the distribution of whale stocks and entanglements, joint initiatives with Canada to reduce whale bycatch in commercial fisheries, and exploration of market incentives to reduce large whale bycatch in these fisheries. In this action, NMFS is proposing strategies that seem best suited to follow the intent of the Team and to achieve the goals set forth by the MMPA. NMFS expects that, if implemented, these measures, taken together, would have a significant effect in reducing the risk of entanglement of large whales in the fisheries considered in this plan to levels that meet both the 6-month and 5-year goals.

Whales are extremely mobile and entanglements have occurred outside the bounds of known high risk areas. It is, therefore, not possible to identify all areas of risk. It is likewise difficult to determine if the measures proposed in this plan will be sufficient to reduce entanglements that result in serious injury and mortality to below PBR levels, and eventually to the ZMRG, or to maintain take rates below those levels. Further restrictions will be applied if these measures are not successful.

It is not possible to conclusively quantify the decrease in risk of entanglement that will result from the proposed measures in this ALWTRP. The Team was presented with the best available data on large whale distribution and abundance patterns in the Atlantic, as well as similar information on fisheries effort and distribution. These data were analyzed and compared to determine areas and times that represent "high risk" to whales based on high probability of whale occurrence and/or high fishing effort. This analysis was used by the Team to provide comments to NMFS regarding locations and times for area

closures or gear restrictions. For an analysis of the level of entanglement risk from the Northeast sink gillnet fishery for all areas, which was done by overlaying right and humpback whale densities on fishing effort for different times of the year and assigning low, medium or high risk, see the appendix 11 and other materials in the ALWTRT Report. Whale densities during certain months in some areas are such that the Team believed it was important to prevent future expansion of fishery effort until effective gear modifications have been developed and demonstrated. In other areas periodic increased whale densities combined with certain levels of fishing effort may create anomalous high risk periods.

The proposed requirements would govern fishing by all vessels in New England multispecies sink gillnet fisheries, the mid-Atlantic coastal gillnet fisheries, the Gulf of Maine/U.S. mid-Atlantic lobster trap/pot fishery and the Southeastern U.S. Atlantic drift gillnet fishery for sharks. As stated earlier, there are additional trap/pot, gillnet or other gear that may have the potential to entangle whales. These are primarily Category III fisheries which will be evaluated during the 1998 List of Fisheries process for potential interaction levels with large whales and possible elevation to Category I or II. Although these fisheries are not included in take reduction or gear marking measures under this proposed rule, the final rule may include such measures.

#### Research Initiatives and Monitoring Strategies

The Team recommended initiation of a gear research and development program to design and implement fishing techniques and technologies that will reduce the entanglement rate and/or severity of injuries and mortalities of large whales. The Team recommended that NMFS work with industry and gear specialists to develop criteria for: (1) Certifying individuals and institutions as qualified to design and evaluate modifications for use consistent with requirements of the ALWTRP and other TRPs; and (2) evaluating gear effectiveness toward reducing marine mammal entanglements.

The Team Report identified several initial gear modifications for investigation. These are the development of: (1) Tag lines (lightweight line that poses no risk to whales, but would hold a buoy at the surface and allow retrieval of a functional buoy line); (2) biodegradable or a weak link at the bottom of the buoy line; (3) improvement of a weak link at

the top of the buoy line; (4) smooth or non-snagging gillnet head rope; (5) biodegradable gear and gear components; (6) using weights to sink floating pot trawl groundline, development of other functional equivalents of sinking groundline, or requiring sinking groundline; and (7) "noisy" gear, or gear more easily detected by whales. Also identified in the Team Report as areas for further investigation are the evaluation of the breaking strengths of weak links and the performance of weak links in gillnets both between and within net panels. The Team Report further comments that successful gear modifications be considered for future incorporation into the plan as implementation measures.

NMFS is forming a gear review and technical advisory group to work with industry and gear technology specialists to develop gear and fishing practices to reduce the number and impact of large whale entanglements. NMFS recognizes that the current low rate of observed entanglement and other difficulties in evaluating gear makes it difficult or impossible to demonstrate conclusively that any gear modification would reduce entanglement or serious injury and mortality resulting from entanglement. Nonetheless, NMFS has included certain gear modifications in this proposed rule although these measures have not yet been evaluated by the NMFS gear review and technical advisory group. NMFS believes that these modifications will reduce the risk of entanglement, but seeks further review of these measures.

It is anticipated that the NMFS gear review group will conduct an initial review of the proposed gear modifications prior to publication of the final rule implementing this plan. NMFS proposes to immediately implement the most stringent restrictions in areas and times when right whale concentrations are highest. This strategy was initiated in regulations implementing Framework Adjustment 23 to the Northeast Multispecies Fishery Management Plan and emergency regulations for the lobster fishery under the MMPA. The proposed rule incorporates these restrictions and phases in additional restrictions.

Through gear marking requirements, NMFS hopes to obtain more useful data regarding when and where entanglements occur, as well as in which parts of the gear they are most likely to occur. This measure will not reduce bycatch, but is expected to facilitate in monitoring entanglement rates and assist in designing future

bycatch reduction measures to achieve ZMRC.

NMFS seeks to implement the gear marking requirement in as simple a manner as possible. A system entailing color-coded marks is proposed. The marking would include three color schemes, one color representing the gear type corresponding to one of the fisheries in this plan, and the second mark consisting of two colors indicating the region in which the gear is being fished. Regions would include Cape Cod Bay critical habitat, Great South Channel critical habitat, the Stellwagen Bank/Jeffreys Ledge area, other Northeast waters, Mid-Atlantic coastal waters, and Southeast waters. Gear marking must be accomplished so that the result is a smooth line with no snags which could catch in a whale's baleen.

Marking of buoy lines (within 2 feet of the buoy and approximately midway in the water column) would be required by January 1, 1998, and marking of nets (at both ends of each net in a string of gillnets and every 100 feet in panels > 300 feet) and lobster pot trawl groundlines (approximately midway between each pot) would be required by January 1, 1999. NMFS solicits comments on these proposed gear marking measures and alternative suggestions. In addition, NMFS also requests comments on whether gear-marking should be required for the other fisheries discussed above which utilize similar gear.

#### Primary Take Reduction Initiatives

##### *Fishing Method / Gear Modifications and Area Restrictions by Fishery and Area*

##### *All Fisheries:*

Documented whale behavior and information from actual entanglement records suggest that both vertical (e.g., buoy lines) and horizontal (e.g., gillnets or lobster pot trawl groundlines) components of fishing gear represent entanglement risks. For example, of the 9 records of right whale entanglements in gear identified as lobster gear since 1970, 4 apparently involved only the buoy line, 2 probably involved only groundline, and 3 involved line that was from an unknown part of the gear. Modifications to the current practices of rigging buoy lines are proposed to reduce the number of vertical lines and to ensure that pot trawls are not rigged with more than two vertical lines. Although the level of risk reduction cannot be quantified because the current number of vertical lines is unknown, implementation of these measures will likely directly reduce the entanglement risk presented by vertical buoy lines.

**Sinking Buoy Line Requirement (except for driftnet gear):** Buoy lines are typically constructed of a section of sinking line near the surface which is spliced or knotted to a longer section of floating line that is attached to the anchor of a gillnet or the first pot of a lobster pot trawl. Sinking line is preferred near the surface to decrease the chance that the line will be severed by propellers of vessels passing through an area. The attached floating line is less expensive than sinking line and has several additional benefits. Using floating line near the bottom can prevent the line from wrapping around gear or rocks on the bottom and chafing as the gear is moved by currents in the area. The length of buoy line used can depend on water depth and tidal influence. In some areas the buoy line may be longer than twice the water depth, and the tautness of the line is influenced by the tidal cycle and other currents. Therefore, the line may be slack during part of the current cycles in certain areas.

Slack floating line appears to represent a greater risk of entanglement than taut line, particularly if the line is laying at or near the surface. Right whales may be particularly susceptible to entanglement in lines laying at or near the surface because of the feeding behavior known as "skim feeding" during which whales move slowly forward through a patch of zooplankton, keeping the mouth slightly ajar for . . . hours at a time. Right and humpback whales are also known to feed at depth; however, the behavior when feeding near the bottom or in the water column is poorly understood.

NMFS proposes to require sinking buoy lines or modified sinking buoy lines, by January 1, 1998, in all lobster pot gear and gillnet gear used by anchored gillnet fisheries covered by this plan be required by January 1, 1998. In order to accommodate regional differences in the practice of rigging buoy lines due to oceanographic conditions, NMFS proposes to allow fishers to use a section of floating line near the bottom of buoy lines in some areas. The Team discussed using 10 fathoms (18.3 m) for this bottom floating section in some areas such as the Great South Channel. Several TRT members mentioned that allowing this amount of floating line in the buoy line in portions of Stellwagen Bank and even the Great South Channel would represent very little reduction in risk, since the water is not much deeper than 10 fathoms (18.3 m) in certain parts of those regions. Because requiring one length, even for one area such as the Great South Channel right whale critical

habitat, is problematic, NMFS is proposing that the floating line at the bottom of a modified sinking buoy line be no longer than 10% of the depth of the water. NMFS is requesting comments on whether 10 fathoms, 1 fathom, or other lengths is more appropriate or whether a different percentage of the water column depth should be specified as the minimum length.

**Breakaway Buoy or Weak Buoy Line Requirement (except for driftnet gear):** NMFS proposes that by January 1, 1998, all buoy lines in lobster pot gear and anchored gillnet gear considered in this plan be equipped with a breakaway buoy at the top of the buoy line, or that traditional buoy lines be replaced with a weak buoy line. The breakaway buoy or weak buoy line would be designed to break in a whale entanglement situation. Based on comments by the Team, NMFS is considering requiring a maximum breaking strength of 150, 300 and 500 lbs (68 kg, 136 kg, and 227 kg, respectively). NMFS is proposing a 150 lb (68 kg) breaking strength, which is the initial value recommended by the Commonwealth of Massachusetts Endangered Whale Working Group and which was also discussed by the Team. Comments are requested on the appropriateness and practicality of these and other possible breaking strengths.

The purpose of this requirement is to reduce the serious injury and mortality associated with an entanglement in the buoy line of fixed gear. The goal of a breakaway buoy is to ensure that the buoy itself does not contribute to the entanglement problem. A line without a buoy or knot at the bitter end is expected to pass more easily through the baleen of a whale and to slip more easily past an appendage. A line which does not get hung up on the baleen or on an appendage because there are no knots or buoys is believed to be less likely to initiate thrashing behavior. It is believed that once a whale starts to thrash, line can be wrapped around appendages and/or begin to cut into tissue. The breakaway buoy is intended to prevent the entanglement from progressing to that stage. While this modification may not reduce the incidence of entanglement, breakaway buoys might be expected to at least reduce the severity of an entanglement.

The intent of a weak buoy line is that it would snap if a whale entangled in it but would be strong enough to haul up a heavier, traditional buoy line that would in turn be used to haul up the fishing gear. This measure may be the most effective gear modification of any discussed by the Team for reducing the serious injury and mortality rate from

entanglement. As mentioned above, buoy line appears to have been the part of the gear responsible for at least 4 of the 9 known right whale entanglements in lobster pot gear. Right and humpback whales have also been sighted entangled in buoy lines of sink gillnet gear. If a brittle buoy line could be designed to break every time it was encountered by a whale, this modification could reduce and possibly eliminate the risk that entanglement would occur or at least ensure that entanglement in a buoy line would result in serious injury or mortality. NMFS assumes that use of such a brittle buoy line may not be practicable, but that a weak line can be developed that will break at least half of the time.

Since a breakaway buoy is not expected to reduce the possibility of injury once a whale gets wrapped in line, the weak buoy line may represent a greater conservation gain than would be achieved through the breakaway buoy. However, the development of a weak buoy line is not as far along as the development of a breakaway buoy. In addition, the cost of developing and implementing a weak buoy line system may be substantially greater than a breakaway buoy system. NMFS proposes to require the use of breakaway buoys in 1998, but weak buoy lines are encouraged to be used as an alternative. Comments are requested on approaches to phasing in this requirement.

**Gear inspection requirement:** This proposed rule includes a requirement that all gear used by the four specified fisheries be hauled at least once every 30 days for inspection. This provision was discussed by the ALWTRT for certain gear types to encourage fishers not to "store" gear at sea.

**Closures:** In addition to gear modifications, the Team discussed the use of time/area closures for sink gillnet and lobster pot gear in areas of high use by right whales until fishing gear has been developed that poses minimal risk of serious injury or mortality from entanglement. Only gear demonstrated to pose minimal risk to whales will be allowed in the restricted area.

**Contingency Measures: Closure or other restrictions in the event of an entanglement in modified gear:** As noted above, NMFS is aware that it will be difficult to determine with surety that required gear modifications will reduce the rate of serious injury and mortality as expected. NMFS proposes that if an injury or mortality of a right whale occurs as the result of an entanglement in modified gear, NMFS will assess the circumstances, including the level of injury, and determine if

there is indication that the modification is not sufficient to reduce the rate of serious injury or mortality to right whales. If such a serious injury or mortality is attributable to modified gear in a critical habitat area, NMFS would close the critical habitat area during the restricted period. If such a serious injury or mortality is attributable to modified gear in another restricted area, NMFS could close the area or impose additional restrictions to ensure the protection of right whales.

If the entanglement involved only the non-serious injury of a right whale, or involved another large whale species, NMFS would again investigate and determine whether the interaction was attributable to modified gear. If the entanglement was attributable to modified gear, NMFS could impose additional gear modifications or alternative fishing practices, or close the area through a publication in the *Federal Register*.

This measure would enable NMFS to take prompt action to protect endangered whales if modified gear is not sufficiently effective. NMFS will examine each entanglement event on a case by case basis to determine whether the gear responsible is modified gear, and whether the entanglement resulted in serious injury or mortality.

*Closures or other restrictions based on unusual concentrations of right whales:* The measures in this rule are proposed to be implemented in various areas based on current knowledge of migratory patterns of right whales. Right whale movements are unpredictable, however, and there are periods when right whales occur in certain U.S. waters at other than expected times of the year and in areas other than right whale critical habitat. Some of these times and areas may have large amounts of fixed gear in the water. The risk of entanglement may be particularly high in these unpredictable situations. For example, all right whale entanglements in U.S. lobster gear where the location was known occurred either outside critical habitat or outside the peak season in critical habitat. As an added measure to reduce the likelihood of entanglement in the anomalous years with unusual right whale distribution patterns, the proposed regulations allow NMFS to extend gear requirements or to close a restricted area. Notification of such action would be published in the *Federal Register*. Under the proposed rule, special area restrictions would be considered if four or more right whales are sighted in an area for two consecutive weeks. Right whales would be judged to have left the area if there are no confirmed sightings for one week

or more. NMFS requests comments on the criteria for determining concentrations of right whales that may require additional protection and suggestions for alternative criteria.

*Risk reduction through other MMPA actions or fishery management plan regulations:* In addition to this proposed rule, certain other measures that are expected to decrease the risk of entanglement of whales in sink gillnets are either currently in effect or under consideration, such as reductions in allowable days at sea and seasonal or year-round area closures to protect groundfish. Additionally, area closures for harbor porpoise conservation are in effect for Massachusetts Bay, the Gulf of Maine "mid-coast" and "northeast" areas, and southern New England. With the exception of the harbor porpoise closure in southern New England, all of these closures coincide with times that right whales are also present in the area, further decreasing the likelihood of entanglement. Effort reduction measures under Framework Adjustment 20 to the Northeast Multispecies Fishery Management Plan are expected to reduce total sink gillnet effort by 50 to 80 percent, which is expected to reduce the risk of large whale entanglement associated with this gear by some fraction of the same amount.

NMFS further notes that the Commonwealth of Massachusetts and the New England Fishery Management Council (NEFMC) are considering net caps in the sink gillnet fishery for future implementation to conserve groundfish. These measures, if implemented, may further reduce the risk of entanglement of right whales in sink gillnet gear, but are not a part of this plan.

Some level of lobster pot gear effort reduction may occur under gear conflict management measures such as those implemented by the NEFMC in Southern New England. Further, NMFS is aware that the Atlantic States Marine Fisheries Commission is currently considering reducing effort in the lobster fishery. Any effort reduction measures implemented for the lobster fishery are likely to reduce the risk of entanglement of whales in that gear, but are not a part of this plan.

*Fishery-Specific Measures:* The following measures are proposed for the four groups of fisheries covered in the ALWTRP. The measures are intended to decrease the risk of entangling large whales in gillnets and lobster gear. Although they did not reach consensus, the Team provided NMFS with a significant and useful framework for developing proposed implementing regulations. The gear modifications proposed by NMFS generally reflect the

intent of the Team to reduce the risk of entanglement without creating an undue burden on the fishing industry. NMFS also considered whether the recommended measures would meet the goals of the MMPA. Certain areas, identified as high use areas by large whales during certain times of the year, were targeted for closures or a high level of gear restrictions. The following area closures and gear restrictions are intended to be implemented beginning in 1998 for the period specified, except for measures proposed for the Southeast drift gillnet fishery for sharks, which would be implemented beginning in November 1997.

#### American Lobster Trap/Pot Fisheries

In addition to the buoy line requirements and contingency measures described above for all fisheries, NMFS proposes the following area-specific measures for the lobster trap/pot fisheries covered in this plan.

As discussed above, groundlines of lobster pot trawls represent an entanglement risk to whales, although the degree of risk relative to other parts of the gear is unknown. The lobster industry uses either sinking or floating groundline, depending on substrate and/or gear densities. Floating line is preferred in many areas to avoid snagging on rocky bottom or on other pots as well as to reduce chafing caused by contact with pots and with the bottom. The degree to which line floats between pots is unknown. Because right and humpback whales are known to use the lower part of the water column for feeding or other activities, even a modest curve to the groundline could still represent an entanglement threat, especially where the length of groundline between pots may be as long as the depth of the water column. The requirement of sinking groundline would reduce the potential for a high profile of the groundline and therefore reduce the entanglement threat represented by that part of the pot trawl.

NMFS proposes to require modifications to lobster pot trawl groundlines only in certain areas with primarily sandy bottoms to minimize the amount of snagging and/or severing on rocky outcrops. Restricting sinking lines to these areas would not be expected to have a significant negative impact on the effectiveness in reducing whale entanglements involving accidental encounters, since whales are not likely to feed close to the bottom in rocky areas. However, there may be cases when whales, particularly juveniles, are attracted to gear even along rocky bottom, so some potential for entanglement remains. The NMFS

gear review and technical advisory group is expected to consider recommendations for alternatives to sinking groundline.

**Cape Cod Bay Critical Habitat Area:**

Based on comments in the Team Report, NMFS proposes to restrict fishing with lobster pot gear in the Cape Cod Bay critical habitat area, including both Federal and Commonwealth waters, from January 1 through May 15 of each year. Only certain types of lobster pot gear would be allowed during this period of high use by right whales. NMFS proposes to prohibit the use of single lobster pots or trawls of less than 4 pots during this time period. In addition, trawls could not be rigged with no more than 2 buoy lines. The purpose of these requirements is to reduce and/or prevent an increase in the number of vertical lines in the water that a whale might encounter. NMFS also proposes to require that all groundlines used in lobster pot trawls in this area consist of sinking line.

Based on comments in the Team Report, NMFS also proposes to restrict fishing with lobster pot gear in the Cape Cod Bay critical habitat area from May 16 through December 31. NMFS does not propose to prohibit the use of single pots from May 16 through December 31, because the likely response to this requirement may be for fishermen who now use single pots in optimal lobster habitat to add pots to their trawls rather than to decrease the number of buoy lines. Only one buoy line would be allowed on trawls of less than 4 pots. Otherwise, gear modifications proposed for the May 16 through December period are similar to those for the January 1 through May 15 period and would include breakaway buoy or weak buoy line, sinking buoy lines, and sinking groundlines.

**Great South Channel Critical Habitat Area:**

Based on comments in the Team Report, NMFS proposes to close all of the Great South Channel critical habitat area from April 1 to June 30 of each year to lobster pot gear until the Assistant Administrator determines that alternative fishing practices or gear modifications have been developed which reduce the risk of serious injury or mortality to whales to acceptable levels. As noted above, if right whale concentrations outside the usual "high-use" period warrant additional action, the area may be closed, through a publication in the Federal Register.

Although not allowing lobster pot gear in the area west of the Lorán C 13710 line from April 1 to June 30 appears inconsistent with what NMFS proposes for sink gillnet gear in this area, NMFS believes that lobster pot

gear poses a greater threat to right whales than does sink gillnet gear in this area. The offshore location generally requires that gillnetters tend their gear, whereas lobster pot gear in this area is often not checked for extended periods especially if there is bad weather.

NMFS is proposing closure of the Great South Channel critical habitat to lobster pot gear during the high right whale use period, but proposes gear modifications in the Cape Cod Bay critical habitat over the comparable period. The rationale for this difference is that there is a higher likelihood that an entangled whale in Cape Cod Bay will be sighted and reported, due to the high level of vessel traffic and more research efforts in that area. Potential whale entanglements in Cape Cod Bay are considered more likely to be observed and reported to the disentanglement network. In addition, NMFS believes that disentanglement efforts may be more effective in reducing the potential for serious injuries and mortalities in these relatively shallow, nearshore waters than in offshore waters. The Great South Channel critical habitat is further offshore and little whale watching or survey effort exists there. The likelihood of observing an entangled whale offshore is lower, and offshore disentanglement efforts are subject to greater logistical impediments.

In addition, differences in oceanographic conditions in the two regions may make a particular gear modification less effective in one area relative to the other. For example, the Great South Channel is much deeper than Cape Cod Bay and exhibits much stronger tides, requiring different fishing practices. NMFS' gear review and technical advisory group will be asked to consider oceanographic conditions in the Great South Channel in making gear recommendations that might be effective and practicable in that area.

Although the Team Report contains discussion regarding the closure of Groundfish Management Area I, which covers part of the Great South Channel right whale critical habitat, to lobster fishing during the high whale use period, NMFS does not propose closing the area to lobster pot fishing at this time, as the frequency of right whale sightings in this area (already closed to gillnet gear for groundfish conservation measures) is quite low and the fishing effort minimal. Comments on this decision are requested.

The Team Report provided comments on the lobster pot fisheries in the Great South Channel critical habitat area outside of the known high right whale

use period. NMFS proposes to restrict lobster fishing in the Great South Channel-right whale critical habitat area from January 1 through March 31 and July 1 through December 31 of each year (beginning in 1998). Proposed restrictions during this time period include only sinking or modified sinking buoy lines, and breakaway buoys or weak buoy lines.

**Stellwagen Bank/Jeffreys Ledge Area:**

NMFS proposes to define the Stellwagen Bank/Jeffreys Ledge (SB/JL) area as the area delineated by the following points: the shoreline at 43 $\frac{1}{2}$ ° 00' N out to 70° W, then south along that line to 42° N, then west along that line to the Massachusetts shoreline at the western end of Cape Cod Bay, excluding right whale critical habitat. The Team Report includes comments indicating a different northern boundary (43° 15' rather than 43° 30'). The northern and eastern boundaries proposed here are consistent with one of the groundfish area closures in the Northeast Multispecies Fishery Management Plan.

Based on the Team Report and subsequent comments regarding this area, NMFS proposes to restrict lobster fishing in the SB/JL area from January 1 through December 31 of each year (beginning in 1998). Proposed restrictions during this time period include sinking groundline, sinking or modified sinking buoy lines, and breakaway buoys or weak buoy lines.

Fishers should be aware that humpback and/or right whales are present in the SB/JL area most months of the year. If the gear modifications are not sufficient to reduce serious injury and mortality to right and humpback whales to achieve the 6-month PBR goal or the 5-year ZMRG goal, additional restrictions or closures of certain portions of SB/JL may be necessary.

**All Other Areas throughout the East Coast Range of the American Lobster Pot Fishery not Addressed by Previous Measures:** NMFS proposes to restrict fishing with American lobster pot gear from January 1 to December 31 in all other U.S. state and Federal waters north of 41° N latitude and from December 1 to March 31 in all state and Federal waters south of 41° N latitude. Beginning January 1, 1998, NMFS proposes to restrict these areas to allow only lobster pot gear that has sinking buoy lines or modified sinking buoy lines. NMFS requests comments on the possible exemption of waters landward of barrier islands, such as those in New Jersey and North Carolina, and other shallow water areas where whales are less likely to occur.



### New England Multispecies Sink Gillnet Fishery

In addition to the buoy line requirements and contingency measures described above for all fisheries, NMFS proposes the following area-specific measures. Consistent with the comments of the Team Report, NMFS proposes a suite of modifications specific to sink gillnets. The purpose of these modifications is to maximize the probability that a whale will be able to break free of a sink gillnet. The modifications include prohibiting floating line everywhere except the headrope (cork line) and the bottom-most section of the buoy line, placing weak links between the net panels on the headrope and footrope (lead line) to reduce amount of gear attached to whale in case of entanglement, increasing length of the lines which connect the net to the anchor to maximize the holding power of the anchors, and limiting the thickness of headrope to enhance the likelihood that it will part when encountered by a whale. These measures would be implemented simultaneously because weak links are not expected to function properly without sufficient anchoring and scope of the groundline/bridle, and using more anchoring power without weak links could result in increased rate of drowning. Industry TRT members indicated that some of these modifications, such as an increased bridle-to-anchor length and increased anchoring power, are already in use to minimize loss of gear to mobile gear. NMFS solicits comments on the likely effectiveness of this suite of gear modifications and in particular on minimal breaking strengths of weak links which could be used while still allowing fishermen to haul their gear. In addition, NMFS also requests comments on typical depth or height of gillnets and whether that depth warrants the requirement of weak links in the footrope as well as the headrope.

**Cape Cod Bay Critical Habitat Area:** The Team Report treated state and Federal waters of right whale critical habitat in Cape Cod Bay separately and did not reach consensus on gillnet restriction measures in the Federal portion of these waters. The Team Report discussed adopting for the state waters of Cape Cod Bay critical habitat the area and gear restrictions implemented by the Commonwealth of Massachusetts for this same area. NMFS supports the regulations adopted by the Commonwealth of Massachusetts for protecting right whales from entanglement in critical habitat within Massachusetts state waters of Cape Cod

Bay. To provide consistent protection for right whales throughout the critical habitat area, NMFS proposes to treat state and Federal waters as one unit in Cape Cod Bay. NMFS intends to work closely with the Commonwealth of Massachusetts as the State regulations, which were implemented under emergency authority, are reviewed and modified through regular rulemaking procedures. NMFS will review State regulations in the context of this take reduction plan and its inherent goals.

Based on comments in the Team Report, NMFS proposes that the entire right whale critical habitat in Cape Cod Bay be closed to sink gillnet gear from January 1 through May 15 of each year, until the Assistant Administrator determines that alternative fishing practices or gear modifications which significantly reduce the risk of serious injury or mortality to whales have been developed. As noted above, if whale concentrations outside the usual "high-use" period warrant additional action, the area may be closed for additional periods, through a publication in the Federal Register.

To provide additional protection for all large whales, NMFS proposes to restrict sink gillnet fishing in the entire Cape Cod Bay critical habitat area from May 16 through December 31 of each year to allow only sink gillnet gear that has been modified as described above.

**Great South Channel Critical Habitat Area:** Based on comments in the Team Report, NMFS proposes to close the portion of right whale critical habitat east of Loran C line 13710/43940 (Northwest Boundary) and 13710/43650 (Southwest Boundary) from April 1 through June 30 to sink gillnet gear until the Assistant Administrator determines that alternative fishing practices or gear modifications have been developed which reduce the risk of serious injury or mortality to whales to acceptable levels. As discussed above, if whale concentrations outside the usual "high-use" period warrant additional action, the area may be closed.

NMFS recognizes that the Team Report did not recommend a complete closure of the entire Great South Channel critical habitat area to sink gillnets. In the narrow band west of the Loran C points 13710/43940 and 13710/43650, the Team considered the likelihood of entanglement of right whales remote. A recent NMFS analysis indicates that only 3% of historical right whale sightings occurred along that western edge of critical habitat. Further, this band is economically important to the sink gillnet fishery.

Based on comments in the Team Report, NMFS proposes to restrict sink

gillnet fishing in the portions of the Great South Channel right whale critical habitat area east of the Loran C 13710 line from January 1 to March 31 and July 1 to December 31 of each year and the portion of right whale critical habitat west of Loran C 13710/43940 (Northwest Boundary) and 13710/43650 (Southwest Boundary) (the "sliver area") from January 1 through December 31 of each year to allow only sink gillnet gear that has been modified according to the specifications described above.

**Stellwagen Bank/Jeffreys Ledge:** This area is defined as for the lobster pot fishery. Based on comments in the Team Report, NMFS proposes year-round restrictions in the SB/JL area to allow only sink gillnet gear that has been modified according to specifications described above. Fishers should be aware that humpback and/or right whales are present in the SB/JL area most months of the year and that if gear modifications are not sufficient to reduce serious injury and mortality to right and humpback whales to levels required under the MMPA, additional restrictions or closures may be necessary.

**All Other Areas throughout the Range of the Northeast Sink Gillnet Fishery not Addressed by Previous Measures:** NMFS proposes to restrict fishing with sink gillnet gear from January 1 to December 31 in U.S. state and Federal waters east of 72° 30' W (dividing line between Northeast sink gillnet fishery and mid-Atlantic coastal gillnet fishery) and north of a line running due east from the North Carolina/South Carolina border. Beginning January 1, 1998, NMFS proposes to restrict sink gillnet fishing in this area to gear with sinking buoy lines or modified sinking buoy lines, and breakaway buoys or weak buoy lines. Beginning in 1999, the full suite of measures described above are proposed to be required.

Since gillnet fisheries in Long Island Sound (inside a line from Orient Point-Plum Island-Fishers Island-Watch Hill), and waters landward of the first bridge embayments in Rhode Island and southern Massachusetts are classified as Category III inshore gillnet fisheries rather than as part of the Category I northeast sink gillnet fishery, those inshore fisheries would be exempt under this proposed rule.

### U.S. Mid-Atlantic Coastal Gillnet Fisheries

**All anchored gillnet fisheries:** NMFS proposes to restrict fishing with all anchored gillnet gear from December 1 through March 31 in mid-Atlantic waters from Shinnecock Inlet on the southern Long Island, New York shore

south to a line running due east from the North Carolina-South Carolina border. Mid-Atlantic gillnet fisheries classified as Category III inshore gillnet fisheries are exempt from this proposed rule. NMFS requests comments on the possible exemption of waters landward of barrier islands, such as those in New Jersey and North Carolina, and other shallow water areas where whales are less likely to occur.

Beginning January 1, 1998, and in addition to the buoy line requirements and contingency measures described above for all fisheries, NMFS proposes to restrict sink gillnet fishing in this area during the period from December 1 through March 31 to gear that has been modified according to the suite of measures outlined above for Northeast sink gillnet gear.

Beginning in 1998, with respect to mid-Atlantic coastal gillnet anchored gear that is not sink-gillnet gear, NMFS proposes to require only the standard requirements for sinking buoy lines or modified sinking buoy lines, and breakaway buoys or weak buoy lines during the winter/spring period from December 1 through March 31. Weak links are not proposed for anchored gillnets other than sink gillnets because the weak link system is not designed for nets fished on the surface or in the upper 2/3 of the water column.

**Floating/drift gillnets:** For the area and time outlined above, NMFS proposes to require all vessels using driftnets to haul all such gear and stow all such gear on the vessel before returning to port.

#### Southeast U.S. Driftnet Fishery

Based on comments in the Team Report, NMFS proposes that the area from Sebastian Inlet, FL (27°51' N latitude) to Savannah, GA (32° N latitude) out to 80° W longitude, be closed to driftnet fishing, except for strikenetting, each year from November 15 to March 31. Strikenetting would be permitted under certain conditions set forth in the rule. Most of this area is right whale critical habitat.

Also based on comments in the Team Report, NMFS proposes to require observer coverage for the use of driftnets in the area from West Palm Beach (26°46.5' N latitude) to Sebastian Inlet (27°51' N latitude), from November 15 to March 31 of each year. Notifications must be provided at least 48 hours prior to the fishing trip so that arrangements for an observer may be made. An observer must be taken on a fishing trip in this area if requested by NMFS.

**Reduction of Inactive Fishing Gear as Marine Debris.** The Team Report discusses measures that could be taken

to minimize the amount of fishing gear that has been damaged and set adrift, either by storms or user group conflicts, as it is believed that some marine mammal entanglements may involve such gear. Specific measures in the Team Report include: (1) Encourage participants in all fisheries to avoid discarding gear at sea; (2) encourage vessel operators to retrieve and deposit on shore any inactive gear encountered (existing penalties that would discourage this should be eliminated); (3) require any commercial fishing vessel that accidentally captures or snags fixed gear in a trawl or by other means or sets fixed gear adrift to retrieve all such gear and deposit it on shore (existing penalties that would discourage this should be eliminated); (4) require that such gear deposited on shore which carries any identifying markings be reported to the appropriate authorities. A system for tracking such gear should be established, allowing owners to retrieve gear; (5) NMFS should take appropriate measures for reducing gear conflicts that can result in gear set adrift (examples are implementation of the Gear Conflict Resolution for Offshore New England and the use of Vessel Tracking Systems); (6) require use of biodegradable, corrodible, or other rapidly degrading gear components where appropriate; (7) establish dockside disposal/recycling facilities at all ports used by commercial fisheries; and (8) make use of existing programs for recycling and disposing of inactive gear.

NMFS agrees that the reduction of "ghost" gear may reduce the number of entanglements of marine mammals in fishing gear. NMFS intends to notify all Atlantic fisheries permit holders of the importance of bringing gear back to shore to be discarded properly. Additionally, NMFS proposes to review regulations currently in place concerning fishing gear or fishing practices that may increase or decrease marine "ghost" gear and to determine what additional measures may be useful in reducing the potential for whale entanglement by this gear.

NMFS has not included a Vessel Tracking System provision in this proposed rule pending the outcome and final disposition of this electronic monitoring system within the commercial fishing industry. NMFS invites comments on this issue. This system may encourage mobile gear vessels to avoid towing through areas where fixed gear is set and may encourage vessels to pick up damaged and inactive gear.

**Disentanglement Efforts.** When entangled in most fishing gear, other

than extremely heavy or anchored gear, whales may swim off with some or all of the gear still trailing. Some whales may eventually free themselves or survive for substantial periods of time while trailing gear, but the continued survival of such animals may be severely jeopardized by this gear.

In 1984, the Center for Coastal Studies (CCS) in Provincetown, MA developed an approach for disentangling free-swimming large whales. This process can be very dangerous, and CCS is currently the only organization authorized to attempt such disentanglements on the U.S. Atlantic coast. NMFS has contracted CCS to perform this service in the Northeast area by supporting current efforts and the establishment of a regional Disentanglement Network (Network). Criteria for participation in the Network have been established, and experienced teams have been formed for New England waters. Additionally, rapid response capability has been developed to allow deployment to remote coasts or at sea. A relationship has been established with the Canadian Department of Fisheries and Oceans and whale biologists operating in the Bay of Fundy to respond to entanglement events in Canadian waters of the Gulf of Maine. Local teams have been identified for other areas along the U.S. Atlantic coast. These resources were developed primarily for response to entangled right whales.

The Team Report discussed the following actions to improve and expand the effort to disentangle large whales along the east coast of the U.S.: (1) Continue authorization and support for the current Disentanglement Network; (2) expand the Network to the U.S. Mid-Atlantic region by training identified response/support teams in Virginia, North Carolina and the Southeastern U.S. right whale critical habitat regions, and by developing protocols appropriate to each region; (3) support education and training of fishermen in identification, reporting and disentangling large whales, where appropriate, in all identified risk areas; (4) increase monitoring of at-risk whales in the region through opportunistic and dedicated surveys; (5) request support from the U.S. Coast Guard (USCG) in the SE Region similar to the level of support committed in the NE region, to achieve a coordinated effort; (6) seek support and coordination with other agencies with similar or overlapping responsibilities; (7) ensure fishermen are informed of requirements for reporting and indemnification resulting from the issuance of incidental take permits, and explore further possible

incentives for reporting entangled whales; (8) allow the Network to authorize individuals to stand by or attach tracking equipment to entangled gear; (9) consider all ways the 500-yard approach regulation may affect right whale protection; (10) consider reimbursing vessel operators for real expenses or loss of regulated fishing days when standing by a whale confirmed by an authorized group as entangled; (11) work with appropriate groups to ensure accurate, thorough and standardized reporting of entanglements and results in a central database; and (12) develop an analytical approach for future entanglement reports which considers an increase in reporting due to the actions referenced above, and which counts successful disentanglements in assessments of take reduction.

NMFS intends to continue its authorization of and work to improve the current Disentanglement Network. NMFS has been working cooperatively with the Network and the USCG to extend the disentanglement efforts into mid-Atlantic and Southeastern waters. Currently, NMFS provides funds only for disentanglement in the Northeast. Disentanglement efforts have already been initiated outside New England waters; for example, during the winter of 1996, NMFS, USCG, the states of Georgia and Florida, the New England Aquarium and the Center for Coastal Studies worked cooperatively to attempt disentanglement and subsequent tracking of a right whale off the east coast of Florida. NMFS will work with CCS to form local "first response" teams which can respond to entanglements in other areas and of other species prior to (or in some cases in lieu of) dispatching the CCS rapid response teams. Included among improvements to the Disentanglement Network will be a strong educational component, to train fishers to identify and report entangled large whales. Such education will be included during skippers workshops planned under the "Education and Outreach" portion of this ALWTRP. Additional training specific to the Disentanglement Network may also be held separately, as needed. NMFS is also funding and/or working cooperatively with other groups to expand the current survey effort to better monitor at-risk areas. For example, year-round aerial and vessel surveys in the mid-Atlantic have recently been funded. These surveys will increase opportunities for sighting entangled whales.

NMFS has been working cooperatively with the USCG in the Southeast U.S. as well as in the

northeast to provide protection to whales. The USCG helps fund the southeast and northeast Early Warning Systems, which involve an aerial monitoring program designed to help avoid collisions between vessels and right whales on their calving grounds. The USCG also has been very helpful in providing vessel support for disentanglement efforts and carcass recovery in the southeast. In order to formalize this cooperative effort, NMFS may enter into a Memorandum of Understanding with the southeastern USCG districts, as has been accomplished with the First Coast Guard District operating in the northeast. NMFS is already cooperating extensively with coastal state agencies such as the Georgia Department of Environmental Resources and the Florida Department of Environmental Protection in disentanglements and other right whale recovery efforts. NMFS will continue working cooperatively with these state agencies, and will seek to expand such efforts to other state agencies involved with endangered marine species issues. Recently, the states of Maine and Massachusetts have been working with NMFS and the Disentanglement Network to develop whale identification materials and information on disentanglement to be distributed to vessels for use at sea.

NMFS understands that cooperation by fishermen and others in reporting entangled whales is essential for the ultimate success of the ALWTRP. Reporting entanglement events creates the opportunity for the successful disentanglement of a whale that is entangled in fishing gear and is still alive. Additionally, reports of entangled whales, both dead or alive, improves the information available for assessing the success of this plan and developing future measures.

Takes of marine mammals that are not listed as endangered or threatened are authorized under section 118 of the MMPA for vessels that are registered in the Marine Mammal Authorization Program. However, takes of endangered species can only be authorized under certain conditions specified in section 101(a)(5)(e) of the MMPA and if an incidental take statement is issued under the Endangered Species Act (ESA). Among other requirements, NMFS must determine that the expected level incidental serious injury or mortality of a threatened or endangered marine mammal resulting from commercial fishing operations will have a negligible impact on such stock. Until these conditions have been met, NMFS could not authorize takes of endangered

whales, even if a take occurs by a vessel operating in compliance with the ALWTRP. Currently, takes from the western North Atlantic stocks of right, humpback and fin whales are not authorized.

Consequently, NMFS does not have the authority to exempt fishers from ESA provisions that prohibit taking endangered whales. NMFS does, however, exercise broad prosecutorial discretion in deciding on a case by case basis when to prosecute and what level of penalty to seek. When exercising such discretion, NMFS will consider whether the taking was reported promptly, and will regard timely reporting as a mitigating factor when determining the appropriate enforcement response. This approach balances NMFS' statutory duty to endorse provisions of the ESA with its strong desire to minimize non-reporting for fear of prosecution.

NMFS has considered the potential effects of the 500-yard interim final rule on future disentanglement efforts, and has incorporated into that rule an exception to allow approaches to investigate a right whale or injury or to assist in disentanglement provided that permission is received from NMFS designee prior to the approach. In addition, in order to facilitate greater success of disentanglement events, NMFS is considering other actions so that vessels operating in the Northeast Multispecies and American lobster fisheries may assist in disentanglement efforts. NMFS has no mechanism for authorizing disbursement of funds for reimbursing vessel operators for expenses, but encourages conservation organizations to consider implementing such a program. NMFS will approach the fishery management councils regarding reimbursing any loss of regulated fishing days resulting from a fisher's participation in a disentanglement effort. A similar provision, called the "good samaritan" provision, exists in several fishery management plans to obtain credit for fishing time lost while assisting search and rescue operations.

NMFS currently maintains a centralized entanglement data base, and intends to work cooperatively with appropriate groups to improve the quality of the data and standardize reporting. Improvements to the current entanglement data base would include incorporation of supplementary data from original sources and information from examination of gear seen on or removed from whales. Tracking of successful disentanglements are to be incorporated in the data base, and

would be considered in assessing progress of take reduction measures.

As stated above, not all whale entanglements result in serious injury or mortality. Monitoring of scarification and comparison of historic levels in the population, as noted by the Team, may help provide a basis for determining whether the various take reduction measures proposed in this plan have been effective in decreasing levels of interaction between whales and fishing gear.

#### Supplementary Take Reduction Initiatives

##### *Fisher Education and Outreach*

The Team Report acknowledges that effective implementation of the ALWTRP will require the active participation of a majority of the fishing industry. To encourage this, the Team Report suggests that NMFS form an advisory group to assist in the implementation of educational workshops and outreach strategies to disseminate information to fishermen on measures to reduce large whale entanglements. The report recommends that education and outreach workshops be held to: (1) Inform fishermen of provisions of the ESA and MMPA, as well as intent and requirements of the ALWTRP; (2) train fishermen in deployment and maintenance of proposed gear modifications; (3) distribute fact sheets for use in whale identification and provision of information on seasonal distribution patterns; (4) train fishermen in protocol for whale disentanglement; (5) supply observer, stranding and entanglement data to fishermen; (6) encourage timely reporting of marine mammals that may be entangled in fishing gear; and (7) solicit information from fishermen on how to reduce marine mammal interactions. The Team Report recommends that such workshops be held throughout the Northeast, Mid-Atlantic and Southeast regions of the U.S. Atlantic coast, and that fishermen be notified by mail of dates, locations and times of the proposed workshops. The Team Report also recommends that public relations materials should be developed and distributed through newsletters, newspapers, radio, television news, and the Internet.

NMFS concurs with the recommendations of the Team Report to conduct fishermen education workshops, as well as other outreach strategies. Although NMFS does not propose to form a formal advisory group, NMFS intends to seek assistance concerning the workshops from SeaGrant and other groups that are

experienced in outreach on marine issues. Workshops are proposed to be held throughout the areas of the affected fisheries to inform fishers of gear and area requirements as well as to address other topics as outlined in the Team Report.

Other recommendations contained in the report include promotion of "responsible fishing practices." For example, the Team Report discusses the following measures with respect to the mid-Atlantic gillnet fisheries: (1) Gillnets and other fishing gear should not be set near whales; (2) gear should be removed as soon as possible if whale(s) move into the area being fished; (3) fishers using un-anchored gillnet gear during the high-risk period (December 1—March 31) should remain with actively fishing gear; and (4) any observed entanglements should be reported. NMFS proposes that such practices be discussed and supported during the fishermen education workshops described above.

#### Monitoring of Whale Stock Distribution and Entanglements

The Team Report acknowledges that the long-term success of the plan depends on the ability to monitor interactions between whales and fisheries, as well as an improved knowledge of whale distribution and movements. The Team Report asserts that successful real-time monitoring of whale distribution could lead to better dynamic management (i.e., flexible area closures and/or gear modifications required during certain periods in certain areas) designed to avoid or respond to entanglements of large whales in fishing gear. The Team Report comments that data collection and monitoring programs should be created where needed, or existing programs improved to achieve a dynamic approach to reducing large whale entanglements, as well as to assess the success of the ALWTRP. The following items were included in the Team Report as significant aspects of an overall take reduction program:

##### Whale Distribution and Movement Patterns

Issues to be addressed: (1) Distribution of whales; (2) movement patterns; and (3) stability of distribution in high-use/critical habitat areas. Possible measures to address these issues include establishing long-term and real time monitoring of whale distribution via aerial and vessel surveys, telemetry and photo documentation.

##### Whale Entanglements and Mortalities

Issues to be addressed: (1) Mechanisms of whale entanglements; (2) geographic areas and portions of water column where whales become entangled; (3) gear whales are entangled in, rate of entanglement, serious injury and mortality; (4) effect on population size and recovery; (5) survivorship of entangled whales; and (6) survivorship of disentangled whales. Possible measures to address these issues are: (1) train personnel to recognize signs of entanglement-related injuries and improve stranding report consistency and accuracy; (2) establish repository for gear removed from stranded and/or entangled whales and develop process for examination and identification; and (3) develop entanglement/interaction reporting protocols to encourage fisher participation in monitoring and disentanglement efforts.

##### Fishing Effort

Issues to be addressed: (1) Status of current information on occurrence and distribution regarding effort and gear type; and (2) identification of information needed for effective monitoring. Possible measures to address these issues are: (1) Improve reporting of fishing effort for area fished, amount of gear, and species targeted, by day; (2) develop improved methods for gear identification and reporting of gear loss; (3) examine fishing practices other than those considered in this ALWTRP for potential impacts to large whales; and (4) improve fishery participation in data collection needs.

##### Dynamic Management

Issues to be addressed: (1) Surveillance-based management is useful for supporting research for implementation of the ALWTRP; and (2) research should echo the State of Massachusetts Plan for reducing right whale takes. Possible measures to address these issues are: (1) NMFS should work with appropriate agencies and research groups to develop a surveillance-based management plan to protect right whales; and (2) establish a narrow and appropriately focused system of dynamic management.

NMFS agrees that the issues raised are important elements in understanding the nature of whale entanglements and developing subsequent management measures to reduce such entanglements. NMFS currently monitors whale distribution and movement patterns, and supports additional efforts for photo-identification, life history and other studies. Real-time monitoring of whale movements for fishery

management purposes is being used by the State of Massachusetts in conjunction with the newly established early warning system for ship strikes in Cape Cod Bay. The success of this program will be reviewed and may be expanded to other areas, if appropriate.

NMFS plans to seek ways to incorporate the comments in the Team Report regarding entanglements and resulting mortalities into the existing Disentanglement Network efforts. Additional research may be supported through alternate funding sources such as Saltonstall-Kennedy grants or other such sources. Improving current information on fishery participation in data collection, methods for gear identification, and reporting gear loss will be effected through a combination of regulations and fisher education and outreach workshops. NMFS proposes to investigate and consult with the appropriate state agencies to improve information on fishery effort distribution. Monitoring effort in terms of the amount of gear present in the water (e.g., number of vertical lines or length of net) is an important element of determining whether effort reduction measures have been successful, or whether it has simply been displaced to other areas where whale entanglements may still occur.

#### *Joint Initiatives With Canada to Reduce Whale Bycatch in Commercial Fisheries*

Large whales are known to be taken in lobster, gillnet, trap and weir fisheries in Canadian waters. The Team Report recognizes that regulatory and management regimes differ between Canada and the U.S., and agrees with the position of Canada that there is need to develop similar and complementary strategies to reduce the incidental take of large whales by commercial fisheries in Canadian Atlantic waters. It is the understanding of the Team that the Canadian Government is considering legislation which, if implemented, would require recovery plans for whale species identified as endangered, threatened or vulnerable. Canada is expected to establish a consultative program similar to the Team. This program would develop, within existing regulatory and management frameworks, programs that are compatible and complementary to the measures proposed by the Team. The Team Report comments that once the ALWTRP is open to public comment, NMFS should initiate discussions with the Canadian Department of Fisheries and Oceans (DFO) to: (1) Obtain comments from DFO on the ALWTRP; (2) urge Canada to develop a joint recovery plan under its Endangered

Species Act, when final; (3) institute mechanisms to reduce large whale entanglements in Canadian waters, as well as a means to evaluate the effectiveness of any proposed take reduction strategies; and (4) outline a timetable for meetings between NMFS officials, Team representatives and DFO to review progress toward reducing entanglements of large whales in U.S. and Canadian waters.

NMFS has been working cooperatively with the DFO towards take reduction efforts for both harbor porpoise and large whales for some time. NMFS anticipates continuation of these cooperative efforts. DFO participated as an observer on the Team, and indicated that Canada is expected to enact a new Endangered Species Act. Under this act, DFO would develop a joint recovery plan with NMFS, and form their own TRT. NMFS intends to continue to support and encourage these conservation efforts, and will continue to invite DFO's participation on the Team as a means of promoting effective bycatch reduction measures for large whales throughout western North Atlantic waters.

#### *Exploration of Market Incentives to Reduce Whale Bycatch in Commercial Fisheries*

The Team discussed the formation of a committee of Team members and other interested parties to explore and develop incentives, including market and other voluntary incentives, for reducing entanglements of large whales. Also discussed was whether this committee should develop a process for incorporating these incentives into the take reduction effort. The committee, as envisioned by the Team, would include persons with experience or expertise in conservation, market-based incentives, seafood processing and distribution, and various fishing strategies.

NMFS has not proposed to include this aspect of the Team's Report in the plan. NMFS believes it is more important to devote its resources to other aspects of this plan. Such efforts may be considered at future team meetings. Members of the Team and/or other interested parties may form a committee to investigate market or other voluntary incentives to reducing whale entanglements to present to the Team for consideration.

#### **Classification**

This proposed rule does not contain new collection-of-information requirements subject to the Paperwork Reduction Act.

NMFS prepared an Initial Regulatory Flexibility Analysis (IFRA) that

describes the impact this proposed rule, if adopted, would have on small entities. The American lobster pot, New England multispecies sink gillnet, Mid-Atlantic coastal gillnet, and Southeast driftnet fisheries are directly affected by the proposed action and are composed primarily of small business entities. The number of state and federal permit lobster permit holders is estimated to be 13,000. The numbers of vessels in the New England multispecies sink gillnet, Mid-Atlantic coastal gillnet, and Southeast shark driftnet fisheries are estimated to be 350, 650, and 10, respectively. The proposed rule does not include reporting or recordkeeping requirements, but does include requirements that fishing gear be marked and that gear be modified in various ways to reduce potential interactions with large whales. In certain cases, area closures are proposed.

Currently, the American Lobster Fishery, the New England Multispecies Fishery, the weakfish and striped bass portion of the mid-Atlantic coastal gillnet fishery, and the Atlantic shark fishery are subject to Federal regulations under 50 CFR Part 649, Subpart F of Part 648, Part 697, and Part 678, respectively. This proposed rule is designed to complement those existing regulations and fishery management objectives by reducing the bycatch of large whales in these fisheries. A variety of regulatory alternatives were considered, including no action, area closures, and various gear modifications and restrictions as discussed above. With respect to some critical habitat areas, area closures are proposed in order to provide the necessary level of protection for the critically endangered northern right whale. In most cases, however, gear modifications represent the preferred alternative; the plan was designed to achieve the goals of the MMPA while minimizing the economic impact on small entities.

The Assistant Administrator for Fisheries, NOAA, prepared a draft environmental assessment (draft EA) for this proposed rule under the National Environmental Policy Act. A copy of the draft EA and the IFRA is available upon request (see ADDRESSES).

#### **References**

Blaylock, R.A., J.W. Hain, L.J. Hansen, D.L. Palka, and G.T. Waring. 1995. U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments. NOAA Technical Memorandum NMFS, NOAA-TM-NMFS-SEFSC-363. 211p.

Team Report. 1997. Draft Atlantic Large Whale Take Reduction Report. Report prepared by the Atlantic Large Whale Take Reduction Team and submitted to the

National Marine Fisheries Service February 4, 1997. 79pp.

**List of Subjects in 50 CFR Part 229**

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: April 1, 1997.

**Charles Karnella,**

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 229 is proposed to be amended to read as follows:

**PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972**

1. The authority citation for part 229 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*

2. In section 229.2, definitions of "American lobster or Lobster", "Anchored gillnet", "Breakaway buoy", "Bridle", "Buoy line", "Driftnet, drift gillnet or drift entanglement net", "Fish with or fishing with", "Footrope", "Gillnet", "Groundline", "Headrope", "Lobster pot", "Lobster pot trawl", "Mid-Atlantic coastal waters", "Northeast waters", "Other anchored gillnet", "Sink gillnet", "Sinking line", "Southeast waters", "Spotter plane", "Stellwagen Bank/Jeffreys Ledge area", "Strikenet or to fish with strikenet gear", "Tended gear or tend", "U.S. waters", "Weak buoy line", and "weak link" are added in alphabetical order to read:

**§ 229.2 Definitions.**

*American lobster or lobster* means the species *Homarus americanus*.

*Anchored gillnet* means any gillnet gear, including sink gillnets, that is set anywhere in the water column and which is anchored, secured or weighted to the bottom.

*Breakaway buoy* means a buoy line equipped with a breakable section near the top (buoy) end of the line that will part when subjected to certain pull pressure and, after parting, will result in a knotless end, not thicker than the diameter of the line.

*Bridle* means the lines connecting a gillnet to an anchor or buoy line.

*Buoy line* means a line connecting fishing gear in the water to a buoy at the surface of the water.

*Driftnet, drift gillnet, or drift entanglement gear* means gillnet gear that is not anchored, secured or weighted to the bottom.

*Fish with or fishing with* means to use, set, or haul back gear or allow gear that is set to remain in the water.

*Footrope* means the line, weighted or otherwise, to which the bottom edge of a gillnet is attached.

*Gillnet* means fishing gear consisting of a wall of webbing or nets, designed or configured so that the webbing or nets are held approximately vertically in the water column designed to capture fish by entanglement, gilling, or wedging. Gillnets include gillnets of all types such as sink gillnets, other anchored gillnets, and drift gillnets.

*Groundline*, with reference to lobster pot gear, means a line connecting lobster pots in a lobster pot trawl, and, with reference to gillnet gear, means a line connecting a gillnet or gillnet bridle to an anchor or buoy line.

*Headrope* means the line at the top of a gillnet from which the mesh portion of the net is hung.

*Lobster pot* means any trap, structure or other device that is placed on the ocean bottom and is designed to or is capable of catching lobsters.

*Lobster pot trawl* means more than one lobster pot attached to a groundline.

*Mid-Atlantic coastal waters* means waters west of the area bounded by the following points: the southern shoreline of Long Island, New York at 72°30'W, then due south to the intersection of 72°30'W with a line running due east from the North Carolina/South Carolina border, then due west along that line to the North Carolina/South Carolina border.

*Northeast waters* means those U.S. waters east of 72°30'W and north of a line running due east from the Virginia-North Carolina border.

*Other anchored gillnet* means any anchored gillnet except sink gillnet.

*Sink gillnet* has the meaning specified in 50 CFR 648.2.

*Sinking line* means line that sinks and does not float at any point in the water column. Polypropylene line is not sinking line unless it contains a lead core.

*Southeast waters* means waters south of a line extending due eastward from the North Carolina/South Carolina border.

*Spotter plane* means a plane that is deployed for the purpose of locating schools of target fish for a fishing vessel that intends to set fishing gear on them.

*Stellwagen Bank/Jeffreys Ledge area* means the area bounded by the Maine shoreline at 43°30' N, then due east to 43°30'N/70°00' W, then south to 42°00' N/70°00'W, then due west to the Massachusetts shoreline, then along the Cape Cod shoreline to 42°04.8' N/70°10' W, then to 42°12' N/70°15' W, to 42°12' N/70°30' W, to 42°00' N/70°30' W, then due west to the Massachusetts shoreline at 42°00'N.

*Strikenet or to fish with strikenet gear* means a gillnet, or a net similar in construction to a gillnet, that is designed so that when it is deployed, it encircles or encloses an area of water either with the net, or by utilizing the shoreline to complete encirclement.

*Tended gear or tend* means active fishing gear that is physically attached to a vessel or to fish so that active gear is attached to the vessel.

*U.S. waters* means both state waters and waters of the U.S. exclusive economic zone along the east coast of the United States from the Canadian/U.S. border southward to a line extending eastward from the southernmost tip of Florida on the Florida shore.

*Weak buoy line* means a buoy line that will part when subjected to certain pull pressure and, after parting, will result in a knotless end, not thicker than the diameter of the line.

*Weak link* means a breakable device that will part when subjected to certain pull pressure.

3. In § 229.3, paragraphs (g) through (j) are added to read as follows:

**§ 229.3 Prohibitions.**

(g) It is prohibited to fish with lobster pot gear in the areas and for the times specified in § 229.32(b) (3), (4), (5), (6) and (7) unless the lobster pot gear meets the marking requirements specified in § 229.32(b)(1) and complies with the closures, modifications, and restrictions specified in § 229.32(b) (2), (3), (4), (5), (6) and (7).

(h) It is prohibited to fish with sink gillnet gear in the areas and for the times specified in § 229.32(c) (3), (4), (5), (6) and (7) unless the sink gillnet gear meets the marking requirements specified in § 229.32(c)(1) and complies with the closures, modifications, and restrictions specified in § 229.32(c) (2), (3), (4), (5), (6) and (7).

(i) It is prohibited to fish with coastal gillnet in the areas and for the times specified in § 229.32(d)(3) unless the coastal gillnet gear meets the marking requirements specified in § 229.32(d)(1) and complies with the restrictions specified in § 229.32(d) (2) and (3).

(j) It is prohibited to fish with shark driftnet gear in the areas and for the times specified in § 229.32(e) (2) and (3) unless the coastal gillnet gear meets the marking requirements specified in § 229.32(e)(1) and complies with the restrictions and requirements specified in § 229.32(e) (2) and (3).

4. A new § 229.32 is added to subpart C to read as follows:

Cape Cod Bay critical habitat area .....	Blue/orange.
Great South Channel critical habitat area .....	Red/blue.
Stellwagen Bank/Jeffreys Ledge area .....	Yellow/orange.
Other Northeast waters .....	Green/orange.
Mid-Atlantic coastal waters .....	Red/orange.
Southeastern U.S. waters .....	Green/red.

(4) **Markings.** Each color of the color codes must be permanently marked on or along the line or lines specified under paragraphs (b)(1), (c)(1), (d)(1), and (e)(1) of this section. Each color of the color codes must be marked so that the colors are clearly visible when the gear is hauled or removed from the water. Each color of the region color code must be between 2 and 3 inches (5.1–7.6 cm) wide. The gear-type color code must be between 4 and 5 inches (10.2–12.7 cm) wide. The color codes must be placed on the line either in the following order or in reverse order: The first color of the region color code, the second color of the region code, and the gear color code. All colors of these color codes must be placed immediately next to each other. If the color of the line next to a color code is the same or similar to a color code, an area of one to 2 inches (2.5–5.1 cm) next to that color code must be permanently marked with a white band. In marking or affixing the color code or associated neutral band, the line may be dyed or marked with thin colored whipping line, thin colored plastic or heat shrink tubing, or other material, or thin line may be woven into or through the line, but the marking material must not be connected by a knot in the line or increase the diameter of the line by more than 5 percent of its original diameter. If the Assistant Administrator revises the gear marking requirements under paragraph (f) of this section, the gear must be marked in compliance with those requirements.

**Subpart C—Take Reduction Plan Regulations and Emergency Regulations**

**§ 229.32 Atlantic large whale take reduction plan regulations.**

(a) **Gear marking provisions.** (1) *Gear marking required for specified gear.* (i) *Specified gear.* Specified fishing gear consists of: lobster pot gear or sink gillnet gear in Northeast waters; lobster pot gear or mid-Atlantic coastal gillnet gear in the mid-Atlantic coastal waters area; and shark driftnet gear in Southeast waters.

(ii) **Requirement.** On or after January 1, 1998 and as otherwise required in paragraphs (b)(1), (c)(1), (d)(1), and (e)(1) of this section, any person who owns or fishes with specified fishing

(5) **Inspection of gear and marking.** At least once every 30 days, all specified gear that is in the water must be hauled and inspected to ensure that the gear is properly marked and otherwise in compliance with this section.

(b) **Restrictions applicable to lobster pot gear.** (1) *Gear marking requirements.* No person may fish with lobster pot gear unless that gear is marked by gear-type and region according to the gear marking code specified under paragraph (a) of this section. On and after January 1, 1998, all buoy lines must be marked within 2 feet (0.6 m) of the top of the buoy line and approximately midway along the length of each buoy line according to the gear type and region. On and after January 1, 1999, each section of groundline must be marked approximately midway between each pot according to gear type and region.

(2) **Gear modifications and restrictions** (i) *Type 1 lobster pot gear.* Type 1 lobster pot gear is gear which complies with the following requirements:

- (A) *Multi-pot trawls.* It is a multiple pot trawl consisting of four or more lobster pots;
- (B) *Limit on buoy lines.* No more than two buoy lines are used per trawl;
- (C) *Sinking buoy lines.* All buoy lines are sinking line;
- (D) *Breakaway buoys or weak buoy lines.* All buoy lines and buoys comply with one of the following:

(1) The buoy line is attached at the top of the line to a breakaway buoy. Unless the Assistant Administrator revises the gear requirements under

paragraph (f) of this section, the breakaway buoy must be designed with a breaking strength of no more than 150 pounds (68 kg); or

(2) The buoy line has a weak buoy line that is at least as long as the depth of the water at mean high water, is attached to the buoy at the top of the line, and is attached to a functional buoy line resting on the ocean bottom at the bottom of the weak buoy line. Unless the Assistant Administrator revises the gear requirements under paragraph (f) of this section, the weak buoy line must be designed with a breaking strength of no more than 150 pounds (68 kg); and

(E) **Sinking groundline.** All groundlines are sinking line.

- (ii) *Type 2 lobster pot gear.* Type 2 lobster pot gear is gear which complies with the following requirements.
- (A) *Limit on buoy lines.* No more than one buoy line is used per trawl consisting of fewer than four pots, and no more than two buoy lines are used on any trawl consisting of four or more pots; and
- (B) *Sinking buoy lines, breakaway buoys or weak buoy lines, and sinking groundline.* The gear complies with the gear requirements of paragraph (b)(2)(i) (C), (D) and (E) of this section.
- (iii) *Type 3 lobster pot gear.* Type 3 lobster pot gear is gear which complies with the following requirements:

(A) *Sinking or modified sinking buoy lines.* All buoy lines are sinking line, except that floating line may be used if: (1) The floating line is not attached to the buoy, is used only in the bottom-

(2) **Gear-type color code.** Gear must be marked with the appropriate color to designate gear-type as follows:

Lobster pot gear .....	Red.
Sink gillnet gear .....	Green.
Other anchored gillnet gear .....	Yellow.
Driftnet gear .....	Blue.

(3) **Region color code.** Gear must be marked with the appropriate color to designate the area where the gear is set as follows:

(1) The floating line is not attached to the buoy, is used only in the bottom-

most section of the buoy line, and is not longer than 10 percent of the depth of the water at mean low water;

(2) The floating line is not larger than 1/2 inch (1.27 cm) in diameter; and

(3) The floating line section of the buoy line is attached to the sinking line by a splice and not by a knot; and

(B) *Limit of buoy lines, breakaway buoys or weak buoy lines, and sinking groundline.* The gear complies with the gear requirements of paragraph (b)(2)(i) (B), (D) and (E) of this section.

(iv) *Type 4 lobster pot gear.* Type 4 lobster pot gear is gear which complies with the following requirements:

(A) *Sinking or modified sinking buoy lines.* It complies with the requirements of paragraph (b)(2)(iii)(A) of this section.

(B) *Limit on buoy lines and breakaway buoys or weak buoy lines.* It complies with the gear requirements of paragraph (b)(2)(i) (B) and (D) of this section.

(3) *Cape Cod Bay.* (i) *Restricted area.* The Cape Cod Bay restricted area consists of the Cape Cod Bay Critical Habitat area specified under 50 CFR 216.13(b) (copies of a chart depicting this area are available from the NE Regional Administrator upon request) unless the Assistant Administrator extends that area under paragraph (f) of this section.

(ii) *Type 1 gear restrictions.* During the winter/spring restricted period, no person may fish with lobster pot gear in the Cape Cod Bay restricted area unless the lobster pot gear complies with the Type 1 gear requirements specified under paragraph (b)(2)(i) of this section; or, if the Assistant Administrator revises the gear requirements under paragraph (f) of this section, the gear complies with those requirements. The winter/spring restricted period for this area is from January 1 until May 15 of each year unless the Assistant Administrator revises the restricted period under paragraph (f) of this section.

(iii) *Type 4 gear restrictions.* On or after January 1, 1998, during the summer/fall restricted period, no person may fish with lobster pot gear in the Cape Cod Bay restricted area unless the lobster pot gear complies with the Type 4 gear requirements specified under paragraph (b)(2)(iv) of this section; or, if the Assistant Administrator revises the gear requirements under paragraph (f) of this section, the gear complies with those requirements. The summer/fall restricted period for this area is from May 16 through December 31, unless the Assistant Administrator revises the restricted period under paragraph (f) of this section.

(4) *Great South Channel.* (i) *Restricted area.* The Great South Channel restricted area consists of the Great

South Channel Critical Habitat area specified under 50 CFR 216.13(a) (copies of a chart depicting this area are available from the NE Regional Administrator upon request) unless the Assistant Administrator extends that area under paragraph (f) of this section.

(ii) *Closure.* During the spring closed period, no person may fish with lobster gear in the Great South Channel restricted area unless the Assistant Administrator specifies gear modifications or alternative fishing practices under paragraph (f) of this section and the gear or practices comply with those specifications. The spring closed period for this area is from April 1 until June 30 of each year unless the Assistant Administrator revises the closed period under paragraph (f) of this section.

(iii) *Type 3 gear restrictions.* Beginning on January 1, 1998, during the winter/summer/fall restricted period, no person may fish with lobster pot gear in the Great South Channel restricted area unless the lobster pot gear complies with the Type 3 gear requirements specified under paragraph (b)(2)(iii) of this section; or, if the Assistant Administrator revises the gear modification requirements under paragraph (f) of this section, the gear complies with those requirements. The winter/summer/fall restricted period for this area is from January 1 through March 31 and from July 1 through December 31 of each year, unless the Assistant Administrator revises the restricted period under paragraph (f) of this section.

(5) *Stellwagen Bank/Jeffreys Ledge.* (i) *Restricted area.* The Stellwagen Bank/Jeffreys Ledge restricted area (copies of a chart depicting this area are available from the NE Regional Administrator upon request) consists of the area bounded by the Maine shoreline at 43°30' N, then due east to 43°30' N/70°00' W, then south to 42°00' N/70°00' W, then due west to the Massachusetts shoreline, then along the Cape Cod shoreline to 42°04.8' N/70°10' W, then to 42°12' N/70°15' W, to 42°12' N/70°30' W, to 42°00' N/70°30' W, then due west to the Massachusetts shoreline at 42°00' N unless the Assistant Administrator extends that area under paragraph (f) of this section.

(ii) *Type 3 gear restrictions.* On or after January 1, 1998, no person may fish with lobster pot gear in the Stellwagen Bank/Jeffreys Ledge restricted area unless the lobster pot gear complies with the Type 3 gear restriction requirements specified under paragraph (b)(3)(iii) of this section; or, if the Assistant Administrator revises the gear modification requirements under

paragraph (f) of this section, the gear complies with those requirements. This restriction applies throughout the year unless the Assistant Administrator revises the restricted period under paragraph (f) of this section.

(6) *Other northern waters.* (i) *Description of the other northern waters.* Other northern waters consist of all U.S. waters north of 41°00' N except the Cape Cod Bay restricted area, Great South Channel restricted areas, and the Stellwagen Bank/Jeffreys Ledge restricted area.

(ii) *Type 4 gear restrictions.* On or after January 1, 1998, no person may fish with lobster pot gear in other northern waters unless the lobster pot gear complies with the Type 4 gear restriction requirements specified under paragraph (b)(2)(iv) of this section; or, if the Assistant Administrator revises the gear modification requirements under paragraph (f) of this section, the gear complies with those requirements. This restriction applies throughout the year unless the Assistant Administrator revises the restricted period under paragraph (f) of this section.

(7) *All other lobster waters.* (i) *Description of all other lobster waters.* All other lobster waters consist of all U.S. waters south of 41°00' N.

(ii) *Type 4 gear restrictions.* On or after January 1, 1998, during the winter restricted period, no person may fish with lobster pot gear in all other lobster waters unless the lobster pot gear complies with the Type 4 gear restriction requirements specified under paragraph (b)(2)(iv) of this section; or, if the Assistant Administrator revises the gear modification requirements under paragraph (f) of this section, the gear complies with those requirements. The winter restricted period for this area is from December 1 through March 31, unless the Assistant Administrator modifies the restricted period under paragraph (f) of this section.

(c) *Restrictions applicable to Northeast sink gillnet gear.* (1) *Sink gillnet gear marking requirements.* No person may fish with sink gillnet gear in Northeast waters unless that gear is marked by gear type and region according to the gear marking code specified under paragraph (a) of this section. On and after January 1, 1998, all buoy lines must be marked within 2 feet (0.6 m) of the top of the buoy line and approximately midway along the length of the buoy line according to gear type and region. On and after January 1, 1999, all net panels in each string of a sink gillnet must be marked along the headrope at both ends of each panel according to gear type and region.



(2) *Gear modifications and restrictions.* (i) *Type 1 sink gillnet gear modifications.* Type 1 sink gillnet gear is gear which complies with the following requirements:

(A) *Sinking line.* All groundlines, bridle lines, anchor lines and other lines, except the headrope and bottom-most section of the buoy lines, are sinking line;

(B) *Headrope specifications.* The headrope:

(1) Is equipped with net floats and the diameter of the headrope does not exceed 5/16 inch (0.79 cm); or

(2) Has a foam core and the diameter of the headrope does not exceed 1/2 inch (1.27 cm);

(C) *Sinking or modified sinking buoy lines.* All buoy lines are sinking line, except that floating line may be used if:

(1) The floating line is not attached to the buoy, is used only in the bottom-most section of the buoy line, and is not longer than 10 percent of the depth of the water at mean low water;

(2) The floating line is not larger than 1/2 inch (1.27 cm) in diameter; and

(3) The floating line section of the buoy line is attached to the sinking line by a splice and not by a knot;

(D) *Breakaway buoys or weak buoy lines.* All buoy lines and buoys comply with one of the following:

(1) The buoy line is attached at the top of the line to a breakaway buoy. Unless the Assistant Administrator revises the gear requirements under paragraph (f) of this section, the breakaway buoy must be designed with a breaking strength of no more than 150 pounds (68 kg); or

(2) The buoy line has a weak buoy line that is at least as long as the depth of the water at mean high water, is attached to the buoy at the top of the line, and is attached to a functional buoy line resting on the ocean bottom at the bottom of the weak buoy line. Unless the Assistant Administrator revises the gear requirements under paragraph (f) of this section, the weak buoy line must be designed with a breaking strength of no more than 150 pounds (68 kg);

(E) *Weak links.* The gillnet is equipped with weak links on the headrope and on the footrope between each net panel. Unless the Assistant Administrator revises the gear requirements under paragraph (f) of this section, each weak link must be designed with a breaking strength of no more than 150 pounds (68 kg); and

(F) *Securely anchored.* Each gillnet is securely anchored so that the anchor will not dislodge when there is a pull on any weak link of more than the

applicable maximum breaking strength for the weak link.

(G) *Groundline.* At each end of a string of net panels, an anchor is attached to the gillnet by a groundline and bridle with a combined length which is equal to or greater than 90 feet (27.7 m).

(ii) *Type 2 sink gillnet gear modifications.* Type 2 sink gillnet gear is gear which complies with the requirements of paragraph (c)(2)(i)(C) and (D) of this section (requirements for sinking buoy lines or modified sinking buoy lines, and breakaway buoys or weak buoy lines).

(3) *Cape Cod Bay.* (i) *Restricted area.* The Cape Cod Bay restricted area consists of the Cape Cod Bay Critical Habitat area specified under 50 CFR 216.13(b) (copies of a chart depicting this area are available from the NE Regional Administrator upon request) unless the Assistant Administrator extends that area under paragraph (f) of this section.

(ii) *Closure.* During the winter/spring closed period, no person may fish with sink gillnet gear in the Cape Cod Bay restricted area unless the Assistant Administrator specifies gear modifications or alternative fishing practices under paragraph (f) of this section and the gear or practices comply with those specifications. The winter/spring closed period for this area is from January 1 until May 15 of each year unless the Assistant Administrator revises the closed period under paragraph (f) of this section.

(iii) *Type 1 gear restrictions.* During the summer/fall restricted period, no person may fish with sink gillnet gear in the Cape Cod Bay restricted area unless the gear complies with the Type 1 gear requirements specified under paragraph (b)(2)(i) of this section; or, if the Assistant Administrator revises the gear requirements under paragraph (f) of this section, the gear complies with those requirements. The summer/fall restricted period for this area is from May 16 through December 31 of each year unless the Assistant Administrator revises the restricted period under paragraph (f) of this section.

(4) *Great South Channel restricted area (excluding the sliver area).* (i) *Restricted area.* The Great South Channel restricted area, excluding the sliver area, consists of the area bounded by lines connecting the following four points: 41°02.2' N/69°02' W, 41°43.5' N/69°36.3' W, 42°10' N/68°31' W, and 41°38' N/68°13' W (copies of a chart depicting this area are available from the NE Regional Administrator upon request), unless the Assistant Administrator extends that area under

paragraph (f) of this section. This described area excludes the sliver area specified under paragraph (c)(5)(i) of this section.

(ii) *Closure.* During the spring closed period, no person may fish with sink gillnet gear in the Great South Channel restricted area, excluding the sliver area, unless the Assistant Administrator specifies gear modifications or alternative fishing practices under paragraph (f) of this section. The spring closed period for this area is from April 1 until June 30 of each year unless the Assistant Administrator revises the closed period under paragraph (f) of this section.

(iii) *Type 1 gear restrictions.* Beginning on January 1, 1998, during the winter/summer/fall restricted period, no person may fish with sink gillnet gear in the Great South Channel restricted area unless the sink gillnet gear complies with the Type 1 gear requirements specified under paragraph (c)(2)(i) of this section; or, if the Assistant Administrator revises the gear modification requirements under paragraph (f) of this section, the gear complies with those requirements. The winter/summer/fall restricted period for this area is from January 1 through March 31 and from July 1 through December 31 of each year, unless the Assistant Administrator revises the restricted period under paragraph (f) of this section.

(5) *Great South Channel sliver restricted area.* (i) *Restricted area.* The Great South Channel sliver restricted area consists of the area bounded by lines connecting the following points: 41°02.2' N/69°02' W, 41°43.5' N/69°36.3' W, 41°40' N/69°45' W, and 41°00' N/69°05' W, (copies of a chart depicting this area are available from the NE Regional Administrator upon request), unless the Assistant Administrator extends that area under paragraph (f) of this section.

(ii) *Type 1 gear restrictions.* On or after January 1, 1998, no person may fish with sink gillnet gear in the Great South Channel sliver restricted area unless the sink gillnet gear complies with the Type 1 gear restrictions specified under paragraph (c)(2)(i) of this section or, if the Assistant Administrator revises the gear modification requirements under paragraph (f) of this section, the gear complies with those requirements. This restriction applies throughout the year unless the Assistant Administrator revises the restricted period under paragraph (f) of this section.

(6) *Stellwagen Bank/Jeffreys Ledge restricted area.* (i) *Description of the restricted area.* The Stellwagen Bank/Jeffreys Ledge restricted area (copies of

a chart depicting this area are available from the NE Regional Administrator upon request) consists of the area bounded by the Maine shoreline at 43°30' N due east 43°3' N/70°00' W, then south to 42°00' N/70°00' W, then due west to the Massachusetts shoreline at 42°00' N, then along the Cape Cod shoreline to 42°04.8' N/70°10' W, then to 42°12' N/70°15' W, then to 42°12' N/70°30' W, then to 42°00' N/70°30' W, then west to the Massachusetts shoreline (copies of a chart depicting this area are available from the NE Regional Administrator upon request), unless the Assistant Administrator extends that area under paragraph (f) of this section.

(ii) *Type 1 gear restrictions.* On or after January 1, 1998, no person may fish with sink gillnet gear in the Stellwagen Bank/Jeffreys Ledge restricted area unless the sink gillnet gear complies with the Type 1 gear restrictions specified under paragraph (c)(2)(i) of this section; or, if the Assistant Administrator revises the gear modification requirements under paragraph (f) of this section, the gear complies with those requirements. This restriction applies throughout the year unless the Assistant Administrator revises the restricted period under paragraph (f) of this section.

(7) *Other Northeast waters area.* (i) *Description of the other Northeast waters area.* The other Northeast waters area consists of all Northeast waters except for the Cape Cod Bay restricted area, the Great South Channel and Great South Channel sliver restricted areas, all waters landward of the first bridge of any embayment in Rhode Island, and southern Massachusetts (to Monomoy Island) and all waters west of a line from the north fork of the eastern end of Long Island, NY (Orient Point to Plum Island to Fisher Island) to Watch Hill Rhode Island.

(ii) *Type 2 gear restrictions.* From January 1 through December 31, 1998, no person may fish with sink gillnet gear in the other Northeast waters area unless the sink gillnet gear complies with the Type 2 gear modification requirements specified under paragraph (c)(2)(ii) of this section; or, if the Assistant Administrator revises the gear modification requirements under paragraph (f) of this section, the gear complies with those requirements. This restriction applies throughout the year unless the Assistant Administrator revises the restricted period under paragraph (f) of this section.

(iii) *Type 1 gear restrictions.* On or after January 1, 1999, no person may fish with sink gillnet gear in the other Northeast waters area unless the sink

gillnet gear complies with the Type 1 gear modification requirements specified under paragraph (c)(2)(i) of this section; or, if the Assistant Administrator revises the gear modification requirements under paragraph (f) of this section, the gear complies with those requirements. This restriction applies throughout the year unless the Assistant Administrator revises the restricted period under paragraph (f) of this section.

(d) *Restrictions applicable to mid-Atlantic coastal gillnet gear.* (1) *Gear marking requirements.* No person may fish with mid-Atlantic coastal gillnet gear unless that gear is marked by gear type and region according to the gear marking code specified under paragraph (a) of this section. On and after January 1, 1998, all buoy lines must be marked within 2 feet (0.6 m) of the top of the buoy line and midway along the length of the buoy line according to gear type and region. On and after January 1, 1999, all net panels in each string of a gillnet must be marked along the headrope at both ends of each panel according to gear type and region.

(2) *Mid-Atlantic coastal gillnet gear modifications and restrictions.* (i) *Type 1 mid-Atlantic coastal gillnet gear.* Type 1 mid-Atlantic coastal gillnet gear is sink gillnet gear which complies with the following requirements:

(A) *Sinking line.* All groundlines, bridle lines, anchor lines and other lines, except the headrope and bottom-most section of the buoy lines, are sinking line;

(B) *Headrope specifications.* The headrope:

(1) Is equipped with net floats and the diameter of the headrope does not exceed  $\frac{5}{16}$  inch (0.79 cm); or

(2) Has a foam core and the diameter of the headrope does not exceed  $\frac{1}{2}$  inch (1.27 cm);

(C) *Sinking or modified sinking buoy lines.* All buoy lines are sinking line, except that floating line may be used if:

(1) The floating line is not attached to the buoy, is used only in the bottom-most section of the buoy line, and is not longer than 10 percent of the depth of the water at mean low water;

(2) The floating line is not larger than  $\frac{1}{2}$  inch (1.27 cm) in diameter; and

(3) The floating line section of the buoy line is attached to the sinking line by a splice and not by a knot;

(D) *Breakaway buoys or weak buoy lines.* All buoy lines and buoys comply with one of the following:

(1) The buoy line is attached at the top of the line to a breakaway buoy. Unless the Assistant Administrator revises the gear requirements under paragraph (f) of this section, the

breakaway buoy must be designed with a breaking strength of no more than 150 pounds (68 kg); or

(2) The buoy line has a weak buoy line that is at least as long as the depth of the water at mean high water, is attached to the buoy at the top of the line, and is attached to a functional buoy line resting on the ocean bottom at the bottom of the weak buoy line. Unless the Assistant Administrator revises the gear requirements under paragraph (f) of this section, the weak buoy line must be designed with a breaking strength of no more than 150 pounds (68 kg);

(E) *Weak links.* The gillnet is equipped with weak links on the headrope and on the footrope between each net panel. Unless the Assistant Administrator revises the gear requirements under paragraph (f) of this section, each weak link must be designed with a breaking strength of no more than 150 pounds (68 kg);

(F) *Securely anchored.* Each gillnet is securely anchored so that the anchor will not dislodge when there is a pull on any weak link of more than the applicable maximum breaking strength for the weak; and

(G) *Groundline.* At each end of a string of net panels, an anchor is attached to the gillnet by a groundline and bridle with a combined length which is equal to or greater than 90 feet (27.7 m).

(ii) *Type 2 mid-Atlantic coastal gillnet gear.* Type 2 mid-Atlantic coastal gillnet gear is anchored gillnet gear, other than sink gillnet gear, which complies with the requirements of paragraph (d)(2)(i), (C) and (D) of this section (sinking buoy lines or modified sinking buoy lines, and breakaway buoys or weak buoy lines).

(3) *Mid-Atlantic coastal waters area.* (i) *Description.* The mid-Atlantic coastal waters area consists of all mid-Atlantic waters except that the following waters are excluded:

(A) Waters landward of the first bridge of any embayment in Raritan and lower New York Bays in the New York Bight;

(B) Waters north of a line drawn from the southern point of Nantuxent Cove (mouth of Cedar Creek, New Jersey) to the southern boundary of Bombay Hook National Wildlife Refuge at Kelly Island, Delaware (Port Mahon);

(C) Waters in the Chesapeake Bay north of the Chesapeake Bay Bridge/Tunnel; and

(D) All waters between the Outer Banks and the mainland from Morehead City, North Carolina, to the Virginia/North Carolina border.

(ii) *Type 1 (sink gillnet) mid-Atlantic coastal gillnet gear restrictions.* On or after January 1, 1998, during the winter/spring restricted period, no person may fish with sink gillnet gear in the Mid-Atlantic coastal waters area unless the gillnet gear complies with the Type 1 gillnet gear restrictions specified under paragraph (d)(2)(i) of this section. The winter/spring restricted period for this area is from December 1 through March 31 unless the Assistant Administrator revises that restricted period under paragraph (f) of this section.

(iii) *Type 2 (other anchored gillnet) mid-Atlantic coastal gillnet gear restrictions.* On or after January 1, 1998, during the winter/spring restricted period, no person may fish with other anchored gillnet gear in the Mid-Atlantic coastal waters area unless the gillnet gear complies with the Type 2 gillnet gear restrictions specified under paragraph (d)(2)(ii) of this section. The winter/spring restricted period for this area is from December 1 through March 31 unless the Assistant Administrator revises that restricted period under paragraph (f) of this section.

(iv) *Driftnet gear—fishing practices requirements.* No person may fish at night with driftnet gear in the mid-Atlantic coastal waters area unless that gear is tended. Before a vessel returns to port, all driftnet gear set by that vessel in the mid-Atlantic coastal waters area must be removed from the water and stowed on board the vessel.

(e) *Restrictions on shark driftnet gear.*

(1) *Gear marking requirements.* No person may fish with drift gillnet gear in Southeast waters unless that gear is marked by gear type and region according to the gear marking code specified under paragraph (a) of this section. On and after November 1, 1998, all buoy lines must be marked within 2 feet (0.6 m) of the top of the buoy line and midway along the length of the buoy line according to gear type and region. On and after November 1, 1999, each net panel must be marked along both the float line and the lead line and at least once every 100 feet (30.8 m) along the floatline and bottom line.

(2) *Management areas.* (i) *SEUS restricted area.* The Southeast U.S. restricted area consists of the SEUS critical habitat area described in 50 CFR 226.13(c) plus an additional area along the coast north to 32°00' N (near Savannah, Georgia) from the shore and extending eastward out 15 nautical miles from the shore, and an additional small area along the coast south to 27°51' N (near Sebastian Inlet, Florida) and extending from the shore eastward out 5 nautical miles from the shore (copies of a chart depicting this area are

available from the SE Regional Administrator upon request), unless the Assistant Administrator extends that area under paragraph (f) of this section.

(ii) *SEUS observer area.* The SEUS observer area consists of the area south of the SEUS restricted area and an additional area along the coast south to 26°46.05' N (near West Palm Beach, Florida) and extending from the shore eastward out 5 nautical miles (copies of a chart depicting this area are available from the SE Regional Administrator upon request), unless the Assistant Administrator extends that area under paragraph (f) of this section.

(3) *Restrictions.* (i) *Closure.* Except as provided under paragraph (e)(3)(iii) of this section, no person may fish with driftnet gear in the SEUS restricted area during the closed period. The closed period for this area is from November 1 through March 31 of the following year, unless the Assistant Administrator extends that closed period under paragraph (f) of this section.

(ii) *Observer requirement.* No person may fish with driftnet gear in the SEUS observer area unless the captain of the vessel calls the SE Regional Office in St. Petersburg, Florida not less than 48 hours prior to departing on any fishing trip in order to arrange for observer coverage. If the Regional Office requests that an observer be taken on a fishing trip, no person may fish with driftnet gear in the SEUS observer area unless the observer is on board the vessel during the trip.

(iii) *Special provision for strikenets.* Fishing with strikenet gear is exempt from the restriction under paragraph (e)(3)(iii) of this section if:

(A) No nets are set at night or when visibility is less than 500 yards (460 m);

(B) Each set is made under the observation of a spotter plane;

(C) No net is set within 3 nautical miles of a right, humpback or fin whale; and

(D) If a right, humpback or fin whale moves within 3 nautical miles of the set gear, the gear is removed immediately from the water.

(f) *Contingency measures and other provisions.* In addition to any other emergency authority under the MMPA, the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, or other appropriate authority, the Assistant Administrator may take action under this section in the following situations:

(1) *Unusual right whale patterns.* The Assistant Administrator may impose additional temporary restrictions on specified gear under paragraph (a)(1)(i) of this section for the purpose of

reducing the risk of interactions with right whales through a publication in the Federal Register if right whales are determined to be resident in the area. This determination will be based on sightings of four or more right whales in the area for 2 or more consecutive weeks or on alternative criteria specified by the Assistant Administrator under this paragraph (f). These additional restrictions may extend any restricted area specified under this section or restrict any other area along the Atlantic coast of the U.S., may revise any closed or restricted period specified under this section to regulate gear specified under paragraph (a)(1)(i) of this section, or take other similar action. The Assistant Administrator may remove these additional temporary restrictions through a publication in the Federal Register if right whales are determined to have left the area. This determination will be based on sighting efforts that produce no confirmed sightings for 1 week or more or other evidence that the right whales have left the area.

(2) *Gear failure.* If a serious injury or mortality of a northern right whale occurs in an interaction with gear specified under paragraph (a)(1)(i) of this section in a restricted area and during a restricted period specified under this section, NMFS will assess the interaction. If NMFS determines that the interaction is attributable to restricted gear used in a critical habitat area, the Assistant Administrator shall close the area during the restricted period. If NMFS determines that the interaction is attributable to restricted gear used in any other restricted area, the Assistant Administrator shall close the restricted area during the restricted period or impose additional gear modifications or alternative fishing practices that will significantly reduce the risk of serious injury or mortality to right whales. The closure or additional restrictions will be imposed through a publication in the Federal Register.

(3) *Gear concerns.* If an entanglement of a right whale or the serious injury or mortality of any endangered whale occurs as a result of an interaction with gear specified under paragraph (a)(1)(i) of this section at any time or in any area, NMFS will assess the interaction. If NMFS determines that the interaction is attributable to restricted gear, the Assistant Administrator may impose additional gear modifications or alternative fishing practices through a publication in the Federal Register, or may close a restricted area or areas until additional gear modifications or alternative fishing practices are imposed through a publication in the Federal Register.

(4) *Other special measures.* If NMFS verifies that certain gear restrictions are effective in reducing serious injuries and mortalities of endangered whales; if new gear technology is developed and determined to be appropriate; if revised breaking strengths are determined to be

appropriate; if new marking systems are developed and determined to be appropriate; if alternative criteria for identifying whether right whales are resident in an area is determined to be appropriate; if gear testing operations are considered appropriate; or for

similar purposes, the Assistant Administrator may revise the requirements of this section through a publication in the **Federal Register**.

[FR Doc. 97-8738 Filed 4-4-97; 8:45 am]

BILLING CODE 3510-22-P

## Notices

Federal Register

Vol. 62, No. 66

Monday, April 7, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

### DEPARTMENT OF AGRICULTURE

#### Agricultural Marketing Service

[DA-96-06]

#### Addendum to the Amplified Decision Regarding the Northeast Interstate Dairy Compact

AGENCY: Agricultural Marketing Service.

ACTION: Notice.

**SUMMARY:** This document is an addendum to the March 20, 1997, notice announcing the Secretary of Agriculture's amplified decision concerning his finding of a compelling public interest in the Northeast Interstate Dairy Compact Region, and his authorization to implement the Compact. The addendum clarifies the Secretary's views regarding his authority to withdraw or revoke authorization. The Compact region consists of the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.

EFFECTIVE DATE: March 20, 1997.

#### FOR FURTHER INFORMATION CONTACT:

Richard M. McKee, Director, USDA/AMS/Dairy Division, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 (202) 720-4392.

**PRIOR DOCUMENTS:** *Notice Requesting Comments on the Northeast Interstate Dairy Compact:* Issued April 30, 1996; published May 3, 1996 (61 FR 19904).

*Notice of Findings and Authority to Implement the Northeast Interstate Dairy Compact:* Issued August 22, 1996; published August 28, 1996 (61 FR 44290).

*Notice of Amplified Decision Regarding the Northeast Interstate Dairy Compact:* Issued March 20, 1997; published March 28, 1997 (62 FR 14879).

**SUPPLEMENTARY INFORMATION:** Section 147 of the 1996 Federal Agriculture Improvement and Reform Act (Act) (Pub. L. 104-127) establishes

Congressional consent for the Northeast Interstate Dairy Compact (the Compact) entered into by the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont subject to several conditions. The Act provides that "Based upon a finding by the Secretary of a compelling public interest in the Compact region, the Secretary may grant the States that have ratified the Northeast Interstate Dairy Compact, as of the date of enactment of this title, the authority to implement the Northeast Interstate Dairy Compact." On August 8, 1996, the Secretary issued a Finding of a compelling public interest and authorized the Northeast Interstate Dairy Compact.

The Secretary on March 27, 1997, issued the following addendum to the March 20, 1997, amplified decision concerning his finding that a compelling public interest exists in the Compact Region:

#### Addendum to the Decision of Secretary Dan Glickman on the Northeast Interstate Dairy Compact

On March 20, 1997, I found a compelling public interest in the Compact region and authorized implementation of the Northeast Interstate Dairy Compact. Questions have subsequently been raised regarding the discussion in that decision of the authority to withdraw or revoke this authorization. In consideration of those concerns, I am hereby clarifying my views with respect to that issue.

As I observed earlier, implementation of the Compact is an ongoing process, and the presence of a compelling public interest depends on facts and circumstances that may change during implementation. I therefore concluded that the authority given to me by the Congress necessarily implies the authority to respond to such changes by modifying or withdrawing my authorization. In my view, therefore, the authority to respond to changing circumstances is inherent in, and, in that sense, essential to the authority conferred by the Congressional mandate.

In attempting to articulate this conclusion, I may have inadvertently created the impression that it would have been impossible for me to authorize implementation in the absence of revocation authority. In fact, however, my finding of compelling public interest was based on a broad array of factors which I discussed in the March 20 decision. My finding of a compelling public interest was not contingent upon the existence of revocation authority. If it should be finally determined that I do not have revocation authority, and if I nonetheless determine that there is no

longer a compelling public interest, I intend to use other authorities given to me by law to ensure that consumers and others in the Compact region are treated fairly, and I also intend to request the Congress to withdraw its consent.

Dated: March 31, 1997.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 97-8734 Filed 4-4-97; 8:45 am]

BILLING CODE 3410-02-P

### COMMISSION ON CIVIL RIGHTS

#### Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:30 p.m. on Thursday, April 24, 1997, at the Providence Marriott Hotel, One Orms Street, Providence, Rhode Island 03096. The purpose of the meeting is to decide on a new project and develop planning for upcoming activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Robert Lee, 401-863-1693, or Ki-Taek Chun, Director of the Eastern Regional Office, 202-376-7533 (TDD 202-376-8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 2, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97-8825 Filed 4-4-97; 8:45 am]

BILLING CODE 6335-01-P

**DEPARTMENT OF COMMERCE****Bureau of the Census****Current Population Survey (CPS)  
School Enrollment Supplement**

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Submit written comments on or before June 6, 1997.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bonnie Tarsia, Bureau of the Census, FOB 3, Room 3340, Washington, DC 20233-8400, (301) 457-3806.

**SUPPLEMENTARY INFORMATION:****I. Abstract**

The Census Bureau plans to request clearance for the collection of data concerning the School Enrollment Supplement to be conducted in conjunction with the October 1997 CPS. The Bureau of the Census and the Bureau of Labor Statistics (BLS) sponsor the basic annual school enrollment questions, which have been collected annually in the CPS for over 25 years. The National Center for Education Statistics (NCES) sponsors the inclusion of the additional questions on summer school enrollment.

This survey provides information on public/private elementary and secondary school enrollment, and characteristics of private school students and their families, which is used for tracking historical trends and for policy planning and support. This year we will also ask questions about computer usage. The last time we asked questions about computer usage during the October supplement was 1993. The questions are modified from those asked in October 1993. This survey is the only source of national data on the age distribution and family characteristics

of college students, and the only source of demographic data on preprimary school enrollment. As part of the Federal Government's efforts to collect data and provide timely information to local governments for policymaking decisions, the survey provides national trends in enrollment and progress in school.

**II. Method of Collection**

The school enrollment information will be collected by both personal visit and telephone interviews in conjunction with the regular October CPS interviewing. All interviews are conducted using computer-assisted interviewing.

**III. Data**

*OMB Number:* 0607-0464.

*Form Number:* There are no forms. We conduct all interviewing on computers.

*Type of Review:* Regular.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 48,000 per month.

*Estimated Time Per Response:* 8 minutes.

*Estimated Total Annual Burden Hours:* 6,400.

*Estimated Total Annual Cost:* We do not expect respondents to incur any cost other than that of their time to respond.

*Respondents' Obligation:* Voluntary.

*Legal Authority:* Title 13, U.S.C., Section 182; and Title 29 U.S.C., Sections 1-9.

**IV. Request for Comments**

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 1, 1997.

Linda Engelmeier,  
Departmental Forms Clearance Officer, Office  
of Management and Organization.

[FR Doc. 97-8728 Filed 4-4-97; 8:45 a.m.]

BILLING CODE 3510-07-P

**DEPARTMENT OF COMMERCE****International Trade Administration****Intent To Revoke Antidumping Duty  
Orders and Findings and To Terminate  
Suspended Investigations**

**AGENCY:** Import Administration,  
International Trade Administration,  
Department of Commerce.

**ACTION:** Notice of intent to revoke  
antidumping duty orders and findings  
and to terminate suspended  
investigations.

**SUMMARY:** The Department of Commerce (the Department) is notifying the public of its intent to revoke the antidumping duty orders and findings and to terminate the suspended investigations listed below. Domestic interested parties who object to these revocations and terminations must submit their comments in writing no later than the last day of April 1997.

**EFFECTIVE DATE:** April 7, 1997.

**FOR FURTHER INFORMATION CONTACT:** Michael Panfeld or the analyst listed under Antidumping Proceeding at: Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230.

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

The Department may revoke an antidumping duty order or finding or terminate a suspended investigation if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke the following antidumping duty orders and findings and to terminate the suspended investigations for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

*Antidumping Proceeding*

Canada

Sugar and Syrups  
A-122-085  
45 FR 24126  
April 9, 1980

Contact: David Dirstine at (202) 482-4033

Greece

Electrolytic Manganese Dioxide

A-484-801

54 FR 15243

April 17, 1989

Contact: Thomas Barlow at (202) 482-0410

Japan

Aspheric Ophthalmoscopy Lenses

A-588-819

57 FR 13075

April 15, 1992

Contact: Jack Dulberger at (202) 482-5505

Kenya

Standard Carnations

A-779-602

52 FR 13490

April 23, 1987

Contact: Michael Panfeld at (202) 482-0168

If no interested party requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, and no domestic interested party objects to the Department's intent to revoke or terminate pursuant to this notice, we shall conclude that the antidumping duty orders, findings, and suspended investigations are no longer of interest to interested parties and shall proceed with the revocation or termination.

*Opportunity To Object*

Domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke these antidumping duty orders and findings or to terminate the suspended investigations by the last day of April 1997. Any submission to the Department must contain the name and case number of the proceeding and a statement that explains how the objecting party qualifies as a domestic interested party under § 353.2(k) (3), (4), (5), and (6) of the Department's regulations.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, D.C. 20230. You must also include the pertinent certification(s) in accordance with § 353.31(g) and § 353.31(i) of the Department's regulations. In addition, the Department requests that a copy of the objection be sent to Michael F. Panfeld in Room 4203.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: March 25, 1997.

**Richard W. Moreland,**

*Acting Deputy Assistant Secretary for AD/CVD Enforcement.*

[FR Doc. 97-8844 Filed 4-4-97; 8:45 am]

BILLING CODE 3510-02-P

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-549-807]

**Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand; Preliminary Results of Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to a request by Tube Forgings of America, Inc., and Mills Iron Works, Inc., (hereafter petitioner) who were the members of the petitioning group of companies in the less-than-fair-value (LTFV) investigation, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain carbon steel butt-weld pipe fittings from Thailand. This review covers TTU Industrial Corp., Ltd. (TTU), a manufacturer/exporter of this merchandise to the United States, and the period July 1, 1995, through June 30, 1996. The firm failed to submit a response to our questionnaire. As a result, we have preliminarily determined to sue the facts otherwise available for cash deposit and appraisal purposes.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the arguments: (1) A statement of the issues and (2) a brief summary of the arguments.

**EFFECTIVE DATE:** April 7, 1997.

**FOR FURTHER INFORMATION CONTACT:**

Daniel Manzoni or James Terpstra, Office of Antidumping and Countervailing Duty Enforcement Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482-4737.

**SUPPLEMENTARY INFORMATION:**

**Applicable Statute**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA).

**Background**

On July 30, 1996, the petitioner requested, in accordance with section 353.22(a) of the Department's regulations (19 CFR 353.22(a)), an administrative review of the antidumping duty order (57 FR 29702, July 6, 1992) on certain carbon steel butt-weld pipe fittings from Thailand, with respect to TTU, a manufacturer/exporter of this merchandise to the United States, and covering the period July 1, 1995, through June 30, 1996. We published a notice of initiation of the review on August 15, 1996 (61 FR 42416). On September 19, 1996, the Department sent an antidumping questionnaire to TTU. The response to the questionnaire was due on November 3, 1996. To date, we have not received any response from TTU. The Department is now conducting this review in accordance with section 751 of the Act.

**Scope of the Review**

The product covered by this order is certain carbon steel but-weld pipe fitting, having an inside diameter of less than 14 inches, imported in either finished or unfinished form. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (e.g., threaded, grooved, or bolted fittings). Carbon steel butt-weld pipe fittings are currently classified under subheading 7307.93.30 of the harmonized tariff schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

The review covers TTU and the period July 1, 1995, through June 30, 1996 (POR).

**Use of Facts Otherwise Available**

We preliminarily determine, in accordance with section 776(a) of the Act, that the use of facts available (FA) is appropriate for TTU because it did not respond to our antidumping questionnaire. We find that this firm has withheld "information that has been requested by the administering

authority." Furthermore, we determine that, pursuant to section 776(b) of the Act, it is appropriate to make an inference adverse to the interests of this company because it failed to cooperate by not responding to our questionnaire.

Where the Department must base the entire dumping margin for a respondent in an administrative review on facts otherwise available because that respondent failed to cooperate, section 776(b) of the Act authorizes the use of an inference adverse to the interests of that respondent in choosing the facts available. Section 776(b) of the Act also authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. (See H.R. Doc. 316, Vol. 1, 103d Cong., 2d sess. 870 (1994).)

In this case, for total adverse FA we have used the best information available (BIA) rate from the LTFV investigation (50.84 percent), which was based on the highest alleged margin in the antidumping petition (52.60 percent), adjusted to exclude the export subsidies found during the period of investigation (1.76 percent). To corroborate the LTFV BIA rate of 50.84 percent, we examined the basis of the rates contained in the petition. The US prices in the petition were based on publicly known prices from a Thai manufacturer selling in the United States. The foreign market value was based on constructed value. We reviewed the data submitted by the petitioner and the assumptions that petitioner made when calculating CV. The methodology was reasonable and was based on the data reasonably available to petitioner at the time.

We preliminarily find that, in this case, there are no circumstances that indicate that the selected margin is not appropriate as adverse facts available.

#### **Preliminary Results of the Review**

As a result of our review, we preliminarily determine that a margin of 50.84 percent exists for TTU for the period July 1, 1995, through June 30, 1996.

Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held

44 days after the date of publication, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. Parties who submit arguments in this proceeding are requested to submit with the arguments: (1) A statement of the issues and (2) a brief summary of the arguments. The Department will publish the final results of the administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

Upon completion of this administrative review, the Department will issue appraisal instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of carbon steel butt-weld pipe fittings from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original LTFV investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 39.10 percent, the "all others" rate established in the LTFV investigation (57 FR 29702, July 6, 1992).

This notice serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that

reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 751(d) of the Act (19 U.S.C. 1675(a)(1)), 19 CFR 353.22 and 19 CFR 353.25.

Dated: April 1, 1997.

**Robert S. LaRussa,**  
*Acting Assistant Secretary for Import Administration.*

[FR Doc. 97-8845 Filed 4-4-97; 8:45 am]

BILLING CODE 3510-DS-P-M

## **DEPARTMENT OF COMMERCE**

### **International Trade Administration**

[A-821-807]

#### **Ferrovandium and Nitrided Vanadium From the Russian Federation; Notice of Extension of Time Limit for Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** April 7, 1997.

**FOR FURTHER INFORMATION CONTACT:** David Goldberger at (202) 482-4136, or Erik Warga at (202) 482-0922, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

**SUMMARY:** The Department of Commerce (the Department) is extending the time limit for the preliminary results of the first administrative review of the antidumping duty order on ferrovandium and nitrided vanadium from the Russian Federation. This extension is made pursuant to the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (hereinafter, "the Act").

#### **Postponement**

Under the Act, the Department may extend the deadline for completion of an administrative review if it determines it is not practicable to complete the review within the statutory time limit of 365 days. The Department finds that it is not practicable to complete the first administrative review of ferrovandium and nitrided vanadium from the Russian Federation within this time limit.

In accordance with section 752(a)(3)(A) of the Act, the Department will extend the time for completion for the preliminary results of this review



from a 245-day period to no later than a 365-day period.

Dated: March 28, 1997.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 97-8770 Filed 4-4-97; 8:45 am]

BILLING CODE 3510-DS-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-489-807]

#### Notice of Amendment of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 7, 1997.

#### FOR FURTHER INFORMATION CONTACT:

Shawn Thompson at (202) 482-1776, or Cameron Werker at (202) 482-3874, AD/CVD Enforcement, Group II, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

#### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 by the Uruguay Rounds Agreements Act (URAA).

#### Amendment to the Final Determination

We are amending the final determination of sales at less than fair value of certain steel concrete reinforcing bars from Turkey, to reflect the correction of a ministerial error made in the margin calculation of one of the respondents in that determination. We are publishing this amendment to the final determination in accordance with section 353.28(c) of the Department's regulations.

#### Scope of Investigation

The product covered by this investigation is all stock deformed steel concrete reinforcing bars ("rebar") sold in straight lengths and coils. This includes all hot-rolled deformed rebar, rolled from billet steel, rail steel, axle steel, or low-alloy steel. It excludes (i) plain round rebar, (ii) rebar that a processor has further worked or fabricated, and (iii) all coated rebar. Deformed rebar is currently classifiable

in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7213.110.00 and 7214.20.00. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this investigation is dispositive.

#### Case History

In accordance with section 735(d) of the Tariff Act of 1930, as amended (the Act), on March 4, 1997, the Department published its final determination that rebar from Turkey was being, or was likely to be, sold in the United States at less than fair value (62 FR 9737). Subsequent to the final determination, we received allegations that the Department made ministerial errors in the margin calculations for one of the respondents, Habas Sinai Ve Tibbi Gazalar Istihsal Endustrisi A.S. (Habas).

#### Amendment of Final Determination

On March 12, 1997, Habas submitted allegations that two ministerial errors were made in the Department's final determination. Specifically, Habas asserts that the Department did not incorporate the verified costs for billets produced by Habas during the first four months of the POI. In addition, Habas argues that the Department made a manifest error by changing to constructed value as the basis for normal value, rather than using the home market sales data that the Department used for the preliminary determination. On March 19, 1997, petitioners responded to Habas' ministerial error allegations.

Concerning the allegation with respect to billet costs, we agree with Habas and have corrected the ministerial error pursuant to section 735(e) of the Act and section 353.28(c) of the Department's regulations. However, concerning Habas' allegation that the Department made a ministerial error in rejecting Habas' home market sales data, we disagree. As described in the Department's final determination, we fully intended to reject Habas' home market sales data and base normal value on constructed value. For a detailed discussion of the alleged ministerial errors and the department's analysis, see, memorandum from the Team to Louis Apple, Acting Office Director, regarding Ministerial Error Allegations in the Final Determination of Rebar From Turkey, dated March 24, 1997. The revised final weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Original final margin percentage	Revised final margin percentage
Colakoglu .....	9.84	9.84
Ekinciler .....	18.68	18.68
Habas .....	19.15	18.54
IDC .....	41.80	41.80
Metas .....	30.16	30.16
All Others .....	16.25	16.06

#### Continuation of Suspension of Liquidation

In accordance with § 735(c) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of rebar from all companies except Colakoglu that are entered, or withdrawn from warehouse, for consumption on or after July 12, 1996, which is 90 days prior to the date of publication of the notice of the preliminary determination in the *Federal Register*. Regarding Colakoglu, we are directing the Customs Service to continue to suspend liquidation of all entries of rebar from Colakoglu that are entered, or withdrawn from warehouse, for consumption on or after October 10, 1996, the date of publication of our preliminary determination in the *Federal Register*. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which normal value exceeds export price, as indicated in the chart above. This suspension of liquidation will remain in effect until further notice.

#### Notification of International Trade Commission (ITC)

In accordance with § 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to § 735(d) of the Act.

Dated: March 27, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97-8767 Filed 4-4-97; 8:45 am]

BILLING CODE 3510-DS-M

## DEPARTMENT OF COMMERCE

## International Trade Administration

[A-588-841]

**Notice of Preliminary Determination of Sales at Less Than Fair Value: Vector Supercomputers from Japan.**

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 7, 1997.

FOR FURTHER INFORMATION CONTACT: Edward Easton or Sunky Kim, Office of AD/CVD Enforcement II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-1777 or (202) 482-2613.

**The Applicable Statute**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the *Federal Register* on May 11, 1995 (60 FR 25130).

**Preliminary Determination**

We preliminarily determine that there is a reasonable basis to believe or suspect that vector supercomputers from Japan are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733(b) of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

**Case History**

Since the initiation of this investigation on August 19, 1996 (*Notice of Initiation of Antidumping Duty Investigation: Vector Supercomputers from Japan*, 61 FR 43527, August 23, 1996), the following events have occurred.

On September 12, 1996, the United States International Trade Commission ("ITC") notified the Department of Commerce ("the Department") of its affirmative preliminary determination (see ITC Investigation No. 731-TA-750). The ITC found that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of vector supercomputers from Japan.

Based on the information available to the Department, the following two companies were named as mandatory respondents in this investigation: Fujitsu Limited ("Fujitsu") and NEC Corporation ("NEC"). On September 30, 1996, we presented Section A of the Department's questionnaire<sup>1</sup> to Fujitsu and NEC. In this case, Section A of the questionnaire was designed specifically to elicit the technical information necessary for determining whether a constructed value analysis rather than a comparison to vector supercomputers sold in the home market or to third countries was appropriate in this investigation. NEC did not respond to the Department's Section A questionnaire. Instead, on October 15, 1996, counsel for NEC sent a letter to the Secretary of Commerce, enclosing a complimentary copy of its request that the U.S. Court of International Trade ("CIT") enjoin the Department's antidumping investigation. Because NEC did not respond to Section A of our questionnaire, we were unable to prepare the remaining sections of the questionnaire for NEC. For a further discussion, see Memorandum to File from Edward Easton dated November 27, 1996, and the *Facts Available* section of the notice. Fujitsu's response to Section A was received on October 25, 1996.

At the Department's request, Cray Research, Inc. (the petitioner), and Fujitsu filed comments on the appropriate product model matching criteria to be used in this investigation on October 16 and 17, 1996, respectively. On November 13, 1996, we issued Sections B and C of the Department's questionnaire to Fujitsu. On December 17, 1996, Fujitsu requested that it be allowed to limit its reporting of home market sales to only those sales most comparable to Fujitsu's single sale to the United States made during the period of investigation ("POI"). The Department, in a letter dated December 26, 1996, permitted Fujitsu to report data only for those home market sales with the same number of processing elements as its U.S. sale. Fujitsu submitted its Sections B and C responses on January 8, 1997. Based on the information received in Fujitsu's Sections A, B and C responses, the Department issued a supplemental questionnaire on January 16, 1997. Fujitsu's response to the supplemental

<sup>1</sup> Section A of the questionnaire requests information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the sales of the merchandise in all of its markets. Sections B and C of the questionnaire request home market sales listings and U.S. sales listings, respectively.

questionnaire was received on January 27, 1997.

On December 12, 1996, at the request of the petitioner, we postponed the preliminary determination to February 25, 1997. (*See Notice of Postponement of Preliminary Determination: Antidumping Investigation of Vector Supercomputers from Japan*, 61 FR 66653, December 18, 1996.)

In connection with NEC's appeal to the CIT, on February 18, 1997, the court, with the consent of the parties to the litigation, enjoined the Department from issuing its preliminary determination in this investigation until March 28, 1997. On March 21, 1997, the CIT denied NEC's request for a preliminary injunction to further enjoin issuance of the preliminary determination.

**Cost of Production Allegation**

On November 27, 1996, the petitioner alleged that there are reasonable grounds to believe or suspect that Fujitsu's home market sales during the POI were made at prices below the cost of production ("COP"). We rejected this allegation because it was untimely filed pursuant to 19 CFR 353.31(c)(i) (*i.e.*, filed less than 45 days prior to the scheduled date of the preliminary determination). On December 17, 1996, subsequent to the above-cited postponement of the preliminary determination, the petitioner submitted a second sales-below-cost allegation concerning Fujitsu's home market sales. We determined that the second allegation was inadequate for purposes of initiating a cost investigation. In a letter dated January 2, 1997, we informed the petitioner of our determination and provided the petitioner with an outline of supplementary information that would be needed for the Department to further consider its allegation. On January 14, 1997, the petitioner refiled its sales-below-cost allegation. The petitioner supplemented that allegation with additional information on January 24, 1997. Fujitsu submitted rebuttal comments to the petitioner's allegations in January 1997. Fujitsu's comments are addressed in memorandums to Richard W. Moreland dated February 13 and 14, 1997.

Based on our examination of the petitioner's January 14, 1997, allegation, we determined that there are reasonable grounds to believe or suspect that Fujitsu sold vector supercomputers in the home market at prices which were below their COP. Accordingly, on January 28, 1997, we initiated a COP investigation with respect to Fujitsu's home market sales. *See Memorandum to*

Barbara R. Stafford, dated January 28, 1997.

Section D of the Department's questionnaire requesting cost of production and constructed value ("CV") data was issued to Fujitsu on February 12, 1997. On March 13, 1997, the Department extended Fujitsu's time to respond to Section D of the questionnaire to April 14, 1997. Accordingly, we are not able to include a COP analysis in our preliminary determination. We will analyze Fujitsu's COP and CV data for our final determination.

#### *Postponement of Final Determination and Extension of Provisional Measures*

Pursuant to section 735(a)(2)(A) of the Act, on March 13, 1997, Fujitsu requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the publication of an affirmative preliminary determination in the **Federal Register**. Our preliminary determination is affirmative. In addition, Fujitsu accounts for a significant proportion of exports of the subject merchandise, and as we are not aware of the existence of any compelling reasons for denying this request, we are granting Fujitsu's request (under 19 CFR 353.20 (b) (1995)) and postponing the final determination. Suspension of liquidation will be extended accordingly. See *Preliminary Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled from Japan* (61 FR 8029, March 1, 1996).

#### *Scope of Investigation*

The products covered by this investigation are all vector supercomputers, whether new or used, and whether in assembled or unassembled form, as well as vector supercomputer spare parts, repair parts, upgrades, and system software shipped to fulfill the requirements of a contract for the sale and, if included, maintenance of a vector supercomputer. A vector supercomputer is any computer with a vector hardware unit as an integral part of its central processing unit boards.

The vector supercomputers imported from Japan, whether assembled or unassembled, covered by this investigation are classified under heading 8471 of the Harmonized Tariff Schedules of the United States ("HTS"). Although the HTS heading is provided for convenience and customs purposes,

our written description of the scope of this investigation is dispositive.

#### *Period of Investigation*

The POI is July 1, 1995 through June 30, 1996.

#### *Facts Available*

As discussed above, NEC failed to answer the Department's questionnaire. On October 15, 1996, NEC sent a letter to the Secretary of Commerce, enclosing a complimentary copy of its request that the U.S. Court of International Trade ("CIT") enjoin the Department's antidumping investigation. In this letter, counsel stated that " \* \* \* my clients will respectfully withhold their response to the Department's questionnaire until such time as a qualified independent party \* \* \* is appointed as a "special master" to conduct the investigation." We have placed this letter on the record of this proceeding and it is the last communication we have had with NEC on that record. NEC's decision not to respond to the Department's request for information has left the Department with no alternative other than to proceed on the basis of the facts available.

Section 776(a)(2) of the Act provides that if an interested party (1) Withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form or manner requested, (3) significantly impedes an antidumping investigation, or (4) provides such information but the information cannot be verified, the Department is required to use facts otherwise available (subject to subsections 782(c)(1) and (e)) to make its determination. Section 776(b) of the Act further provides that adverse inferences may be used in selecting from the facts otherwise available if the party failed to cooperate by not acting to the best of its ability to comply with requests for information. See also "Statement of Administrative Action" accompanying the URAA, H.R. Rep. No. 316, 103rd Cong., 2d Sess. 870 ("SAA"). NEC's decision not to participate in the Department's investigation demonstrates that it failed to act to the best of its ability in this investigation. Therefore, the Department has determined that an adverse inference is appropriate. Consistent with Departmental practice in cases where respondents decide not to participate, as facts otherwise available, we are assigning to NEC the margin stated in the petition, 454 percent.

Section 776(c) provides that if the Department relies upon secondary information, such as the petition, when

resorting to facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. When analyzing the petition, the Department examined the data that the petitioner relied upon in calculating the estimated dumping margin. This calculation was based on a comparison of the export price of an NEC offer to the normal value of the NEC vector supercomputer system. The export price was based on the "best and final offer" to supply a U.S. customer with four vector supercomputers manufactured by NEC. Normal value was based on the estimated constructed value of this NEC system.

The Department examined the accuracy and adequacy of all of the information from which the margin was calculated during our pre-initiation analysis of the petition. For the purpose of this preliminary determination, we re-examined the information provided in the petition. The petition included a copy of NEC's English-language brochure describing the company's SX-4 series vector supercomputer, including the specifications of this model. The contract value of the procurement relied upon for the U.S. sale is in the public domain. The procurement negotiations for NEC's "best and final offer" to the U.S. purchaser are described in an acquisition announcement released by the University Corporation for Atmospheric Research on May 20, 1996. The estimated cost build up for constructing the value of the NEC system used as normal value was based upon the recent cost experience of the petitioner in building similar supercomputer systems. Cray Research, Inc. is the only U.S. manufacturer of vector supercomputer systems comparable in performance to the NEC SX-4 system. We examined the methodology for estimating the dumping margin on the SX-4 after the filing of the petition and found it to be satisfactory.

Based on our review of the available evidence, we find that the information in the petition continues to be of probative value. See SAA at 870. Therefore, we determine that the petition is corroborated within the meaning of section 776(c) of the Act.

#### *Product Comparison*

As noted above in the "Case History" section, the Department granted Fujitsu's request to limit its reporting of home market sales of vector supercomputers during the POI to those sales with the same number of processing elements as the sale made in

the United States. We selected the home market sale most comparable to the U.S. sale based on the six-model matching criteria proposed by Fujitsu and the petitioner. For a further discussion, see Memorandum to Richard W. Moreland, dated March 26, 1997.

#### *Level of Trade and CEP Offset*

As set forth in section 773(a)(1)(B)(i) of the Act and in the SAA at 829-831, to the extent practicable, the Department will calculate normal value ("NV") based on sales at the same level of trade as the U.S. sales. When the Department is unable to find sales in the comparison market at the same level of trade as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at different levels of trade.

Section 773(a)(7)(A) provides that if we compare a U.S. sale with a home market sale made at a different level of trade, we will adjust the NV to account for this difference if two conditions are met. First, there must be differences between the actual selling functions performed by the seller at the level of trade of the U.S. sale and at the level of trade of the comparison market sale used to determine NV. Second, the differences must affect price comparability, as evidenced by a pattern of consistent price differences between sales at the different levels of trade in the market in which NV is determined.

For constructed export price ("CEP") sales, section 773(a)(7)(B) establishes the procedure for making a "CEP Offset" when two conditions are met. First, the NV is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the CEP and, second, the data available do not establish an appropriate basis for calculating a level-of-trade adjustment.

In its questionnaire response, Fujitsu reported that the following functions were performed in the home market for sales to end users: market research, sales activity, contract negotiations, warranty and other after-sale service, technical services, installation services, freight and delivery arrangements, and maintenance. Fujitsu reported the same selling functions by Fujitsu America, Inc., for the U.S. sale, which was also to an end user. Fujitsu asserts that should the Department treat its U.S. sale as a CEP sale, the statutory adjustments to arrive at CEP would place home market sales at a more advanced level of trade than the level of trade of the CEP sale. This assertion is based only on Fujitsu's assumption that a CEP sale is, by definition, at a different level of trade than the NV level of trade. Fujitsu did

not provide sufficient factual information demonstrating a difference in levels of trade that would affect price comparability or data to quantify any such affect.

Based on Fujitsu's responses, we cannot establish that different levels of trade were involved in the different markets. In response to our original and supplemental questions concerning level of trade, Fujitsu reported only very limited and general information on types of selling functions, which is insufficient for a level-of-trade analysis. Even if it were possible to determine differences in levels of trade from this limited data, Fujitsu has not provided any information which would justify a level-of-trade adjustment. The Department's practice is to not rely on a presumption that there will be a level-of-trade adjustment or a CEP offset in CEP price comparisons. The evidence must establish that the comparison sales are at a more advanced level of trade and that available data does not provide a sufficient basis for an adjustment. Absent such information, the Department cannot find that a CEP offset is authorized by section 773(a)(7)(B).

#### *Fair Value Comparisons*

To determine whether Fujitsu's single sale of a vector supercomputer system to the United States during the POI was made at less than fair value, we compared CEP to the normal value, as described in the "Constructed Export Price" and "Normal Value" sections of this notice.

#### *Constructed Export Price*

We calculated CEP for Fujitsu, in accordance with sections 772 (b), (c) and (d) of the Act. We found that CEP is warranted because all U.S. sales activities associated with the single U.S. sale took place in the United States through a wholly-owned subsidiary of Fujitsu. We calculated CEP based on the installed price to the first unaffiliated customer in the United States. We made deductions from the starting price for the following expenses: foreign inland freight, foreign inland insurance, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, U.S. inland freight, and U.S. Customs duties.

Pursuant to section 772(d) of the Act, we also made deductions for direct selling expenses, including imputed credit, installation service, and training expenses. In addition, we deducted indirect selling expenses that related to economic activity in the United States. These included inventory carrying costs and indirect selling expenses incurred

in the home market, and the indirect selling expenses of the U.S. subsidiary. Finally, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act.

#### *Normal Value*

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Fujitsu's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Fujitsu's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise. Accordingly, we determined that its home market was viable. As noted above in the *Product Comparison* section of the notice, we based NV on a home market sale of the product which we identified as the most comparable to the U.S. sale.

We calculated NV based on the installed price to an unaffiliated customer and made deductions from the starting price for inland freight and inland insurance. We made adjustments for differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. For the purposes of this preliminary determination, we recalculated the difference-in-merchandise adjustment based on the costs of hardware reported by Fujitsu. In recalculating the adjustment, we included the cost of software as well as hardware. In addition, in accordance with section 773(a)(6)(C)(iii) of the Act, we made circumstance-of-sale adjustments for direct expenses including imputed credit, warranty expenses, installation and technical service expenses. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(B) of the Act.

#### *Currency Conversion*

We made currency conversions into U.S. dollars based on the official exchange rates in effect on the date of the U.S. sale as certified by the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to convert foreign currencies based on the dollar exchange rate in effect on the date of sale of the subject merchandise, except if it is established that a currency transaction on forward markets is directly linked to an export sale. When a company demonstrates that a sale on forward markets is directly linked to a particular export sale in order to minimize its exposure to exchange rate losses, the

Department will use the rate of exchange in the forward currency sale agreement.

Section 773A(a) also directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine a fluctuation existed, we substitute the benchmark for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, see, *Policy Bulletin 96-1: Currency Conversions*, 61 FR 9434, March 8, 1996.) Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the Japanese yen did not undergo a sustained movement, nor were there any currency fluctuations during the POI.

#### Verification

As provided in section 782(i) of the Act, we will verify all information used in making our final determination.

#### Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of vector supercomputers from Japan, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the *Federal Register*. For these entries, the Customs Service will require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the export price as shown below.

The entries must be accompanied by documentation provided by both the foreign manufacturer/exporter and the U.S. importer which discloses the following information: (1) The vector supercomputer contract pursuant to which the merchandise is imported, (2) a description of the merchandise included in the entry, (3) the actual or estimated price (agreed to as of the time

of importation) of the complete vector supercomputer system, and (4) a schedule of all shipments to be made pursuant to a particular vector supercomputer contract, if more than one shipment is involved. We will also request that the Japanese manufacturer/exporter(s) submit to the Department the contracts pursuant to which subject merchandise is imported. These suspension of liquidation instructions will remain in effect until further notice.

The scope of this investigation includes both complete and unassembled shipments. Given that vector supercomputer systems may be entered into the United States in different shipments, it is important to ensure that the subject merchandise, particularly parts, components, and subassemblies, be readily identifiable to the U.S. Customs Service and to the Department. To ensure that any antidumping order which may issue as a result of this investigation is clear, we are requesting interested parties to submit their comments on this subject to the Department by May 5, 1997. Reply comments will be due by May 19, 1997.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Fujitsu .....	27.17
NEC* .....	454.00
All Others .....	27.17

\* Facts Available Rate.

Pursuant to section 735(c)(5)(A) of the Act, the Department has excluded the margin determined entirely under section 776 of the Act from the calculation of the All Others rate.

#### ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

#### Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than July 7, 1997, and rebuttal briefs, no later than July 10, 1997. A list of authorities used and an executive summary of issues should accompany any briefs submitted

to the Department. The summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on July 14, 1997, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by 135 days after the date of the preliminary determination.

This determination is published pursuant to section 733(f) of the Act.

Dated: March 28, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

{FR Doc. 97-8766 Filed 4-4-97; 8:45 am}

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-489-501]

#### Notice of Amended Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 7, 1997.

FOR FURTHER INFORMATION CONTACT: Jennifer Stagner at (202) 482-1673 or Gabriel Adler at (202) 482-1442, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

### Amended Final Results

On December 31, 1996, the Department of Commerce (the Department) published the final results of its administrative review of the antidumping duty order on certain welded carbon steel pipe and tube (pipe and tube) from Turkey (61 FR 69067). The period of review (POR) is May 1, 1994, through April 30, 1995.

In January 1997, the petitioners and the Borusan Group (Borusan) filed timely allegations, pursuant to 19 CFR 353.28, of ministerial and clerical errors with regard to the final results in the 1994-95 administrative review of the antidumping duty order on pipe and tube from Turkey.

We determine, in accordance with section 735(e) of the Act, that ministerial errors were made in our margin calculation for Borusan. Specifically, Borusan alleged that (1) the verified costs upon which the Department relied for its final results did not include inventory holdings gains; (2) the concordance program (*i.e.*, matching) selected inappropriate matches; and (3) the computer program incorrectly applied the weight savings adjustment to all costs, rather than only to costs based on the weight of coil. In accordance with 19 CFR 353.28(c), we are amending the final results of the administrative review of steel pipe and tube from Turkey to correct these ministerial errors. For a detailed discussion and the Department's analysis, see Memorandum from Case Analysts to Richard W. Moreland, dated March 24, 1997.

Additionally, Borusan alleged that (1) the Department's calculation of cost of production is improperly based on an average of the production costs for the period July 1994 to April 1995, and erroneously ignores reported costs for the period July 1993 through June 1994; and (2) the Department erroneously based its level of trade price analysis on the POR rather than on a monthly basis since Turkey experienced hyperinflation during the POR. We

determine that these allegations are not ministerial errors pursuant to 19 CFR 353.28(d) because it is a substantive argument for a new methodology. *Kerr-McGee Chemical Corp. v. United States*, No. 97-2, Slip Op. at 20 (CIT January 8, 1997). Accordingly, we have not considered these issues because they are outside the scope of permissible corrections under 19 CFR 353.28(d). *Id.* For a detailed discussion and the Department's analysis, see Memorandum from Case Analysts to Richard W. Moreland, dated February 27, 1997.

The petitioners alleged that the Department incorrectly relied on the exchange rates for investigations, rather than those for administrative reviews. They state that the Department did not follow its policy outlined in *Change in Policy Regarding Currency Conversion* (61 FR 9434, March 8, 1996) (*Change in Policy*). We determine that this allegation is not a ministerial error pursuant to 19 CFR 353.28(d) because it was the Department's intention to limit the application of the *Change in Policy*. See *Final Results*, at 69071.

### Scope of the Review

Imports covered by this review are shipments of certain welded carbon steel pipe and tube products with an outside diameter of 0.375 inch or more but not over 16 inches, of any wall thickness. These products are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. These products, commonly referred to in the industry as standard pipe and tube, are produced to various American Society for Testing and Materials (ASTM) specifications, most notably A-120, A-53 or A-135.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

### Amended Final Results of Review

Upon correction of the ministerial errors, we have determined that the following margins exist for the period indicated:

Manufacturer/ exporter	Time period	Margin percent
Borusan .....	5/1/94-4/30/95	3.37

The Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between United States price and normal value

may vary from the percentages stated above. The Department will issue appraisal instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective, upon publication of this notice of amended final results of review for all shipments of certain circular welded carbon steel pipe and tube from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Borusan will be the rate established above; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less than fair value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 14.74 percent, the All Others rate established in the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as final reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 C.F.R. 353.28.

Dated: March 31, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97-8769 Filed 4-4-97; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### University of Arizona; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

*Docket Number:* 96-129. *Applicant:*

University of Arizona, Tucson, AZ 85721. *Instrument:* Surface Forces Apparatus, Model Mark 4.

*Manufacturer:* Australian National University, Australia. *Intended Use:* See notice at 62 FR 4032, January 28, 1997.

*Comments:* None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

*Reasons:* The foreign instrument provides measurement of the forces between two surfaces in vapor or liquid with a sensitivity of 10 nN and a distance resolution of about 0.1 nm with a positioning accuracy to 50 nm. This capability is pertinent to the applicant's intended purposes and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97-8768 Filed 4-4-97; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-401-401]

#### Certain Carbon Steel Products from Sweden; 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 December 3, 1996, the Department of Commerce ("the Department") published in the Federal Register its preliminary results of administrative review of the countervailing duty order on Certain Carbon Steel Products from Sweden for the period January 1, 1994 through December 31, 1994 (61 FR 64062; December 3, 1996). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net subsidy for the reviewed company, and for all non-reviewed companies, please see the *Final Results of Review* section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Final Results of Review* section of this notice.

**EFFECTIVE DATE:** April 7, 1997.

**FOR FURTHER INFORMATION CONTACT:** Gayle Longest or Lorenza Olivas, Office of CVD/AD Enforcement VI, 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

Pursuant to 19 C.F.R. 355.22(a), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers SSAB Svenskt Stal AB ("SSAB"), the sole known producer/exporter of the subject merchandise during the review period. This review also covers the period January 1, 1994 through December 31, 1994, and 10 programs.

We published the preliminary results on December 3, 1996 (61 FR 64062). We invited interested parties to comment on the preliminary results. We received no comments from any of the parties.

##### Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("URAA") effective January 1, 1995 ("the Act"). The Department is conducting this administrative review in accordance with section 751(a) of the Act.

##### Scope of the Review

Imports covered by this review are shipments of certain carbon steel

products from Sweden. These products include cold-rolled carbon steel, flat-rolled products, whether or not corrugated, or crimped: whether or not pickled, not cut, not pressed and not stamped to non-rectangular shape; not coated or pleated with metal and not clad; over 12 inches in width and of any thickness; whether or not in coils. During the review period, such merchandise was classifiable under the Harmonized Tariff Schedule (HTS) item numbers 7209.11.0000, 7209.12.0000, 7209.13.0000, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7211.30.5000, 7211.41.7000 and 7211.49.5000. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

##### Allocation Methodology

In the past, the Department has relied upon information from the U.S. Internal Revenue Service on the industry-specific average useful life ("AUL") of assets in determining the allocation period for nonrecurring grant benefits. See General Issues Appendix appended to Final Countervailing Duty Determination; Certain Steel Products from Austria, 58 FR 37217, 37226 (July 9, 1993) ("General Issues Appendix"). However, in *British Steel plc. v. United States*, 879 F. Supp. 1254 (CIT 1995) ("*British Steel*"), the U.S. Court of International Trade ("the Court") ruled against this allocation methodology. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for nonrecurring subsidies based on the AUL of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *British Steel*, 929 F. Supp. 426, 439 (CIT 1996).

The Department has decided to acquiesce to the Court's decision and, as such, we intend to determine the allocation period for nonrecurring subsidies using company-specific AUL data where reasonable and practicable. In the preliminary results (61 FR 64062), the Department preliminarily determined that it is reasonable and practicable to allocate all new nonrecurring subsidies (i.e., subsidies that have not yet been assigned an allocation period) based on a company-specific AUL. However, if a subsidy has already been countervailed based on an allocation period established in an earlier segment of the proceeding, it does not appear reasonable or

practicable to reallocate that subsidy over a different period of time. In other words, since the countervailing duty rate in earlier segments of the proceeding was calculated based on a certain allocation period and resulting benefit stream, redefining the allocation period in later segments of the proceeding would entail taking the original grant amount and creating an entirely new benefit stream for that grant. Such a practice may lead to an increase or decrease in the total amount countervailed and, thus, would result in the possibility of over-countervailing or under-countervailing the actual benefit. The Department preliminarily determined that a more reasonable and accurate approach is to continue using the allocation period first assigned to the subsidy. We invited the parties to comment on the selection of this methodology and to provide any other reasonable and practicable approaches for complying with the Court's ruling. We received no comments on this issue.

In the current review, there are no new subsidies. All of the nonrecurring subsidies currently under review were provided prior to the period of review ("POR"); allocation periods for these grants were established during prior segments of this proceeding. Therefore, for purposes of these final results, the Department is using the original allocation period assigned to each nonrecurring subsidy.

#### Privatization and Sale of Productive Units

SSAB is the only company that produces and exports the subject merchandise from Sweden. SSAB has sold several productive units and the company was partially privatized twice, in 1987 and in 1989. During the review period, SSAB was completely privatized.

In Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Sweden, 58 FR 37385 (July 9, 1993) ("Final Determination"), the Department found that SSAB had received countervailable subsidies prior to the sale of the productive units and the two partial privatizations. Further, the Department found that a private party purchasing all or part of a government-owned company can repay prior subsidies on behalf of the company as part or all of the sales price (see General Issues Appendix, 58 FR at 37262 (July 9, 1993)). Therefore, to the extent that a portion of the sales price paid for a privatized company can be reasonably attributed to prior subsidies, that portion of those subsidies will be extinguished.

To calculate a rate for the subsidies that were allocated to the spin-offs, *i.e.*, productive units that were sold, we first determined the amount of the subsidies attributable to each productive unit by dividing the asset value of that productive unit by the total asset value of SSAB in the year of the spin-off. We then applied this ratio to the net present value ("NPV"), in the year of the spin-off, of the future benefit streams from all of SSAB's prior subsidies allocable to the POR. The future benefit streams at the time of the sale of each productive unit reflect the Department's allocation over time of prior subsidies to SSAB in accordance with the declining balance methodology (see *e.g.*, Final Affirmative Countervailing Duty Determination: Fresh Chilled Atlantic Salmon from Norway, 56 FR 7678; 7679 (February 25, 1991)), and reflect also the prior spin-offs of SSAB productive units.

We next estimated the portion of the purchase price which represents repayment of prior subsidies by determining the portion of SSAB's net worth that was accounted for by subsidies. To do that, we divided the face value of the allocable subsidies received by SSAB in each year from fiscal year 1979 through fiscal year 1993 by SSAB's net worth in the same year. We calculated a simple average of these ratios, which was then multiplied by the purchase price of the productive unit. Thus, we determined the amount of the purchase price which represents repayment of prior subsidies. This amount was subtracted from the subsidies attributed to the productive unit at the time of sale to arrive at the amount of subsidies allocated to the productive unit being spun-off.

To calculate the subsidies remaining with SSAB after privatization, we performed the following calculations. We first calculated the NPV of the future benefit stream of the subsidies at the time of the sale of the shares taking into account the spin-offs. Next, we estimated the portion of the purchase price which represents repayment of prior subsidies in accordance with the methodology described in the "Privatization" section of the General Issues Appendix at 37259. This amount was then subtracted from the amount of the NPV eligible for repayment, and the result was divided by the NPV to calculate the ratio representing the amount of subsidies remaining with SSAB.

To calculate the benefit provided to SSAB in the POR, where appropriate, we multiplied the benefit calculated for 1994, adjusted for sales of productive units, by the ratio representing the amount of subsidies remaining with

SSAB after privatization. We then divided the results by the company's total sales in 1994.

#### Analysis of Programs

Based upon our analysis of the information on the record, we determine the following:

##### *I. Programs Previously Determined to Confer Subsidies*

We did not receive any comments on the following programs from the interested parties; however, our review of the record uncovered a clerical error in our preliminary calculations. In our calculation of the subsidies remaining with SSAB after its privatization, we inadvertently took the face value of the subsidies in calculating the future benefit stream from the nonrecurring subsidies at the time of the sale. Instead, we should have calculated their net present value, which is the methodology set forth in the General Issues Appendix, to determine the amount of subsidies remaining with SSAB and the amount of subsidies repaid at the time<sup>24</sup> of the sale. Accordingly, for these final results, we have adjusted our calculations to reflect the net present value of the remaining stream of benefits from the nonrecurring subsidies. The corrected rates are listed below.

##### 1. Equity Infusions

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from interested parties; however, due to the clerical error explained above, the net subsidy for this program has changed from 0.53 percent *ad valorem* to 0.51 percent *ad valorem* for SSAB.

##### 2. Structural Loans

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from interested parties; however, due to the clerical error explained above, the net subsidy for this program has changed from 0.27 percent *ad valorem* to 0.26 percent *ad valorem* for SSAB.

##### 3. Forgiven Reconstruction Loans

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from interested parties; however, due to the clerical error explained above, the net subsidy for this program has changed



from 1.18 percent *ad valorem* to 1.14 percent *ad valorem* for SSAB.

## II. Programs Found Not to Confer Subsidies

A. Research & Development (R&D) Loans and Grants.

B. Fund for Industry and New Business R&D.

In the preliminary results, we found these programs did not confer subsidies during the POR. We did not receive any comments on these programs from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

## III. Programs Found To Be Not Used

In the preliminary results, we found that the producer/exporter of the subject merchandise did not apply for or receive benefits under the following programs:

A. Regional Development Grants.

B. Transportation Grants.

C. Location-of Industry Loans.

We did not receive any comments on these programs from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

## IV. Program Found To Be Terminated

In the preliminary results, we found the following program to be terminated and that no residual benefits were being provided:

Mining Exploration Grants.

We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

## Final Results of Review

In accordance with 19 CFR 355.22(c)(7)(ii), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. As a result of correcting the clerical errors in the preliminary results, we determine the net subsidy for SSAB to be 1.91 percent *ad valorem* for the period January 1, 1994 through December 31, 1994.

We will instruct the U.S. Customs Service ("Customs") to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentages detailed above of the f.o.b. invoice price on all shipments of the subject merchandise from the reviewed company, entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. See 19 CFR 355.22(a). Pursuant to 19 CFR 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. See *Federal-Mogul Corporation and The Torrington Company v. United States*, 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council v. United States*, 822 F.Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g), the countervailing duty regulation on automatic assessment). Therefore, the cash deposit rates for all companies except SSAB will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding conducted pursuant to the statutory provisions that were in effect prior to the URAA amendment. See *Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review*, 61 FR 5378 (February 12, 1996). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1994 through December 31, 1994, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance

with 19 C.F.R. 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 C.F.R. 355.22(c)(8).

Dated: March 28, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97-8842 Filed 4-4-97; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-401-804]

#### Certain Cut-to-Length Carbon Steel Plate from Sweden; 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 October 3, 1996, the Department of Commerce ("the Department") published in the *Federal Register* its preliminary results of administrative review of the countervailing duty order on certain cut-to-length carbon steel plate from Sweden for the period January 1, 1994 through December 31, 1994 (61 FR 51683). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net subsidy for the reviewed company, and for all non-reviewed companies, please see the *Final Results of Review* section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: April 7, 1997.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Lorenza Olivas, Office of CVD/AD Enforcement VI, 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

Pursuant to 19 C.F.R. 355.22(a), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers SSAB Svenskt Stal AB ("SSAB"); the sole known producer/exporter of the subject merchandise during the review period. This review also covers the period January 1, 1994 through December 31, 1994, and 10 programs. On May 29, 1996, the Department extended the time limit for the preliminary and final results of this administrative review (61 FR 26878). The time for completion of the final results of this review was extended from a 120-day period to not later than a 180-day period.

Since the publication of the preliminary results on October 3, 1996 (61 FR 51683), the following events have occurred. We invited interested parties to comment on the preliminary results. On November 4, 1996, a case brief was submitted by the petitioners. On November 8, 1996, a rebuttal brief was submitted by SSAB, the respondent.

## Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("URAA") effective January 1, 1995 ("the Act"). The Department is conducting this administrative review in accordance with section 751(a) of the Act.

## Scope of the Review

Imports covered by this review are shipments of certain cut-to-length carbon steel plate from Sweden. These products include hot-rolled carbon steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without pattern in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeter or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. During the review period, such merchandise was classifiable under the Harmonized Tariff Schedule (HTS) item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000,

7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000 and 7212.50.5000. Included in this order are flat-rolled products of non-rectangular cross-section where cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this order is grade X-70 plate. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

## Allocation Methodology

In the past, the Department has relied upon information from the U.S. Internal Revenue Service on the industry-specific average useful life ("AUL") of assets in determining the allocation period for nonrecurring grant benefits. See General Issues Appendix appended to Final Countervailing Duty Determination; Certain Steel Products from Austria, 58 FR 37217, 37226 (July 9, 1993) (General Issues Appendix). However, in *British Steel plc. v. United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel*), the U.S. Court of International Trade (the Court) ruled against this allocation methodology. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for nonrecurring subsidies based on the AUL of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *British Steel*, 929 F. Supp. 426, 439 (CIT 1996).

The Department has decided to acquiesce to the Court's decision and, as such, we intend to determine the allocation period for nonrecurring subsidies using company-specific AUL data where reasonable and practicable. In the preliminary results (61 FR 51683), the Department preliminarily determined that it is reasonable and practicable to allocate new nonrecurring subsidies (i.e., subsidies that have not yet been assigned an allocation period) based on a company-specific AUL. However, if a subsidy has already been countervailed based on an allocation period established in an earlier segment of the proceeding, it does not appear reasonable or practicable to reallocate that subsidy over a different period of time. In other words, since the countervailing duty rate in earlier segments of the proceeding was calculated based on a certain allocation period and resulting benefit stream,

redefining the allocation period in later segments of the proceeding would entail taking the original grant amount and creating an entirely new benefit stream for that grant. Such a practice may lead to an increase or decrease in the total amount countervailed and, thus, would result in the possibility of over-countervailing or under-countervailing the actual benefit. The Department preliminarily determined that a more reasonable and accurate approach is to continue using the allocation period first assigned to the subsidy. We invited the parties to comment on the selection of this methodology and to provide any other reasonable and practicable approaches for complying with the Court's ruling. We received no comments on this issue.

In the current review, there are no new subsidies. All of the nonrecurring subsidies currently under review were provided prior to the period of review (POR); allocation periods for these grants were established during prior segments of this proceeding. Therefore, for purposes of these final results, the Department is using the original allocation period assigned to each nonrecurring subsidy.

## Privatization and Sale of Productive Units

SSAB has sold several productive units and the company was partially privatized twice, in 1987 and in 1989. During the review period, SSAB was completely privatized.

In Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Sweden, 58 FR 37385 (July 9, 1993) ("Final Determination"), the Department found that SSAB had received countervailable subsidies prior to the sale of the productive units and the two partial privatizations. Further, the Department found that a private party purchasing all or part of a government-owned company can repay prior subsidies on behalf of the company as part or all of the sales price (see General Issues Appendix, 58 FR at 37262 (July 9, 1993)). Therefore, to the extent that a portion of the sales price paid for a privatized company can be reasonably attributed to prior subsidies, that portion of those subsidies will be extinguished.

To calculate a rate for the subsidies that were allocated to the spin-offs, (i.e., productive units that were sold), we first determined the amount of the subsidies attributable to each productive unit by dividing the asset value of that productive unit by the total asset value of SSAB in the year of the spin-off. We then applied this ratio to the net present value ("NPV"), in the year of the spin-

off, of the future benefit streams from all of SSAB's prior subsidies allocable to the POR. The future benefit streams at the time of the sale of each productive unit reflect the Department's allocation over time of prior subsidies to SSAB in accordance with the declining balance methodology (see *e.g.*, Final Affirmative Countervailing Duty Determination; Fresh and Chilled Salmon from Norway, 56 FR 7678; 7679 (February 25, 1991)), and reflect also the prior spin-offs of SSAB productive units.

We next estimated the portion of the purchase price which represents repayment of prior subsidies by determining the portion of SSAB's net worth that was accounted for by subsidies. To do that, we divided the face value of the allocable subsidies received by SSAB in each year from fiscal year 1979 through fiscal year 1993 by SSAB's net worth in the same year. We calculated a simple average of these ratios, which was then multiplied by the purchase price of the productive unit. Thus, we determined the amount of the purchase price which represents repayment of prior subsidies. This amount was subtracted from the subsidies attributed to the productive unit at the time of sale to arrive at the amount of subsidies allocated to the productive unit being spun-off.

To calculate the subsidies remaining with SSAB after privatization, we performed the following calculations. We first calculated the NPV of the future benefit stream of the subsidies at the time of the sale of the shares taking into account the spin-offs. Next, we estimated the portion of the purchase price which represents repayment of prior subsidies in accordance with the methodology described in the "Privatization" section of the General Issues Appendix (58 FR at 37259). This amount was then subtracted from the amount of the NPV eligible for repayment, and the result was divided by the NPV to calculate the ratio representing the amount of subsidies remaining with SSAB.

To calculate the benefit provided to SSAB in the POR, where appropriate, we multiplied the benefit calculated for 1994, adjusted for sales of productive units, by the ratio representing the amount of subsidies remaining with SSAB after privatization. We then divided the results by the company's total sales in 1994.

#### Analysis of Programs

Based upon the responses to our questionnaire and written comments from the interested parties we determine the following:

#### I. Programs Previously Determined to Confer Subsidies

We did not receive any comments on the following programs from the interested parties; however, our review of the record uncovered a clerical error in our preliminary calculations. In our calculation of the subsidies remaining with SSAB after its privatization, we inadvertently calculated the future benefit stream from the nonrecurring subsidies at the time of the sale at their face value without calculating their net present value. As stated above, in order to determine the amount of subsidies remaining with SSAB and the amount of subsidies repaid, we must calculate the net present value of the remaining stream of benefits of the nonrecurring subsidies at the time of the sale. Accordingly, for these final results, we have adjusted our calculations to reflect the net present value at the time of the sale of the remaining stream of benefits from the nonrecurring subsidies listed below.

##### 1. Equity Infusions

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from interested parties; however, due to the clerical error explained above, the net subsidy for this program has changed from 0.53 percent *ad valorem* to 0.51 percent *ad valorem* for SSAB.

##### 2. Structural Loans

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from interested parties; however, due to the clerical error explained above, the net subsidy for this program has changed from 0.27 percent *ad valorem* to 0.26 percent *ad valorem* for SSAB.

##### 3. Forgiven Reconstruction Loans

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from interested parties; however, due to the clerical error explained above, the net subsidy for this program has changed from 1.18 percent *ad valorem* to 1.14 percent *ad valorem* for SSAB.

#### II. Programs Found Not to Confer Subsidies

A. Research & Development (R&D) Loans and Grants.

B. Fund for Industry and New Business R&D.

In the preliminary results, we found these programs did not confer subsidies during the POR. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results.

#### III. Program Found to be Not Used

In the preliminary results, we found that the producer/exporter of the subject merchandise did not apply for or receive benefits under the following programs:

A. Regional Development Grants.

B. Transportation Grants.

C. Location-of Industry Loans.

Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results.

#### IV. Program Found to be Terminated

In the preliminary results, we found the following program to be terminated and that no residual benefits were being provided:

##### Mining Exploration Grants

Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results.

#### Analysis of Comments

*Comment:* Petitioners argue that the Department's privatization methodology is contrary to economic reality, and is inconsistent with the countervailing duty statute. Petitioners claim that the Department's determination that privatization "repays" a portion of the subsidies received before privatization is contrary to economic reality because resources provided to SSAB by the Government of Sweden (GOS) still remain with the company after privatization. According to petitioners, these resources, which "represented a flow of resources into SSAB that the market would not have provided," continue to benefit the subject merchandise. No resources were transferred from SSAB back to the GOS. Furthermore, petitioners argue that the Department's privatization methodology is contrary to the countervailing duty statute because 19 U.S.C. 1671(a) requires that subsidies bestowed upon the production, manufacture, or exportation of merchandise imported into the United States be countervailed. Petitioners maintain that the subsidies received by SSAB continue to benefit the production of the subject merchandise after privatization. Thus,

these subsidies continue to be fully countervailable.

The respondent claims in its rebuttal that the same arguments against the Department's privatization methodology were raised by the petitioners in the first administrative review. Respondents argue that petitioners have provided no new arguments that would warrant the Department to reconsider its privatization methodology. Therefore, the Department should continue to apply its privatization methodology in the final results of this administrative review.

*Department's Position:* Petitioners' claim that the Department's privatization methodology is contrary to economic reality and inconsistent with the countervailing duty statute is erroneous. On the contrary, the application of this methodology is well within the Department's discretion. The countervailing duty law instructs Commerce to identify, measure and allocate subsidies. The law is intended to provide remedial relief in the form of countervailing duties. See, e.g., *Chaparral Steel Co. v. United States*, 901 F. 2d 1097, 1103-1104 (Fed. Cir. 1990). As we explained in the General Issues Appendix, the Department interprets the law as allowing for the repayment or reallocation of prior subsidies. See also, *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Countervailing Duty Administrative Review*, 61 FR 58377; 58381 (November 14, 1996). In the context of the sale of a government-owned company, the Department found that a portion of the price paid for a privatized company can go toward a partial repayment of prior subsidies. General Issues Appendix, 58 at 37262-37263.

The General Issues Appendix is not inconsistent with the URAA with regard to this issue. The URAA purposely leaves discretion to the Department. It provides the Department with the flexibility to determine both whether, and to what extent, a change in ownership affects the countervailability of past subsidies. See, e.g., section 771(5)(F) of the Act and Final Affirmative Countervailing Duty Determination: *Certain Pasta from Italy*, 61 FR at 30298. This clearly was Congress' intent when it stated that "[t]he Commerce Department should continue to have the discretion to determine whether, and to what extent (if any), actions such as the 'privatization' of a government-owned company actually serve to eliminate such subsidies." S. Rep. No. 412, 103d

Cong., 2nd Sess. 92 (1994) (emphasis added).

Accordingly, as in the preliminary results, we continue to find that because SSAB was a subsidized government-owned company, a portion of the price paid for the privatized company represents partial repayment of subsidies which were received prior to privatization. See, Final Affirmative Countervailing Duty Determinations: *Certain Steel Products from Sweden* (58 FR 37385, July 9, 1993).

#### Final Results of Review

In accordance with 19 CFR 355.22(c)(7)(ii), we calculated a subsidy rate for the producer/exporter subject to this administrative review. As a result of correcting the clerical errors in the preliminary results, we determine the net subsidy for SSAB to be 1.91 percent *ad valorem* for the period January 1, 1994 through December 31, 1994.

We will instruct the U.S. Customs Service ("Customs") to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentages detailed above of the f.o.b. invoice price on all shipments of the subject merchandise from the reviewed company, entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. See 19 C.F.R. 355.22(a). Pursuant to 19 C.F.R. 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. See *Federal-Mogul Corporation and The Torrington Company v. United States*, 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council v. United States*, 822 F.Supp. 766 (CIT 1993) (interpreting 19 C.F.R. 353.22(e), the antidumping regulation on automatic assessment, which is

identical to 19 C.F.R. 355.22(g), the countervailing duty regulation on automatic assessment. Therefore, the cash deposit rates for all companies except SSAB will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding conducted pursuant to the statutory provisions that were in effect prior to the URAA amendments. See *Certain Cut-to-Length Carbon Steel Plate from Sweden; Final Results of Countervailing Duty Administrative Review*, 61 FR 5381 (February 12, 1996). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1994 through December 31, 1994, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 C.F.R. 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are 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: March 28, 1997.

**Robert S. LaRossa**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 97-8843 Filed 4-4-97; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

International Trade Administration  
[C-412-811]

**Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Preliminary Results of Countervailing Duty Administrative Review**

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom. The period covered by this administrative review is January 1, 1995, through December 31, 1995. For information on the net subsidy for each reviewed company, as well for all non-reviewed companies, please see the "Preliminary Results of Review" section of this notice. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to assess countervailing duties as indicated in the "Preliminary Results of Review" section of this notice. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** April 7, 1997.

**FOR FURTHER INFORMATION CONTACT:** Christopher Cassel or Dana Mermelstein, Office of CVD/AD Enforcement VI, 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 March 22, 1993, the Department published in the *Federal Register* (58 FR 15327) the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom. On March 4, 1996, the Department published a notice of "Opportunity to Request an Administrative Review" (61 FR 8238) of this countervailing duty order. We received timely requests for review from Inland Steel Bar Co. and United States/Kobe Steel Co., interested parties to this proceeding. We initiated the review, covering the period January 1, 1995,

through December 31, 1995, on April 25, 1996 (61 FR 18378).

In accordance with 19 CFR § 355.22(a), this review covers only those producers or exporters for which a review was specifically requested. Accordingly, this review covers British Steel Engineering Steel Limited (formerly United Engineering Steels Limited), and British Steel plc. On November 29, 1996, we extended the period for completion of the preliminary results pursuant to section 751(a)(3) of the Tariff Act of 1930, as amended. *Extension of the Time Limit for Certain Countervailing Duty Administrative Review*, 61 FR 60684 (November 29, 1996). Therefore, the deadline for these preliminary results is no later than March 31, 1997, and the deadline for the final results of this review is no later than 120 days from the date on which these preliminary results are published in the *Federal Register*.

**Applicable Statute**

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act.

**Scope of the Review**

Imports covered by this review are hot-rolled bars and rods of non-alloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this review are other alloy steels (as defined by the *Harmonized Tariff Schedule of the United States* (HTSUS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this review are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80. Although the HTSUS subheadings are provided for convenience and for Customs purposes,

our written description of the scope of this proceeding is dispositive.

**Verification**

As provided in section 782(i) of the Act, we verified information submitted by the Government of the United Kingdom, British Steel plc., and British Steel Engineering Steels. We followed standard verification procedures, including meeting with government and company officials and examining relevant accounting and financial records and other original source documents. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (Room B-099 of the Main Commerce Building).

**Facts Available**

Section 776(a)(2) of the Act, requires the Department to use facts available if "an interested party or any other person \* \* \* withholds information that has been requested by the administering authority \* \* \* under this title." The facts on the record show that British Steel plc received assistance during the period of review (POR) under the European Union BRITE/EuRAM program. The facts also show that this assistance was unreported in the questionnaire response, notwithstanding a specific question on this program in the Department's questionnaire. See the March 31, 1997, *Memorandum for Acting Assistant Secretary Re: Facts Available for New Subsidies Discovered at Verification*, public document, on file in the Central Records Unit, Room B-099 of the Department of Commerce).

Section 776(b) of the Act permits the administering authority to use an inference that is adverse to the interests of an interested party if that party has "failed to cooperate by not acting to the best of its ability to comply with a request for information." Such adverse inference may include reliance on information derived from: (1) The petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 or determination under section 753 regarding the country under consideration, or (4) any other information placed on the record. Because respondents were aware of the requested information but did not comply with the Department's request for such information, we find that respondents failed to cooperate by not acting to the best of their ability to comply with the Department's request. Therefore, we are using adverse inferences in accordance with section 776(b) of the Act. The adverse inference

is a finding that the BRITE/EuRAM program is specific under section 771(5A) of the Act, and that the grants constitute a financial contribution which benefits the recipient. As such, these grants are countervailable. This finding conforms with the Department's facts available determination in the *Final Affirmative Countervailing Duty Determination; Certain Pasta From Turkey*, 61 FR 30366, 30367 (June 14, 1996).

### Change in Ownership

#### (I) Background

On March 21, 1995, British Steel plc (BS plc) acquired all of Guest, Keen & Nettlefolds' (GKN) shares in United Engineering Steels (UES), the company which produced and exported the subject merchandise to the United States during the original investigation. Thus, during the POR, UES became a wholly-owned subsidiary of BS plc and was renamed British Steel Engineering Steels (BSES). For ease of reference, we will continue to refer to the company as UES in this notice.

Prior to this change in ownership, UES was a joint venture company formed in 1986 by British Steel Corporation (BSC), a government-owned company, and GKN. In return for shares in UES, BSC contributed a major portion of its Special Steels Business, the productive unit which produced the subject merchandise. GKN contributed its Brymbo Steel Works and its forging business to the joint venture. BSC was privatized in 1988 and now bears the name BS plc.

In the investigation of this case, the Department found that BSC had received a number of subsidies prior to the 1986 transfer of its Special Steels Business to UES. See *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom*, 58 FR 6237, 6243 (January 27, 1993) (*Lead Bar*). Further, the Department determined that the sale to UES did not alter the effect of these previously bestowed subsidies, and thus the portion of BSC's pre-1986 subsidies attributable to its Special Steels Business transferred to UES. *Lead Bar* at 6240.

In the 1993 certain steel products investigations, the Department modified the *Lead Bar* allocation methodology. Specifically, the Department stated that it could no longer be assumed that the entire amount of subsidies allocated to a productive unit follows it when it is sold. Rather, when a productive unit is spun-off or acquired, a portion of the sales price of the productive unit

represents the reallocation of prior subsidies. See the General Issues Appendix (GIA), appended to the *Final Countervailing Duty Determination; Certain Steel Products From Austria*, 58 FR 37217, 37269 (July 9, 1993) (*Certain Steel*). In a subsequent Remand Determination, the Department aligned *Lead Bar* with the methodology set forth in the "Privatization" and "Restructuring" sections of the GIA. *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom: Remand Determination* (October 12, 1993) (*Remand*).

#### (II) Analysis of BS plc's Acquisition of UES

On March 21, 1995, BS plc acquired 100 percent of UES. In determining how this change in ownership affects our attribution of subsidies to the subject merchandise, we relied on Section 771(5)(F) of the Act, which states that a change in ownership does not require a determination that past subsidies received by an enterprise are no longer countervailable, even if the transaction is accomplished at arm's length. The Statement of Administrative Action, H.R. Doc. No. 316, 103d Cong., 2d Sess. (1994) (SAA), explains that the aim of this provision is to prevent the extreme interpretation that the arm's length sale of a firm automatically, and in all cases, extinguishes any prior subsidies conferred. While the SAA indicates that the Department retains the discretion to determine whether and to what extent a change in ownership eliminates past subsidies, it also indicates that this discretion must be exercised carefully by considering the facts of each case. SAA at 928.

In accordance with the SAA, we have examined the facts of BS plc's acquisition of UES, and we preliminarily determine that the change in ownership does not render previously bestowed subsidies attributable to UES no longer countervailable. However, we also preliminarily determine that a portion of the purchase price paid for UES is attributable to its prior subsidies. Therefore, we have reduced the amount of the subsidies that "travel" with UES to BS plc, taking into account the allocation of subsidies to GKN, the former joint-owner of UES. See the March 31, 1997, *Memorandum For Acting Assistant Secretary Re: BS plc's March 1995 Acquisition of UES* (public document, on file in the Central Records Unit, Room B-099 of the Department of Commerce) (*Acquisition Memo*). To calculate the amount of UES' subsidies that passed through to BS plc as a result of the acquisition, we applied the

methodology described in the "Restructuring" section of the GIA. See GIA, 58 FR at 37268-37269. This determination is in accordance with our changes in ownership finding in *Final Affirmative Countervailing Duty Determination; Pasta From Italy*, 61 FR 30288, 30289-30290 (June 14, 1996), and our finding in the 1994 administrative review of this case, in which we determined that "[t]he URAA is not inconsistent with and does not overturn the Department's General Issues Appendix methodology or its findings in the *Lead Bar Remand Determination*." *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Countervailing Duty Administrative Review*, 61 FR 58377, 58379 (November 14, 1996).

With the acquisition of UES, we also need to determine whether BS plc's remaining subsidies are attributable to the subject merchandise. Where the Department finds that a company has received untied countervailable subsidies, to determine the countervailing duty rate, the Department allocates those subsidies to that company's total sales of domestically produced merchandise, including the sales of 100-percent-owned domestic subsidiaries. If the subject merchandise is produced by a subsidiary company, and the only subsidies in question are the untied subsidies received by the parent company, the countervailing duty rate calculation for the subject merchandise is the same as described above. Similarly, if such a company purchases another company, as was the case with BS plc's purchase of UES, then the current benefit from the parent company's allocable untied subsidies is attributed to total sales, including the sales of the newly acquired company. See, e.g., GIA, 58 FR at 3762 ("the Department often treats the parent entity and its subsidiaries as one when determining who ultimately benefits from a subsidy"); *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Germany*, 58 FR 37315 (July 9, 1993). Accordingly, we preliminarily determine that it is appropriate to collapse BSES with BS plc for purposes of calculating the countervailing duty for the subject merchandise. BSES, as a 100 percent-owned subsidiary of BS plc, now also benefits from the remaining benefit stream of BS plc's untied subsidies.

In collapsing UES with BS plc, we also preliminarily determine that UES' untied subsidies "rejoin" BS plc's pool of subsidies with the company's 1995 acquisition. All of these subsidies were

untied subsidies originally bestowed upon BSC (BS plc). After the formation of UES in 1986, the subsidies that "traveled" with the Special Steels Business to their new home were also untied, and were found to benefit the company as a whole. See the *Acquisition Memo*.

### (III) Calculation of Benefit

To calculate the countervailing duty rate for the subject merchandise in 1995, we first determined BS plc's benefits in 1995, taking into account all spin-offs of productive units (including the Special Steel Business) and BSC's full privatization in 1988. See *Final Affirmative Countervailing Duty Determination; Certain Steel Products from the United Kingdom*, 58 FR 37393 (July 9, 1993) (*UK Certain Steel*). We then calculated the amount of UES's subsidies that "rejoined" BS plc after the 1995 acquisition, taking into account the reallocation of subsidies to GKN. As indicated above, in determining both these amounts, we followed the methodology outlined in the *GIA*. After adding BS plc's and UES' benefits for each program, we then divided that amount by BS plc's total sales of domestically produced merchandise in 1995.

In this administrative review, we preliminarily find it appropriate to make two changes to the calculation methodology. These changes involve (1) The calculation of the net present value in administrative reviews and (2) the period of allocation for non-recurring subsidies.

#### (1) The Net Present Value Calculation in Administrative Reviews

To calculate the benefit to UES in the original investigation, we determined the subsidies that were allocated from BSC to UES by following the *GIA* methodology described above. To do this, we first divided the asset value of BSC's Special Steels Business by the value of BSC's total assets. This ratio represents the portion of BSC's subsidies that were attributable to its Special Steels Business. The Department then applied this ratio to the net present value, in the year of the spin-off, of the future benefit streams from all of BSC's prior subsidies. The future benefit stream took into account prior spin-offs of BSC productive units. That amount represented the subsidies allocated to the Special Steels Business.

The Department next estimated the portion of the purchase price that could be attributed to prior subsidies by determining the portion of BSC's net worth that was accounted for by subsidies at the time of the spin-off.

This was calculated by dividing the face value of the allocable subsidies received by BSC in each year from fiscal year 1977/78 through fiscal year 1984/85 (the year prior to the spin-off) by BSC's net worth in the same year. The simple average of these ratios was then multiplied by the purchase price of the productive unit to determine the portion of the purchase price that can be attributed to prior subsidies. This amount was then subtracted from the amount of subsidies attributed to BSC's Special Steels Business at the time of the sale. The result is the amount of subsidies allocated to UES in 1986. We then divided the subsidies allocated to UES by the net present value in 1986 of the future benefit streams from all non-recurring subsidies received by BSC prior to the spin-off. The resulting percentage represented the portion of BSC's future benefit streams apportioned to UES. This percentage was then multiplied by the benefit amount from BSC's previously bestowed subsidies. The result represented the total amount of countervailable subsidies to UES for that period.

In each of the two prior administrative reviews of this case, and in each administrative review of other cases involving changes in ownership, we recalculated the amount of subsidies that were extinguished due to privatization, or which "pass-through" as a result of a change in ownership. Specifically, we revisited the original privatization or change in ownership calculation, and excluded from the future benefit streams subsidies whose benefit had expired in the year prior to the POR. We then recalculated the net present value of the remaining subsidies in the year of the transaction. This recalculation results in a change in the amount of subsidies that pass-through or that may be extinguished as a result of a change in ownership. The rationale underlying that approach was that in the calculation for a specific POR, the net present value of the future stream of benefits should include only the subsidies benefitting the company during the POR.

We have revisited that methodology in this administrative review and preliminarily determine that it is not appropriate to modify the calculation in the manner described above. The change in ownership of a company is a fixed event at a particular point in time. Thus, the percentage of subsidies that "travel" with a company or that may be extinguished due to privatization in a given year is also fixed at that same point in time and does not change. See the March 31, 1997, *Memorandum for Acting Assistant Secretary Re:*

*Privatization/Change in Ownership Calculation Methodology* (public document on file in the Central Records Unit, Room B-099 of the Department of Commerce). Therefore, the pass-through percentage will no longer be altered once it has initially been determined in an investigation or administrative review. We have modified the UES spin-off calculations in this administrative review to reflect the change outlined above.

#### (2) Allocation Methodology

In the past, the Department has relied upon information from the U.S. Internal Revenue Service (IRS) on the industry-specific average useful life (AUL) of assets in determining the allocation period for non-recurring subsidies. *GIA*, 58 FR at 37226. However, in *British Steel plc. v. United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel I*), the U.S. Court of International Trade (the Court) ruled against this allocation methodology. In accordance with the Court's remand order, the Department calculated a company-specific allocation period based on the AUL of non-renewable physical assets for BS plc. This allocation period was 18 years. This remand determination was affirmed by the Court on June 4, 1996. *British Steel plc v. United States*, 929 F. Supp. 426, 439 (CIT 1996) (*British Steel II*).

The Department has acquiesced to the Court's decision and, as such, we have been determining the allocation period for non-recurring subsidies using company-specific AUL data where reasonable and practicable. In other cases, the Department has stated that it is reasonable and practicable to allocate all new non-recurring subsidies (*i.e.*, subsidies that have not yet been assigned an allocation period) based on a company-specific AUL. However, we have further determined that if a subsidy has already been countervailed based on an allocation period established in an earlier segment of the proceeding, it does not appear reasonable or practicable to reallocate that subsidy over a different period of time. In other words, since the countervailing duty rate in earlier segments of the proceeding was calculated based on a certain allocation period and resulting benefit stream, redefining the allocation period in later segments of the proceeding would entail taking the original grant amount and creating an entirely new benefit stream for that grant. Such a practice may lead to an increase or decrease in the amount countervailed and, thus, would result in the possibility of over-countervailing or under-countervailing the actual benefit.

As such, the Department found that a more reasonable and accurate approach was, normally, to continue using the allocation period first assigned to the subsidy. See, e.g., *Certain Carbon Steel Products from Sweden; Preliminary Results of Countervailing Duty Administrative Review*, 61 FR 64062 (December 3, 1996) (*Swedish Steel*).

However, notwithstanding the general approach outlined above, due to the unique circumstances of this case, we preliminarily determine that it is appropriate to change the allocation period for the previously bestowed subsidies attributed to UES, even though all of these subsidies were bestowed prior to the POR and had established allocation periods. The Department's acquiescence to the CIT's decision in the *Certain Steel* cases has resulted in different allocation periods between the *UK Certain Steel* and *Lead Bar* proceedings (18 years vs. 15 years). Different allocation periods for the same subsidies in two different proceedings involving the same company generate significant inconsistencies. For instance, the portion of BSC's subsidies attributed to UES in *UK Certain Steel* is different from the portion calculated in the *Lead Bar* proceeding. Furthermore, with BS plc's reacquisition of UES in 1995, UES became a wholly-owned subsidiary of BS plc. Because we have now collapsed the two companies, UES' subsidies now "rejoin" BS plc's subsidies (see the *Acquisition Memo*). To maintain a consistent allocation period across the *Lead Bar* and *UK Certain Steel* proceedings, as well as in the different segments of *Lead Bar*, we preliminarily determine that it is appropriate to apply the company-specific 18-year allocation period to all non-recurring subsidies in this review. See the March 31, 1997, *Memorandum For Acting Assistant Secretary Re: Allocation Period for Nonrecurring Subsidies* (in the Central Records Unit of the Department of Commerce, Room B-099 of the Main Commerce Building) (*Allocation Memo*).

## Analysis of Programs

### I. Programs Conferring Subsidies

In determining the subsidies previously bestowed to BSC/BS plc that were allocated to UES, we examined the following programs: equity infusions, Regional Development Grants, a National Loan Fund loan cancellation, and loans and interest rebates under ECSC Article 54.

#### (A) Equity Infusions

In every year from 1978/79 through 1985/86, BSC/BS plc received equity capital from the Secretary of State for

Trade and Industry pursuant to section 18(1) of the Iron and Steel Acts 1975, 1981, and 1982. According to section 18(1), the Secretary of State for the Department of Trade and Industry may "pay to the Corporation (BSC) such funds as he sees fit." The Government of the United Kingdom's equity investments in BSC/BS plc were made pursuant to an agreed external financing limit which was based upon medium-term financial projections. BSC's performance was monitored by the Government of the United Kingdom on an ongoing basis and requests for capital were examined on a case-by-case basis. The UK government did not receive any additional ownership, such as stock or additional rights, in return for the capital provided to BSC/BS plc under section 18(1) since it already owned 100 percent of the company.

In *Lead Bar* (58 FR at 6241), the Department found BSC/BS plc to be unequityworthy from 78/79 through 1985/86, and thus determined that the Government of the United Kingdom's equity infusions were inconsistent with commercial considerations. Although, prior to the formation of UES, BSC's section 18(1) equity capital was written off in two stages (£3,000 million in 1981 and £1,000 million in 1982) as part of a capital reconstruction of BSC, the Department determined that BSC/BS plc benefitted from these equity infusions, notwithstanding the subsequent write-off of equity capital. Therefore, the Department countervailed the equity investments as grants given in the years the equity capital was received. No new information or evidence of changed circumstances was presented in this review to warrant a reconsideration of that finding.

Because the Department determined in *Lead Bar* that the infusions are non-recurring, we have allocated the benefits over BS plc's company-specific average useful life of renewable physical assets (18 years).

To calculate the benefit from these grants, we have used a discount rate which includes a risk premium. See, e.g., *Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Mexico*, 58 FR 37352, 37354 (July 9, 1993) (*Mexican Steel*). While uncreditworthiness was not specifically alleged or investigated during the investigation on *lead bar*, in *UK Certain Steel* the Department found that BSC/BS plc was uncreditworthy from 1977/78 through 1985/86. No new information or evidence of changed circumstances was presented in this review to warrant a reconsideration of that finding.

To calculate the benefit to the subject merchandise from this program, we first summed the benefit to BS plc from all infusions allocated to 1995. Then, we determined the portion of that benefit still remaining with BS plc after accounting for privatization and spin-offs. To that we added the portion of UES's subsidies under this program that "rejoined" BS plc with the acquisition. See the "Change in Ownership" section of the notice. We then divided the result by BS plc's total sales of all products domestically-produced during 1995. On this basis, we preliminarily determine the net subsidy for this program to be 6.55 percent *ad valorem* in 1995.

#### (B) Regional Development Grant Program

Regional development grants were paid to BSC/BS plc under the Industry Act of 1972 and the Industrial Development Act of 1982. In order to qualify for assistance under these two Acts, an applicant had to be engaged in manufacturing and located in an assisted area. Assisted areas are older, industrial regions identified as having deep-seated, long-term problems such as high levels of unemployment, migration, slow economic growth, derelict land, and obsolete factory buildings. Regional development grants were given for the purchase of specific assets. According to the Government of the United Kingdom, the program involved one-time grants, sometimes disbursed over several years.

BSC/BS plc received regional development grants during the period between fiscal years 1978/79 and 1985/86. The Department found this program countervailable in *Lead Bar* (58 FR at 6242), because it is limited to specific regions. No new information or evidence of changed circumstances was presented in this review to warrant a reconsideration of that finding.

In *Lead Bar*, we determined that, since each grant required a separate application, these grants are non-recurring. Accordingly, we have calculated the benefits from this program by allocating the benefits over BS plc's company-specific average useful life of renewable physical assets (18 years). See *British Steel II*, 929 F. Supp. at 439. Since BSC/BS plc was uncreditworthy from 1978/79 through 1985/86 (as discussed under the "Equity Infusions" section, above), we have used a discount rate which includes a risk premium (see *Mexican Steel*, 58 FR at 37354) to calculate the benefits from these grants.

To calculate the benefit from this program, we followed the same methodology described above for equity



infusions. On this basis, we preliminarily determine the net subsidy for this program to be 0.23 percent *ad valorem* in 1995.

#### (C) National Loan Funds Loan Cancellation

In conjunction with the 1981/1982 capital reconstruction of BSC, section 3(1) of the Iron and Steel Act of 1981 extinguished certain National Loans Fund (NLF) loans, as well as the accrued interest thereon, at the end of BSC's 1980/81 fiscal year. Because this loan cancellation was provided specifically to BSC, the Department determined in *Lead Bar* (58 FR at 6242) that it provided a countervailable benefit. No new information or evidence of changed circumstances was presented in this review to warrant a reconsideration of that finding.

We calculated the benefit for this review using our standard methodology for non-recurring grants. We allocated the benefits from this loan cancellation over BS plc's company-specific average useful life of renewable physical assets (18 years). See *British Steel II*, 929 F. Supp. at 439. Because BSC/BS plc was found to be uncreditworthy in 1981/82 (as discussed under "Equity Infusions" section, above), we have used a discount rate which includes a risk premium. See *Mexican Steel*, 58 FR at 37354.

To calculate the benefit from this program, we followed the same methodology described above for equity infusions. On this basis, we preliminarily determine the net subsidy for this program to be 0.56 percent *ad valorem* in 1995.

#### (D) European Coal and Steel Community (ECSC) Article 54 Loans/Interest Rebates

The European Coal and Steel Community's (ECSC) Article 54 Industrial Investment loans are direct, long-term loans from the Commission of the European Communities to be used by the iron and steel industry for purchasing new equipment or financing modernization. The purpose of the program is to facilitate the borrowing process for companies in the ECSC, some of which may not otherwise be able to obtain loans. In *UK Certain Steel*, the Department determined that this program is limited to the iron and steel industry, and thus is countervailable to the extent that it provides loans on terms inconsistent with commercial considerations. 58 FR at 37397. No new information or evidence of changed circumstances was presented in this review to warrant a reconsideration of that finding.

In addition, interest rebates on Article 54 loans were granted to steel

companies during the restructuring and modernization of the industry in the early 1980s. To qualify for the rebates, companies had to meet certain criteria, such as being in the process of reducing their steel production capacity or of implementing improvements in processing that would yield energy savings and improved efficiency.

The interest rebates, which were limited to a maximum of 3 percent of the total investment over a period of five years, were funded from the ECSC operational budget. While levies imposed on ECSC steel companies have provided the revenues for the operational budget since 1985, contributions by Member States supplemented the budget before that time. For this reason, the Department determined in *UK Certain Steel* that a portion of those interest rebates was countervailable. *Id.* Following the same methodology in this review to determine the countervailable portion, we calculated the ratio of the contributions by Member States to the ECSC's total available funds for each year in which the rebates were given, and then multiplied this ratio by the rebate amount.

BSC/BS plc received one Article 54 loan in fiscal year 76/77 and two Article 54 loans in fiscal year 77/78, all of which were provided in U.S. dollars were still outstanding during the POR. BSC/BS plc also received interest rebates during the first five years of the 76/77 loan. Because BSC/BS plc qualified for the interest rebate at the time the loan was granted, we considered the rebate to constitute a reduction in the interest rate charged rather than a grant.

We considered the loan made to BSC/BS plc during its creditworthy period (*i.e.*, in BSC's 76/77 fiscal year) separately from the two loans made during its uncreditworthy period (*i.e.*, in BSC's 77/78 fiscal year). For the Article 54 loan provided when BSC/BS plc was creditworthy, we used as our benchmark the average U.S. long-term commercial rate for 1977. We used this rate because we did not have information on U.S. dollar loans borrowed in the United Kingdom in 1977. To calculate the benefit from this loan we employed our long-term loan methodology. See, *e.g.*, *Final Affirmative Countervailing Duty Determinations: Certain Steel Products From France*, 58 FR 37304, 37308 (July 9, 1993) (*French Steel*). We then compared the amount of interest that would have been paid on the benchmark loan to the interest paid by BSC/BS plc (factoring in the interest rebate as discussed above) and found

that BSC's interest payments were higher than those it would have made on the benchmark loan. Therefore, we find that this particular loan was provided on terms consistent with commercial considerations.

For the loans provided when BSC/BS plc was uncreditworthy, we used as our benchmark the highest U.S. lending rate available for long-term fixed rate loans at the time the loan was granted, plus a risk premium equal to 12 percent of the U.S. prime rate for 1977. See, *e.g.*, *Final Affirmative Countervailing Duty Determination: New Steel Rail, Except Light Rail, from Canada*, 54 FR 31991 (August 3, 1989); see also, *French Steel*, 58 FR at 37309. Again, we used a U.S. interest rate because we did not have information on U.S. dollar loans borrowed in the United Kingdom in 1977. We then compared the cost of the benchmark financing to the cost of the financing that BSC/BS plc received under this program and found that the two Article 54 loans to BSC/BS plc during its uncreditworthy period were provided on terms inconsistent with commercial considerations.

To calculate the benefit from these loans we used our long-term loan methodology and a benchmark discount rate which includes a risk premium\* (*French Steel*, 58 FR at 37308). We first calculated the grant equivalent and allocated it over the life of the loans. We then followed the same methodology described above for equity infusions. On this basis, we preliminarily determine the net subsidy for this program to be 0.001 percent *ad valorem* in 1995.

#### (E) BRITE/EuRAM

As explained in the "Facts Available" section of this notice, BS plc received assistance under the BRITE/EuRAM program during the POR that was unreported in the questionnaire response, notwithstanding a specific question on this program in the Department's questionnaire. Because respondents failed to comply with the Department's request for information, we are applying adverse inferences in accordance with section 776(b) of the act. Therefore, we preliminarily determine that the BRITE/EuRAM program is specific under section 771(5A) of the Act and, therefore, countervailable. See the March 31, 1997, Memorandum for Acting Assistant Secretary Re: *Facts Available for New Subsidies Discovered at Verification*, public document, on file in the Central Records Unit, Room B-099 of the Department of Commerce.

We have calculated the benefit under this program for the POR using our standard methodology for non-recurring

grants. See *GIA*, 58 FR at 37226.

However, the grants received by BS plc under this program were less than 0.5 percent of BS plc's total sales, and thus were allocated to the year of receipt. On this basis, we preliminarily determine the net subsidies for this program to be 0.001 percent *ad valorem*.

### II. Programs Preliminarily Determined To Be Not Used

We examined the following programs and preliminarily find that the producers and/or exporters of the subject merchandise subject to this review did not apply for or receive benefits under these programs during the POR:

- (A) New Community Instrument Loans
- (B) ECSC Article 54 Loan Guarantees
- (C) NLF Loans
- (D) ECSC Conversion Loans
- (E) European Regional Development Fund Aid
- (F) Article 56 Rebates
- (G) Regional Selective Assistance
- (H) ECSC Article 56(b)(2) Redeployment Aid
- (I) Inner Urban Areas Act of 1978
- (J) LINK Initiative
- (K) Transportation Assistance

### III. Programs Preliminarily Determined To Be Terminated Transportation Assistance

The Department originally found that BS plc received preferential rail transport freight subsidies under this program in the *Certain Steel* investigation. *UK Certain Steel*, 58 FR at 37397. During this administrative review, however, we found that this program has been terminated and that there are no residual benefits. See the March 31, 1997, Memorandum to the File Re: *Transportation Assistance* (public document on file in the Central Records Unit, Room B-099 of the Department of Commerce).

### Preliminary Results of Review

In accordance with 19 CFR 355.22(c)(4)(ii), we have calculated an individual subsidy rate for each producer/exporter subject to this administrative review. As discussed in the "Change in Ownership" section of the notice, above, we are treating British Steel plc and British Steel Engineering Steels as one company for purposes of this proceeding. For the period January 1, 1995 through December 31, 1995, we preliminarily determine the net subsidy for British Steel plc/British Steel Engineering Steel/United Engineering Steel (BS plc/BSES/UES) to be 7.35 percent *ad valorem*. If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to assess countervailing duties

for BS plc/BSES at 7.35 percent *ad valorem*. The Department also intends to instruct the U.S. Customs Service to collect a cash deposit of 7.35 percent of the f.o.b. invoice price on all shipments of the subject merchandise from BS plc/BSES/UES, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

The URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies. The procedures for countervailing duty cases are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. Requests for administrative reviews must now specify the companies to be reviewed. See 19 CFR § 355.22(a). The requested review will normally cover only those companies specifically named. Pursuant to 19 CFR § 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. See *Federal-Mogul Corporation and The Torrington Company v. United States*, 822 F. Supp. 782 (CIT 1993); see also, *Floral Trade Council v. United States*, 822 F. Supp. 766 (CIT 1993) (interpreting 19 CFR § 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR § 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review. We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company.

Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are 20.33 percent *ad valorem* for Allied Steel Wire and 9.76 percent *ad valorem* for all other non-reviewed companies, which are the rates calculated in the most recently completed administrative proceeding. See *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Countervailing Duty Administrative Review*, 60 FR 54841 (October 26, 1995). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1995 through

December 31, 1995, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

### Public Comment

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Parties who submit argument in this proceeding are requested to submit with the argument (1) A statement of the issue and (2) a brief summary of the argument. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR § 355.38.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR § 355.38, are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: March 31, 1997.

**Robert S. LaRussa,**

Acting Assistant Secretary for Import Administration.

[FR Doc. 97-8841 Filed 4-4-97; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 033197H]

### Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will convene public meetings of the Mackerel Advisory Panel (AP) and Standing and Special Mackerel Scientific and Statistical Committee (SSC).

**DATES:** The meetings are scheduled as follows: Standing and Special Mackerel SSC will meet on April 30, 1997, from 8:00 a.m. to 3:30 p.m.; Mackerel AP will meet on May 1, 1997, from 8:00 a.m. to 3:00 p.m.

**ADDRESSES:** The meetings will be held at the New Orleans Airport Radisson Hotel, 2150 Veterans Boulevard, Kenner, LA 70062; telephone: 504-467-3111.

*Council address:* Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

**FOR FURTHER INFORMATION CONTACT:** Dr. Richard Leard, Senior Fishery Biologist; telephone: 813-228-2815.

**SUPPLEMENTARY INFORMATION:** The Standing and Special Mackerel SSC will review the 1997 stock assessment updates for both king and Spanish Mackerel and the report of the Socioeconomic Panel (SEP) that includes economic and social information related to setting an allowable biological catch range and bag limits for mackerels in the Gulf of Mexico and South Atlantic. Based on this review, the SSC may recommend to the Council levels for total allowable catch, bag limits, size limits, commercial quotas, and other measures for these species for the 1997-98 season.

The Mackerel AP will also review the 1997 stock assessment updates for both king and Spanish Mackerel and the report of the SEP. The AP will also provide recommendations to the Council based on their perspectives as users of these resources.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by April 23, 1997.

Dated: April 1, 1997.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 97-8739 Filed 4-4-97; 8:45 am]

BILLING CODE 3510-22-F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 033197G]

#### Gulf of Mexico Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting via conference call on April 22, 1997, beginning at 10:00 a.m. eastern standard time (EST)/9:00 a.m. central standard time (CST) to resolve inconsistencies in their advice to the Council on vermilion snapper minimum size limits and allowable biological catch recommendations. The Council is considering an increase in the vermilion snapper minimum size limit from 8-inches to 10-inches total length in order to stop a decline in the vermilion snapper stock and prevent the stock from becoming overfished. In November 1996, the Reef Fish Stock Assessment Panel (RFSAP) had stated that changes in the minimum size limit would have very little impact on the resource, but in February 1997, the RFSAP concluded that increasing the minimum size limit to 10-inches total length would reduce overall harvest by about 33 percent.

**DATES:** The meeting will be held on April 22, 1997, beginning at 10:00 a.m. EST/9:00 a.m. CST.

**ADDRESSES:** A listening phone will be located at each of the following locations:

1. NMFS Southeast Regional Office, 9721 Executive Center Drive North, St. Petersburg, FL; telephone: 813-570-5335;
2. NMFS Panama City Laboratory, 3500 Delwood Beach Road, Panama City, FL; telephone: 904-234-6541;
3. NMFS Miami Laboratory, 75 Virginia Beach Drive, Miami, FL; telephone: 305-361-4487.

*Council address:* Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

**FOR FURTHER INFORMATION CONTACT:** Steven Atran, Population Dynamic Statistician; telephone: 813-228-2815.

#### Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the

Council (see **ADDRESSES**) by April 15, 1997.

Dated: April 1, 1997.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 97-8740 Filed 4-4-97; 8:45 am]

BILLING CODE 3510-22-F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 033197F]

#### Gulf of Mexico Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Reef Fish Advisory Panel (AP).

**DATES:** The meeting will be held on May 2, 1997, from 8:00 a.m. to 3:00 p.m.

**ADDRESSES:** The meeting will be held at the at the Radisson Bay Harbor Inn, 7700 Courtney Campbell Causeway, Tampa, FL 33607; telephone: 813-281-8000.

*Council address:* Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

**FOR FURTHER INFORMATION CONTACT:** Steven Atran, Population Dynamics Statistician; telephone: 813-228-2815.

**SUPPLEMENTARY INFORMATION:** The Reef Fish AP will review draft Reef Fish Amendment 15 which contains: proposals for a red snapper commercial license limitation system; limits on harvest of reef fish from crustacean traps; a vermilion snapper minimum size limit increase; removal of sea bass, grunts, and porgies from Federal management; and removal of several reef fish species from the aggregate bag limit rule. The Red Snapper AP may also provide recommendations to the Council, and the AP will also hear a presentation on marine reserves from NMFS.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by April 25, 1997.

Dated: April 1, 1997.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97-8741 Filed 4-4-97; 8:45 am]

BILLING CODE 3510-22-F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 033197E]

#### Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will convene public meetings of the Red Snapper Advisory Panel (AP) and Standing and Special Reef Fish Scientific and Statistical Committee (SSC).

**DATES:** The meetings are scheduled as follows: Red Snapper AP will meet on April 28, 1997, from 10:00 a.m. to 5:00 p.m.; Standing and Special Reef Fish SSC will meet on April 29, 1997, from 10:00 a.m. to 5:00 p.m.

**ADDRESSES:** The meetings will be held at the New Orleans Airport Radisson Hotel, 2150 Veterans Boulevard, Kenner, LA 70062; telephone: 504-467-3111.

**Council address:** Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

**FOR FURTHER INFORMATION CONTACT:** Steven Atran, Population Dynamics Statistician; telephone: 813-228-2815.

**SUPPLEMENTARY INFORMATION:** The Red Snapper AP will review draft Reef Fish Amendment 15 which contains: proposals for a red snapper commercial license limitation system; limits on harvest of reef fish from crustacean traps; a vermilion snapper minimum size limit increase; removal of sea bass, grunts, and porgies from Federal management; and removal of several reef fish species from the aggregate bag limit rule. The Red Snapper AP may also provide recommendations to the Council, and the AP will also hear a presentation on marine reserves from NMFS.

The SSC will also review draft Reef Fish Amendment 15 and provide recommendations on the scientific merits of the alternatives contained within.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see ADDRESSES) by April 21, 1997.

Dated: April 1, 1997.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97-8742 Filed 4-4-97; 8:45 am]

BILLING CODE 3510-22-F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 040197A]

#### Marine Mammals; Scientific Research Permits (PHF#s 779\_1339 and 849\_1341)

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

ACTION: Receipt of applications.

**SUMMARY:** Notice is hereby given that the following applicants, have applied in due form for a permit to take and/or import marine mammals for purposes of scientific research.

The Southeast Fisheries Science Center, NMFS (PHF#779\_1339), 75 Virginia Beach Drive, Miami, FL 33149; and

The University of Oklahoma, Department of Zoology, 730 Van Vleet Oval, Norman, OK 73019-0235.

**DATES:** Written comments must be received on or before May 7, 1997.

**ADDRESSES:** The applications and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289); and

Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702-2432 (813-570-5301).

Written data or views, or requests for a public hearing on these requests, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the Federal Register, NMFS is forwarding copies of the applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

**SUPPLEMENTARY INFORMATION:** The subject permits are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

Southeast Fisheries Science Center (PHF# 779-1339) requests a permit to (1) harass all species of cetaceans for the purpose of estimating abundance, collecting behavioral data, photography and biopsy sampling, and (2) collect and import biopsy tissue samples taken with a projectile dart. Activities will occur in the North Atlantic Ocean including the Gulf of Mexico, Caribbean Sea, U.S. territorial seas and international waters.

University of Oklahoma, Department of Zoology (PHF# 849-1341) requests authority to import two skeletal remains of the South American dolphin (*Sotalia fluviatilis*) from Managua, Nicaragua for deposit at the Oklahoma Museum of Natural History for use in scientific research projects. The axial skeletons and skulls were found on the beach and are being held by the Nicaraguan Government pending receipt of appropriate permits.

Dated: April 1, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97-8757 Filed 4-4-97; 8:45 am]

BILLING CODE 3510-22-F

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Thursday, April 24, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C. Lobby Level Hearing Room.

STATUS: Open.

**MATTERS TO BE CONSIDERED:**

Third Quarter FY 1997 Objectives Report by the Division of Economic Analysis regarding Initiative on Options Large Trader Reports and Final Rules

**CONTACT PERSON FOR MORE INFORMATION:**

Jean A. Webb, 202-418-5100.

Jean A. Webb,  
*Secretary of the Commission.*

[FR Doc. 97-9000 Filed 4-3-97; 3:48 pm]

**BILLING CODE 6351-01-M**

**COMMODITY FUTURES TRADING COMMISSION****Sunshine Act Meeting**

**AGENCY HOLDING THE MEETING:**  
Commodity Futures Trading Commission.

**TIME AND DATE:** 10:00 a.m., Monday, April 28, 1997.

**PLACE:** 1155 21st St. N.W., Washington, D.C. 9th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**  
Enforcement Matters.

**CONTACT PERSON FOR MORE INFORMATION:**  
Jean A. Webb, 202-418-5100.

Jean A. Webb,  
*Secretary of the Commission.*

[FR Doc. 97-9001 Filed 4-3-97; 3:48 pm]

**BILLING CODE 6351-01-M**

**COMMODITY FUTURES TRADING COMMISSION****Sunshine Act Meeting**

**AGENCY HOLDING THE MEETING:**  
Commodity Futures Trading Commission.

**TIME AND DATE:** 10:30 a.m., Monday, April 28, 1997.

**PLACE:** 1155 21st St. N.W., Washington, D.C. 9th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**  
Enforcement Quarterly Review.

**CONTACT PERSON FOR MORE INFORMATION:**  
Jean A. Webb, 202-418-5100.

Jean A. Webb,  
*Secretary of the Commission.*

[FR Doc. 97-9002 Filed 4-3-97; 3:48 pm]

**BILLING CODE 6351-01-M**

**DEPARTMENT OF DEFENSE****Department of the Army  
Corps of Engineers**

**Jacksonville District, Jacksonville, Florida, 32202; Intent to Prepare a Draft Environmental Impact Statement (DEIS) for the Dade County Erosion Control and Hurricane Protection Project, Project Modification at Sunny Isles**

**AGENCY:** U.S. Army Corps of Engineers, Department of Defense.

**ACTION:** Correction.

**SUMMARY:** In previous Federal Register notice (Vol. 62, No. 13, pages 3012-3013) Tuesday, January 21, 1997, make the following correction. On page 3013 in column 2, paragraph entitled DEIS Preparation, change the estimated date the DEIS will be available to the public from February 1, 1997, to September 15, 1997.

We continue to invite the participation of all interested parties in the scoping process by identifying any additional concerns on issues, studies needed, alternatives, procedures or other related matters.

**FOR FURTHER INFORMATION CONTACT:**  
Kenneth Dugger, at 904-232-1686, Environmental Branch, Planning Division, P.O. Box 4970, Jacksonville, Florida 32232-0019.

Dated: March 21, 1997.

**Hanley K. Smith,**  
*Acting Chief, Planning Division.*

[FR Doc. 97-8758 Filed 4-4-97; 8:45 am]

**BILLING CODE 3710-AJ-M**

**DEPARTMENT OF DEFENSE****Department of the Navy**

**Notice of Intent To Prepare an Environmental Impact Statement for the Proposed West Coast Introduction of the F/A-18 E/F Aircraft**

**SUMMARY:** Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500-1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the environmental impacts of the West Coast introduction of F/A-18 E/F aircraft, associated functional and administrative components, and associated military personnel. Naval Air Station (NAS) Lemoore, Naval Air Weapons Station (NAWS) Pt. Mugu, and Naval Air Facility (NAF) El Centro,

California are proposed as potential basing locations.

This process involves retiring older aircraft from active use and incorporating the new F/A-18 E/F into service. The new aircraft will continue to support operations of the U.S. Pacific Fleet.

Major environmental issues addressed in the EIS will include, but are not limited to, air space, operational training capability, socioeconomic and environmental justice impacts, air quality, noise, endangered species, cultural resources, traffic, local infrastructure impacts, and cumulative impacts.

**ADDRESSES:** The Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this action. The Navy will hold public scoping meetings on Monday, April 28, 1997 at 7 p.m. at the Lemoore High School Cafeteria, 101 East Bush Street, Lemoore, California; on Tuesday, April 29, 1997 at 7 p.m. at the Imperial County Board of Supervisors Office, 940 West Main Street, El Centro, California; and on Wednesday, April 30, 1997 at 7 p.m. in the Bougainvillea Room, Orchid Professional Building, 816 Camarillo Springs Road, Camarillo, California. A brief presentation will precede a request for public comments. Navy representatives will be available at this meeting to receive comments from the public regarding information on issues of concern. It is important that federal, state, and local agencies and interested individuals take this opportunity to provide information or identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commenter believes the EIS should address.

**FOR FURTHER INFORMATION CONTACT:** Written statements and/or questions regarding the scoping process should be mailed to: Commanding Officer, Engineering Field Activity West, Naval Facilities Engineering Command, 900 Commodore Drive, San Bruno, CA 94066-5006 (Attention: Mr. Surinder Sikand, Code 18511), telephone (415) 244-3020, fax (415) 244-3737. All

comments must be received no later than May 23, 1997.

Dated: April 1, 1997.

**D.E. Koenig,**

*LCDR, JAGC, USN, Federal Register Liaison Officer.*

[FR Doc. 97-8720 Filed 4-4-97; 8:45 am]

BILLING CODE 3810-FF-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP97-230-001]

#### Florida Gas Transmission Company; Notice of Compliance Filing

April 1, 1997.

Take notice that on March 26, 1997, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 the following tariff sheets, with an effective date of April 1, 1997:

**Second Revised Sheet No. 115**

Original Sheet No. 115A

FGT states that on January 16, 1997, FGT filed revised Tariff sheets in Docket, No. RP97-230-000 (January 16 Filing) to eliminate the shipper option to, submit written nominations for scheduling pipeline capacity except in certain emergency circumstances. FGT proposed an effective date of April 1, 1997 to coincide with FGT's implementation of the Gas Industry Standards Board's (GISB) standards on that date. FGT explained that it would not be able to meet the GISB timeline requirement of communicating scheduled volumes by 4:30 p.m. if written nominations were not received by FGT until 11:45 a.m.

Subsequent to the January 16 Filing, to address certain issues raised by parties to this proceeding, FGT proposed to expand the definition of the emergency circumstances which would permit the submission of written nominations, and to institute a three month transition period during which shippers could continue to submit written nominations as long as the written nominations were received by FGT no later than 10:30 a.m.

FGT states that in the March 13 Order, the Commission accepted FGT's proposed changes subject to the outcome of the proceedings in Docket No. RP97-21 (FGT's GISB Compliance Docket) and subject to the FGT submitting revised tariff sheets reflecting the three month transition period and the expanded provisions regarding the emergency circumstances

under which written nominations would still be permitted. The instant filing is in compliance with the March 13 Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before April 18, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97-8751 Filed 4-4-97; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP97-8-001]

#### Granite State Gas Transmission Inc.; Notice of Tariff Filing

April 1, 1997.

Take notice that on March 27, 1997, Granite State Gas Transmission, Inc. (Granite State) tendered for filing the revised tariff sheets listed below in its FERC Gas Tariff, Third Revised Volume No. 1, accompanied by a motion pursuant to Section 4(e) of the Natural Gas Act and Section 154.206 of the Commission's Regulations to make the tariff sheets effective April 1, 1997:

Eighth Revised Sheet No. 21

Ninth Revised Sheet No. 22

Eighth Revised Sheet No. 23

According to Granite State, on October 1, 1996, it filed revised Base Tariff Rates on the above tariff sheets for firm transportation services under its Rate Schedules FT-NN and FT-1 and for interruptible transportation service under its Rate Schedule IT, for effectiveness on November 1, 1996. On October 31, 1996, the Commission issued an order accepting and suspending the tariff sheets, subject to refund and establishing hearing procedures. *Granite State Gas Transmission, Inc.*, 77 FERC ¶61,094. In the order, the Commission suspended the effectiveness of the tariff sheets and the Base Tariff Rates until April 1, 1997.

According to Granite State, copies of its filing was served on its firm and

interruptible customers, the regulatory agencies of the States of Maine, Massachusetts and New Hampshire and the parties on the official service list maintained by the Secretary in Docket No. RP97-8-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of Granite State's filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97-8749 Filed 4-4-97; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP97-300-000]

#### Granite State Gas Transmission, Inc.; Notice of Filing Tariff Sheets

April 1, 1997.

Take notice that on March 27, 1997, Granite State Gas Transmission, Inc. (Granite State) tendered for filing with the Commission the original and revised tariff sheets listed below in its FERC Gas Tariff, Third Revised Volume No. 1, for effectiveness on April 1, 1997:

**Original Sheet No. 333, 334 and 335**

First Revised Sheet No. 200

First Revised Sheet Nos. 336-339

According to Granite State, Original Sheet Nos. 333, 334 and 335 add a new article to the General Terms and Conditions of its tariff to establish a tracking methodology to pass through to its firm transportation customers certain electric power costs for which Granite State is obligated to compensate Portland Pipe Line Corporation (Portland Pipe Line). Granite State leases an 18-inch pipeline from Portland Pipe Line; the line extends from a connection with Granite State's pipeline system near Portland, Maine, to the U.S.-Canadian border. Granite State further states that, until an alternate delivery system is available, the leased pipeline provides significant and indispensable transportation capacity

for the receipt and delivery of Canadian gas supplies for Bay State Gas Company and Northern Utilities, Inc.

According to Granite State, Portland Pipe Line initially constructed and operated the 18-inch line and a parallel 24-inch pipeline from South Portland, Maine, to refineries in the vicinity of Montreal, Quebec, to provide an overland crude oil transportation system for the delivery of off-shore crude to the refineries. It is stated that the 18-inch line was idled in 1986 because the capacity in the 24-inch pipeline at that time was sufficient to supply the refineries. Granite State leased the 18-inch pipeline with the purpose of converting the 166-miles of the line from Portland to the U.S.-Canadian border to natural gas service, and operating the pipeline to import Canadian gas supplies for its system and its customers. According to Granite State, the Commission issued a limited-term certificate to Granite State, extending to March 31, 1996, to operate the leased pipeline because Portland Pipe Line had reserved an option to terminate the lease as of that date.

After Portland Pipe Line gave notice of its intent to terminate the lease on March 31, 1996, Granite State and Portland Pipe Line negotiated an extension of the lease to March 31, 1997 and the Commission extended the limited-term certificate to that date. In the negotiation of the extension (the First Amendment) it was recognized that the crude oil throughput on the 24-inch line could increase during the lease extension period. According to Granite State, the pumps on the 24-inch line are electric powered and power consumption increases with throughput and power usage on the 24-inch operating singly is greater than transporting the same volume through both the 18-inch and 24-inch lines.

In the First Amendment extending the lease, Granite State agreed to compensate Portland Pipe Line for increased power usage for the electric pumps on the 24-inch pipeline when throughput increased above a base level of an average of 177,000 barrels daily.

Granite State further states that it is currently operating the leased pipeline on a further extension of the lease under a Second Amendment and an extension of the limited-term certificate to April 30, 1998. The electric power compensation provision for increased usage of power by the pumps in the 24-inch line has been incorporated in the Second Amendment, according to Granite State, and Granite State is currently being invoiced for such costs.

Because of the monthly variable in power usage, Granite State proposes in

Original Sheet Nos. 333, 334 and 335 to establish a Power Cost Adjustment tracking mechanism, beginning April 1, 1997 and changing quarterly, based on projected electric costs provided by Portland Pipe Line. The tracking mechanism would be used to derive a surcharge per Dth applied to the reservation billing determinants for firm transportation services under Granite State's Rate Schedules FT-NN and FT-1. The first proposed quarterly surcharge, beginning April 1, 1997, is \$0.1737 per Dth shown in materials submitted with the tariff filing. The tracking mechanism would establish deferred accounts for over and under collections in relation to invoiced costs from Portland Pipe Line. Carrying charges would be applied to the deferred account balances, either over or under invoiced costs and the account balances would be reconciled semi-annually.

Granite State also states that it filed a rate increase on October 1, 1996 in Docket No. RP97-8-000 which was accepted by the Commission and suspended until April 1, 1997. According to Granite State it filed its proposed Power Cost Adjustment tracking procedure as *pro forma* tariff sheets in the Docket No. RP97-8-000 which the Commission noted in the suspension order with the observation that the mechanism could be considered as part of the resolution of that proceeding. Granite State further states that it has moved to put the suspended rates in Docket No. RP97-8-000 into effect on April 1, 1997.

According to Granite State, copies of its filing was served on its firm and interruptible customers, the regulatory agencies of the States of Maine, Massachusetts and New Hampshire and the parties on the official service list maintained by the Secretary in Docket No. RP97-8-000.

Any person desiring to intervene or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Granite State's filing are on file with

the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97-8752 Filed 4-4-97; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP97-64-004]

#### Natural Gas Pipeline Company of America; Notice of Supplemental Compliance Filing

April 1, 1997.

Take notice that on March 26, 1997, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Alternate First Revised Sheet No. 315 to become effective May 1, 1997.

Natural states that the purpose of this filing is to revise Section 19.18 of the General Terms and Conditions to reflect the formulas for converting between monthly and daily rates that are contained in Version 1.1 of Standard 5.3.22 which was just incorporated by reference into the Federal Energy Regulatory Commission's Regulations by Order No. 587-C. Natural asks that this alternate tariff sheet be accepted instead of First Revised Sheet No. 315 that was submitted in Docket No. RP97-64-002 on February 28, 1997.

Natural requests whatever waivers may be necessary to permit the tariff sheet submitted to become effective on May 1, 1997.

Natural states that copies of the filing are being mailed its jurisdictional customers, interested state regulatory agencies and all parties set out on the official service list at Docket No. RP97-64.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,  
Secretary.

[FR Doc. 97-8748 Filed 4-4-97; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EC97-25-000]

#### NP Energy Inc.; Notice of Filing

April 1, 1997.

Take notice that NP Energy Inc., a broker and marketer of electric power, filed on March 27, 1997, a request for approval to sell and issue to National Power of America, Inc. (National Power) common stock constituting 50 percent of the issued and outstanding common stock of NP Energy, and to sell and issue to National Power all of the preferred stock of NP Energy Inc. NP Energy is a privately-held corporation owned by individuals. National Power is a wholly-owned indirect subsidiary of National Power PLC, a corporation organized under the laws of England and Wales. National Power PLC is a large electric generating company in the United Kingdom. National Power owns indirectly another power broker and marketer, ANP Energy Direct Company, and interests in various exempt wholesale generators and qualifying facilities under the Public Utility Regulatory Policies Act of 1978.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before April 11, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 97-8746 Filed 4-4-97; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP96-306-000]

#### Palute Pipeline Company; Notice of Informal Settlement Conference

April 1, 1997.

Take notice that an informal settlement conference will be convened in this proceeding on April 8, 1997 at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 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 Irene E. Szopo at (202) 208-1602 or Anja M. Clark at (202) 208-2034.

Lois D. Cashell,  
Secretary.

[FR Doc. 97-8747 Filed 4-4-97; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP97-224-002]

#### Sea Robin Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

April 1, 1997.

Take notice that on March 28, 1997, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised Tariff sheets set forth on Appendix A to the filing, in compliance with the Commission's Order No. 587 and the Commission's March 3, 1997 Order in this docket, to become effective June 1, 1997.

On July 17, 1996, the Commission issued Order No. 587 in Docket No. RM96-1-000 which revised the Commission's regulations governing interstate natural gas pipelines to require such pipelines to follow certain standardized business practices issued by the Gas Industry Standards Board (GISB) and adopted by the Commission in said Order. 18 CFR 284.10(b). The standards govern certain aspects of the following practices of natural gas

pipelines: nominations, allocations, balancing, measurement, invoicing, and capacity release. The revisions shown on the Tariff Sheets filed herewith reflect Sea Robin's compliance filing to conform with the GISB standards. On January 3, 1997, Sea Robin made its compliance filing submitting pro forma tariff sheets to comply with Order No. 587. On March 3, 1997, the Commission issued an order in this docket in response to Sea Robin's filing. The order required Sea Robin to revise and submit its compliance filing for implementation of the approved standards by June 1, 1997.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed on or before April 18, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,  
Secretary.

[FR Doc. 97-8750 Filed 4-4-97; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER94-1545-009, et al.]

#### Calpine Power Services Company, et al.; Electric Rate and Corporate Regulation Filings

March 31, 1997.

Take notice that the following filings have been made with the Commission:

1. Calpine Power Services Company, Power Company of America, L.P., Howard Energy Marketing, Inc., and Petroleum Source & Systems Group, Inc.

[Docket Nos. ER94-1545-009, ER95-111-009, ER95-252-008, and ER95-266-008]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On March 21, 1997, Calpine Power Services Company filed certain information as required by the



Commission's March 9, 1995, order in Docket No. ER94-1545-000.

On January 30, 1997, Power Company of America, L.P. filed certain information as required by the Commission's December 30, 1994, order in Docket No. ER95-111-000.

On March 17, 1997, Howard Energy Marketing, Inc. filed certain information as required by the Commission's February 24, 1995, order in Docket No. ER95-252-000.

On March 11, 1997, Petroleum Source & Systems Group, Inc. filed certain information as required by the Commission's January 18, 1995, order in Docket No. ER95-266-000.

## 2. Entergy Services, Inc.

[Docket No. ER97-2142-000]

Take notice that on March 18, 1997, Entergy Services, Inc. ("Entergy Services"), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the "Entergy Operating Companies"), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as a agent for the Entergy Operating Companies, and Western Resources, Inc. ("Western Resources").

*Comment date:* April 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 3. Southern California Edison Company

[Docket No. ER97-2143-000]

Take notice that on March 18, 1997, Southern California Edison Company (Edison), tendered for filing Service Agreements (Service Agreements) with the City of Vernon and Southern Energy Trading & Marketing, Inc. for Non-Firm Point-To-Point Transmission Service under Edison's Open Access Transmission Tariff (Tariff) filed in compliance with FERC Order No. 888.

Edison filed the executed Service Agreements with the Commission in compliance with applicable Commission regulations. Edison also submitted a revised Sheet No. 152 (Attachment E) to the Tariff, which is an updated list of all current subscribers. Edison requests waiver of the Commission's notice requirement to permit an effective date of March 18, 1997, for Attachment E, and to allow the Service Agreements to become effective according to their terms.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

*Comment date:* April 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 4. Cinergy Services, Inc.

[Docket No. ER97-2145-000]

Take notice that on March 18, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement and confirmation letter under Cinergy's Non-Firm Power Sales Standard Tariff (the Tariff) entered into between Cinergy and Wisconsin Electric Power Company (WEPSCO).

Cinergy and WEPSCO are requesting an effective date of February 26, 1997.

*Comment date:* April 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 5. Interstate Power Company

[Docket No. ER97-2146-000]

Take notice that on March 18, 1997, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and Wisconsin Power and Light (WPL). Under the Transmission Service Agreement, IPW will provide firm point-to-point transmission service to WPL.

*Comment date:* April 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 6. Interstate Power Company

[Docket No. ER97-2147-000]

Take notice that on March 18, 1997, Interstate Power Company (IPW), tendered for filing three Transmission Service Agreements between IPW and CornBelt Power Cooperative (CornBelt). Under the Transmission Service Agreements, IPW will provide firm point-to-point transmission service to CornBelt.

*Comment date:* April 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 7. Southwestern Public Service Company

[Docket No. ER97-2148-000]

Take notice that on March 18, 1997, Southwestern Public Service Company ("Southwestern"), submitted an executed service agreement under its open access transmission tariff with Arizona Public Service Company. The service agreement is for umbrella non-firm transmission service.

*Comment date:* April 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 8. Western Resources, Inc.

[Docket No. ER97-2149-000]

Take notice that on March 18, 1997, Western Resources, Inc., tendered for

filing a non-firm transmission agreement between Western Resources and Morgan Stanley Capital Group, Inc. Western Resources states that the purpose of the agreement is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreement is proposed to become effective March 13, 1997. Copies of the filing were served upon Morgan Stanley Capital, Inc. and the Kansas Corporation Commission.

*Comment date:* April 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 9. Southern California Edison Company

[Docket No. ER97-2150-000]

Take notice that on March 19, 1997, Southern California Edison Company (Edison), tendered for filing four pro forma Radial Lines Agreements (Agreements) to be executed by Edison and a future generation plant purchaser.

Edison requests waiver of the Commission's 120-day notice requirements and that the Commission accept the pro forma Agreements for filing, unexecuted. Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

*Comment date:* April 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 10. South Carolina Electric & Gas Company

[Docket No. OA96-49-001]

Take notice that on March 21, 1997, South Carolina Electric & Gas Company (SCE&G) tendered for filing (1) certain revisions to SCE&G's Open Access Transmission Service Tariff, as directed by the Commission's December 18, 1996 order in *Allegheny Power System, Inc., et al.*, 77 FERC ¶ 61,266 (1996), and (2) a new version of SCE&G's Open Access Tariff, designed to reflect SCE&G's conversion to a new word processing format.

SCE&G states that a copy of this filing has been served on all customers under the Tariff as well as on the South Carolina Public Service Commission.

*Comment date:* April 15, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 11. Tennessee Power Company

[Docket No. TX97-5-000]

Take notice that on March 26, 1997, Tennessee Power Company filed with the Federal Energy Regulatory Commission an application requesting

that the Commission order the Tennessee Valley Authority to provide transmission services pursuant to Section 211 of the Federal Power Act.

Tennessee Power Company requests a standing transmission arrangement to begin as soon as possible, for as available, point(s)-to-point(s) non-firm transmission service to be called discriminatory open access rates, terms, and conditions, the same as that required of jurisdictional public utilities under Commission Orders 888 and 889. As the need for specific transmission arises, they will be scheduled, provided, and paid for in accordance with the same tariff of general applicability to others, including the Tennessee Valley Authority, as required of jurisdictional public utilities.

*Comment date:* April 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

## 12. Northwestern Wisconsin Electric Company

[Docket No. ER97-2144-000]

Take notice that on March 18, 1997, Northwestern Wisconsin Electric Company, tendered for filing proposed changes in its Transmission Use Charge, Rate Schedule FERC No. 2. The proposed changes would decrease revenues from jurisdictional sales by \$1,383.75 based on the 12 month period ending April 30, 1997. Northwestern Wisconsin Electric Company is proposing this rate schedule change to more accurately reflect the actual cost of transmitting energy from one utility to another based on current cost data. The service agreement for which this rate is calculated calls for the Transmission Use Charge to be reviewed annually and revised on May 1.

Northwestern Wisconsin Electric Company requests this Rate Schedule Change become effective May 1, 1997.

Copies of this filing have been provided to the respective parties and to the Public Service Commission of Wisconsin.

*Comment date:* April 14, 1997, in accordance with Standard Paragraph E at the end of this notice.

### Standard Paragraph

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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 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. 97-8782 Filed 4-4-97; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RM96-1-000]

#### Standards for Business Practices of Interstate Natural Gas Pipelines

April 1, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of presentation.

**SUMMARY:** The Interstate Natural Gas Association of America will be making a presentation on pipeline implementation of the electronic communication standards promulgated by the Gas Industry Standards Board.

**DATES:** April 8, 1997 from 2:00 p.m. to 4:00 p.m.

**ADDRESSES:** Federal Energy Regulatory Commission, Conference Room 3M-2B, 888 First Street, N.E., Washington DC 20426.

#### FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208-2294;

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208-1283.

#### SUPPLEMENTARY INFORMATION:

In addition to publishing the full text of this document in the *Federal Register*, the Commission provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 2A, 888 First Street, N.E., Washington D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing 202-208-1397 if

dialing locally or 1-800-856-3920 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS in ASCII and WordPerfect 5.1 format. CIPS user assistance is available at 202-208-2474.

CIPS is also available on the Internet through the Fed World system. Telnet software is required. To access CIPS via the Internet, point your browser to the URL address: <http://www.fedworld.gov> and select the "Go to the FedWorld Telnet Site" button. When your Telnet software connects you, log on to the FedWorld system, scroll down and select FedWorld by typing: 1 and at the command line and type: /go FERC. FedWorld may also be accessed by Telnet at the address [fedworld.gov](http://fedworld.gov).

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is also located in the Public Reference Room at 888 First Street, N.E., Washington, DC 20426.

Take notice that on Tuesday, April 8, 1997, the Interstate Natural Gas Association of America will be making a presentation on pipeline implementation of the electronic communication standards promulgated by the Gas Industry Standards Board. The presentation will be from 2:00 p.m. to 4:00 p.m. in Conference Room 3M-2B, at the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC 20426.

All interested persons are invited to attend. For additional information contact Michael Goldenberg at 202-208-2294 or Marvin Rosenberg at (202) 208-1283.

Lois D. Cashell,  
Secretary.

[FR Doc. 97-8753 Filed 4-4-97; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-5807-6]

### National Environmental Justice Advisory Council; Notification of Meeting and Public Comment Period(s); Open Meeting

Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92-463, we now give notice that the National Environmental Justice Advisory Council (NEJAC) along with

the subcommittees will meet on the dates and times described below. All times noted are Eastern Standard Time. All meetings are open to the public. Due to limited space, seating at the NEJAC meeting will be on a first-come basis. Documents that are the subject of NEJAC reviews are normally available from the originating EPA office and are not available from the NEJAC. The meetings will occur at the Potawatomi Indian Springs Lodge and Conference Center in Wabeno, Wisconsin 54566-0132.

The full NEJAC will convene Tuesday, May 13 from 9:00 a.m. to 1:30 a.m. and from 6:45 p.m. to 9:00 p.m., and Thursday, May 15 from 9:00 a.m. to 4:30 p.m. and from 6:15 p.m. to 9:30 p.m. to discuss EPA's perspective on

tribal issues related to environmental justice, to hear presentations from the State of California, the Tribal Operations Council and EPA's American Indian Office, to follow-up on pending items from the December 1996 meeting, and several NEJAC new business interest items. NEJAC will have a 5-hour break in the meeting schedule Tuesday, May 13 at 11:30 a.m. to conduct a bus tour of local environmental justice sites. There will be public comment periods scheduled from 7:00-9:00 p.m. Tuesday, May 13 and from 6:30 p.m.-9:30 p.m. Thursday, May 15.

The six subcommittees will meet Wednesday, May 14 from 9:00 a.m. to 6:00 p.m. Any member of the public wishing additional information on the subcommittee meetings should contact

the specific Designated Federal Official at the telephone number listed below.

Members of the public who wish to make a brief oral presentation should contact Tama Clare of PRC Environmental Management, Inc. by May 2 to have time reserved on the agenda. Individuals or groups making oral presentations will be limited to a total time of five minutes. We should receive written comments of any length (at least 35 copies) by May 2, comments received after that date will be provided to the Council as logistics allow. Send your written comments to PRC Environmental Management, Inc., 1593 Spring Hill Road, Suite 300, Vienna, VA 22188. Telephone number is 703/287-8880 or FAX: 703/287-8843. Internet E-mail address is Clare@ttemi.com.

Subcommittee	Federal Official and Telephone No.
Enforcement .....	Ms. Sherry Milan—202/564-2619.
Health & Research .....	Mr. Lawrence Martin—202/260-0673; Ms. Carol Christensen—202/260-2301.
International .....	Ms. Doña Canales—202/260-6772.
Indigenous Peoples .....	Ms. Elizabeth Bell—202/260-8106.
Public Participation .....	Mr. Robert Knox—202/564-2604.
Waste/Facility Siting .....	Mr. Kent Benjamin—202/260-2822.

**FOR FURTHER INFORMATION CONTACT:** For hearing impaired individuals or non-English speaking attendees wishing to arrange for a sign language or foreign language interpreter, please call or fax Tama Clare of PRC Environmental Management, Inc. at Phone: 703/287-8880 or Fax: 703/287-8843.

Registration through the Internet at our World Wide Web's home page can be done via the following address: <http://www.prcemi.com/nejac>.

Dated: March 31, 1997.

**Clarice E. Gaylord,**

*Designated Federal Official, National Environmental Justice Advisory Council.*  
[FR Doc. 97-8820 Filed 4-4-97; 8:45 am]

**BILLING CODE 6560-50-P**

**FEDERAL COMMUNICATIONS COMMISSION**

**Sunshine Act Meeting; Change in Time and Additional Items To Be Considered at Open Meeting, Thursday, April 3rd**

April 3, 1997.

The Federal Communications Commission previously announced on March 27, 1997, its intention to hold an Open Meeting on Thursday, April 3, 1997, commencing at 9:30 a.m. The time has been changed to 2 p.m., and the following items have been added to the list of agenda items scheduled for consideration.

Item No.	Bureau	Subject
3 .....	Office of Engineering and Technology and Mass Media.	Title: Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service (MM Docket No. 87-268). Summary: The Commission will consider adoption of a new Table of Allotments for digital television (DTV); amendments of its rules for initial DTV allotments; procedures for assigning DTV frequencies; and plans for spectrum recovery.
4 .....	Mass Media and Office of Engineering and Technology.	Title: Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service (MM Docket No. 87-268). Summary: The Commission will consider action concerning the service rules for digital television.

The prompt and orderly conduct of Commission business requires this change and no earlier announcement was possible.

Additional information concerning this meeting may be obtained from

Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418-0500.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor,

International Transcription Services, Inc. (ITS, Inc.) at (202) 857-3800 or fax (202) 857-3805 and 857-3184. These copies are available in paper format and alternative media which includes, large print/type; digital disk; and audio tape.

ITS may be reached by e-mail: its \_\_\_\_\_ inc@ix.netcom.com. Their Internet address is <http://www.itsi.com>.

This meeting can be viewed over George Mason University's Capitol Connection. For information on this service call (703) 993-3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966-2211 or fax (202) 966-1770; and from Conference Call USA (available only outside the Washington, D.C. metropolitan area), telephone 1-800-962-0044. Audio and video tapes of this meeting can be obtained from the Office of Public Affairs, Television Staff, telephone (202) 418-0460, or TTY (202) 418-1398; fax numbers (202) 418-2809 or (202) 418-7286.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 97-8974 Filed 4-3-97; 3:02 pm]

BILLING CODE 6712-01-P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a proposed collection of information. In accordance with the Paperwork Reduction Act of

1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments on the National Fire Academy (NFA) Course Evaluation Form.

**SUPPLEMENTARY INFORMATION:** The National Fire Academy (NFA) is mandated under the Fire Prevention and Control Act of 1974 (Public Law 93-498) to provide training and education to the Nation's fire service and emergency service personnel. To maintain the quality of these programs, it is necessary to evaluate them on an ongoing basis.

#### Collection of Information

**Title:** National Fire Academy Course Evaluation Form.

**Type of Information Collection:** Revision of a currently approved collection.

**OMB Number:** 3067-0234.

**Form Number:** FEMA Form 95-20, National Fire Academy Course Evaluation Form.

**Abstract:** FEMA uses the National Fire Academy Course Evaluation Form to evaluate on-campus courses delivered at the NFA facility, located in Emmitsburg, Maryland. It is also used to evaluate NFA regional courses, which are identical to the NFA resident courses, offered in selected regions to students unable to travel to the Emmitsburg campus for the resident offering of the course. The data provided by students evaluating an NFA course is used to determine the need for course improvements and the degree of student satisfaction with the course experience.

**Affected Public:** Individuals.

**Estimated Total Annual Burden Hours:** 1,375.

**Estimated Number of Respondents:** 5,500.

**Estimated Time Per Response:** 15 minutes.

**Frequency of Response:** The evaluation form is completed after the completion of a course.

**Estimated Cost:** Costs to the respondents are minimal. All materials are provided: form, number 2 pencil, envelope, and videotaped instructions.

**COMMENTS:** Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received by June 6, 1997.

**ADDRESSEE:** Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 311, Washington, DC 20472. Telephone number (202) 646-2625. FAX number (202) 646-3524.

**FOR FURTHER INFORMATION CONTACT:** Contact Polly Barnett-Birdsall, Instructional Systems Specialist, National Fire Academy, 301-447-1228 for additional information.

Dated: March 28, 1997.

**Thomas Behm,**

*Acting Director, Program Services Division,  
Operations Support Directorate.*

BILLING CODE 6716-01-P

Attachment

OMB Number 3067-0234  
Expiration Date:

FEDERAL EMERGENCY MANAGEMENT AGENCY  
NATIONAL FIRE ACADEMY  
**COURSE EVALUATION FORM**

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a currently valid OMB control number. The burden to complete this collection of information is an estimated average of 15 minutes per response. Burden means the time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to a Federal agency. Respondents may send comments regarding the accuracy of the burden estimate or any suggestions for reducing the burden, to Information Collections Management, Federal Emergency Management Agency, 500 C Street SW, Washington DC 20472, Paperwork Reduction Project (3067-0234). Completion of this form is voluntary.

The first part of this survey requests your feedback on the course you have just completed. Please fill in the "bubble" that most closely corresponds to your level of agreement or disagreement with each statement. Part II of the survey asks for demographic and career related information. This information is requested to ensure NFA courses continue to meet the needs of our target audience. *All survey data are completely confidential. No individual's responses are reported.* Please be completely candid in your responses below.

**Part I**  
**Course Evaluation Data**

Course Title: \_\_\_\_\_

Course Number: \_\_\_\_\_ Dates Attended: \_\_\_\_\_

To what extent do you agree with each of the following?

	Very Strongly Agree		Neutral		Very Strongly Disagree		Does Not Apply
<b>The Course ...</b>							
1 Increased my knowledge of this topic	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2 Allowed sufficient time to prepare in and out of class assignments or tasks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3 Was well organized	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
4 Contained sufficient practical "hands on" opportunities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
5 Fostered appropriate team building skills	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
6 Used an effective set of teaching techniques (e.g., lecture, audio, visuals, scenarios)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
7 Provided a balance of individual and group based teaching techniques	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
8 Helped me clarify my goals and professional expectations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
9 Was paced at about the right level for my needs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
10 Provided up-to-date information	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>The printed materials for this course ...</b>							
1 Were clear and comprehensive	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2 Set reasonable module and course expectations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3 Supported class discussion	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
4 Will be a useful reference when I'm back on the job	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
5 Supplemented other teaching aids used in the course (e.g., lecture, audiovisuals, scenarios)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>The audiovisual materials for this course ...</b>							
1 Were of high technical quality	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2 Contained information I can use in my job	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3 Supplemented other teaching aids used in the course (e.g., lecture, audiovisuals, scenarios)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>The computer support systems for this course ...</b>							
1 Were user friendly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
2 Were available when I needed them	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
3 Supplemented the teaching aids used in the course (e.g., lecture, text/readings, scenarios)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>



**Student Comments**

1. How do you think this course will help you in your job?

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2. Please identify any content areas currently not covered in this course that you think would help improve your present job performance.

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3. Do you have suggestions for improving the structure, delivery, or specific course materials for the course you have just completed? If so, please identify them in the space below. Be as specific as you can.

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4. Some courses have guest instructors for special modules. If this is the case for the course you have just completed, please provide any feedback you think your module instructor(s) should have.

Module instructor name: \_\_\_\_\_

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5. Are there any other items or questions that this survey should have included about the course you have just completed? If so – or if you have other comments about this learning experience – please list them below.

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- |   |                       |                              |                       |
|---|-----------------------|------------------------------|-----------------------|
|   | Yes                   | No                           |                       |
| 6. If this was a resident, or "on-campus," course, was it your first?                         | <input type="radio"/> | <input type="radio"/>        |                       |
| If this was a non-resident, or "off-campus," course, was it your first?                       | <input type="radio"/> | <input type="radio"/>        |                       |
| 7. Which of these statements applies to you? Before I took this course, this material was ... |                       |                              |                       |
|   |                       | completely new to me         | <input type="radio"/> |
|   |                       | somewhat familiar to me      | <input type="radio"/> |
|   |                       | very familiar to me          | <input type="radio"/> |
| 8. I access information about National Fire Academy courses by:                               | <input type="radio"/> | Printed catalog              |                       |
|   | <input type="radio"/> | World wide web page          |                       |
|   | <input type="radio"/> | Local department information |                       |
|   | <input type="radio"/> | Information at conferences   |                       |
|   | <input type="radio"/> | Other                        |                       |

\_\_\_\_\_

**Part II**  
**Demographic and Professional Data**

1. What are the first three digits of the zip code for your department or organization?

	0	1	2	3	4	5	6	7	8	9
First digit	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Second digit	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Third digit	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

2. How would you describe the primary population(s) served by your local service organization?

- |                                       |   |
|---------------------------------------|---|
| <input type="radio"/> rural           | <input type="radio"/> educational/nonprofit |
| <input type="radio"/> suburban        | <input type="radio"/> private industry      |
| <input type="radio"/> urban           | <input type="radio"/> local government      |
| <input type="radio"/> county/district | <input type="radio"/> state government      |
| <input type="radio"/> parish          | <input type="radio"/> federal government    |
| <input type="radio"/> statewide       | <input type="radio"/> other institutions    |

3. Is your local service organization ...?

- Career Fire & Emergency Service
- Career & Volunteer Fire & Emergency Service
- Volunteer Fire & Emergency Service
- Allied Professional
- Other

4. My local organization is:  Public  Private

5. Please estimate the number of people in your department.

- |                                  |                                    |
|----------------------------------|------------------------------------|
| <input type="radio"/> 1 to 25    | <input type="radio"/> 201 to 500   |
| <input type="radio"/> 26 to 50   | <input type="radio"/> 501 to 1000  |
| <input type="radio"/> 51 to 100  | <input type="radio"/> 1001 to 2000 |
| <input type="radio"/> 101 to 200 | <input type="radio"/> over 2000    |

What percentage are volunteer personnel?

- |                                 |                                 |
|---------------------------------|---------------------------------|
| <input type="radio"/> None      | <input type="radio"/> 51 to 75% |
| <input type="radio"/> 1 to 25%  | <input type="radio"/> 76 to 99% |
| <input type="radio"/> 26 to 50% | <input type="radio"/> All       |

6. How many years have you been in the fire and emergency services?

- |                                   |                                |
|-----------------------------------|--------------------------------|
| <input type="radio"/> Less than 1 | <input type="radio"/> 11 to 15 |
| <input type="radio"/> 1 to 5      | <input type="radio"/> 16 to 20 |
| <input type="radio"/> 6 to 10     | <input type="radio"/> Over 20  |

7. What is your position?

- |   |   |
|---|---|
| <input type="radio"/> Firefighter           | <input type="radio"/> Deputy Chief        |
| <input type="radio"/> Specialist/technician | <input type="radio"/> Assistant Chief     |
| <input type="radio"/> Sergeant              | <input type="radio"/> Chief of Department |
| <input type="radio"/> Lieutenant            | <input type="radio"/> Civilian Employee   |
| <input type="radio"/> Captain               | <input type="radio"/> Operator/Engineer   |
| <input type="radio"/> Battalion Chief       | <input type="radio"/> Volunteer           |
| <input type="radio"/> Bureau Chief          | <input type="radio"/> Other               |
| <input type="radio"/> Division Chief        |   |

8. Listed below are several roles and responsibilities of fire service professionals. Locate your primary responsibility and mark the P column once. Mark the S column next to all of your secondary responsibilities.

- |                       |                       |                    |                       |                       |                       |
|-----------------------|-----------------------|--------------------|-----------------------|-----------------------|-----------------------|
| P                     | S                     |                    | P                     | S                     |                       |
| <input type="radio"/> | <input type="radio"/> | Command            | <input type="radio"/> | <input type="radio"/> | Admin. Service        |
| <input type="radio"/> | <input type="radio"/> | Fire Prevention    | <input type="radio"/> | <input type="radio"/> | Vehicle/Equip Maint   |
| <input type="radio"/> | <input type="radio"/> | Fire Suppression   | <input type="radio"/> | <input type="radio"/> | Inspector/Enforcement |
| <input type="radio"/> | <input type="radio"/> | EMS                | <input type="radio"/> | <input type="radio"/> | HAZMAT                |
| <input type="radio"/> | <input type="radio"/> | Fire Investigation | <input type="radio"/> | <input type="radio"/> | Instructor            |
| <input type="radio"/> | <input type="radio"/> | Communications     | <input type="radio"/> | <input type="radio"/> | Other                 |
| <input type="radio"/> | <input type="radio"/> | Public Fire Educ.  | <input type="radio"/> | <input type="radio"/> | None                  |

9. What is the highest educational level you have completed?

- Less than high school graduation
- High school graduation or its equivalency
- Some college
- Associate degree from a college
- Bachelor's degree from a college
- Master's degree from a college
- Other

10. Why did you attend this course?

Locate your primary reason and mark the P column once. Mark the S column next to all of your secondary reasons.

- |                       |                       |   |                       |                       |   |
|-----------------------|-----------------------|---|-----------------------|-----------------------|---|
| P                     | S                     |   | P                     | S                     |   |
| <input type="radio"/> | <input type="radio"/> | Someone recommended it  | <input type="radio"/> | <input type="radio"/> | General professional advancement                |
| <input type="radio"/> | <input type="radio"/> | It is required for my current or next assignment                            | <input type="radio"/> | <input type="radio"/> | Increase my technical or professional knowledge |
| <input type="radio"/> | <input type="radio"/> | To broaden my perspective by working with personnel from across the country | <input type="radio"/> | <input type="radio"/> | No cost to me                                   |
| <input type="radio"/> | <input type="radio"/> | Expectation that the course would be "cutting edge"                         | <input type="radio"/> | <input type="radio"/> | Modest cost to my department                    |
| <input type="radio"/> | <input type="radio"/> | Expectation that the teaching methods would be "cutting edge"               | <input type="radio"/> | <input type="radio"/> | Anticipated benefit to department               |

Answers to the following questions are completely voluntary. This information will help the NFA design courses that serve the needs of the entire fire and emergency service community.

11. What is your sex?  Male  Female

13. Are you:

12. How old were you on your last birthday?

	0	1	2	3	4	5	6	7	8	9
First digit	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Second digit	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

- American Indian or Alaskan Native
- Asian or Pacific Islander
- Black, not of Hispanic origin
- Hispanic
- White, not of Hispanic origin



**FEDERAL EMERGENCY  
MANAGEMENT AGENCY****Agency Information Collection  
Activities: Proposed Collection;  
Comment Request**

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a proposed collection of information. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning National Fire Academy Executive Fire Officer Program Application for Admission.

**SUPPLEMENTARY INFORMATION:** Public Law 93-498, Fire Prevention and Control Act of 1974, as amended created the National Fire Academy (NFA) to advance the professional development of fire service personnel and allied professionals. The act provides for, among other things, the conduct of courses and programs of training and education to train fire service personnel in such skills and knowledge as may be useful to advance their ability to prevent and control fires including tactics and command of firefighting for fire chiefs and commanders and administration and management of fire services.

**Collection of Information**

*Title:* National Fire Academy Executive Fire Officer Program Application for Admission.

*Type of Information Collection:* Extension of a currently approved collection.

*OMB Number:* 3067-0194.

*Form Numbers:* FEMA Form 95-22, National Fire Academy Executive Fire Officer Program Application for Admission.

*Abstract:* FEMA Form 95-22, National Fire Academy Executive Fire Officer Program Application for Admission, is used by senior level executive fire officers to apply to the Executive Fire Officer Program. FEMA uses the application form to select the best qualified applicants for admission to the program.

*Affected Public:* State, Local or Tribal Government.

*Estimated Total Annual Burden Hours:* 300.

*Number of Responses:* 300.

*Time Per Response:* 1 hour.

*Estimated Cost:* \$9,985.00.

**COMMENTS:** Written comments are solicited to (a) Evaluate whether the

proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received by June 6, 1997.

**ADDRESSES:** Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 311, Washington, DC 20472. Telephone number (202) 646-2625. FAX number (202) 646-3524.

**FOR FURTHER INFORMATION CONTACT:** Contact Charles J. Burkell, Program Chair for Executive Development, United States Fire Administration, National Fire Academy, at (301) 447-1072 for additional information. Contact Ms. Anderson at (202) 646-2625 for copies of the proposed collection of information.

Dated: March 27, 1997.

Reginald Trujillo,

Director, Program Services Division,  
Operations Support Directorate.

[FR Doc. 97-8810 Filed 4-4-97; 8:45 am]

BILLING CODE 6718-01-P

**FEDERAL EMERGENCY  
MANAGEMENT AGENCY****Agency Information Collection  
Activities: Proposed Collection;  
Comment Request**

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a proposed collection of information. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning information required by FEMA to amend or revise National Flood Insurance Program Maps to remove

certain property from the one-percent annual chance floodplain.

*Supplementary Information.* With the passage of the Flood Disaster Protection Act of 1973, an owner of a structure, with a federally backed mortgage, located in the one-percent annual chance (base flood) floodplain was required to purchase federal flood insurance. This was in response to the escalating damage caused by flooding and the unavailability of flood insurance from commercial insurance companies. As part of this effort FEMA mapped the one-percent annual chance floodplain in communities. However, due to scale limitations, individual structures that may be above the base flood cannot be shown as being out of the one-percent annual chance floodplain. FEMA will issue a Letter of Map Amendment (LOMA) or a Letter of Map Revision based on Fill (LOMR-F) to waive the federal requirement for flood insurance when data is submitted to show that the structure is above the base flood.

*Collection of Information. (1) Title.* Report to submit technical or scientific data to correct mapping deficiencies unrelated to community-wide elevation determinations (Amendments and Revisions to National Flood Insurance Program Maps).

*Type of Information Collection.* Revision.

*OMB Number:* 3067-0147.

*Abstract.* The certification forms (referred to as MT-1 series forms) are designed to assist requesters in gathering information that FEMA needs to determine whether a certain property is likely to be flooded during the flood event that has a one-percent chance of being equaled or exceeded in any given year (base flood).

*FEMA Forms.* FEMA Form 81-87, Property Information, describes the location of the property, what is being requested, and what data are required to support the request.

FEMA Form 81-87A, Elevation Information, indicates what the Base (100-year) Flood Elevation (BFE) for the property is, how the BFE was determined, the lowest ground elevation on the property, and/or the elevation of the lowest adjacent grade to any structures on the property. The information is required in order for FEMA to determine if the property that is being requested to be removed from the Special Flood Hazard Area (SFHA) is above the BFE.

FEMA Form 81-87B, Certification of Fill Placement, requires that a registered professional engineer or the community's floodplain official certify that the fill was placed in accordance

with National Flood Insurance Program (NFIP) regulations. NFIP regulations 44 CFR section 65.5(a)(6) requires that fill placed to remove an area from the SFHA meet certain criteria.

FEMA Form 81-87C, Community Acknowledgment of Requests Involving Fill, ensures that the requirements of NFIP regulations 44 CFR section 65.5(a)(6) is fulfilled prior to the submittal of the request to FEMA. The regulation states if fill is placed to remove an area from the SFHA that the community acknowledge the request.

FEMA Form 81-87D, Summary of Elevations-Individual Lot Breakdown, is used in conjunction with the Elevation Information Form for requests involving multiple lots or structures. It provides a table to allow the required submitted data to be presented in a manner for quick and efficient review.

FEMA Form 81-87E, Credit Card Information, outlines the information required to process a request when the requester is paying by credit card.

**Affected Public:** Individuals or households; Businesses or other for-profit; State, Local or Tribal Government.

**Estimated Total Annual Burden Hours.** 22,464.

**Estimated number of responses.** 5,400.

**Estimated hours per response.** 4.16.

**Estimated Cost.** \$1,123,200.

**COMMENTS:** Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received by June 6, 1997.

**ADDRESSEE:** Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 311, Washington, DC 20472. Telephone number (202) 646-2625. FAX number (202) 646-3524.

**FOR FURTHER INFORMATION CONTACT:** Contact Ms. Cecelia Lynch, FEMA,

Mitigation Directorate at (202) 646-2747 for additional information. Contact Ms. Anderson at (202) 646-2625 for copies of the proposed collection of information.

Dated: March 28, 1997.

**Thomas Behm,**

*Acting Director, Program Services Division, Operations Support Directorate.*

[FR Doc. 97-8812 Filed 4-4-97; 8:45 am]

**BILLING CODE 6718-01-P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a proposed collection of information. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning information required by FEMA to amend or revise National Flood Insurance Program (NFIP) Maps to remove certain property from the one-percent annual chance floodplain.

**Supplementary Information.** With the passage of the Flood Disaster Protection Act of 1973 an owner of a structure, with a federally backed mortgage, located in the one-percent annual chance (base flood) floodplain was required to purchase federal flood insurance. This was in response to the escalating damage caused by flooding and the unavailability of flood insurance from commercial insurance companies. As part of this effort FEMA mapped the one-percent annual chance floodplain in communities. However, due to scale limitations individual structures that may be above the base flood cannot be shown as being out of the one-percent annual chance floodplain. FEMA will issue a Letter of Map Amendment (LOMA) or a Letter of Map Revision based on Fill (LOMR-F) to waive the federal requirement for flood insurance when data is submitted to show that the structure is above the base flood.

**Collection of Information. Title.** Report to submit technical or scientific data to correct mapping deficiencies unrelated to community-wide elevation determinations for a single residential lot or structure.

**Type of Information Collection, Revision.**

**OMB Number.** 3067-0257.

**FEMA Form.** FEMA Form 81-92, Application Form for Single Residential Lot or Structure Amendments and Revisions to National Flood Insurance Program Maps, allows the owner or lessee of a single residential lot or structure to more easily understand and prepare the data required to determine if the single residential lot or structure is located in the Special Flood Hazard Area.

**Abstract.** The form (also referred to as MT-EZ) is designed to assist requesters in gathering information that FEMA needs to determine whether a single residential lot or structure is likely to be flooded during the flood event that has a one-percent chance of being equaled or exceeded in any given year (base flood).

**Affected Public:** Individuals or households.

**Estimated Total Annual Burden Hours:** 14,050.

**Estimated Number of Responses:** 5,854.

**Estimated Hours Per Response:** 2.40.

**Estimated Cost:** \$702,500.

**COMMENTS:** Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received by June 6, 1997.

**ADDRESSEE:** Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW., Room 311, Washington, DC 20472. Telephone number (202) 646-2625. FAX number (202) 646-3524.

**FOR FURTHER INFORMATION CONTACT:** Contact Ms. Cecelia Lynch, FEMA, Mitigation Directorate at (202) 646-2747 for additional information. Contact Ms. Anderson at (202) 646-2625 for copies of the proposed collection of information.

Dated: March 28, 1997.

**Thomas Behm,**

Acting Director, Program Services Division,  
Operations Support Directorate,  
[FR Doc. 97-8813 Filed 4-4-97; 8:45 am]

BILLING CODE 6718-01-P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice and request for  
comments.

**SUMMARY:** The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a proposed collection of information. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning information required by FEMA to revise National Flood Insurance Program (NFIP) Maps to reflect natural and man made changes to the one-percent annual chance floodplain.

**Supplementary Information.** With the passage of the Flood Disaster Protection Act of 1973 an owner of a structure, with a federally backed mortgage, located in the one-percent annual chance (base flood) floodplain was required to purchase federal flood insurance. This was in response to the escalating damage caused by flooding and the unavailability of flood insurance from commercial insurance companies. As part of this effort FEMA mapped the one-percent annual chance floodplain in communities. However, due to the occurrence of natural or man made changes in the floodplain the boundaries of the one-percent annual chance floodplain will change. When scientific or technical data is submitted to FEMA reflecting these changes FEMA will revise the NFIP Maps to reflect the new information, as warranted.

#### Collection of Information

**Title.** Consultation with local officials to assure compliance with Sections 110 and 206 of the Flood Disaster Protection Act of 1973 (Revisions to National Flood Insurance Program Maps).

**Type of Information Collection.** Revision.

**OMB Number:** 3067-0148.

**Abstract.** These certification forms (referred to MT-2 series forms) will provide FEMA with assurances that all pertinent data relating to revisions to

effective Flood Insurance Studies are included in the submittal of requests for revisions. They will also assure that all individuals and organizations impacted by the changes are aware of the changes and have had an opportunity to comment on them. FEMA uses the information to review the assumptions made, parameters used, and results for technical accuracy, and to ensure that the required hydraulic models to revise the Flood Insurance Study (FIS), Flood Insurance Rate Map (FIRM), and Flood Boundaries and Floodway Maps (FBFM) are included with the initial submittal.

**FEMA Forms.** FEMA Form 81-89, Revision Requester and Community Official Form, describes the location of the revision request, what is being requested, and which forms are required for the request. It also allows a registered professional engineer or land surveyor to certify that the submitted data is correct.

**FEMA Form 81-89A, Credit Card Information,** outlines the information required to process a request when the requester is paying by credit card.

**FEMA Form 81-89B, Hydrologic Analysis Form,** used to submit a revised hydrologic analysis if a revision request is based on revised flood discharges.

**FEMA Form 81-89C, Riverine Hydraulic Analysis Form,** used to submit a hydraulic analysis if a revision request is based on improved hydrologic data/analysis, improved hydraulic analysis, or physical changes to the hydraulics of the flooding source.

**FEMA Form 81-89D, Riverine/Coastal Mapping Form,** ensures that everything required to be shown on the topographic work map in order to revise the FIRM and FBFM is included with the initial submittal. It also ensures that fill was placed in accordance with NFIP regulations 44 CFR 65.6(a)(6).

**FEMA Form 81-89E, Channelization Form,** describes the channelization project and its impact on the 100-year water-surface elevation.

**FEMA Form 81-89F, Bridge/Culvert Form,** describes the bridge or culvert and its impacts on the 100-year water-surface elevation.

**FEMA Form 81-89G, Levee/Floodwall System Analyses Form,** ensures that a levee or floodwall was constructed in accordance with NFIP regulation 44 CFR 65.10, which requires that levees being credited with providing protection from a 100-year flood event meet certain criteria.

**FEMA Form 81-89H, Coastal Analysis Form,** used to submit a revised coastal analysis if a revision is based on improved coastal analysis or physical changes to the coastal area.

**FEMA Form 81-89I, Coastal Structures Form,** describes the coastal structure and its impacts on the 100-year flood elevations.

**FEMA Form 81-89J, Dam Form,** describes a dam and its impact on the 100-year flood elevations.

**FEMA Form 81-89K, Alluvial Fan Flooding Form,** ensures that certain analyses required by NFIP regulation 44 CFR 65.13 be performed for alluvial fan flooding.

**Affected Public:** State, Local, or Tribal Government; Individuals or households; Businesses or other for-profit.

**Estimated Annual Burden Hours.** 7,074.

**Estimated Number of Responses.** 900.

**Estimated Hours Per Response.** 7.86.

**Estimated Cost.** \$353,700.

**Comments:** Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received by June 6, 1997.

**ADDRESSEE:** Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW., Room 311, Washington, DC 20472. Telephone number (202) 646-2625. FAX number (202) 646-3524.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cecelia Lynch, FEMA, Mitigation Directorate at (202) 646-2747 for additional information. Contact Ms. Anderson at (202) 646-2625 for copies of the proposed collection of information.

Dated: March 28, 1997.

**Thomas Behm,**

Acting Director, Program Services Division,  
Operations Support Directorate,  
[FR Doc. 97-8814 Filed 4-4-97; 8:45 am]

BILLING CODE 6718-01-P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) has submitted an emergency processing collection of information to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). OMB approval has been requested by April 4, 1997.

A subsequent clearance package will be submitted to OMB for long-term approval of the collection. To facilitate the timely processing of the both the emergency processing request and the subsequent request, FEMA invites comments on the proposed collection of information.

#### Collection of Information

**Title:** Flood Mitigation Assistance—Flood Mitigation Plan.

**Type of Review:** New.

**Abstract:** FEMA interim final rule, 44 CFR Part 78, requires States and communities to develop Flood Mitigation Plans to articulate a comprehensive strategy for implementing technically feasible flood mitigation activities for the area affected by the plan. At a minimum, the plan includes: A description of the planning process and public involvement, including workshops, public meetings, or public hearings; a description of the existing flood hazard and identification of the flood risk, including estimates of the number and type of structures at risk, repetitive loss properties, and the extent of flood depth and damage potential; the applicant's floodplain management goals for the area covered by the plan; identification and evaluation of cost-effective and technically feasible mitigation actions considered; and the strategy for reducing flood risks and continued compliance with the National Flood Insurance Program and procedures for ensuring implementation, reviewing program, and recommending revisions to the plan.

When States or communities have plans already in place that meets the above minimum requirements, such plans may be used. Examples of such plans include those credited through the Community Rating System or those prepared to meet the requirements of section 409 of the Robert T. Stafford Act (42 U.S.C. 5176).

**Affected Public:** State, local or tribal governments.

**Estimated Total Annual Burden**

**Hours:** 20,160.

**Number of Responses:** 56.

**Estimated Hours Per Response:** Plan development—480 hours; Plan update—240 hours.

**COMMENTS:** Written comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**ADDRESSES:** Direct comments on the request for emergency processing of the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, ATTN: Ms. Victoria Becker-Wassmer, Washington, DC 20503. Telephone Number (202) 395-5371.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the proposed collection of information, contact Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 311, Washington, DC 20472. Telephone number (202) 646-2625. FAX number (202) 646-3524. Comments on the proposed collection of information may also be provided to FEMA at the above address. Comments should be received by June 6, 1997.

Dated: March 28, 1997.

**Thomas Behm,**

*Acting Director, Program Services Division,  
Operations Support Directorate.*

[FR Doc. 97-8811 Filed 4-4-97; 8:45 am]

BILLING CODE 6718-01-P

## FEDERAL MARITIME COMMISSION

### Ocean Freight Forwarder License Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app.

1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below:

**License Number:** 4009.  
**Name:** Amerstar Shipping Incorporated.  
**Address:** 277 Broadway, New York, NY 10007.

**Date Revoked:** March 12, 1997.

**Reason:** Failed to maintain a valid surety bond.

**License Number:** 1646.  
**Name:** Full Service Forwarders, Inc.  
**Address:** 3715 Canal Street, New Orleans, LA 70119.

**Date Revoked:** February 23, 1997.

**Reason:** Failed to maintain a valid surety bond.

**License Number:** 2852.  
**Name:** Mercury International, Inc.  
**Address:** 12850 Reeveston, Houston, TX 77039.

**Date Revoked:** February 23, 1997.

**Reason:** Failed to maintain a valid surety bond.

**License Number:** 3913.  
**Name:** Shaheed Rahaman d/b/a AZ Forwarding Co.  
**Address:** 473 Crescent Street, Brooklyn, NY 11208.

**Date Revoked:** August 28, 1996.

**Reason:** Failed to maintain a valid surety bond.

**Bryant L. VanBrakle,**  
*Director, Bureau of Tariffs, Certification and Licensing.*

[FR Doc. 97-8765 Filed 4-4-97; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL MARITIME COMMISSION

### Sunshine Act Meeting

**TIME AND DATE:** 2:00 P.M.—April 10, 1997.

**PLACE:** 800 North Capitol Street, N.W.—Room 905, Washington, D.C.

**STATUS:** Closed.

**MATTER(S) TO BE CONSIDERED:** 1. The Trans-Atlantic Conference Agreement and its Members—Section 15 Order on Possible Restrictions on Space Charters.  
**CONTACT PERSON FOR MORE INFORMATION:** Joseph C. Polking, Secretary, (202) 523-5725.

**Joseph C. Polking,**  
*Secretary.*

[FR Doc. 97-8900 Filed 4-2-97; 4:49 pm]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank

Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 21, 1997.

**A. Federal Reserve Bank of Minneapolis** (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. *Stephen D. Habberstad*, Blooming Prairie, Minnesota; to acquire an additional 1.06 percent, for a total of 39.9 percent, and Susan A. Boschetti, Lubbock, Texas, to acquire an additional 9.7 percent, for a total of 33.3 percent, of the voting shares of Country Bankers, Inc., Blooming Prairie, Minnesota, and thereby indirectly acquire Farmers & Merchants State Bank of Blooming Prairie, Blooming Prairie, Minnesota, and Citizens State Bank of Hayfield, Hayfield, Minnesota. In addition, Mr. Habberstad will hold with power to vote an additional 13.5 percent of the voting shares as custodian.

Board of Governors of the Federal Reserve System, April 1, 1997.

**Jennifer J. Johnson**,

*Deputy Secretary of the Board.*

[FR Doc. 97-8773 Filed 4-4-97; 8:45 am]

BILLING CODE 6210-01-F

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes, and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate

inspection at the Federal Reserve Bank indicated. 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 standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 1, 1997.

**A. Federal Reserve Bank of New York** (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. *Korea Long Term Credit Bank*, Seoul, Korea; to acquire 9.51 percent of the voting shares of Nara Bank, National Association, Los Angeles, California.

**B. Federal Reserve Bank of Philadelphia** (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. *Century Bancorp, MHC*, Bridgeton, New Jersey, and *Century Bancorp, Inc.*, Bridgeton, New Jersey; to become bank holding companies by acquiring 100 percent of the voting shares of Century Savings Bank, Bridgeton, New Jersey.

**C. Federal Reserve Bank of Cleveland** (R. Chris Moore, Senior Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. *PHS Bancorp, M.H.C.*, Beaver Falls, Pennsylvania; to become a bank holding company by acquiring 51 percent of the voting shares of Peoples Home Savings Bank, Beaver Falls, Pennsylvania.

**D. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *Allied Irish Banks, p.l.c.*, Dublin, Ireland, and *First Maryland Bancorp*, Baltimore, Maryland (collectively, "Applicants"), to merge with Dauphin Deposit Corporation ("Dauphin") and thereby indirectly acquire Dauphin Deposit Bank and Trust Company, both of Harrisburg, Pennsylvania. Applicants also have applied to exercise an option to acquire up to 19.9 percent of the voting shares of Dauphin.

Applicants also have provided notice to acquire Hopper Soliday & Co., Inc., Lancaster, Pennsylvania, and thereby engage in underwriting and dealing in debt securities, equity securities, and bank-eligible instruments, acting as

agent in the private placement of securities, buying and selling all types of securities on the order of customers as a "riskless principal," providing investment and financial advisory services, and providing securities brokerage services alone or in combination with investment advisory services to both institutional and retail customers with respect to ineligible securities that Hopper Soliday may hold as principal in connection with its authorized underwriting and dealing activities, pursuant to Board Order dated June 24, 1991 and approval received from the Federal Reserve Bank of Philadelphia dated April 6, 1995; Dauphin Life Insurance Company, Harrisburg, Pennsylvania, and thereby engage in selling and reinsuring credit life, health, and accident insurance directly related to extensions of credit by Dauphin Bank, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y; and Loans USA, Incorporated, Pasadena, Maryland, a joint venture that engages in making, acquiring, brokering or servicing loans or other extensions of credit (including factoring, issuing letters of credit and accepting drafts) for its own account or for the account of others, pursuant to § 225.25(b)(1) of the Board's Regulation Y, providing tax preparation services to any person, pursuant to § 225.25(b)(21) of the Board's Regulation Y, and providing data processing and data transmission services, pursuant to § 225.25(b)(7) of the Board's Regulation Y, and selling and reinsuring credit life, health and accident insurance directly related to extensions of credit to its customers, pursuant to § 225.25(b)(8)(ii) of the Board's Regulation Y.

**E. Federal Reserve Bank of Minneapolis** (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. *First Bank System, Inc.*, Minneapolis Minnesota; to acquire 100 percent of the voting shares of First Bank of South Dakota (National Association) Sioux Falls, South Dakota, a *de novo* bank.

In connection with this application, Applicant also has applied to acquire First Interim Bank of Casper, fsb, Casper, Wyoming, and First Interim Bank of Cheyenne, FSB, Cheyenne, Wyoming, and thereby engage in operating two *de novo* thrift institutions, pursuant to § 225.25(b)(9) of the Board's Regulation Y. In addition, each of the above thrifts will acquire seven Wyoming branches of First Bank, FSB, Fargo, North Dakota, an existing subsidiary of First Bank System, Inc.

**F. Federal Reserve Bank of Dallas** (Genie D. Short, Vice President) 2200

North Pearl Street, Dallas, Texas 75201-2272:

1. *Premier Bancshares, Inc.*, La Grange, Texas, and Premier Holdings - Nevada, Inc., Carson City, Nevada; to acquire 100 percent of the voting shares of Citizens State Bank, Hempstead, Texas.

G. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105-1579:

1. *Imperial Bancorp.*, Inglewood, California; to acquire 100 percent of the voting shares of Imperial Bank Arizona, Phoenix, Arizona, a *de novo* bank (in formation).

Board of Governors of the Federal Reserve System, April 1, 1997.

Jennifer J. Johnson,  
Deputy Secretary of the Board.  
[FR Doc. 97-8772 Filed 4-4-97; 8:45 am]  
BILLING CODE 6210-01-F

#### FEDERAL TRADE COMMISSION

##### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade

Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

#### TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 3-17-97 AND 3-28-97

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
American General Corporation, USLIFE Corporation, USLIFE Corporation	97-1159	03/17/97
British Aerospace plc, Reflectone, Inc., Reflectone, Inc.	97-1372	03/17/97
Vestar Equity Partners, L.P., Westinghouse Air Brake Company, Westinghouse Air Brake Company	97-1405	03/17/97
The President and Fellow of Harvard College, Westinghouse Air Brake Company, Westinghouse Air Brake Company	97-1433	03/17/97
HCC Insurance Holdings, Inc., AVEMCO Corporation, AVEMCO Corporation	97-1434	03/17/97
John Hancock Mutual Life Insurance Company, Estate of Henry Penn Wagner, Detroit & Canada Tunnel Corporation	97-1457	03/17/97
R.A.B. Holdings, Inc., McKesson Corporation, Millbrook Distribution Services, Inc.	97-1459	03/17/97
Vereniging AEGON, Providian Corporation, Providian Corporation	97-1460	03/17/97
Jim L. Turner, Seven-Up/RC Bottling Company of Southern California Inc., Seven-Up/RC Bottling Company of Southern California Inc.	97-1471	03/17/97
Airtours plc, ST Pacific Holdings, Inc., ST Pacific Holdings, Inc.	97-1476	03/17/97
Thayer Equity Investors III, L.P., Software AG (a German company), Software AG Systems, Inc.	97-1486	03/17/97
Owens Corning, James C. Allen, Falcon Manufacturing of California, Inc., CADA	97-1327	03/18/97
Apartment Investment and Management Company, NHP Incorporated, NHP Incorporated	97-1396	03/18/97
ITC Holding Company, Inc., SCANA Corporation, Gulf States FiberNet, a Georgia general partnership	97-1420	03/18/97
The York Group, Inc., Howard Joe Trulove, West Point Casket Company	97-1477	03/18/97
Robert R. Dyson, Ralph G. Ridenour, Universal Enterprises, Inc.	97-1481	03/18/97
Pierce Leahy Corp., Records Management Storage, Inc., Records Management Storage, Inc.	97-1368	03/19/97
Pacific Dunlop Limited, Harold F. Plemmons, Golden Needles Knitting & Glove Co. Ltd	97-1428	03/19/97
Pacific Dunlop Limited, Michael G. Conruff, Golden Needles Knitting & Glove Co. Ltd	97-1442	03/19/97
Westinghouse Electric Corporation, Peter A. Bordes, Greater Los Angeles Radio, Inc.	97-1538	03/19/97
Peter A. Bordes, Westinghouse Electric Corporation, Infinity WOAZ-FM, Inc.	97-1539	03/19/97
Rifkin Acquisition Partners, L.L.P., American Cable TV Investors 5, Ltd, American Cable TV Investors 5, Ltd	97-1331	03/20/97
Brooks Fiber Properties, Inc., Gus Constantin and Mary Jane Constantin, Phoenix Fiberlink of Utah, Inc., Phoenix Communications	97-1348	03/20/97
American Disposal Service, Inc., WMX Technologies, Inc., Waste Management of Indiana, L.L.C.	97-1399	03/20/97
Evergreen Media Corporation, Sumner M. Redstone, Redstone Subsidiaries WAXQ Inc.	97-1421	03/20/97
Hicks, Muse, Tate & Furst Equity Fund II, L.P., Sumner M. Redstone, KIBB, Inc., KYSR, Inc., WDRQ, Inc. & WLIT, Inc.	97-1423	03/20/97
General Electric Company, Xerox Corporation, Coregis Group, Inc.	97-1449	03/20/97
The Washington Post Company, Tele-Communications, Inc., TCI American Cable Holdings II, L.P.	97-1463	03/20/97
S.C.R.-Sibelco S. A., Watts Blake Bearn & Company, PLC (a British company), Watts Blake Bearn & Company, PLC	97-1464	03/20/97
Robert F. X. Sillerman, Kenneth A. Brown, ABS Communications, L.L.C.	97-1470	03/20/97
New York University, New York Downtown Hospital, New York Downtown Hospital	97-1400	03/21/97
Fortis AMEV N.V., Robert S. and Rita DeLue (Husband and Wife), Associated California State Insurance Agencies, Inc.	97-1425	03/21/97
Fortis AG S.A., Robert S. and Rita DeLue (Husband and Wife), Associated California State Insurance Agencies, Inc.	97-1426	03/21/97
Tele-Communications, Inc., The Washington Post Company, Post-Newsweek Cable, Inc.	97-1456	03/21/97
Foundation Health Corporation, Fund American Enterprises Holdings, Inc., Christiania General Insurance Corporation	97-1487	03/21/97
Sigma-Aldrich Corporation, Riverside Fund I, L.P., Research Biochemicals Limited Partnership	97-1489	03/21/97
Duferco Participations Holding Limited, Deutsche Babcock AG, Baldwin Steel Company	97-1490	03/21/97
Richard and Roberta Snyder, Inter-City Products Corporation (a Canadian company), Inter-City Products Corporation	97-1491	03/21/97

## TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 3-17-97 AND 3-28-97—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Freedom Communications, Inc., Kenneth R. Thomson, Thompson Newspapers Inc. ....	97-1492	03/21/97
Smith Investment Company, Joseph Motors, Inc., Joseph Motors, Inc. ....	97-1500	03/21/97
Smith Investment Company, Estate of Jerome Joseph, UPPCO, Inc. ....	97-1501	03/21/97
United/Harvey Holdings L.P., Bass PLC (a British company), Holiday Inns, Inc. ....	97-1502	03/21/97
E.I. duPont de Nemours and Company, Pfister Hybrid Corn Company, Pfister Hybrid Corn Company .....	97-1507	03/21/97
Aon Corporation, Innovative Services International, L.L.C., Innovative Services International, L.L.C. ....	97-1508	03/21/97
Marsh & McLennan Companies, Inc., Johnson & Higgins, Johnson & Higgins .....	97-1511	03/21/97
TRW, Inc., RF Micro Devices, Inc., RF Micro Devices, Inc. ....	97-1513	03/21/97
Gordon Lee & Melissa W. Dickens, James Erickson, ProAmerica Systems, Inc. ....	97-1540	03/21/97
Cementos Lemona, S.A. (a Spanish company), Cementos Portland, S.A. (a Spanish company), CDN-USA, Inc. ....	97-1543	03/21/97
Eos Partners, L.P., Union Pacific Corporation, Pacific Motor Transport Company .....	97-1545	03/21/97
Vencor, Inc., Andy L. Schoepf, American Elderserve Corporation .....	97-1418	03/24/97
Robert S. and Rita DeLue, Fortis AMEV N.V., Fortis, Inc. ....	97-1452	03/24/97
Robert S. and Rita DeLue, Fortis AG S.A., Fortis, Inc. ....	97-1453	03/24/97
Hermann Hirsch, and Austrian citizen, Textron Inc., Hirsch-Speidel L.L.C. ....	97-1495	03/24/97
The Energy Group, plc (a British company), Lehman Brothers Holdings, Inc., Citizens Lehman Power L.L.C. ....	97-1503	03/24/97
WMX Technologies, Inc., Neil Vacarro, N. Vacarro, Inc., Hi-Tech Recycling, Inc. ....	97-1509	03/24/97
The Walt Disney Company, Steven P. Jobs, Pixar .....	97-1510	03/24/97
Gordon Lee & Melissa W. Dickens, G. Jodene Ballew, ProAmerica Systems, Inc. ....	97-1544	03/24/97
Cypress Semiconductor Corporation, QuickLogic Corporation, QuickLogic Corporation .....	97-1548	03/24/97
S.A. Latingy (a/k/a Groupe Latingy), The Times Mirror Company, Harry N. Abrams, Inc. ....	97-1549	03/24/97
Culligan Water Technologies, Inc., Ametek, Inc., Ametek, Inc. (Post Spin-off) .....	97-1553	03/24/97
Hyperion Partners II L.P., Transworld Home HealthCare, Inc., Transworld Home HealthCare, Inc. ....	97-1556	03/24/97
Memorial Health Alliance, West Jersey Health System, West Jersey Health System .....	97-1564	03/24/97
West Jersey Health System, Memorial Health Alliance, Memorial Health Alliance .....	97-1565	03/24/97
PacifiCorp, TPC Corporation, TPC Corporation .....	97-1566	03/24/97
Caradon plc, Fred M. Schildwachter & Sons, Inc., Fred M. Schildwachter & Sons, Inc. ....	97-1571	03/24/97
Peconic Health Corporation, 1905 Enterprises, Inc., Eastern Long Island Hospital .....	97-1379	03/25/97
Harvard Pilgrim Health Care, Inc., Dartmouth-Hitchcock Medical Center, Matthew Thornton Health Plan, Inc. ....	97-1390	03/25/97
Tele-Communications, Inc., Oscar I Corporation, Oscar I Corporation .....	97-1474	03/25/97
Lehman Brothers Holdings, Inc., Oscar I Corporation, Oscar I Corporation .....	97-1475	03/25/97
Trustees of Princeton University (The), Castle Tower Holding Corp, Castle Tower Holding Corp .....	97-1493	03/25/97
Chase Manhattan Corporation, Fund American Enterprises Holdings, Inc., Source One Mortgage Services Corporation .....	97-1506	03/26/97
Norman Barham, Marsh & McLennan Companies, Inc., Marsh & McLennan Companies, Inc. ....	97-1514	03/26/97
William C. Bauman, Marsh & McLennan Companies, Inc., Marsh & McLennan Companies, Inc. ....	97-1515	03/26/97
S. Robert Beane, Marsh & McLennan Companies, Inc., Marsh & McLennan Companies, Inc. ....	97-1516	03/26/97
Rodney D. Day, III, Marsh & McLennan Companies, Inc., Marsh & McLennan Companies, Inc. ....	97-1517	03/26/97
John V. Deitchman, Marsh & McLennan Companies, Inc., Marsh & McLennan Companies, Inc. ....	97-1518	03/26/97
Theodore J. Fuller, Marsh & McLennan Companies, Inc., Marsh & McLennan Companies, Inc. ....	97-1519	03/26/97
John W. Gussenhoven, Marsh & McLennan Companies, Inc., Marsh & McLennan Companies, Inc. ....	97-1520	03/26/97
Brian R. Hall, Marsh & McLennan Companies, Inc., Marsh & McLennan Companies, Inc. ....	97-1521	03/26/97
William S. Jennings, Marsh & McLennan Companies, Inc., Marsh & McLennan Companies, Inc. ....	97-1522	03/26/97
John P. Keyser, Marsh & McLennan Companies, Inc., Marsh & McLennan Companies, Inc. ....	97-1523	03/26/97
Willis T. King, Jr., Marsh & McLennan Companies, Inc., Marsh & McLennan Companies, Inc. ....	97-1524	03/26/97
Christine LaSala, Marsh & McLennan Companies, Inc., Marsh & McLennan Companies, Inc. ....	97-1525	03/26/97
James W. McElvany, Marsh & McLennan Companies, Inc., Marsh & McLennan Companies, Inc. ....	97-1526	03/26/97
John A. McMahon, Marsh & McLennan Companies, Inc., Marsh & McLennan Companies, Inc. ....	97-1527	03/26/97
Gardner M. Mundy, Marsh & McLennan Companies, Inc., Marsh & McLennan Companies, Inc. ....	97-1528	03/26/97
Richard A. Nielsen, Marsh & McLennan Companies, Inc., Marsh & McLennan Companies, Inc. ....	97-1529	03/26/97
David A. Olsen, Marsh & McLennan Companies, Inc., Marsh & McLennan Companies, Inc. ....	97-1530	03/26/97
Alan G. Page, Marsh & McLennan Companies, Inc., Marsh & McLennan Companies, Inc. ....	97-1531	03/26/97
Thomas G. Patzau, Marsh & McLennan Companies, Inc., Marsh & McLennan Companies, Inc. ....	97-1532	03/26/97
Joseph P. Platt, Jr., Marsh & McLennan Companies, Inc., Marsh & McLennan Companies, Inc. ....	97-1533	03/26/97
Joseph D. Roxe, Marsh & McLennan Companies, Inc., Marsh & McLennan Companies, Inc. ....	97-1534	03/26/97
Gerald R. Swanson, Marsh & McLennan Companies, Inc., Marsh & McLennan Companies, Inc. ....	97-1535	03/26/97
Richard E. Valliere, Marsh & McLennan Companies, Inc., Marsh & McLennan Companies, Inc. ....	97-1536	03/26/97
Rufus J. Williams, III, Marsh & McLennan Companies, Inc., Marsh & McLennan Companies, Inc. ....	97-1537	03/26/97
Autodesk, Inc., Softdesk, Inc., Softdesk, Inc. ....	97-0935	03/28/97
Jacor Communication, Inc., Edward F. McLaughlin, EFM Media Management, Pam Media, Inc. & EFM Publishing ..	97-1496	03/28/97
First Data Corporation, Douglas B. Bosch, Consumer Credit Associates, Inc. ....	97-1557	03/28/97
Media General, Inc., Scudder Family Voting Trust for ANI, Garden State Newspapers, Inc. ....	97-1559	03/28/97
The Walt Disney Company, Paul Allen, Starwave Corporation .....	97-1572	03/28/97
Pride Petroleum Services, Inc., Noble Drilling Corporation, Noble Drilling Corporation .....	97-1576	03/28/97
John E. and Elaine A. Fellowes, James K. Sankey, Alpha Enterprises, Inc. ....	97-1579	03/28/97
Joseph M. Field, Westinghouse Electric Corporation, Group W Broadcasting, Inc. ....	97-1580	03/28/97
Westinghouse Electric Corporation, Joseph M. Field, Entertainment Communications, Inc. ....	97-1581	03/28/97
U.S. Office Products Company, The Walt Disney Company, Childcraft Education Corp./Bird-In-Hand Woodworks, Inc. ....	97-1582	03/28/97
NGC Corporation, The Dow Chemical Company, Destec Energy, Inc. ....	97-1583	03/28/97
Rolls-Royce plc, LucasVarity plc, Geared Systems, Inc. ....	97-1584	03/28/97

## TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 3-17-97 AND 3-28-97—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Calpine Corporation, Enron Corporation, Enron/Dominion Cogen Corporation .....	97-1586	03/28/97
Cox Enterprises, Inc., El Dorado Communications, Inc., El Dorado Communications, Inc. ....	97-1592	03/28/97
Deseret Management Corporation, Westinghouse Electric Corporation, Group W Broadcasting, Inc. ....	97-1594	03/28/97
Mr. Keith Rupert Murdoch, The News Corporation Limited, an Australian company, The News Corporation Limited, an Australian company .....	97-1595	03/28/97
Reliance Steel & Aluminum Co., Nashville Steel Corporation, AMI Metals, Inc. ....	97-1596	03/28/97
Frank M. Late, David E. Culiver, Firebird Investments, Inc.; Culiver Infronti, Inc. ....	97-1597	03/28/97
Clear Channel Communications, Philip D. Marella, Pinnacle Broadcasting Company, Inc. ....	97-1610	03/28/97
Granite Construction Incorporated, TIC Holdings, Inc., TIC Holdings, Inc. ....	97-1614	03/28/97
Just For Feet, Inc., Bruce E. and Emily A. Mommson, Imperial Acquisition Corporation .....	97-1615	03/28/97
United Auto Group, Inc., Gary W. Hanna, Gary Hanna Nissan, Inc. ....	97-1618	03/28/97

**FOR FURTHER INFORMATION CONTACT:**

Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326-3100.

- By Direction of the Commission.

**Donald S. Clark,**  
Secretary.

[FR Doc. 97-8796 Filed 4-4-97; 8:45 am]

BILLING CODE 6750-01-M

**FEDERAL TRADE COMMISSION**

[File No. 962-3224]

**2943174 Canada Inc., Also d/b/a United Research Center, Inc.; Analysis To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Quebec-based company and its president from making health benefits, performance, or efficacy claims regarding the "Svelt-PATCH" or any other drug or device unless, at the time the representation is made, the respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation, and from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or study. In addition, the proposed consent agreement would require the respondents to pay \$375,000 in consumer redress or disgorgement.

**DATES:** Comments must be received on or before June 6, 1997.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:**

Michael Bloom or Ronald Waldman, Federal Trade Commission, New York Regional Office, 150 William St, 13th Floor, New York, N.Y. 10038-2603, (212) 264-1201 or 264-1242.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home page (for March 25, 1997), on the World Wide Web, at "<http://www.ftc.gov/os/actions/htm>." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

**Analysis of Proposed Consent Order**

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed Consent Order ("proposed order") from 2943174 Canada Inc., also doing business as

United Research Center, Inc., and its principal, Patrice Runner.

The proposed order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns print advertisements for proposed respondents' Svelt-PATCH, a purported weight loss product. The Commission's complaint alleges that proposed respondents engaged in deceptive advertising in violation of Sections 5 and 12 of the FTC Act by making unsubstantiated claims that: (1) Svelt-PATCH controls appetite; (2) Svelt-PATCH significantly increases human metabolism; (3) Svelt-PATCH significantly reduces body fat; (4) Svelt-PATCH causes significant weight loss; (5) Svelt-PATCH causes long-term or permanent weight loss; and (6) Svelt-PATCH lowers serum cholesterol levels.

The complaint further alleges that proposed respondents made a false claim that clinical evidence proves that Svelt-PATCH causes users to lose weight.

The proposed order contains provisions designed to remedy the violations charged and to prevent proposed respondents from engaging in similar acts in the future.

Paragraph I of the proposed order prohibits proposed respondents from claiming that Svelt-PATCH or any other product or program: (1) controls appetite; (2) increases human metabolism; (3) reduces body fat; (4) causes weight loss; (5) causes long-term or permanent weight loss; and (6) reduces cholesterol; (7) provides any weight loss, fat loss, weight regulation, weight control, or weight maintenance benefit, unless, at the time the



representation is made, proposed respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Paragraph II of the proposed order prohibits proposed respondents from making any representation for Svlt-PATCH, or any other drug or device, about the health benefits, performance, or efficacy of such product unless, at the time the representation is made, proposed respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Paragraph III of the proposed order prohibits proposed respondents from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or study.

Paragraphs IV of the proposed order provides that nothing in this order shall prohibit proposed respondents from making any representation permitted by the Food and Drug Administration.

Paragraph V of the proposed order requires proposed respondents to pay three hundred and seventy-five thousand dollars (\$375,000) in consumer redress, or if consumer redress is impracticable or unwarranted, said money shall be payable to the United States Treasury.

Paragraph VI of the proposed order contains recordkeeping requirements for materials that substantiate, qualify, or contradict covered claims and requires the proposed respondents to keep and maintain all advertisements and promotional materials containing any representation covered by the proposed order. In addition, paragraph VII requires distribution of a copy of the consent decree to current and future officers and agents. Further, paragraph VIII provides for Commission notification upon a change in the corporate respondent. Paragraph IX requires proposed respondent Patrice Runner to notify the respondents when he discontinues his current business or employment and of his affiliation with certain new businesses or employment. The proposed order also requires the filing of a compliance report (Paragraph X).

Finally, paragraph XI of the proposed order provides for the termination of the order after twenty years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of

the agreement and proposed order or to modify in any way their terms.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 97-8801 Filed 4-4-97; 8:45 am]

BILLING CODE 6750-01-M

## FEDERAL TRADE COMMISSION

[File No. 912-3220]

### Dean Distributors, Inc., et al., d/b/a Advanced Health Systems, Cambridge Direct Sales, and Medibase; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the California-based companies, which market low calorie and very low calorie diet (VLCD) programs, to possess a reasonable basis for any future claims regarding weight loss or weight loss maintenance, and to clearly and prominently disclose in any representation regarding the safety of respondent's VLCD diet programs that physician monitoring is required to minimize the potential for health risks, namely development of gallbladder disease.

**DATES:** Comments must be received on or before June 6, 1997.

**ADDRESSES:** Comments should be directed to: FTC/Office of Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Walter Gross or J. Reilly Dolan, FTC/H-200, Washington, DC 20580. (202) 326-3319 or 326-3292.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home page (for March 25, 1997), on the

World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

### Analysis of Proposed Consent Order

The Federal Trade Commission has accepted an agreement to a proposed consent order from Dean Distributors, Inc., a corporation doing business as advanced Health Care Systems, Cambridge Direct Sales and Medibase. Proposed respondent markets low calorie and very low calorie diet programs through a multi-level distribution system and directly to independent physicians.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission has alleged that proposed respondent has made false and unsubstantiated claims in its advertising, promotional and sales materials that are likely to mislead consumers as to: (1) the likelihood of success in achieving and maintaining weight reduction; and (2) the health risk associated with rapid weight loss. Proposed respondent has represented, through consumer endorsements, that its diet programs produce successful results. The consumers featured in these testimonials purportedly achieved remarkable success in reaching a desired weight, and in changing their appearance. Through these consumer endorsements, proposed respondent has represented that he success achieved by such consumers in reaching their weight loss goal reflects the typical or ordinary experiences of participants of respondent's weight loss programs. The Commission has alleged that proposed respondent had failed to substantiate the claim that the weight loss success experienced by persons featured in these testimonial advertisements is representative of what consumers will generally achieve with the products.

The Commission has also alleged that proposed respondent has represented that the typical consumer of its products and services is successful in maintaining achieved weight loss, or, at a minimum, a substantial portion of achieved weight loss, over time. Proposed respondent has not provided adequate substantiation to support representations regarding the long-term effectiveness of the weight loss products and programs. Furthermore, according to the Commission's complaint, proposed respondent has represented that its maintenance claims were based in part upon a valid statistical analysis of its customers. However, the Commission has alleged that the analysis in question was not based upon a valid statistical sample of proposed respondent's customers.

Finally, the Commission has alleged that proposed respondent has represented that its physician monitored very-low-calorie diet programs are free of serious health risks without disclosing that physician monitoring is necessary to minimize the risk of serious health complications associated with very-low-calorie diet programs. Further the Commission has alleged that in materials prepared specifically for physicians of patients using the very-low-calorie diets, proposed respondent failed to list serious adverse health complications that have been associated with very-low-calorie diets.

The proposed consent order seeks to address the alleged misrepresentations cited in the accompanying complaint by requiring proposed respondents to possess a reasonable basis for any future claims regarding weight loss or weight loss maintenance. The proposed consent order also requires proposed respondent to clearly and prominently disclose in any representation regarding the safety of respondent's VLCD diet programs that physician monitoring is required to minimize the potential for health risks, namely development of gallbladder disease.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

**Donald S. Clark,**  
Secretary.

[FR Doc. 97-8799 Filed 4-4-97; 8:45 am]

BILLING CODE 6750-01-M

## FEDERAL TRADE COMMISSION

[File No. 962-3172]

### Amerifit, Inc.; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Connecticut-based company to pay \$100,000 to the Commission for disgorgement and would prohibit the respondent from representing that the Fat Burners products, or any other food, drug, or dietary supplement cause weight loss or reduce body fat unless, at the time the representation is made, it possesses and relies upon competent and reliable scientific evidence that substantiates the representation. In addition, the proposed consent agreement would prohibit the respondent from using the trade name "Fat Burners," unless it is used as part of the trade name "Fat Burners Diet, Exercise and Supplement System" and a disclosure statement is prominently and clearly placed on materials containing that name.

**DATES:** Comments must be received on or before June 6, 1997.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Justin Dingfelder or Jeffrey Feinstein, FTC/S-4302, Washington, D.C. 20580. (202) 326-3017 or 326-2372.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home page (for March 25, 1997), on the World Wide Web, at "<http://www.ftc.gov/os/actions/htm>." A paper copy can be obtained from the FTC

Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

### Analysis of Proposed Consent Order

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from AmeriFIT, Inc. (respondent). The agreement would settle a proposed complaint by the Commission that respondent engaged in unfair or deceptive acts or practices in violation of sections 5(a) and 12 of the Federal Trade Commission Act.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint alleges that respondent manufactured, advertised, labeled, offered for sale, sold and distributed products to the public, including "Fat Burners," "Fast Burners," "Improved Formula Fat Burners," and "Extra Strength Fat Burners" (collectively, "the Fat Burners products"), and represented that the Fat Burners products cause weight loss or reduced body fat. The Commission's complaint further alleges that respondent did not possess and rely upon a reasonable basis that substantiated those representations.

The consent agreement resolving these allegations prohibits respondent from representing that the Fat Burners products, or any other food, drug, or dietary supplement cause weight loss or reduce body fat unless, at the time the representation is made, it possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

The agreement further prohibits respondent from using the name "Fat Burners" or any other name that communicates the same or similar meaning unless the material containing the name clearly and prominently contains the following disclosure:

THE DIETARY SUPPLEMENT IN THIS SYSTEM IS FOR NUTRITIONAL USE ONLY

AND DOES NOT CONTRIBUTE TO WEIGHT LOSS OR LOSS OF BODY FAT.

The agreement also requires respondent to pay \$100,000 to the Federal Trade Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify any of their terms.

Donald S. Clark,

Secretary.

[FR Doc. 97-8797 Filed 4-4-97; 8:45 am]

BILLING CODE 6750-01-M

## FEDERAL TRADE COMMISSION

(File No. 972-3021)

### Bodywell Inc., et al., Also d/b/a Bodywell U.S.A.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would, among other things, require the New York-based company and its principal to possess competent and reliable scientific evidence to support any claim that any product causes weight loss, with or without changes in diet or exercise, or provides any weight loss, fat loss, weight regulation, weight control or weight maintenance benefit; and would prohibit them from using the name "Slimming Soles" or any other name in a manner that represents that any product causes weight loss, unless the respondents possess competent and reliable scientific evidence that substantiates the representation. The consent agreement also would prohibit the respondent from making any misrepresentations of the existence, contents, validity, results, conclusions or interpretations of any test, study or research, and from violating the Mail or Telephone Order Merchandise Rule, which, among other things, requires that purchasers be notified if the products are not delivered in a timely fashion. In addition, the consent agreement would require the respondents to pay \$100,000 for consumer redress or disgorgement.

**DATES:** Comments must be received on or before June 6, 1997.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Richard Cleland, FTC/H-482, Washington, D.C. 20580. (202) 326-3088.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home page (for March 25, 1997), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, NW., Washington, D.C. 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

#### Analysis of Proposed Consent Order

The Federal Trade Commission has accepted an agreement to a proposed consent order from BodyWell, Inc. and BodyWell, Inc.'s officer, Gerard du Passage ("respondents").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint in this matter charges respondents with deceptively advertising Slimming Soles, insoles worn in the shoes that purportedly cause weight loss through "reflexology," without changes in diet or exercise. According to advertisements for the product, the Slimming Soles purportedly cause weight loss by massaging certain "reflex points" on the bottom of the foot during the course of a normal day's walking, thereby stimulating the body's digestive system to burn stored fat and cause weight loss.

Advertisements for the product appeared in newspapers such as the *Denver Post* and in the *National Enquirer*, in newspaper inserts, in magazines such as *Cosmopolitan* and *Woman's Day* as well as in nationwide direct mailings.

The complaint alleges that, through the product name "Slimming Soles" and the advertisements, respondents made unsubstantiated representations that the Slimming Soles cause significant weight loss; that the weight loss occurs without changes in diet or exercise; and that consumers using the Slimming Soles will lose 13 to 16 pounds within six weeks, without changes in diet or exercise. According to the complaint, the ads also claimed, without adequate substantiation, that the consumer testimonials in the ads reflect the typical or ordinary experience of people who have used the product.

The complaint also alleges that respondents falsely represented that scientific studies demonstrate that the Slimming Soles cause significant weight loss, including 13 to 16 pounds within six weeks, without changes in diet or exercise. In addition, the complaint alleges that respondents falsely represented that the product would be delivered to purchasers within a reasonable period of time. In fact, the complaint alleges, in numerous instances the Soles sold to purchasers were not delivered to those purchasers within a reasonable period of time.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent respondents from engaging in similar acts and practices in the future.

Part I of the order requires respondents to possess competent and reliable scientific evidence to support any claim that any product causes weight loss, with or without changes in diet or exercise, causes weight loss at any particular rate or speed, or within any time period, or provides any weight loss, fat loss, weight regulation, weight control or weight maintenance benefit. Part II prohibits respondents from using the name "Slimming Soles" or any other name in a manner that represents that any product causes weight loss, unless they possess competent and reliable scientific evidence that substantiates the representation.

Part III prohibits respondents from claiming that the experience represented in any user-testimonial or endorsement of any food, dietary supplement, drug, device, or weight loss product or program represents the typical or ordinary experience of members of the public who use the

product or program, unless, at the time, they possess and rely upon competent and reliable scientific evidence substantiating the representation or they disclose, clearly and prominently, and in close proximity to the testimonial or endorsement, what the generally expected results would be or that consumers should not expect to experience similar results.

Part IV prohibits respondents from misrepresenting the existence, contents, validity, results, conclusions or interpretations of any test, study or research in connection with the sale of any food, dietary supplement, drug, device, or weight loss product or program. Part V prohibits respondents from violating the Mail or Telephone Order Merchandise Rule, which, among other things, requires that purchasers be notified if the products are not delivered in a timely fashion.

Part VI requires respondents to deposit \$100,000 into an escrow account, which will be used by the Commission to provide either direct redress to purchasers of the Slimming Soles or will be paid to the United States Treasury, if the Commission determines that direct redress to consumers is wholly or partially impracticable.

Parts VII through IX relate to respondents' obligations to maintain and make available to the Commission certain records; to provide copies of the order to respondents' personnel; and to notify the Commission of structural changes in the corporation. Part X requires Gerard du Passage to notify the Commission if he leaves his current employment or he affiliates with any new business or employment whose activities relate to the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of any dietary supplement, drug, device, or weight loss product or program for which any health or weight loss claim is made. Part XI requires respondents to file compliance reports with the Commission. Part XII provides that the order will terminate after twenty years, under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

**Donald S. Clark,**  
Secretary.

[FR Doc. 97-8798 Filed 4-4-97; 8:45am]

BILLING CODE 6750-01-M

## FEDERAL TRADE COMMISSION

[File No. 962-3137]

### Guildwood Direct Limited, Also d/b/a Intermed Laboratories; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the New York-based company from representing that any product causes weight loss, with or without changes in diet or exercise, or provides any weight loss, fat loss, weight regulation, weight control or weight maintenance benefit, and from using the name "Slimming Insoles" or any other name in a manner that represents that any product causes weight loss unless the respondent possesses competent and reliable scientific evidence that substantiates the representation. The consent agreement also would prohibit the respondent from representing that Advance Bio/Natural Research Labs in a bona fide, independent research organization or from making any misrepresentations of the existence, contents, validity, results, conclusions or interpretations of any test, study or research or the existence, nature, purpose or activities of any organization. In addition, the consent agreement would require the respondent to pay, to purchasers of the Slimming Insoles, \$40,000 for consumer redress or disgorgement, with that liability being suspended upon payment of \$7,500 once the order becomes final.

**DATES:** Comments must be received on or before June 6, 1997.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Richard Cleland, FTC/H-482, Washington, D.C. 20580. (202) 326-3088.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following

Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home page (for March 25, 1997), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(iii)).

### Analysis of Proposed Consent Order

The Federal Trade Commission has accepted an agreement to a proposed consent order from Guildwood Direct Limited ("respondent").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint in this matter charges respondent with deceptively advertising Slimming Insoles, insoles worn in the shoes that purportedly cause weight loss through "reflexology," without changes in diet or exercise. According to advertisements for the product, the Slimming Insoles purportedly cause weight loss by massaging certain "reflex points" on the bottom of the foot during the course of a normal day's walking, thereby stimulating the body's digestive system to burn stored fat and cause weight loss. Advertisements for the product appeared in newspapers such as the *Washington Post*, *New York Post*, *Denver Post* and *St. Louis Post*, in newspaper inserts, in magazines such as *American Women*, *Soap Opera Update* and *Woman's Own* as well as in nationwide direct mailings.

The complaint alleges that, through the product name "Slimming Insoles" and the advertisements, respondent made unsubstantiated representations that the Slimming Insoles cause significant weight loss and that the weight loss occurs without changes in diet or exercise. According to the complaint, the ads also claim, without

adequate substantiation, that testimonials from consumers appearing in the ads reflect the typical or ordinary experience of people who have used the product.

The complaint also alleges that respondent falsely represented that scientific studies demonstrate that the Slimming Insoles cause significant weight loss without changes in diet or exercise. In addition, the complaint alleges that respondent falsely represented that an organization named Advanced Bio/Natural Research Labs is a bona fide, independent research organization that has published a report containing the results of valid, independent testing of the Slimming Insoles.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent respondent from engaging in similar acts and practices in the future.

Part I of the order requires respondent to possess competent and reliable scientific evidence to support any claim that any product causes weight loss, with or without changes in diet or exercise, or provides any weight loss, fat loss, weight regulation, weight control or weight maintenance benefit. Part II prohibits respondent from using the name "Slimming Insoles" or any other name in a manner that represents that any product causes weight loss, unless respondent possesses competent and reliable scientific evidence that substantiates the representation.

Part III prohibits respondent from claiming that the experience represented in any user-testimonial or endorsement of any food, dietary supplement, drug, device, or weight loss product or program represents the typical or ordinary experience of members of the public who use the product, unless, at the time, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation or respondent discloses, clearly and prominently, and in close proximity to the testimonial or endorsement, what the generally expected results would be or that consumers should not expect to experience similar results.

Part IV prohibits respondent from representing that Advance Bio/Natural Research Labs is a bona fide, independent research organization or that it has published a report containing the results of valid, independent testing of any product. Part V prohibits, in connection with the sale of any food, dietary supplement, drug, device or weight loss product or program, misrepresentations of the existence, contents, validity, results, conclusions

or interpretations of any test, study or research or the existence, nature, purpose or activities of any organization.

Part VI requires respondent to deposit \$40,000 into an escrow account, which will be used by the Commission to provide either direct redress to purchasers of the Slimming Insoles or will be paid to the United States Treasury, if the Commission determines that direct redress to consumers is wholly or partially impracticable. The order suspends the full \$40,000 liability, however, provided that respondent pays \$7,500 to the Commission no later than the date the order becomes final. The full \$40,000 becomes due, however, should respondent default in making the \$7,500 payment. In addition, the Commission's acceptance of the order is expressly premised upon financial statements and related documents provided by the respondent, and the Commission reserves the right to re-open the proceeding to determine if the financial information provided by respondent contains any material misrepresentations or omissions. If the Commission determines that there are any material misrepresentations or omissions in the financial information provided, then the full \$40,000 becomes due and payable.

Parts VII through X relate to respondent's obligations to maintain and make available to the Commission certain records; to provide copies of the order to respondent's personnel; to notify the Commission of changes in corporate structure; and to file compliance reports with the Commission. Part XI provides that the order will terminate after twenty years, under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,  
Secretary.

[FR Doc. 97-8800 Filed 4-4-97; 8:45 am]

BILLING CODE 6750-01-M

#### FEDERAL TRADE COMMISSION

[File No. 942-3237]

**KCD Holdings, Inc., et al.; Interactive Medical Technologies, Ltd., et al.; William Peizer, Jr.; and William E. Shell, M.D.; Analysis to Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreements.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, the four consent agreements, accepted subject to final Commission approval, would prohibit, among other things, the California-based companies, which market cellulose-bile products, and their officers from providing means and instrumentalities or substantial assistance to any person who they know, or should know, is making any false or unsubstantiated benefit, performance, efficacy or safety claim for any weight loss, fat or cholesterol reduction product or program. The consent agreements would require KCD, KCD Holdings and Richards to pay \$150,000 in consumer redress, in thirteen installments over a period of one year, Interactive Medical and Effective Health to pay \$35,000 in consumer redress, and Dr. William E. Shell, a former officer of Interactive Medical Technologies, Ltd., to pay \$20,000 in consumer redress.

**DATES:** Comments must be received on or before June 6, 1997.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Laureen Franco or Nadine Samter, Federal Trade Commission, Seattle Regional Office, 915 Second Ave., Suite 2896, Seattle, WA. 98174. (202) 220-6350 or 220-4471.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreements containing a consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreements, and the allegations in the complaints. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home page (for March 25, 1997), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered

by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

#### Analysis of Proposed Consent Orders

The Federal Trade Commission ("Commission") has accepted, subject to final approval, agreements to proposed consent orders from KCD, Incorporated ("KCD") and KCD Holdings, Inc. ("KCD Holdings"), their former officer, Clark M. Holcomb ("Holcomb"), and their current officer, Bonnie L. Richards ("Richards") (hereinafter "KCD respondents"), their advertising agency Deerfield Corporation ("Deerfield"), and its owner, Gerald E. Hatto ("Hatto"). The KCD respondents market and sell an over-the-counter weight loss product, known as SeQuester, comprised of fiber and ox bile. The product advertisements have represented that the product reduces the body's absorption of fat and sugar from consumed food, thereby providing weight loss and cholesterol lowering benefits. Respondents Deerfield and Hatto assisted in the creation and dissemination of the SeQuester advertisements.

The Commission has also accepted, subject to final approval, agreements to proposed consent orders from Interactive Medical Technologies, Ltd. ("IMT"), its wholly owned subsidiary, Effective Health, Inc. ("EHI"), William Pelzer, Jr. ("Pelzer"), a former officer of IMT and EHI, and William E. Shell, M.D. ("Shell"), also a former officer of IMT (hereinafter "IMT respondents"). These respondents marketed and sold an over-the-counter weight loss product, known as Lipitrol, also comprised of fiber and ox bile. The Lipitrol product advertisements represented that the product reduced the body's absorption of fat from consumed food, thereby providing weight loss and cholesterol lowering benefits. The IMT respondents also provided means and instrumentalities or substantial assistance to the KCD respondents' marketing and sale of SeQuester.

The proposed consent orders have been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreements and take other appropriate action or make final the proposed orders contained in the agreements.

#### The Proposed Complaints

The Commission's complaint against the KCD respondents, Deerfield and Hatto, charges these respondents with making false and unsubstantiated claims, in advertising and promotional materials, regarding the efficacy of SeQuester as a weight loss, fat reduction and cholesterol reduction product. Specifically, the complaint alleges that the KCD respondents falsely represented, expressly or by implication, that SeQuester prevents or significantly reduces the body's absorption of fat and sugar from consumed food. The complaint also charges that these respondents failed to possess and rely upon a reasonable basis for these representations. The Complaint further alleges that these respondents made false and deceptive representations that scientific research demonstrates that SeQuester prevents or significantly reduces the body's absorption of fat from consumed food and causes significant weight loss.

In addition, the complaint alleges that the KCD respondents have represented that SeQuester causes significant weight loss; allows consumers to eat high-fat foods without gaining weight; causes significantly greater weight loss than diet and exercise alone; allows consumers to eat high-fat foods without increasing their risk of high cholesterol, clogged arteries, heart disease and other health problems associated with a high-fat diet; reduces the risk of high cholesterol, clogged arteries, heart disease and other problems associated with a high-fat diet; and is beneficial and safe when used in amounts sufficient to cause diarrhea. The Complaint charges that these respondents did not possess and rely upon a reasonable basis for these representations.

The complaint also alleges that Deerfield and Hatto have represented, expressly or by implication, that SeQuester causes significant weight loss; allows consumers to eat high-fat foods without gaining weight; allows consumers to eat high-fat foods without increasing their risk of high cholesterol, clogged arteries, heart disease and other health problems associated with a high-fat diet; prevents or significantly reduces the body's absorption of fat and sugar from consumed food; reduces the risk of high cholesterol, clogged arteries, heart disease and other problems associated with a high-fat diet; and significantly reduces the body's absorption of sugar from consumed food. The complaint charges that Deerfield and Hatto did not possess and rely upon a reasonable basis for these

representations. The complaint further alleges that Deerfield and Hatto falsely represented that scientific research demonstrates that SeQuester prevents or significantly reduces the body's absorption of fat from consumed food and causes significant weight loss. The complaint also charges that respondents Deerfield and Hatto knew or should have known that these representations were false and misleading.

The Commission's complaint against the IMT respondents charges IMT, EHI and Shell, with making false and unsubstantiated advertising claims regarding the efficacy of Lipitrol as a weight loss, fat reduction and cholesterol reduction product. Specifically, the complaint alleges that IMT, EHI and Shell falsely represented, either expressly or by implication, that Lipitrol prevents or significantly reduces the body's absorption of fat from consumed food, and absorbs approximately 5.9 grams of fat per tablet from consumed food. The complaint also charges that respondents IMT, EHI and Shell failed to possess and rely upon a reasonable basis for these representations. The complaint further alleges that these respondents made false and deceptive representations that scientific research demonstrates that Lipitrol prevents or significantly reduces the body's absorption of fat from consumed food, absorbs approximately 5.9 grams of fat per tablet from consumed food, causes significant weight loss and lowers blood cholesterol levels.

In addition, the complaint alleges that respondents IMT, EHI and Shell have represented that Lipitrol causes significant weight loss; lowers blood cholesterol levels; reduces, or reduces the risks associated with, high cholesterol, including clogged arteries, high blood pressure, diabetes, breast cancer and heart disease; causes significantly greater weight loss than diet and exercise alone; and is beneficial and safe when taken in amounts sufficient to cause diarrhea. The complaint charges that these respondents did not possess and rely upon a reasonable basis for these representations.

Respondent William Pelzer, Jr. is not included in the above-mentioned allegations because he had no involvement in the advertising, marketing or sale of Lipitrol.

In addition, the complaint charges that the IMT respondents, including respondent Pelzer, provided means and instrumentalities and/or substantial assistance to others who respondents knew or should have known were making false and deceptive or

unsubstantiated claims for the product, sold under the name SeQuester. Specifically, the complaint alleges that the respondents licensed to KCD, its holding company, KCD Holdings, those companies' former principal, Holcomb, and current principal, Richards, the exclusive rights to market the product.

The complaint alleges that the IMT respondents knew or should have known that the KCD respondents made false and deceptive or unsubstantiated representations similar to those made for Lipitrol, in advertisements for SeQuester. The complaint charges that despite the fact that respondents knew or should have known that KCD was making the false and deceptive, and/or unsubstantiated representations in the marketing and sale of SeQuester, the IMT respondents nevertheless provided various services and promotional materials to the KCD respondents in furtherance of the KCD respondents' efforts to disseminate these false claims, including providing the KCD respondents with studies purporting to show that SeQuester effectively reduces the body's absorption of fat from consumed food and causes significant weight loss; the licensing rights to market and sell the product to consumers; technical information regarding the product; and various promotional materials and information for marketing the product.

#### The Proposed Orders

The Commission has accepted four separate consent orders in this matter. The proposed orders contain provisions designed to remedy the alleged violations. The proposed orders against respondents KCD Holdings, Inc., KCD, Incorporated and Bonnie L. Richards; IMT and EHI; and Shell provide for the payment of consumer redress in installments over a period of one year from the date the proposed orders become final. In the event that consumer redress is not feasible, the proposed orders provide that the funds will be deposited in the United States Treasury. In addition, the proposed order against respondent Shell requires him to post a performance bond of either \$250,000 or \$1,000,000, depending on the circumstances of his activities.

#### Proposed Consent Order with the KCD Respondents, Deerfield and Hatto

Part I of the proposed consent order against the KCD respondents, Deerfield and Hatto bars them from making representations that SeQueter or any product or program prevents or reduces the body's absorption of fat or sugar from consumed food unless the

representation is true at the time it is made and is supported by competent and reliable scientific evidence.

Part II of the proposed consent order against the KCD respondents, Deerfield and Hatto prohibits them from representing that Sequester or any product or program provides any weight loss benefit; causes greater loss of body fat than diet and exercise alone; allows consumers to eat high-fat foods without increasing their risk of high cholesterol, clogged arteries, heart disease or other health problems associated with a high-fat diet; or reduces, or reduces the risk of, high cholesterol, clogged arteries, heart disease and other health problems associated with a high-fat diet, unless respondents can substantiate these representations with competent and reliable scientific evidence.

Part III of the proposed consent order against the KCD respondents prevents them from representing that SeQuester or any product or program can be used beneficially and safely, in amounts or with frequency sufficient to cause diarrhea, unless, at the time the representation is made, they possess and rely upon competent and reliable scientific evidence that substantiates the representation; which when appropriate, must be competent and reliable scientific evidence.

Part IV of the proposed consent order against the KCD respondents, Deerfield and Hatto bars them from misrepresenting the existence, contents, validity, results, conclusions or interpretations of any test, study or research.

Part V of the proposed consent order against the KCD respondents, Deerfield and Hatto prohibits them from making representations about the benefits, performance, efficacy or safety of SeQuester or any product or program unless competent and reliable evidence substantiates any such representation.

Part VI of the proposed consent order against the KCD respondents provides Deerfield and Hatto with a defense to Parts I, II and V of the order if they neither knew nor had reason to know of an inadequacy of substantiation for any representation covered by those parts of the order; and a defense to Part IV of the order if they neither knew nor had reason to know that the test, study or research did not prove, demonstrate or confirm any representation covered by that part of the order.

Part VII of the proposed order against the KCD respondents requires KCD, KCD Holdings and Richards to pay \$150,000 in consumer redress, in thirteen installments over a period of one year. If consumer redress is impracticable, Part VII provides that

these funds will be paid to the United States Treasury. Part VII(C) requires KCD, KCD Holdings and Richards to provide the Commission with a security interest in certain property to insure full payment of the \$150,000 of consumer redress.

Parts VIII and IX of the proposed order against the KCD respondents, Deerfield and Hatto contain provisions permitting certain claims that are approved for labeling by the FDA, either under the Nutrition Labeling and Education Act, a tentative final or final monograph or under any new drug application approved by the FDA.

Parts X, XI, XII, XIII and XIV of the proposed order against the KCD respondents, Deerfield and Hatto contain compliance reporting provisions requiring respondents to: retain records that bear on their compliance with the order; distribute copies of the order to those persons having responsibility with respect to the subject matter of the order; notify the Commission of any changes in the structure of the corporate respondents that may affect their compliance obligations under the order, or any changes in the business affiliations of the individual respondents; and report to the Commission their compliance with the terms of the order.

Part XV of the proposed order against the KCD respondents, Deerfield and Hatto contains a provision automatically terminating the order twenty (20) years from the date that it becomes final.

#### Proposed Consent Order With IMT, EHI, Shell and Pelzer

Part I of the proposed consent order against respondents IMT and EHI bars them from making representations that LIPITROL or any weight loss, fat reduction or cholesterol reduction product or program prevents or reduces the body's absorption of fat from consumed food or absorbs any amount of fat from consumed food unless the representation is true and supported by competent and reliable scientific evidence. Part I of the proposed order against respondent Shell contains the same bar, but covers representations for Lipitrol or any product or program.

Part II of the proposed order against respondents IMT and EHI prohibits them from representing that Lipitrol or any weight loss, fat reduction or cholesterol reduction product or program, or any food, drug or dietary supplement, provides any weight loss benefit; lowers blood cholesterol levels; reduces, or reduces the risks associated with, high cholesterol, including clogged arteries, high blood pressure, diabetes, breast cancer and heart

disease; or can be used, beneficially and safely, in amounts or with frequency sufficient to cause diarrhea, unless respondents can substantiate these representations with competent and reliable scientific evidence. Again, the same prohibition is contained in Part II of the proposed order against respondent Shell, but covers representations for Lipitrol or any product or program.

Part III of the proposed order against respondents IMT and EHI prohibits them from misrepresenting the existence, contents, validity, results, conclusions or interpretations of any test, study or research in connection with Lipitrol or any weight loss, fat reduction or cholesterol reduction product or program, or any food, drug or dietary supplement. Part IV of the proposed order prohibits respondents IMT and EHI from making representations about the benefits, performance, efficacy or safety of Lipitrol or any weight loss, fat reduction or cholesterol reduction product or program, or any food, drug or dietary supplement unless competent and reliable scientific evidence substantiates any such representation. Parts III and IV of the proposed order against respondent Shell are the same except that the prohibitions apply to representations for Lipitrol or any product or program.

Part V of the proposed orders against respondents IMT, EHI and Shell, and Part I of the proposed order against respondent Pelzer, bars each of these respondents from providing means and instrumentalities or substantial assistance or support to any person or entity who they know or should know is making any false or misleading or unsubstantiated claim for any weight loss, fat reduction or cholesterol reduction product or program. The proposed orders define "assistance" to include providing: tests, analyses, studies or research to determine the benefits, performance, efficacy or safety of the product or program; licensing or other contractual rights to market any such product or program; technical assistance; or advertising, labeling or promotional materials for the marketing and sale of any such product or program.

Part VI of the proposed orders against respondents IMT, EHI and Shell, and Part II of the proposed order against respondent Pelzer, require these respondents to monitor business practices of certain parties to whom they provide assistance. To the extent that any such party is engaged in the marketing and sale of any weight loss, fat reduction or cholesterol reduction

product or program, these respondents must make an effort to determine whether false or misleading or unsubstantiated claims are being made with respect to any such product or program. Specifically, these respondents must review all advertisements and promotional materials and all tests, reports, studies, surveys, demonstrations or other evidence that any such person relies upon in making any claims to consumers. In addition, these respondents are required to terminate their business relationship with any person whom they know or should know is making any false or misleading or unsubstantiated claims.

Part VII of the proposed order against respondents IMT and EHI requires them to pay \$35,000 in consumer redress in three installments over a period of one year. If consumer redress is impracticable, Part VII provides that these funds will be paid into the United States Treasury. Part VII(C) requires IMT and EHI to provide the Commission with a security interest in certain property to insure full payment of the \$35,000 of consumer redress.

Part VII(A)(1) and (2) of the proposed order against respondent Shell requires him to obtain a performance bond for \$1,000,000 before he markets, sells or holds any ownership interest or official position in any business that advertises or sells Lipitrol or any other weight loss, fat reduction or cholesterol reduction product composed of fiber and bile extract. Part VII(A)(3) and (4) of the proposed order also requires respondent Shell to obtain a performance bond of \$250,000 before he markets, sells or holds an ownership interest or official position in any business that advertises or sells any weight loss, fat reduction or cholesterol reduction product or program to consumers, other than his treatment of patients in connection with his private medical practice. Parts VII(B) through (F) require respondent Shell to provide a copy of the bond to the FTC; prohibit him from disclosing the existence of the bond to any consumer; and describe the period during which the bond must remain effective, the bond's coverage, the bond's potential beneficiaries and certain other administrative requirements.

Part VIII of the proposed order against respondent Shell requires him to pay consumer redress in the amount \$20,000 in four installments over a period of one year. In the event that consumer redress is impractical, this Part provides that these funds will be paid into the United States Treasury. Part VII(C) requires Shell to provide the Commission with a security interest in certain property to

insure full payment of the \$20,000 of consumer redress.

Parts VIII and IX of the proposed order against respondents IMT and EHI, Parts IX and X of the proposed order against respondent Pelzer, contain provisions permitting certain claims that are approved for labels by the FDA, either under the Nutrition Labeling and Education Act, a tentative final or final monograph or under a new drug application approved by the FDA.

Parts X, XI, XII and XIII of the proposed order against respondents IMT and EHI, Parts XI, XII, XIII and XIV of the proposed order against respondent Shell, and Parts V, VI, VII and VIII of the proposed order against respondent Pelzer, contain compliance reporting provisions requiring these respondents to: retain all records that would bear on their compliance with the respective orders; notify the Commission of any changes in the structure of the corporate respondents that may affect their compliance obligations under the orders, or any changes in the business affiliations of the individual respondents relating to the advertising, offering for sale, sale or distribution of any weight loss, fat reduction or cholesterol reduction product or program; distribute copies of the orders to those persons having responsibility with respect to the subject matter of the respective orders; and report to the Commission their compliance with the terms of the respective orders.

Part XIV of the proposed order against respondents IMT and EHI, Part XV of the proposed order against respondent Shell, and Part IX of the proposed order against respondent Pelzer contain a provision automatically terminating the order twenty (20) years from the date that they become final.

The purpose of this analysis is to facilitate public comment on the proposed orders. It is not intended to constitute an official interpretation of the agreements and proposed orders or to modify their terms in any way.

Donald S. Clark,  
Secretary.

[FR Doc. 97-8802 Filed 4-4-97; 8:45 am]  
BILLING CODE 6750-01-M

## GENERAL ACCOUNTING OFFICE

### Federal Accounting Standards Advisory Board Meeting

AGENCY: General Accounting Office.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92-463), as amended,



notice is hereby given that the Federal Accounting Standards Advisory Board will meet on Friday, April 18, 1997, from 9:00 a.m. to 4:00 p.m., in room 7C13 of the General Accounting Office building, 441 G St., NW., Washington, DC.

The purpose of the meeting is to discuss the following issues: (1) Social insurance, (2) natural resources, (3) consolidated stewardship reporting, and (4) federal mission Property, Plant and Equipment (PP&E).

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

**FOR FURTHER INFORMATION CONTACT:**

Wendy Comes, Executive Director, 441 G St., NW., Room 3B18, Washington, DC 20548 (note new address, effective April 7) or call (202) 512-7350.

**Authority:** Federal Advisory Committee Act, Pub. L. No. 92-463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101-6.1015 (1990).

Dated: April 1, 1997.

Wendy M. Comes,  
Executive Director.

[FR Doc. 97-8710 Filed 4-4-97; 8:45 am]

BILLING CODE 1610-01-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of the Secretary**

**Agency Information Collection Activities: Proposed Collections; Comment Request**

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690-6207.

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the

use of automated collection techniques or other forms of information technology.

**Proposed Projects:** Voluntary Customer Surveys to Implement Executive Order 12862 in the Public Health Service—Extension—0937-0201—The Public Health Service is conducting numerous customer-related surveys under this approved collection of information. Activities for which an extension of OMB approval will be requested are as follows: (A) The Smoke Free Kids Campaign in the Office of Public Health and Science (OPHS) is conducting an on-line customer feedback survey pertaining to products and information offered by the Web site. An estimated 5,000 annual respondents (Web site visitors who order a product) will spend 1.5 minutes per response for a total annual burden of 125 hours. (B) The Food and Drug Administration (FDA) will survey physicians and allied health professionals on their satisfaction with the FDA Medical Bulletin. An estimated 1,200 annual respondents will spend ten minutes per response for a total annual burden of 200 hours. (C) The FDA will survey mammography facilities to gather information about the existing inspection process as it is perceived by the facilities. An estimated 1039 respondents will spend 15 minutes per response for a total annual burden of 260 hours. (D) The Center for Disease Control (CDC) will survey users of the National Center for Health Statistics (NCHS) Internet Homepage to assess user satisfaction with the Internet site. An estimated 5,400 annual respondents will spend seven minutes per response for a total annual burden of 630 hours. (E) CDC is surveying state health departments about the quality of technical assistance received for violence prevention. The 50 states will spend 45-60 minutes per response for a total burden of 43 hours. (F) The Agency for Health Care Policy and Research (AHCPR) is conducting a customer satisfaction survey of the recipients of AHCPR publications. On average, there will be 12,300 annual respondents at ten minutes per response for a total annual burden of 2,050 hours. (G) AHCPR is conducting a survey of customer opinions on the information offered through the AHCPR Web Site. An estimated 500 annual respondents will spend seven minutes per response for a total annual burden of 59 hours. (H) AHCPR will conduct a survey of the customers of the AHCPR Publications Clearinghouse to measure customer perception of service quality. An estimated 7,500 respondents will spend two minutes per response for a total

burden of 250 hours. (I) AHCPR will conduct a survey of physicians and nurses regarding the use of AHCPR Clinical Practice Guidelines. Roughly 80 respondents will spend 30 minutes per response for a total burden of 40 hours. (J) AHCPR will conduct a survey to assess the usage of the Quality Measurement Network (QMNet). An estimated 100 respondents will spend 23 minutes per response for a total annual burden of 39 hours. (K) The National Library of Medicine (NLM) will conduct an online survey of its World Wide Web site customers to determine user satisfaction with the content and format of the site. 500 respondents will spend three minutes per response for a total burden of 25 hours. (L) NLM will conduct an interactive voice response survey of their National Network of Libraries of Medicine member libraries to ascertain satisfaction with the Web site. An estimated 3902 respondents will spend three minutes per response for a total burden of 196 hours. (M) NLM will conduct a survey of the users of its Reference and MEDLARS telephone service desks to assess customer satisfaction with the individual interactions they have had with the customer service desk staff. Roughly 413 respondents will spend three minutes per response for a total burden of 21 hours. (N) The National Cancer Institute's (NCI) International Cancer Information Center is surveying Information Associates Program members to determine user satisfaction with NCI's cancer information products. 4,400 respondents will spend 18 minutes per response for a total burden of 1,320 hours. (O) The National Institutes of Health (NIH) is conducting a survey of research grant applicants to determine their satisfaction with the grant application and review process. Approximately 2215 respondents will spend 30 minutes per response for a total burden of 1,108 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington DC, 20201. Written comments should be received by June 6, 1997.

Dated March 27, 1997.

Dennis P. Williams,  
Deputy Assistant Secretary, Budget.  
[FR Doc. 97-8806 Filed 4-4-97; 8:45 am]

BILLING CODE 4150-04-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**
**Advisory Committees; Notice**

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

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to solicit nominations for membership on the National Committee on Vital and Health Statistics (NCVHS). The NCVHS, which consists of 18 members, is the statutory public advisory body to the Department of Health and Human Services in the area of health statistics, health data standards, health information privacy and health information policy generally. In this capacity, the NCVHS provides advice and assistance to the Department on a variety of health data policy and privacy issues. Public Law 104-191, the Health Insurance Portability and Accountability Act of 1996, has assigned new responsibilities to the Committee in health data standards and health information privacy.

Several vacancies are expected to occur on the Committee during 1997. New members will be appointed to terms of up to four years by the Secretary from among persons who have distinguished themselves in the fields of health statistics, electronic interchange of health care information, privacy and security of electronic information, population-based public health, purchasing or financing of health care services, integrated computerized health information systems, health services research, consumer interests in health information, health data standards, epidemiology, and the provision of health services.

In appointing members to the Committee, the Department will give close attention to equitable geographic distribution and to minority and female representation. Appointments will be made without discrimination on the basis of age, race, gender, sexual orientation, HIV status, cultural, religious or socioeconomic status.

**DATES:** Nominations for new members should include a letter describing the qualifications of the nominee and the nominee's current resume or vitae. The closing date for nominations is May 7, 1997. Nominations previously submitted for vacancies occurring in 1995 and 1996 automatically will be considered in this solicitation and need not be resubmitted.

Nominations should be sent to the person named below: James Scanlon, Executive Secretary, HHS Data Council, U.S. Department of Health and Human Services, Room 440-D, 200

Independence Avenue S.W., Washington, D.C. 20201, (202) 690-7100.

**FOR FURTHER INFORMATION CONTACT:** James Scanlon (202) 690-7100. Additional information about the NCVHS, including the charter and current roster of members, is available on the NCVHS home page of the HHS website: <http://aspe.os.dhhs.gov/ncvhs/index/htm>.

Dated: March 30, 1997.

**David Garrison**

Dated: March 29, 1997.

**Bruce Vladeck,**

*Cochairpersons HHS Data Council.*

[FR Doc. 97-8805 Filed 4-4-97; 8:45 am]

**BILLING CODE 4151-04-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**RIN 0905-2A99**

**Office of Public Health and Science; Announcement of Availability of Grants for Adolescent Family Life Demonstration Projects**

**AGENCY:** Office of Adolescent Pregnancy Programs, Office of Population Affairs, OPHS, HHS.

**ACTION:** Correction to notice.

**SUPPLEMENTARY INFORMATION:** In notice document 97-6307, on March 13, 1997, Part VI, *Federal Register*, Vol. 62, No. 49, Page 12031, Column 3, under (2) Review Under Executive Order 12372, the date for State comments to be received by the Office of Population Affairs was incorrect. The date should be corrected to June 30, 1997.

Dated: March 25, 1997.

**Diane J. Osterhus,**

*Director, Grants Management Office, Office of Population Affairs.*

[FR Doc. 97-8803 Filed 4-4-97; 8:45 am]

**BILLING CODE 4160-17-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**RIN 0905-ZB00**

**Office of Public Health and Science; Announcement of Availability of Grants for Adolescent Family Life Demonstration Projects**

**AGENCY:** Office of Adolescent Pregnancy Programs, Office of Population Affairs, OPHS, HHS.

**ACTION:** Correction to notice.

**SUPPLEMENTARY INFORMATION:** In notice document 97-6308, on March 13, 1997,

Part V, *Federal Register*, Vol. 62, No. 49, Page 12027, Column 3, under (2) Review Under Executive Order 12372, the date for State comments to be received by the Office of Population Affairs was incorrect. The date should be corrected to June 13, 1997.

Dated: March 25, 1997.

**Diane J. Osterhus,**

*Director, Grants Management Office, Office of Population Affairs.*

[FR Doc. 97-8804 Filed 4-4-97; 8:45 am]

**BILLING CODE 4160-17-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**
**Administration for Children and Families**

[Program Announcement No. 93612-973]

**Administration for Native Americans; Availability of Financial Assistance; Correction**

In notice document 93612-973 beginning on page 14276 in the issue of Tuesday, March 25, 1997, make the following corrections:

1. On page 14276 the sentence **DATES:** "The closing date for receipt of applications is May 27, 1997" should read, **DATES:** "The closing date for submission of applications is May 27, 1997."

2. On page 14278 in part II, in section D titled "Eligible Applicants", in the first column, second line from the bottom, the following sentence, "An organization can conclusively establish that it meets this requirement through a signed statement or resolution stating that its duly elected or appointed board of directors are either Native Americans or Native Alaskans or a copy of the organizational charter or by-laws that clearly states that the organization has a board drawn from members of these groups" should read, "To establish compliance with the requirement in the regulations for a Board representative of the community applicants should provide information establishing that at least ninety (90) percent of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) a current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served."

Dated: March 26, 1997.

Gary N. Kimble,

Commissioner, Administration for Native Americans.

[FR Doc. 97-8729 Filed 4-4-97; 8:45 am]

BILLING CODE 4184-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

[Program Announcement No. 93612-971]

#### Administration for Native Americans: Availability of Financial Assistance

**ACTION:** Announcement of availability of competitive financial assistance for projects in competitive areas administered by the Administration for Native Americans for American Indians, Native Hawaiian, Alaska Natives and Native American Pacific Islanders; Correction

In notice document 93612-971 beginning on page 44122 in the issue of Tuesday, August 27, 1996, make the following corrections:

1. On pages 44124, 44129, 44127, and 44132 in section D titled Eligible Applicants, the following sentence repeated on each of those pages, "An organization can conclusively establish that it meets this requirement through a signed statement or resolution stating that its duly elected or appointed board of directors are either Native Americans or Native Alaskans or a copy of the organizational charter or by-laws that clearly states that the organization has a board drawn from members of these groups" should read, "To establish compliance with the requirement in the regulations for a Board representative of the community applicants should provide information establishing that at least ninety (90) percent of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served."

Dated: March 26, 1997.

Gary N. Kimble,

Commissioner, Administration for Native Americans.

[FR Doc. 97-8733 Filed 4-4-97; 8:45 am]

BILLING CODE 4184-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 97M-0124]

#### COOK OB/GYN®; Humanitarian Device Exemption Approval of Harrison Fetal Bladder Stent Set (Lowery Modification)

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the humanitarian device exemption (HDE) application by COOK OB/GYN®, Spencer, IN, under the Federal Food, Drug, and Cosmetic Act (the act) of the Harrison Fetal Bladder Stent Set (Lowery Modification).

**DATES:** Petitions for administrative review by May 7, 1997.

**ADDRESSES:** Written requests for copies of the summary of safety and probable benefit and petitions for administrative review should be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Donna-Bea Tillman, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-1180.

**SUPPLEMENTARY INFORMATION:** On November 13, 1996, COOK OB/GYN®, Spencer, IN 47460, submitted to CDRH an application for an HDE for the Harrison Fetal Bladder Stent Set (Lowery Modification). The device is a fetal bladder stent and is indicated for fetal urinary tract decompression following the diagnosis of fetal postvesicular obstructive uropathy in fetuses 18 to 32 weeks gestational age.

In accordance with 21 CFR 814.116(a), this HDE was not referred to the Obstetrics and Gynecology Devices Panel, an FDA advisory committee, for review and recommendation because the information in the HDE substantially duplicates information previously reviewed by this panel.

On February 14, 1997, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and probable benefit upon which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from the office upon written request. Requests should be

identified with the name of the device and the docket number found in brackets in the heading of this document.

#### Opportunity for Administrative Review

Section 515 (d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the *Federal Register*. If FDA grants the petition, the notice will state the issue(s) to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 7, 1997, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 520(h) of the act (21 U.S.C. 360j(h)), 21 CFR 814.116(b), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 20, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97-8707 Filed 4-4-97; 8:45 am]

BILLING CODE 4160-01-F

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Indian Health Service**

**Proposed Collection; Comment Request; IHS, Community Health Representative Activity Reporting Sample**

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for 60-day public comment period on proposed data collection projects, the Indian Health Service (IHS) is publishing a summary of a proposed information collection project to be submitted to the Office of Management

and Budget (OMB) for review and approval.

**Proposed Collection**

*Title:* 0917-0010, "IHS, Community Health Representative Activity Reporting Sample". *Type of Information Collection Request:* A 3 year approval for reinstatement, without change, of previously approved information collection, 0917-0010, "IHS, Community Health Representative Activity Reporting Sample", which expired 02/28/97. *Need and Use of Information Collection:* Section 107 "Community Health Representative (CHR) Program" of the Indian Health Care Improvement Act, Public Law 100-713 authorizes the IHS to develop a

system to review and evaluate the CHR program. The information collected is used to review and evaluate contract performance (e.g., the number and types of health services being provided); to prepare program reports; to develop program training plans and, performance and accreditation standards; to increase the efficiency and effectiveness of the program; and, to meet the management and administrative needs of the CHR program.

See Table 1 below for; Type(s) of Data Collection Instruments, Estimated Number of Respondents, Number of Responses per Respondent, Average Burden Hour per Response, and Total Annual Burden Hours.

TABLE 1

Data collection instrument	Estimated No. of respondents	Responses per respondent	Average burden hour per response*	Total annual burden hours
Report of CHR Activities .....	1,100	4	0.10 hours (6 minutes) .....	6,600

\* For ease of understanding, burden hours are also provided in actual minutes.

**Request for Comments**

Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Send Comments and Requests For Further Information:* Send your written comments, requests for more information on the proposed project, or requests to obtain a copy of the data collection instrument and instructions to: Mr. Lance Hodahkwen, Sr., IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852-1601, or call non-toll free (301) 443-0461, fax (301) 443-1522, or send your E-mail requests, comments, and return address to lhodahkw@smtp.ihs.gov.

*Comment Due Date:* Your comments regarding this information collection are

best assured of having their full effect if received on or before June 6, 1997.

Dated: March 31, 1997.  
**Michael H. Trujillo,**  
*Assistant Surgeon General Director.*  
 [FR Doc. 97-8706 Filed 4-4-97; 8:45 am]  
**BILLING CODE 4160-16-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health (NIH)**

**National Institute on Aging; Notice of Meeting of the Board of Scientific Counselors, National Institute on Aging**

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Aging, May 5-7, 1997 to be held at the Gerontology Research Center, Baltimore, Maryland. On Tuesday, May 6, the meeting will be open to the public for the review of the Laboratory of Molecular Genetics from 8:20 a.m. until 12:00 noon; and from 1:00 until 4:00 p.m. On Wednesday, May 7, the meeting will be open to the public for the review of the Laboratory of Personality and Cognition from 8:30 until 11:40 a.m. and from 12:30 to 3:40 p.m. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the

meeting will be closed to the public on Monday, May 5, from 8:00 p.m. to recess; Tuesday, May 6, from 4:00 to 5:00 p.m.; and Wednesday, May 7, from 3:40 p.m. until adjournment for the review, discussion, and evaluation of individual programs and projects conducted by the National Institute on Aging, (NIA), including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Committee Management Officer, NIA, Gateway Building, Room 2C218, National Institutes of Health, Bethesda, Maryland 20892, (301/496-9322), will provide a summary of the meeting and a roster of committee members upon request.

Dr. Dan L. Longo, Scientific Director, NIA, Gerontology Research Center, 4940 Eastern Avenue, Baltimore, Maryland 21224, will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Scientific Director in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health.)

Dated: April 2, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97-8849 Filed 4-4-97; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Environmental Health Sciences; Notice of Meeting of National Advisory Environmental Health Sciences Council

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, May 19-20, 1997, Natcher Building, Conference Room E, 4500 Center Drive, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public from 9:00 a.m. to approximately 3:45 p.m. on May 19 for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public from approximately 3:45 p.m. on May 19 to adjournment on May 20, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Anne Sassaman, Director, Division of Extramural Research and Training, and Executive Secretary, National Advisory Environmental Health Sciences Council, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541-7723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115,

Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health.)

Dated: April 2, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97-8850 Filed 4-4-97; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Library of Medicine; Notice of Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice is hereby given of the following National Library of Medicine Special Emphasis Panel (SEP) meeting.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of SEP:* National Library of Medicine Special Emphasis Panel.

*Dates:* April 14-15, 1997.

*Open:* April 14 from 6:00 p.m. to 12 midnight.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

*Purpose/Agenda:* To discuss the objectives of the Human Brain Project program, the progress made to date, and the review procedures which will be used during the closed portion of the meeting.

*Closed:* April 15 from 8:30 a.m. to adjournment.

*Place:* Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894.

*Contact:* Dr. Robert W. Dahlen, Chief, Biomedical Information Support Branch, EP, 8600 Rockville Pike, Bldg. 38A, Rm. 5S-522, Bethesda, Maryland 20894, 301/496-4221.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

*Purpose/Agenda:* To evaluate and review the Human Brain Project grant applications. The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93-879—Medical Library Assistance, National Institutes of Health.)

Dated: April 2, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97-8851 Filed 4-4-97; 8:45 am]

BILLING CODE 4140-01-M

## 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 Panel (SEP) meetings:

*Purpose/Agenda:* To review individual grant applications.

*Name of SEP:* Biological and Physiological Sciences.

*Date:* April 27, 1997.

*Time:* 9:00 a.m.

*Place:* NIH, Rockledge 2, Room 5200, Telephone Conference.

*Contact Person:* Dr. Bob Weller, Scientific Review Administrator, 6701 Rockledge Drive, Room 5200, Bethesda, Maryland 20892 (301) 435-1259.

*Name of SEP:* Microbiological and Immunological Sciences.

*Date:* May 8, 1997.

*Time:* 1:30 p.m.

*Place:* NIH, Rockledge 2, Room 4182, Telephone Conference.

*Contact Person:* Dr. William Branche, Jr., Scientific Review Administrator, 6701 Rockledge Drive, Room 4182, Bethesda, Maryland 20892 (301) 435-1148.

The meetings will be closed in accordance with the provisions set forth in sections 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: April 2, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97-8848 Filed 4-4-97; 8:45 am]

BILLING CODE 4140-01-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Privacy Act of 1974; New System of Records**

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notification of a new system of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act, the National Institutes of Health (NIH) is publishing a notice of a new system of records, 09-25-0200, "Clinical, Epidemiologic and Biometric Studies of the National Institutes of Health (NIH), HHS/NIH/OD." This system notice serves as an umbrella system for most NIH clinical, epidemiologic and biometric research studies. Thirty-eight existing NIH system notices were subsumed under this notice (listed in the system notice under System Manager(s)), to reduce the number and avoid future proliferation of like system notices. We are also proposing routine uses for this new system; with two exceptions, these routine uses were already contained in the preceding system notices. The first new routine use will allow disclosure to authorized organizations which provide health services to subject individuals or provide third-party reimbursement or fiscal intermediary functions. The purpose of the disclosure is to plan for or provide such services, bill or collect third-party reimbursements. The second new routine use will allow disclosure for the purpose of reporting child, elder, or spousal abuse or neglect, or any other type of abuse or neglect as required by State or Federal law.

**DATES:** NIH invites interested parties to submit comments on the proposed internal and routine uses on or before May 7, 1997. NIH has sent a report of a New System to the Congress and to the Office of Management and Budget (OMB) on November 6, 1996. This system of records will be effective 40 days from the date of publication unless NIH receives comments on the routine uses which would result in a contrary determination.

**ADDRESS:** Please submit comments to: NIH Privacy Act Officer, Building 31, Room 1B05, 31 Center Drive MSC 2075, Bethesda, MD 20892-2075, 301-496-2832.

Comments received will be available for inspection at this same address from 9 a.m. to 3 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** NIH Privacy Act Officer, Building 31, Room 1B05, 31 Center Drive MSC 2075, Bethesda, MD 20892-2075, 301-496-2832.

The numbers listed above are not toll free.

**SUPPLEMENTARY INFORMATION:** The National Institutes of Health (NIH) proposes to establish a new system of records: 09-25-0200, "Clinical, Epidemiologic and Biometric Studies of the National Institutes of Health (NIH), HHS/NIH/OD." This umbrella system of records will be used by NIH staff to document, track, monitor and evaluate NIH clinical, epidemiologic and biometric research activities. This inclusive system notice will achieve agency administrative efficiencies, avoiding confusion created by the current fragmented pool of Institute, Center and Division (ICD) system notices. Because of its unique organizational structure, NIH has, over the recent decades, experienced a proliferation of almost identical system notices that differ only by disease/disorder under study or ICD interest. This system notice subsumes thirty-eight existing system notices and will offer coverage for research not currently covered by an appropriate system notice. The consolidation of similar research systems of records into one generic-type notice will also serve the public interest. It will alleviate burden on the public associated with multiple attempts at notification, access and correction of record information when individuals are not sure which research system notice applied to their study participation.

The system will comprise records about individuals as relevant to a particular research study. Examples include, but are not limited to: Name, study identification number, address, relevant telephone numbers, Social Security Number (voluntary), driver's license number, date of birth, weight, height, sex, race, medical, psychological and dental information, laboratory and diagnostic testing results; registries; social, economic and demographic data; health services utilization; insurance and hospital cost data, employers, conditions of the work environment, exposure to hazardous substances/compounds; information pertaining to stored biologic specimens (including blood, urine, tissue and genetic materials), characteristics and activities of health care providers and educators and trainers (including curriculum vitae); and associated correspondence. The amount of information recorded on each individual will be only that which

is necessary to accomplish the purpose of the system.

The records in this system will be maintained in a secure manner compatible with their content and use. NIH and contractor staff will be required to adhere to the provisions of the Privacy Act and the HHS Privacy Act Regulations. The System Manager will control access to the data. Only authorized users whose official duties require the use of such information will have regular access to the records in this system. Authorized users are HHS employees, and contractors responsible for implementing the research.

Records may be stored on index cards, file folders, computer tapes and disks (including optical disks), photography media, microfiche, microfilm, and audio and video tapes. Manual and computerized records will be maintained in accordance with the standards of Chapter 45-13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf:45-13, the Department's Automated Information System Security Program Handbook, and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

Data on computer files is accessed by keyword known only to authorized users. Access to information is thus limited to those with a need to know. Rooms where records are stored are locked when not in use. During regular business hours rooms are unlocked but are controlled by on-site personnel. Researchers authorized to conduct research on biological specimens will typically access to the system through the use of encrypted identifiers sufficient to link individuals with records in such a manner that does not compromise confidentiality of the individual. All authorized users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office. Depending upon the sensitivity of the information in the record, additional safeguard measures are employed.

The routine uses proposed for this system are compatible with the stated purposes of the system. The first routine use permits disclosure of a record for an authorized research purpose under specified conditions. The second routine use permitting disclosure to a congressional office is proposed to allow subject individuals to obtain assistance from their representatives in Congress, should they so desire. Such

disclosure would be made only pursuant to a request of the individual. The third routine use allows disclosure to the Department of Justice for use in litigation. The fourth routine use allows disclosure of records to contractor, grantee, experts, consultants or volunteers who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity. The fifth routine use allows disclosure to certain relevant third parties (e.g., relatives, prior employees, Motor Vehicle Administration, State vita statistics offices) when necessary to obtain information on morbidity and mortality experiences and to locate individuals for follow-up studies. The sixth routine use allows disclosure to tumor registries for maintenance of health statistics. The seventh routine use allows the PHS to inform the sexual and/or needle-sharing partner(s) of a subject individual who is infected with the human immunodeficiency virus (HIV) of their exposure to HIV, or to disclose such information to State or local public health departments under specified circumstances. The eighth routine use allows disclosure of certain diseases and conditions, including infectious diseases, to appropriate representatives of State or Federal Government as required by State or Federal law. The ninth routine use allows records to be disclosed to authorized organizations which provide health services to subject individuals or provide third-party reimbursement or fiscal intermediary functions, for the purpose of planning for or providing such services, billing or collecting third-party reimbursements. The tenth routine use allows disclosure to organizations deemed qualified by the Secretary, DHHS, to carry out quality assessment, medical audits or utilization reviews. The eleventh routine use allows information to be disclosed for the purpose of reporting child, elder or spousal abuse or neglect, or any other type of abuse or neglect as required by State or Federal law.

The following notice is written in the present, rather than future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the system has become effective.

Dated: October 30, 1996.

**Anthony L. Itteleg,**  
Deputy Director for Management, National  
Institutes of Health.

09-25-0200

**SYSTEM NAME:**

Clinical, Epidemiologic and Biometric Studies of the National Institutes of Health (NIH), HHS/NIH/OD.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Records are located at NIH and Contractor research facilities which collect or provide research data for this system. Contractors may include, but are not limited to: Research centers, clinics, hospitals, universities, medical schools, research institutions/foundations, national associations, commercial organizations, collaborating State and Federal Government agencies, and coordinating centers. A current list of sites, including the address of any Federal Records Center where records from this system may be stored, is available by writing to the appropriate Coordinator listed under Notification Procedure.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Adults and/or children who are the subjects of clinical, epidemiologic, and biometric research studies of the NIH. Individuals with disease. Individuals who are representative of the general population or of special groups including, but not limited to: Normal controls, normal volunteers, family members and relatives; providers of services (e.g., health care and social work); health care professionals and educators, and demographic sub-groups as applicable, such as age, sex, ethnicity, race, occupation, geographic location; and groups exposed to real and/or hypothesized risks (e.g., exposure to biohazardous microbial agents).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system contains data about individuals as relevant to a particular research study. Examples include, but are not limited to: Name, study identification number, address, relevant telephone numbers, Social Security Number (voluntary), driver's license number, date of birth, weight, height, sex, race; medical, psychological and dental information, laboratory and diagnostic testing results; registries; social, economic and demographic data; health services utilization; insurance and hospital cost data, employers,

conditions of the work environment, exposure to hazardous substances/compounds; information pertaining to stored biologic specimens (including blood, urine, tissue and genetic materials), characteristics and activities of health care providers and educators and trainers (including curriculum vitae); and associated correspondence.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

"Research and Investigation," "Appointment and Authority of the Directors of the National Research Institutes," "National Cancer Institute," "National Eye Institute," "National Heart, Lung and Blood Institute," "National Institute on Aging," "National Institute on Alcohol Abuse and Alcoholism," "National Institute on Allergy and Infectious Diseases," "National Institute of Arthritis and Musculoskeletal and Skin Diseases," "National Institute of Child Health and Human Development," "National Institute on Deafness and Other Communication Disorders," "National Institute of Dental Research," "National Institute of Diabetes, and Digestive and Kidney Diseases," "National Institute of Drug Abuse," "National Institute of Environmental Health Sciences," "National Institute of Mental Health," "National Institute of Neurological Disorders and Stroke," and the "National Center for Human Genome Research," of the Public Health Service Act. (42 U.S.C. 241, 242, 248, 281, 282, 284, 285a, 285b, 285c, 285d, 285e, 285f, 285g, 285h, 285i, 285j, 285l, 285m, 285n, 285o, 285p, 285q, 287, 287b, 287c, 289a, 289c, and 44 U.S.C. 3101.)

**PURPOSE(S)**

To document, track, monitor and evaluate NIH clinical, epidemiologic and biometric research activities.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

1. A record may be disclosed for a research purpose, when the Department: (A) has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; e.g., disclosure of alcohol or drug abuse patient records will be made only in accordance with the restrictions of confidentiality statutes and regulations 42 U.S.C. 241, 42 U.S.C. 290dd-2, 42 CFR part 2, and where applicable, no disclosures will be made inconsistent with an authorization of confidentiality under 42 U.S.C. 241 and 42 CFR part 2a; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the

record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; and (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by, these provisions.

2. Disclosure may be made to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

3. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

4. Disclosure may be made to agency contractors, grantees, experts, consultants, collaborating researchers, or volunteers who have been engaged by the agency to assist in the performance of a service related to this system of

records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. Information from this system may be disclosed to Federal agencies, State agencies (including the Motor Vehicle Administration and State vital statistics offices, private agencies, and other third parties (such as current or prior employers, acquaintances, relatives), when necessary to obtain information on morbidity and mortality experiences and to locate individuals for follow-up studies. Social Security numbers, date of birth and other identifiers may be disclosed: (1) To the National Center for Health Statistics to ascertain vital status through the National Death Index; (2) to the Health Care Financing Agency to ascertain morbidities; and (3) to the Social Security Administration to ascertain disabilities and/or location of participants. Social Security numbers may also be given to other Federal agencies, and State and local agencies when necessary to locating individuals for participation in follow-up studies.

6. Medical information may be disclosed in identifiable form to tumor registries for maintenance of health statistics, e.g., for use in epidemiologic studies.

7. (a). PHS may inform the sexual and/or needle-sharing partner(s) of a subject individual who is infected with the human immunodeficiency virus (HIV) of their exposure to HIV, under the following circumstances: (1) The information has been obtained in the course of clinical activities at PHS facilities carried out by PHS personnel or contractors; (2) The PHS employee or contractor has made reasonable efforts to counsel and encourage the subject individual to provide the information to the individual's sexual or needle-sharing partner(s); (3) The PHS employee or contractor determines that the subject individual is unlikely to provide the information to the sexual or needle-sharing partner(s) or that the provision of such information cannot reasonably be verified; and (4) The notification of the partner(s) is made, whenever possible, by the subject individual's physician or by a professional counselor and shall follow standard counseling practices.

(b). PHS may disclose information to State or local public health departments, to assist in the notification of the subject individual's sexual and/or needle-sharing partner(s), or in the verification that the subject individual has notified such sexual or needle-sharing partner(s).

8. Certain diseases and conditions, including infectious diseases, may be reported to appropriate representatives of State or Federal Government as required by State or Federal law.

9. Disclosure may be made to authorized organizations which provide health services to subject individuals or provide third-party reimbursement or fiscal intermediary functions, for the purpose of planning for or providing such services, billing or collecting third-party reimbursements.

10. The Secretary may disclose information to organizations deemed qualified to carry out quality assessment, medical audits or utilization reviews.

11. Disclosure may be made for the purpose of reporting child, elder or spousal abuse or neglect or any other type of abuse or neglect as required by State or Federal law.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records may be stored on index cards, file folders, computer tapes and disks (including optical disks), photography media, microfiche, microfilm, and audio and video tapes. For certain studies, factual data with study code numbers are stored on computer tape or disk, while the key to personal identifiers is stored separately, without factual data, in paper/computer files.

**RETRIEVABILITY:**

During data collection stages and follow-up, retrieval is by personal identifier (e.g., name, Social Security Number, medical record or study identification number, etc.). During the data analysis stage, data are normally retrieved by the variables of interest (e.g., diagnosis, age, occupation).

**SAFEGUARDS:**

1. *Authorized Users:* Access to identifiers and to link files is strictly limited to the authorized personnel whose duties require such access. Procedures for determining authorized access to identified data are established as appropriate for each location. Personnel, including contractor personnel, who may be so authorized include those directly involved in data collection and in the design of research studies, e.g., interviewers and interviewer supervisors; project managers; and statisticians involved in designing sampling plans. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.



Researchers authorized to conduct research on biologic specimens will typically access the system through the use of encrypted identifiers sufficient to link individuals with records in such a manner that does not compromise confidentiality of the individual.

2. *Physical Safeguards:* Records are either stored in locked rooms during off-duty hours, locked file cabinets, and/or secured computer facilities. For certain studies, personal identifiers and link files are separated and stored in locked files. Computer data access is limited through the use of key words known only to authorized personnel.

3. *Procedural Safeguards:* Collection and maintenance of data is consistent with legislation and regulations in the protection of human subjects, informed consent, confidentiality, and confidentiality specific to drug and alcohol abuse patients where these apply. When anonymous data is provided to research scientists for analysis, study numbers which can be matched to personal identifiers will be eliminated, scrambled, or replaced by the agency or contractor with random numbers which cannot be matched. Contractors who maintain records in this system are instructed to make no further disclosure of the records. Privacy Act requirements are specifically included in contracts for survey and research activities related to this system. The OHS project directors, contract officers, and project officers oversee compliance with these requirements. Personnel having access are trained in Privacy Act requirements. Depending upon the sensitivity of the information in the record, additional safeguard measures may be employed.

4. *Implementation Guidelines:* DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the HHS General Administration Manual and Part 6, "ADP System Security" of the HHS ADP Systems Security Manual.

#### RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B-361), item 3000-G-3, which allows records to be kept as long as they are useful in scientific research. Collaborative Perinatal Project records are retained in accordance with item 3000-G-4, which does not allow records to be destroyed. William A. White Clinical Research Program medical records (Saint Elizabeths Hospital, NIMH) are retained for 5 years after last discharge or upon death of a

patient and then transferred to the Washington National Records Center, where they are retained until 30 years after discharge or death. Refer to the NIH Manual Chapter for specific conditions on disposal or retention instructions.

#### SYSTEM MANAGER(S) AND ADDRESS:

See Appendix I for a listing of current system managers. This system is for use by all NIH Institutes, Centers, and Divisions. The following system notices have been subsumed under this umbrella system notice.

- 09-25-0001 Clinical Research: Patient Records, HHS/NIH/NHLBI
- 09-25-0010 Research Resources: Registry of Individuals Potentially Exposed to Microbial Agents, HHS/NIH/NCI
- 09-25-0015 Clinical Research: Collaborative Clinical Epilepsy Research, HHS/NIH/NINDS
- 09-25-0016 Clinical Research: Collaborative Perinatal Project, HHS/NIH/NINDS
- 09-25-0026 Clinical Research: Nervous System Studies, HHS/NIH/NINDS
- 09-25-0028 Clinical Research: Patient Medical Histories, HHS/NIH/NINDS and HHS/NIH/NIDCD
- 09-25-0031 Clinical Research: Serological and Virus Data in Studies Related to the Central Nervous System, HHS/NIH/NINDS
- 09-25-0037 Clinical Research: The Baltimore Longitudinal Study of Aging, HHS/NIH/NIA
- 09-25-0038 Clinical Research: Patient Data, HHS/NIH/NIDDK
- 09-25-0039 Clinical Research: Diabetes Mellitus Research Study of Southwestern American Indians, HHS/NIH/NIDDK
- 09-25-0040 Clinical Research: Southwestern American Indian Patient Data, HHS/NIH/NIDDK
- 09-25-0042 Clinical Research: National Institute of Dental Research Patient Records, HHS/NIH/NIDR
- 09-25-0044 Clinical Research: Sensory Testing Research Program, HHS/NIH/NIDR
- 09-25-0046 Clinical Research: Catalog of Clinical Specimens from Patients, Volunteers and Laboratory Personnel, HHS/NIH/NIAID
- 09-25-0053 Clinical Research: Vision Studies, HHS/NIH/NEI
- 09-25-0057 Clinical Research: Burkitt's Lymphoma Registry, HHS/NIH/NCI
- 09-25-0060 Clinical Research: Division of Cancer Treatment Clinical Investigations, HHS/NIH/NCI
- 09-25-0067 Clinical Research: National Cancer Incidence Surveys, HHS/NIH/NCI
- 09-25-0069 NIH Clinical Center Admissions of the National Cancer Institute, HHS/NIH/NCI
- 09-25-0074 Clinical Research: Division of Cancer Biology and Diagnosis Patient Trials, HHS/NIH/NCI
- 09-25-0077 Biological Carcinogenesis Branch Human Specimen Program, HHS/NIH/NCI
- 09-25-0126 Clinical Research: National Heart, Lung, and Blood Institute Epidemiological and Biometric Studies, HHS/NIH/NHLBI
- 09-25-0128 Clinical Research: Neural Prosthesis and Biomedical Engineering Studies, HHS/NIH/NINDS
- 09-25-0129 Clinical Research: Clinical Research Studies Dealing with Hearing, Speech, Language and Chemosensory Disorders, HHS/NIH/NIDCD
- 09-25-0130 Clinical Research: Studies in the Division of Cancer Cause and Prevention, HHS/NIH/NCI
- 09-25-0134 Clinical Research: Epidemiology Studies, National Institute of Environmental Health Sciences, HHS/NIH/NIEHS
- 09-25-0142 Clinical Research: Records of Subjects in Intramural Research, Epidemiology, Demography and Biometry Studies on Aging, HHS/NIH/NIA
- 09-25-0143 Biomedical Research: Records of Subjects in Clinical, Epidemiologic and Biometric Studies of the National Institute of Allergy and Infectious Diseases, HHS/NIH/NIAID
- 09-25-0145 Clinical Trials and Epidemiological Studies Dealing with Visual Disease and Disorders in the National Eye Institute, HHS/NIH/NEI
- 09-25-0148 Contracted and Contract-Related Research: Records of Subjects in Clinical, Epidemiological and Biomedical Studies of the National Institute of Neurological Disorders and Stroke and the National Institute on Deafness and Other Communication Disorders, HHS/NIH/NINDS and HHS/NIH/NIDCD
- 09-25-0152 Biomedical Research: Records of Subjects in National Institute of Dental Research Contracted Epidemiological and Biometric Studies, HHS/NIH/NIDR
- 09-25-0153 Biomedical Research: Records of Subjects in Biomedical and Behavioral Studies of Child Health and Human Development, HHS/NIH/NICHHD
- 09-25-0154 Biomedical Research: Records of Subjects: 1) Cancer Studies of the Division of Cancer Prevention and Control, HHS/NIH/NCI; and 2) Women's Health Initiative (WHI) Studies, HHS/NIH/OD
- 09-25-0170 Diabetes Control and Complications Trial (DCCT) Data System, HHS/NIH/NIDDK
- 09-25-0172 Clinical Research: National Center for Human Genome Research, HHS/NIH/NCHGR
- 09-25-0201 Clinical Research: National Institute of Mental Health Patient Records, HHS/NIH/NIMH
- 09-25-0205 Alcohol, Drug Abuse, and Mental Health Epidemiologic and Biometric Research Data, HHS/NIH/NIAAA, HHS/NIH/NIDA and HHS/NIH/NIMH
- 09-25-0212 Clinical Research: Neuroscience Research Center Patient Medical Records, HHS/NIH/NIMH

**NOTIFICATION PROCEDURE:**

To determine if a record exists, write to the appropriate ICD Privacy Act Coordinator listed below. In cases where the requestor knows specifically which System Manager to contact, he or she may contact the System Manager directly (See Appendix I). Notification requests should include: Individual's name; current address; date of birth; date, place and nature of participation in specific research study; name of individual or organization administering the research study (if known); name or description of the research study (if known); address at the time of participation; and in specific cases, a notarized statement (some highly sensitive systems require two witnesses attesting to the individual's identity). A requestor must verify his or her identity by providing either a notarization of the request or by submitting a written certification that the requestor is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

Individuals will be granted direct access to their medical records unless the System Manager determines that such access is likely to have an adverse effect (i.e., could cause harm) on the individual. In such cases when the System Manager has determined that the nature of the record information requires medical interpretation, the subject of the record shall be requested to designate, in writing, a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. The representative may be a physician, other health professional, or other responsible individual. In this case, the medical/dental record will be sent to the designated representative. Individuals will be informed in writing if the record is sent to the representative. This same procedure will apply in cases where a parent or guardian requests notification of, or access to, a child's or incompetent person's medical record. The parent or guardian must also verify (provide adequate documentation) their relationship to the child or incompetent person as well as his or her own identity to prove their relationship.

If the requestor does not know which Institute, Center or Division Privacy Act Coordinator to contact for notification purposes, he or she may contact directly the NIH Privacy Act Officer at the following address: NIH Privacy Act

Officer, Office of Management Assessment, Building 31, Room 1B05, 31 Center Drive MSC 2075, Bethesda, MD 20892-2075.

**NIH Privacy Act Coordinators**

Office of the Director, (OD), NIH  
Associate Director for Disease Prevention,  
OD, NIH  
Building 1, Room 260  
1 Center Drive  
Bethesda, MD 20892

National Cancer Institute (NCI)  
Privacy Act Coordinator, NCI, NIH  
Building 31, Room 10A34  
31 Center Drive  
Bethesda, MD 20892

National Eye Institute (NEI)  
Privacy Act Coordinator, NEI, NIH  
Building 31, Room 6A-19  
31 Center Drive  
Bethesda, MD 20892

National Heart, Lung and Blood Institute (NHLBI)  
Privacy Act Coordinator, NHLBI, NIH  
Building 31, Room 5A08  
31 Center Drive  
Bethesda, MD 20892

National Institute on Aging (NIA)  
Privacy Act Coordinator, NIA, NIH  
Building 31, Room 2C12  
31 Center Drive  
Bethesda, MD 20892

National Institute on Alcohol Abuse and Alcoholism (NIAAA)  
Privacy Act Coordinator, NIAAA, NIH  
Wilco Building, Suite  
6000 Executive Blvd., MSC 7003  
Bethesda, MD 20892-7003

National Institute of Allergy and Infectious Diseases (NIAID)  
Privacy Act Coordinator, NIAID, NIH  
Solar Building, Room 3C-23  
6003 Executive Blvd.  
Bethesda, MD 20892

National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS)

Privacy Act Coordinator, NIAMS, NIH  
Natcher Building, Room 5QS49  
45 Center Drive  
Bethesda, MD 20892

National Institute of Child Health and Human Development (NICHD)  
Privacy Act Coordinator, NICHD, NIH  
6100 Executive Blvd., Room 5D01  
North Bethesda, MD 20892

National Institute on Deafness and Other Communication Disorders (NIDCD)  
Privacy Act Coordinator, NIDCD, NIH  
Building 31, Room 3C02  
9000 Rockville Pike  
Bethesda, MD 20892

National Institute of Dental Research (NIDR)  
Privacy Act Coordinator, NIDR, NIH  
Building 31, Room 2C-35  
31 Center Drive, MSC 2290  
Bethesda, MD 20892-2290

National Institute of Diabetes and Digestive and Kidney Disease (NIDDK)  
Privacy Act Coordinator, NIDDK, NIH  
Building 31, Room 9A47  
31 Center Drive  
Bethesda, MD 20892

National Institute on Drug Abuse (NIDA)  
Privacy Act Coordinator, NIDA, NIH

Parklawn Building, Room 10A-42  
5600 Fishers Lane  
Rockville, Maryland 20857  
National Institute of Environmental Health Sciences (NIEHS)  
Chief, Epidemiology Branch, NIEHS, NIH  
P.O. Box 12233

Research Triangle Park  
North Carolina 27709  
National Institute of Mental Health (NIMH)  
Privacy Act Coordinator, NIMH, NIH  
Parklawn Building, Room 7C-22  
5600 Fishers Lane  
Rockville, Maryland 20857

National Institute of Neurological Disorders and Stroke (NINDS)  
Privacy Act Coordinator, NINDS, NIH  
Federal Building, Room 816  
7550 Wisconsin Avenue  
Bethesda, MD 20892  
National Center for Human Genome Research (NCHGR)  
Chief, Office of Human Genome Communications, NGHGR, NIH  
Building 38A, Room 617  
9000 Rockville Pike  
Bethesda, Maryland 20892

**RECORD ACCESS PROCEDURE:**

Same as notification procedures. Requesters should reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

**CONTESTING RECORD PROCEDURE:**

Contact the appropriate official at the address specified under Notification Procedure, and reasonably identify the record, specify the information being contested, and state corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

**RECORD SOURCE CATEGORIES:**

The system contains information obtained directly from the subject individual by interview (face-to-face or telephone), written questionnaire, or by other tests, recording devices or observations, consistent with legislation and regulation regarding informed consent and protection of human subjects. Information is also obtained from other sources, including but not limited to: Referring medical physicians, mental health/alcohol/drug abuse or other health care providers; hospitals; organizations providing biological specimens; relatives; guardians; schools; and clinical medical research records.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

**Appendix I: System Managers and Addresses**

Office of the Director, NIH

- Associate Director for Disease Prevention, OD, NIH  
Building 1, Room 260  
1 Center Drive  
Bethesda, MD 20892
- National Cancer Institute  
Computer Systems Analyst, DCBD, NCI, NIH  
Executive Plaza North, Room 344  
Bethesda, MD 20892
- American Burkitt's Lymphoma Registry  
Division of Cancer Etiology, NCI, NIH  
Executive Plaza North, Suite 434  
6130 Executive Blvd.  
Bethesda, MD 20892
- Chief, Genetic Epidemiology Branch, EBP, DCE, NCI, NIH  
Executive Plaza North, Suite 439  
6130 Executive Blvd.  
Bethesda, MD 20892
- Chief, Clinical Genetics Section  
Clinical Epidemiology Branch, DCE, NCI, NIH  
Executive Plaza North, Suite 400  
6130 Executive Blvd.  
Bethesda, MD 20892
- Program Director, Research Resources  
Biological Carcinogenesis Branch, DCE, NCI, NIH  
Executive Plaza North, Room 540  
6130 Executive Blvd.  
Bethesda, MD 20892
- Chief, Environmental Epidemiology Branch, DCE, NCI, NIH  
Executive Plaza North, Room 443  
6130 Executive Blvd.  
Bethesda, MD 20892
- Associate Director, Surveillance Program, DCPC, NCI, NIH  
Executive Plaza North, Room 343K  
6130 Executive Blvd.  
Bethesda, MD 20892
- Head, Biostatistics and Data Management Section, DCT, NCI, NIH  
8601 Old Georgetown Road  
Bethesda, MD 20892
- Chief, Clinical Research Branch  
Biological Response Modifiers Program  
Frederick Cancer Research and Development Center, DCT, NCI, NIH  
501 W. 7th Street, Suite #3  
Frederick, MD 21701
- Deputy Branch Chief, Navy Hospital  
NCI—Naval Medical Oncology Branch, DCT, NCI, NIH  
Building 8, Room 5101  
Bethesda, MD 20814
- Chief, Pharmaceutical Management Branch  
Cancer Therapy Evaluation Program, DCT, NCI, NIH  
Executive Plaza North, Suite 804  
Bethesda, MD 20892
- Director, Extramural Clinical Studies, BRB, BRMP, DCT, NCI, NIH  
Frederick Cancer Research and Development Center  
Fort Detrick  
Frederick, MD 21701
- National Eye Institute  
Clinical Director, NEI, NIH  
Building 10, Room 10N-202  
10 Center Drive  
Bethesda, MD 20892
- Director, Division of Biometry and Epidemiology, NEI, NIH  
Building 31, Room 6A-52  
31 Center Drive  
Bethesda, MD 20892
- National Heart Lung and Blood Institute  
Administrative Officer, Division of Intramural Research, NHLBI, NIH  
Building 10 Room 7N220  
10 Center Drive, MSC 1670  
Bethesda, MD 20892-1670
- Senior Scientific Advisor, OD  
Division of Epidemiology and Clinical Applications, NHLBI, NIH  
Federal Building, 220  
7550 Wisconsin Avenue  
Bethesda, MD 20892
- National Institute on Aging  
Computer Scientist, Longitudinal Studies Branch, IRP, NIH  
Gerontology Research Center, GRC  
4940 Eastern Avenue  
Baltimore, MD 21224
- Associate Director, Epidemiology, Demography and Biometry Program, NIA, NIH  
Gateway Building, Suite 3C309  
7201 Wisconsin Avenue  
Bethesda, MD 20892
- National Institute on Alcohol Abuse and Alcoholism  
Deputy Director, Division of Biometry and Epidemiology, NIAAAA, NIH  
Willco Building, Suite 514  
6000 Executive Blvd., MSC 7003  
Bethesda, MD 20892-7003
- Deputy Director, Div. of Clinical and Prevention Res., NIAAAA, NIH  
Willco Building, Suite 505  
6000 Executive Blvd., MSC 7003  
Bethesda, MD 20892-7003
- National Institute of Allergy and Infectious Diseases  
Chief, Respiratory Viruses Section, LID, NIAID, NIH  
Building 7, Room 106  
9000 Rockville Pike  
Bethesda, MD 20892
- Chief, Hepatitis Virus Section, LID, NIAID, NIH  
Building 7, Room 202  
9000 Rockville Pike  
Bethesda, MD 20892
- Chief, Epidemiology and Biometry Branch, DMID, NIAID, NIH  
Solar Building, Room 3A24  
Bethesda, Maryland 20892
- Special Assistant, Clinical Research Program, DAIDS, NIAID, NIH  
Solar Building, Room 2C-20  
6003 Executive Blvd.  
Bethesda, MD 20892
- National Institute of Arthritis and Musculoskeletal and Skin Diseases  
Clinical Director, NIAMS, NIH  
Building 10, Room 9S205  
10 Center Drive  
Bethesda, MD 20892
- National Institute of Child Health and Human Development  
Chief, Contracts Management Branch, NICHD, NIH  
Executive Plaza North, Room 7A07  
6100 Executive Blvd.
- North Bethesda, MD 20892
- National Institute on Deafness and Other Communication Disorders  
Acting Director of Intramural Research, NIDCD, NIH  
Building 31, Room 3C02  
31 Center Drive  
Bethesda, MD 20892
- Director, Division of Human Communication, NIDCD, NIH  
Executive Plaza South, Room 400B  
6120 Executive Boulevard  
Rockville, MD 20852
- National Institute of Dental Research  
Deputy Clinical Director, NIDR, NIH  
Building 10, Room 1N-113  
10 Center Drive, MSC 1190  
Bethesda, MD 20892-1190
- Research Psychologist, Clinical Investigations, NIDR, NIH  
Building 10, Room 1N114  
10 Center Drive, MSC 1190  
Bethesda, MD 20892-1190
- Chief, Contract Management Section  
Extramural Program, NIDR, NIH  
Natcher Building, Room 4AN-44B  
45 Center Drive, MSC 6402  
Bethesda, MD 20892-6402
- National Institute of Diabetes and Digestive and Kidney Diseases  
Chief, Clinical Investigations, NIDDK, NIH  
Building 10, Room 9N222  
10 Center Drive  
Bethesda, MD 20892
- Chief, Phoenix Clinical Research Section, NIDDK, NIH  
Phoenix Area Indian Hospital, Room 541  
4212 North 16th Street  
Phoenix, Arizona 85016
- Chief, Diabetes Research Section, DPB, DDEMD, NIDDK, NIH  
Natcher Building, Room 5AN-18G  
45 Center Drive, MSC 6600  
Bethesda, MD 20892
- National Institute on Drug Abuse  
Privacy Act Coordinator, NIDA, NIH  
Parklawn Building, Room 10A-42  
5600 Fishers Lane  
Rockville, Maryland 20857
- National Institute of Environmental Health Sciences  
Chief, Epidemiology Branch, NIEHS, NIH  
P.O. Box 12233  
Research Triangle Park  
North Carolina 27709
- National Institute of Mental Health  
Director, Intramural Research Program, NIMH, NIH  
Building 10, Room 4N-224  
9000 Rockville Pike  
Bethesda, MD 20205
- Privacy Act Coordinator, NIMH, NIH  
Parklawn Building, Room 7C22  
5600 Fishers Lane  
Rockville, Maryland 20857
- Clinical Director, Neuroscience Research Center, DIRP, NIMH  
Saint Elizabeths Hospital,  
William A. White Building, Room 133  
2700 Martin Luther King Jr., Avenue, SE  
Washington, DC 20032
- National Institute of Neurological Disorders and Stroke

Chief, Epilepsy Branch, NINDS, NIH  
Federal Building, Room 114  
7750 Wisconsin Avenue  
Bethesda, MD 20892

Chief, Development Neurology Branch,  
NINDS, NIH

Federal Building, NIH  
7750 Wisconsin Avenue  
Bethesda, MD 20892

Assistant Director, CNP, DIR, NINDS, NIH  
Building 10, Room 5N226  
10 Center Drive  
Bethesda, MD 20892

Deputy Chief, Laboratory of Central  
Nervous Systems Studies  
Intramural Research Program, NINDS, NIH  
Building 36, Room 5B21,  
9000 Rockville Pike  
Bethesda, MD 20892

Director, Division of Fundamental  
Neurosciences, NINDS, NIH  
Federal Building, Room 916  
7550 Wisconsin Ave  
Bethesda, MD 20892

Director, Division of Convulsive,  
Developmental and Neuromuscular  
Disorders, NINDS, NIH  
Federal Building, Room 816  
7550 Wisconsin Avenue  
Bethesda, MD 20892

Director, Division of Demyelinating  
Atrophic, and Dementing Disorders,  
NINDS, NIH  
Federal Building, Room 810  
7550 Wisconsin Avenue  
Bethesda, MD 20892

Director, Division of Stroke and Trauma,  
NINDS, NIH  
Federal Building, Room 8A08  
7550 Wisconsin Avenue  
Bethesda, MD 20892

National Center for Human Genome Research  
Chief, Office of Human Genome  
Communications, NCHGR, NIH  
Building 38A, Room 617  
9000 Rockville Pike  
Bethesda, MD 20892

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BILLING CODE 4140-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

#### Fiscal Year (FY) 1997 Funding Opportunities for Knowledge Development and Application Cooperative Agreements

AGENCY: Substance Abuse and Mental  
Health Services Administration  
(SAMHSA), HHS.

ACTION: Clarification of Notice of  
Funding Availability (NOFA).

This notice is to clarify questions/  
issues that have been raised subsequent  
to the publication of the NOFA for  
SAMHSA's "Cooperative Agreements

for Integrating Mental Health and  
Substance Abuse Prevention and  
Treatment Services with Primary Health  
Care Service Settings or with Early  
Childhood Service Settings, for Children  
ages Birth to 7 and their Families/  
Caregivers" (Short Title: Starting Early  
Starting Smart—SESS). The NOFA was  
published in the *Federal Register* (Vol.  
62, No. 31), Friday February 14, 1997,  
on pages 6974–6977. The receipt date  
for applications is April 17, 1997.

**Award Amounts:** On page 6976 under  
the Cooperative Agreements/Amounts  
section, the notice states that  
approximately \$5.9 million will be  
available to support approximately 10  
SESS site awards and \$500,000 to  
support one data coordinating center  
award. To clarify, it is anticipated that  
funds available to support the data  
coordinating center may increase  
commensurate with the increased center  
tasks and responsibilities in years 2–4.  
In addition, proposed budgets must be  
for total costs (direct + indirect).

**Evaluation Costs:** The percentage of  
the total proposed budget for evaluation  
costs is determined by the proposed  
study design and the costs associated  
with the steering committee and the  
data coordinating center. The budget  
must be consonant with the cost of  
doing the evaluation required by the  
study design. The proposed study  
design, evaluation associated costs, and  
overall budget will be evaluated by a  
peer review group as part of their  
overall assessment of the application.

**Eligible Applicants:** On page 6976  
under the Eligible Applicants section,  
the notice states that applications  
" \* \* \* may be submitted by units of  
State or local governments and by  
domestic private nonprofit and for-  
profit organizations \* \* \*," and that  
each SESS site proposal must include  
documentation regarding the existence  
of an infrastructure and two years of  
experience providing behavioral health  
and other relevant services to the target  
population. SAMHSA has determined  
that "home-based" early childhood  
service settings are eligible applicants if  
they meet other eligibility requirements  
as specified in the announcement.

FOR FURTHER INFORMATION CONTACT: Rose  
C. Kittrell, MSW, SAMHSA, Rockwall  
II, Room 1075, 5600 Fishers Lane,  
Rockville, MD 20857; (301) 443-0354 or  
443-0365.

Dated: April 1, 1997.

Richard Kopanda,  
Executive Officer, SAMHSA.

[FR Doc. 97-8705 Filed 4-4-97; 8:45 am]

BILLING CODE 4162-20-P

## DEPARTMENT OF THE INTERIOR

### Central Utah Project Completion Act; Notice of Availability of the Record of Decision on the Wasatch County Water Efficiency Project and Daniel Replacement Project Final Environmental Impact Statement Documenting the Department of the Interior's Approval for the Central Utah Water Conservancy District To Proceed With the Construction of the Proposed Action Alternative

AGENCY: Office of the Assistant  
Secretary—Water and Science,  
Department of the Interior.

ACTION: Notice of availability of the  
Wasatch County Water Efficiency  
Project and Daniel Replacement Project  
Record of Decision.

**SUMMARY:** On March 21, 1997, Patricia J.  
Beneke, Assistant Secretary—Water and  
Science, Department of the Interior,  
signed the Record of Decision (ROD)  
which documents the selection of the  
Proposed Action Alternative as  
presented in the Wasatch County Water  
Efficiency Project and Daniel  
Replacement Project (WCWEP and DRP)  
Final Environmental Impact Statement  
(FEIS), INT FES 96-58, filed November  
22, 1996, and as described in the  
WCWEP Feasibility Study dated January  
1997. The ROD also approves the  
Central Utah Water Conservancy District  
(CUWCD) proceeding with construction  
of WCWEP and DRP, in accordance with  
statutory and contractual obligations.  
Construction of WCWEP will provide a  
replacement water supply out of water  
conserved in Wasatch County, for the  
water presently being diverted from the  
Strawberry River basin. The  
replacement supply will be delivered by  
means of the DRP.

The FEIS for WCWEP and DRP,  
considered three alternatives to restore  
flows in the upper Strawberry River and  
to provide water and water conveyance  
facilities from Jordanelle Reservoir to  
the existing Daniel Irrigation Company  
(DIC) water storage facilities as  
mandated in section 303 of the Central  
Utah Project Completion Act (CUPCA)  
and a No Action Alternative. The  
Department of the Interior (Interior), the  
Utah Reclamation Mitigation and  
Conservation Commission (Mitigation  
Commission), and the CUWCD served as  
the Joint Lead Agencies in the  
preparation of the NEPA compliance  
documents.

In addition to satisfying the  
requirements and authorizations of  
CUPCA, the construction of the WCWEP  
and DRP will satisfy Interior's  
environmental commitment made in the

U.S. Bureau of Reclamation's 1990 Final Supplement to the Final Environmental Impact Statement, Diamond Fork System, and now binding upon the Mitigation Commission, to restore flows in the upper Strawberry River that have been historically diverted by the DIC, and to provide the mandated replacement water supply. Of principal significance, the selected alternative will fulfill the mandates of CUPCA and the environmental commitment by: improving the efficiency of delivering CUP agricultural and municipal and industrial water stored in Jordanelle Reservoir; conserving water and improving water management in the Heber Valley; supplementing instream flows in some Heber Valley streams; protecting the water rights of downstream users; and minimizing adverse impacts on groundwater, wetlands and other environmental resources.

During preparation of the FEIS, CUWCD consulted formally on listed species with the U.S. Fish and Wildlife Service (FWS) under § 7 of the Endangered Species Act (16 U.S.C.A. sections 1531 to 1544, as amended). In a letter dated January 14, 1997, the FWS indicated that the Proposed Action Alternative selected by this ROD is not likely to adversely affect listed or proposed species or designated or proposed critical habitats. CUWCD and Interior will continue to consult with FWS prior to and during construction to avoid action that may affect proposed or listed species, or their proposed or designated critical habitat.

**FOR FURTHER INFORMATION:** Additional information on matters related to this Federal Register notice can be obtained at the address and telephone number set forth below: Mr. Reed Murray, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South Provo, UT 84606-6154, Telephone: (801) 379-1237.

Dated: April 1, 1997.

**Ronald Johnston,**

*Program Director, Department of the Interior.*

[FR Doc. 97-8780 Filed 4-4-97; 8:45 am]

BILLING CODE 4310-RK-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Issuance of Permit for Incidental Take of Threatened Species

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of issuance.

On February 28, 1997, a notice was published in the Federal Register (40 FR 9204-9205) that an application had been filed with the U.S. Fish and Wildlife Service by the Church of Jesus Christ of Latter-Day Saints for a permit to incidentally take, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), threatened Utah Prairie Dog (*Cynomys parvidens*). Anticipated incidental take of this species is in conjunction with otherwise legal activities including construction of a meeting house, seminary building, parking area, and associated infrastructure on a 6.3-acre site in Cedar City, Iron County, Utah pursuant to the Implementation Agreement that implements the Habitat Conservation Plan prepared by the LDS Church.

Notice is hereby given that on March 31, 1997, as authorized by the provisions of the Act, the Service issued an incidental take permit (permit number PRT-825570) to the above-named party subject to certain conditions set forth therein. The permit was granted only after it was determined that it was applied for in good faith, that by granting the permit it will not be the disadvantage of the threatened species, and that it will be consistent with the purposes and policy set forth in the Act, as amended.

Additional information on this permit action may be obtained by contacting the Assistant Field Supervisor, U.S. Fish and Wildlife Service, Utah Ecological Services Field Office, 145 East 1300 South Street, Suite 404, Salt Lake City, Utah 84115, telephone (801) 524-5001, on weekdays between the hours of 8:00 am and 4:30 pm.

Dated: March 31, 1997.

**Terry Terrell,**

*Deputy Regional Director, Region 6, U.S. Fish and Wildlife Service.*

[FR Doc. 97-8821 Filed 4-4-97; 8:45 am]

BILLING CODE 4310-55-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WY-621-41-5700; WYW101404]

#### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

March 26, 1997.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW101404 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required

rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$5.00 per acre, or fraction thereof, per year and 16½ percent, respectively.

The lessee has paid the required \$500 administrative fee and \$125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW101404 effective October 1, 1996, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Pamela J. Lewis,**

*Chief, Leasable Minerals Section.*

[FR Doc. 97-8737 Filed 4-4-97; 8:45 am]

BILLING CODE 4310-22-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CA-330-1220-00]

#### Notice of Proposed Supplementary Rules for King Range National Conservation Area

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of proposed establishment of supplementary rules.

**SUMMARY:** The Arcata Resource Area is proposing the establishment of the following Supplementary Rules for the King Range National Conservation Area as provided for under Title 43 Code of Federal Regulations Subpart 8365.1-6:

**A. Parking Restriction, Black Sands Beach:** Buses, camping trailers or motor homes, or any other vehicles larger than a full-sized pickup truck, are prohibited from parking in the Black Sands Beach Parking Area at the terminus of Beach Road.

**B. Parking Restriction, Developed Camping and Picnic Sites:** Parking any vehicle on a developed camp/picnic site is allowed only during occupancy of the site. "Occupancy of the site" is defined as that period of time when the vehicles occupants are using facilities at the site for the primary purpose of camping or picnicking. All vehicles not directly associated with use of the camp/picnic site must be placed at other parking locations. This includes any vehicle left parked unattended for the primary purpose of allowing the occupants to

participate in recreation activities away from the camping/picnic site including, but not limited to, backpacking, hiking, beachcombing, hunting, surfing etc. The following developed camping and picnic sites are covered under this restriction: Mattole, Tolkan, Horse Mountain, Honeydew Creek, and Wailaki.

**C. Vehicle Barriers:** Taking any vehicle through, around, or beyond any structure, restrictive sign, recognizable barricade, fence, gate, or traffic control barrier is prohibited.

**D. Camping Closure:** BLM administered lands within the following areas are closed to camping (overnight occupancy) outside of developed campgrounds: Public Lands within 500 feet of Chemise Mountain Road; Public Lands within 500 feet of Shelter Cove Road between milepost 5 and the intersection with Chemise Mountain Road; Public Lands adjacent to Lower Pacific Drive including Mal Coombs Park, Seal Rock Picnic Area, Abalone Point, and all other BLM managed oceanfront lots within the Shelter Cove Subdivision; Public Lands south of Telegraph Creek and north of Humboldt Creek known as the Black Sands Beach Parking Area; Public Lands within Township 3 South, Range 1 East, Sections 6 and 7 known as the Honeydew Creek parcel; and Public Lands within 500 feet of King Peak Road between milepost 2 and 7.

**EFFECTIVE DATE:** These Supplementary Rules will be effective on May 20, 1997.

**COMMENT PERIOD:** The BLM is requesting comments concerning these supplemental rules. The comment period will be open for 30 days from the date of publication of this notice.

**SUPPLEMENTARY INFORMATION:** The above supplementary rules are being proposed for the following purposes:

**A. Parking, Black Sands Beach:** Wave erosion of the existing parking area has severely reduced its size to the point that larger vehicles and trailers cannot safely park or turn around, especially since the lot is often filled to capacity. Enlargement of the existing lot is not feasible, and efforts are being made to acquire an alternate parking area to accommodate larger vehicles.

**B. Parking, Developed Camping and Picnic Sites:** This rule is intended to be used in conjunction with an improved information program to increase the efficiency of use at developed camping/picnic areas. Presently, visitors often park in camp/picnic sites to hike, backpack or pursue other activities that do not require use of the site. Comparable access for these activities is available from nearby parking locations.

Often, all campsites are full, denying use to additional campers/picnickers, while these nearby parking areas have spots available.

**C. Vehicle Barriers:** Self explanatory.

**D. Camping Closure:** The closure along segments of Chemise Mountain and Shelter Cove Roads is intended to protect critical salmon spawning and rearing habitat along the Bear Creek corridor from impacts. The oceanfront lots and parks (Seal Rock, Abalone Point and Mal Coombs) along Lower Pacific Drive are in a residential area and are not designed to accommodate overnight use. The closure along King Peak Road and of the Honeydew Creek Parcel is intended to reduce resource damage and maintenance costs from increased numbers of visitors camping in undeveloped sites adjacent to developed campgrounds so that they can use the facilities without paying fees. Because of extensive wave erosion, the Black Sands Beach Parking Area no longer has the capacity to accommodate any tent or vehicle camping. Violation of any of the above supplementary rules is punishable by a fine not to exceed \$100,000, and/or imprisonment not to exceed 12 months (43 CFR 8360.0-7).

**FOR MORE INFORMATION:** Lynda J. Roush, Bureau of Land Management, Arcata Resource Area Manager, 1695 Heindon Rd., Arcata, CA 95521, phone (707) 825-2300.

Daniel E. Averill,

Acting Arcata Resource Area Manager.

[FR Doc. 97-8828 Filed 4-4-97; 8:45 am]

BILLING CODE 4310-40-P

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### North Country National Scenic Trail

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of availability of final trailway plans for Kent County, Michigan, and Columbiana and Carroll Counties, Ohio.

**SUMMARY:** A public planning process has been conducted in Kent County, Michigan, and Columbiana and Carroll Counties, Ohio, to select a specific route or trailway for the North Country National Scenic Trail in those counties. The planning process identified and mapped a specific "corridor of opportunity" within which public and private partners working to establish and manage the trail will work to secure lands on which the actual footpath can be constructed. This will require the cooperation of willing landowners. Lands may be secured by outright

purchase; easement, lease, or voluntary use agreements. The identified corridor is several landowners wide to allow flexibility in working with willing landowners to find a mutually agreeable alignment for the trail. A copy of either trailway plan can be obtained by writing to the National Park Service, 700 Rayovac Drive, Suite 100, Madison, Wisconsin 53711, or by calling 608-264-5610.

**FOR FURTHER INFORMATION CONTACT:** Superintendent Tom Gilbert, Ice Age, North Country, and Lewis and Clark National Trails, at the address or telephone number given above.

**SUPPLEMENTARY INFORMATION:** In March 1980, Federal legislation authorized the establishment of the North Country National Scenic Trail (NST) as a component of the National Trails System (16 U.S.C. 1241 *et seq.*). The trail will extend more than 3,200 miles across seven north States: New York, Pennsylvania, Ohio, Michigan, Wisconsin, Minnesota, and North Dakota. Approximately 1,321 miles are completed and open to public use. A comprehensive management plan, published in September 1982 identified a general route for the trail.

Dated: March 18, 1997.

David N. Given,

Deputy Regional Director, Midwest Regional Office.

[FR Doc. 97-8715 Filed 4-4-97; 8:45 am]

BILLING CODE 4310-70-P

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Availability of Plan of Operations and Environmental Assessment for Drilling an Exploratory Oil and Gas Well; Royal Production Company, Incorporated, Big Thicket National Preserve, Hardin County, Texas

Notice is hereby given in accordance with regulations at Section 9.52(b) of Title 36 of the Code of Federal Regulations, Part 9, Subpart B, that the National Park Service has accepted a Plan of Operations from Royal Production Company, Inc., to drill an exploratory oil and gas well within Big Thicket National Preserve, Hardin County, Texas.

The Plan of Operations and corresponding Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice. Such documents can be viewed during normal business hours at the Office of the Superintendent, Big Thicket National Preserve, 3785 Milam,

Beaumont, Texas. Copies can be requested from the Superintendent, Big Thicket National Preserve, 3785 Milam, Beaumont, Texas 77701.

Dated: March 21, 1997.

**Richard R. Peterson,**  
Superintendent, Big Thicket National Preserve.

[FR Doc. 97-8714 Filed 4-4-97; 8:45 am]

BILLING CODE 4310-70-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

#### Notice of Request for Revisions and Reinstatement of a Previously Approved Information Collection

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the intentions of the Bureau of Reclamation (Reclamation) to seek renewal of an information collection. Reclamation delivers Colorado River water to water users for diversion and beneficial consumptive use in the States of Arizona, California, and Nevada. Under Supreme Court order, the United States is required, at least annually, to prepare and maintain complete, detailed, and accurate records of diversions of water, return flow, and consumptive use. This information is needed to ensure that a State or a water user within a State does not exceed its authorized use of Colorado River water. Water users are obligated to provide information on diversions and return flows to Reclamation by provisions in their water delivery contracts. Reclamation determines the consumptive use by subtracting return flow from diversions or by other engineering means. Without this information, Reclamation could not comply with the order of the United States Supreme Court to prepare and maintain detailed and accurate records of diversions, return flow, and consumptive use.

**DATES:** Comments on this notice must be received by June 6, 1997.

**FOR FURTHER INFORMATION CONTACT:**

To submit comments on this information collection contact: Bureau of Reclamation, Information Collection Officer, D-7924, P.O. Box 25007, Denver, Colorado 80225-0007; telephone: (303) 236-0305 extension 462; Internet address: infocoll@do.usbr.gov.

**SUPPLEMENTARY INFORMATION:** Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Reclamation, including whether the information shall have practical utility; (b) the accuracy of Reclamation's estimated time and cost burdens of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including increased use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

This information collection was formerly titled, "Regulations for administering entitlements to Colorado River water in the lower Colorado River basin." Development of those regulations is expected to resume in the future, but the information to be collected is needed by Reclamation independent of the regulations.

**Title:** Diversions, return flow, and consumptive use of Colorado River water in the lower Colorado River basin.

**OMB No.:** OMB No. 1006-0015.

**Description of respondents:** The Lower Basin States (Arizona, California, and Nevada); local and tribal entities, water districts, and individuals that use Colorado River water.

**Frequency:** Annually, or otherwise as determined by the Secretary of the Interior.

**Estimated completion time:** An average of 2 hours per respondent.

**Annual responses:** 160 respondents.

**Annual burden hours:** 320.

Dated: April 1, 1997.

**William E. Rinne,**

Area Manager, Boulder Canyon Operations Office.

[FR Doc. 97-8778 Filed 4-4-97; 8:45 am]

BILLING CODE 4310-04-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

#### Notice of Request for Reinstatement of a Previously Approved Information Collection

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the intentions of the

Bureau of Reclamation (Reclamation) to seek renewal of the information collection for Private Rental Survey. Under Public Law 80-459, Federal agencies are authorized to provide housing for Government employees under specified circumstances. A review of private rental market housing rates is required once every 5 years to ensure that the rental, utility, and related charges to occupants of Government Furnished Quarters (GFQ) are comparable to corresponding charges in the private sector. To avoid unnecessary duplication and inconsistent rental rates, the Bureau of Reclamation conducts housing surveys for the Departments of Interior, Agriculture, Commerce, Defense, Justice, Transportation, Treasury, and Health and Human Services. If the collection activity was not performed, there would be no basis for determining open market rental costs.

**DATES:** Comments on this notice must be received by June 6, 1997.

**FOR FURTHER INFORMATION CONTACT:**

To submit comments on this information collection contact: Bureau of Reclamation, Information Collection Officer, D-7924, P.O. Box 25007, Denver, Colorado 80225-0007; telephone: (303) 236-0305 extension 462; Internet address: infocoll@do.usbr.gov

**SUPPLEMENTARY INFORMATION:** Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of participating agencies, including whether the information shall have practical utility; (b) the accuracy of Reclamation's estimated burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

**Title:** Private Rental Survey.

**OMB No.:** OMB No. 1006-0009.

**Description of respondents:**

Individual property owners and small businesses or organizations (real estate managers or property managers).

**Frequency:** Each of 14 regions are surveyed every fifth year; this equates to two to three regions surveyed each year.

**Estimated completion time:** An average of 10 or 12 minutes per respondent.

**Annual responses:** 3,000 respondents.

**Annual burden hours:** 590 hours.

Dated: March 31, 1997.

Stan Dunn,

Director, Administrative Service Center.

[FR Doc. 97-8837 Filed 4-4-97; 8:45 am]

BILLING CODE 4310-04-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### Notice of Proposed Information Collection

**AGENCY:** Office of Surface Mining Reclamation and Enforcement.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for the Acid mine drainage treatment and abatement program, part 876.

**DATES:** Comments on the proposed information collection must be received by June 6, 1997, to be assured of consideration.

**ADDRESSES:** Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210—SIB, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208-2783.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d)). This notice identifies information collections that OSM will be submitting to OMB for extension. These collections are contained in 30 CFR 876, Acid mine drainage treatment and abatement program.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for each information collection activity.

*Comments are invited on:* (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the

agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

*Title:* Acid mine drainage treatment and abatement program, 30 CFR 876.

*OMB Control Number:* 1029-0104.

*Summary:* This part establishes the requirements and procedures allowing State and Indian Tribes to establish acid mine drainage abatement and treatment programs under the Abandoned Mine Land fund as directed through Public Law 101-508.

*Bureau Form Number:* None.

*Frequency of Collection:* On occasion.

*Description of Respondents:* State governments and Indian Tribes.

*Total Annual Responses:* 1.

*Total Annual Burden Hours:* 350.

Dated: April 2, 1997.

Arthur W. Abbs,

Chief, Division of Regulatory Support.

[FR Doc. 97-8787 Filed 4-4-97; 8:45 am]

BILLING CODE 4310-05-M

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-751 (Final)]

### Open-End Spun Rayon Singles Yarn From Austria

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of the final phase of an antidumping investigation.

**SUMMARY:** The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731-TA-751 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Austria of open-end spun rayon

singles yarn, provided for in subheading 5510.11.00 of the Harmonized Tariff Schedule of the United States.<sup>1</sup>

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207), as amended by 61 FR 37818, July 22, 1996. **EFFECTIVE DATE:** March 26, 1997.

#### FOR FURTHER INFORMATION CONTACT:

Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov> or <ftp://ftp.usitc.gov>).

#### SUPPLEMENTARY INFORMATION:

*Background.*—The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of open-end spun rayon singles yarn from Austria are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). The investigation was requested in a petition filed on August 20, 1996, by the Ad Hoc Committee of Open-End Spun Rayon Yarn Producers, Gastonia, NC.

*Participation in the investigation and public service list.*—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a

<sup>1</sup> For purposes of this investigation, Commerce has defined the subject merchandise as "open-end spun singles yarn containing 85% or more rayon staple fiber."



public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

**Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.**—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Staff report.**—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on July 28, 1997, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

**Hearing.**—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on August 12, 1997, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before August 5, 1997. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on August 7, 1997, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

**Written submissions.**—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is August 5, 1997. Parties may also file written testimony in connection with their presentation at the hearing, as

provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is August 20, 1997; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before August 20, 1997. On September 5, 1997, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before September 9, 1997, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: March 31, 1997.

**Donna R. Koehnke,**  
Secretary.

[FR Doc. 97-8723 Filed 4-4-97; 8:45 am]

BILLING CODE 7020-02-P

#### INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-767  
(Preliminary)]

#### Ultra High Temperature Milk From Canada

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice of withdrawal of petition in antidumping investigation.

**SUMMARY:** On March 28 1997, the Department of Commerce and the

Commission received a letter from petitioner in the subject investigation (Industria Lechera de Puerto Rico, Inc., San Juan, PR) withdrawing its petition. Commerce has not initiated an investigation as provided for in section 732(c) of the Tariff Act of 1930 (19 U.S.C. § 1673a(c)). Accordingly, the Commission gives notice that its antidumping investigation concerning ultra high temperature milk from Canada (investigation No. 731-TA-767 (Preliminary)) is discontinued.

**EFFECTIVE DATE:** March 28, 1997.

**FOR FURTHER INFORMATION CONTACT:** Brad Hudgens (202-205-3189), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov> or <ftp://ftp.usitc.gov>).

By order of the Commission.

Issued: March 31, 1997.

**Donna R. Koehnke,**  
Secretary.

[FR Doc. 97-8722 Filed 4-4-97; 8:45 am]

BILLING CODE 7020-02-M

#### DEPARTMENT OF JUSTICE

#### Immigration and Naturalization Service

[INS No. 1842-97]

RIN 1115-AE77

#### Direct Mail Program; Form I-360

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice of Expansion of the Direct Mail Program.

**SUMMARY:** This notice announces the Immigration and Naturalization Service's (Service) plan to expand the Direct Mail Program to include the filing of self-petitions by a battered spouse or child on Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. The Service will now require that all Forms I-360, filed by a self-petitioning battered spouse, child, or by the parent of a battered child, be mailed directly to the Vermont Service Center. This change will enable the Service to expedite the processing of these petitions.

**DATES:** This notice is effective May 7, 1997.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karen FitzGerald, Staff Officer, Immigration and Naturalization Service, Adjudications and Nationality Division, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514-5014.

**SUPPLEMENTARY INFORMATION:**

**Background**

Under 8 CFR 103.2(a), applications submitted to the Service must be executed and filed in accordance with the instructions on the application form. By eliminating specific reference to filing location, this regulation provides service center directors with the authority to accept and process applications designated for Direct Mail. It also provides the Service with the flexibility to shift filings to the service centers as the Direct Mail Program continues to expand.

Recent legislation and the publication of an interim rule on March 26, 1996, at 59 FR 13061 have led the Service to conclude that expansion of the use of the direct mail program to include I-360 petitions filed in accordance with the provisions of the Violence Against Women Act (VAWA) is warranted.

It is the intent of the Service to ensure sensitive and expeditious processing of the petitions filed by this class of at-risk applicants. Institution of a centralized direct mail filing process enables the Service to accomplish this and engenders uniformity in the adjudication of all applications of this type. This modification also enhances the Service's ability to be more responsive to inquiries from applicants, their representatives, and benefit-granting agencies.

**Where to File**

Effective May 7, 1997, Form I-360 for self-petitioning battered spouses and children residing within the United States must be mailed, with all supporting documentation, directly to the following address: USINS Vermont Service Center, 75 Lower Weldon Street, St. Albans, VT 05479. Applicants may obtain the Form I-360 by telephoning the toll-free INS Forms Request Line, 1-800-870-3676.

**Special Note**

This notice does not apply to I-360 petitions filed by Amerasians, widow(er)s, or special immigrants.

**Transition**

During the first 30 days following the effective date of this notice, district

offices and service centers will forward to the Vermont Service Center, in a timely manner, any Form I-360 filed by a self-petitioning battered spouse or child, which has been inadvertently mailed to an office other than the Vermont Service Center. Petitions filed prior to the effective date of this notice will be adjudicated at the place of initial filing.

Appeals or motions to reopen or reconsider denied I-360 petitions submitted to the Service prior to May 7, 1997 will be processed by the office where the I-360 was originally filed and adjudicated. Appeals and motions filed during the transition period, and after this notice goes into effect, should be filed with the Vermont Service Center and will be processed by that office.

During the transition period, the Service intends to work closely with community organizations and advocacy groups to provide information and assistance to the public regarding this change.

After the 30-day transition period, self-petitioning battered spouses and children will be directed to mail the Form I-360 to the Vermont Service Center for processing.

Dated: March 22, 1997.

**Doris Meissner,**  
Commissioner, Immigration and Naturalization Service.

[FR Doc. 97-8835 Filed 4-4-97; 8:45 am]

BILLING CODE 4410-10-M

**DEPARTMENT OF JUSTICE**

**Immigration and Naturalization Service**

[INS No. 1832-97; AG Order No. 2076-97]

RIN 1115-AE26

**Extension of Designation and Redesignation of Liberia Under Temporary Protected Status Program**

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice.

**SUMMARY:** This notice extends the designation of Liberia under the Temporary Protected Status ("TPS") program for an additional 12 months (until March 28, 1998) in accordance with sections 244(b)(3)(A) and (C) of the Immigration and Nationality Act, as amended ("the Act" or "INA"). This notice also describes the procedures with which eligible aliens, who are nationals of Liberia (or who have no nationality and who last habitually resided in Liberia), must comply to re-register for TPS. Re-registration for the TPS extension period is limited to

persons who already have registered for the initial period of TPS, which ended on March 27, 1992.

Pursuant to section 244(b)(1) of the Act, this notice concurrently designates Liberia anew ("redesignates") under the TPS program. This redesignation of Liberia makes TPS available to eligible Liberian TPS applicants who have "continuously resided in the United States" since June 1, 1996, and who have been "continuously physically present in the United States" since April 7, 1997.

**EFFECTIVE DATES:**

**1. Extension of Designation and Re-registration**

The extension of designation is effective on March 29, 1997, and will remain in effect until March 28, 1998. The primary re-registration procedures become effective on April 7, 1997, and will remain in effect until May 6, 1997.

**2. Redesignation**

The Liberian TPS redesignation is effective concurrently with the extension from March 29, 1997, until March 28, 1998. The registration period for the Liberian TPS redesignation program begins on April 7, 1997 and will remain in effect until October 6, 1997.

**FOR FURTHER INFORMATION CONTACT:** Ronald Chirlin, Adjudications Officer, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 514-5014.

**SUPPLEMENTARY INFORMATION:**

**Background**

*Statutory Provisions for TPS*

**1. Designation and Extension Under the TPS Program**

Section 308(a)(7) of Public Law 104-132 renumbered section 244A of the Act. Under this section renumbered as INA 244 (8 U.S.C. 1254), the Attorney General is authorized to grant Temporary Protected Status in the United States to eligible aliens who are nationals of a foreign state designated by the Attorney General (or who have no nationality and last habitually resided in that state). The Attorney General may designate a state upon finding that the state is experiencing ongoing armed conflict, environmental disaster, or extraordinary and temporary conditions that prevent nationals or residents of the country from returning in safety.

At least 60 days before the end of a designation or extension of designation, the Attorney General, after consultation with appropriate agencies of the

Government, reviews conditions in the foreign state for which the designation is in effect. The designation is extended if the Attorney General does not determine that termination is appropriate because the foreign state no longer meets the conditions for designation. INA 244(b)(3)(C). Through such an extension of designation, however, TPS continues to be available only to aliens who have been continuously physically present in the United States from the effective date of the designation. TPS is not available to aliens who have been physically present in the United States only from the effective date of the extension but who were not physically present from the date of the designation.

## 2. Redesignation of Liberia Under the TPS Program

Subsection 244(b)(1) of the Act implicitly permits the Attorney General to "redesignate" (that is, to designate under the TPS program a country that has been previously designated), as well as designate for the first time, if she first finds that the required conditions are met. The act of redesignation is referenced in subsection 244(c)(1)(A)(i), which requires that "the alien has been continuously physically present since the effective date of the most recent designation of the state." (Emphasis added.) This provision thus explicitly contemplates more than one designation. This redesignation of Liberia under the TPS program is nonetheless the first time that the Attorney General has found it appropriate to exercise her discretion to redesignate a country.

One factor in determining whether redesignation is appropriate is whether it will create a "magnet effect" for nationals of the country under consideration. In cases where the Attorney General contemplates redesignation, she may consider this possible magnet effect and any other factors weighing against redesignation, together with any discretionary factors in favor of redesignation. A significant discretionary factor in favor of redesignation is the intensification of civil strife and instability in the country under consideration.

The TPS statute imposes a requirement that, in order to be eligible for TPS, an alien must have been continuously physically present in the United States since the effective date of the most recent designation. This means that, regardless of when a designation may have been extended, in order to receive TPS an alien must have been physically present in the United States from the date of initial designation or

from the date of any redesignation. INA 244(c)(1)(A)(i). The statute also authorizes the Attorney General to impose an additional requirement that an alien must have continuously resided in the United States since such date as the Attorney General may designate. INA 244(c)(1)(A)(ii). The authority to designate a separate date from which an alien must have continuously resided in the United States allows the Attorney General to tailor more narrowly the group of aliens to whom she determines it is appropriate to extend the coverage of a designation or redesignation.

The required June 1, 1996, residence date will apply to all applicants. For a small number of applicants with recent foreign travel, certain trips from the United States between June 1, 1996, and April 7, 1997 would be allowed under the definition of "continuously resided." Such trips after April 7, 1997 would be allowed within slightly narrower limits under the definition of "continuously physically present." See definitions at 8 CFR 244.1, formerly 8 CFR 240.1.

The initial registration period for this TPS redesignation continues from April 7, 1997 until October 6, 1997 in accordance with the required 180-day minimum period. INA 244(c)(1)(A)(iv).

### *Extension of Designation of Liberia Under the TPS Program*

On March 27, 1991, the Attorney General designated Liberia for Temporary Protected Status for a period of 12 months, 56 FR 12746. The Attorney General subsequently extended the designation of Liberia under the TPS program for 5 additional 12-month periods with the last extension valid until March 28, 1997, 61 FR 8076.

The Attorney General has determined that temporary conditions continue to prevent nationals of Liberia from returning to their country in safety. Therefore, by this notice she is extending the designation of Liberia under the Temporary Protected Status program for an additional 12 months (until March 28, 1998) in accordance with sections 244(b)(3) (A) and (C) of the Act.

### *Redesignation of Liberia Under the TPS Program*

In her discretion, the Attorney General has further determined that, in light of renewed conflict in Liberia during the first half of 1996, the temporary conditions that continue to exist in Liberia warrant redesignation. Therefore, pursuant to section 244(b)(1) of the Act, this notice concurrently grants Liberia a redesignation of TPS.

With the redesignation of Liberia, TPS is now available to otherwise eligible applicants who are ineligible for reregistration under the extension of the initial designation, either because they came to the United States after the initial designation or because they failed to register in a timely manner under the initial designation.

By operation of statute, this redesignation extends the availability of TPS only to Liberians who have been continuously physically present in the United States from the effective date of this redesignation April 7, 1997. In addition, the Attorney General is exercising her discretion under INA section 244(c)(1)(A)(ii) to select a different and earlier date of June 1, 1996, from which Liberians must have continuously resided in the United States in order to receive TPS. Although the Attorney General finds that conditions in Liberia warrant redesignation, she has determined that it is appropriate to establish a separate cut-off date that relates to the renewed conflict in Liberia during the first half of 1996. Therefore, the Attorney General is imposing an additional June 1, 1996, residence date requirement.

### *Notice of Extension of Designation of Liberia Under the Temporary Protected Status Program*

By the authority vested in me as Attorney General under section 244 of the Immigration and Nationality Act, as amended, (8 U.S.C. 1254), and as required by subsection 244(b)(3) (A) and (C) of the Act, I have consulted with the appropriate agencies of the U.S. Government concerning: (a) The conditions in Liberia and (b) whether permitting nationals of Liberia (and aliens having no nationality who last habitually resided in Liberia) to remain temporarily in the United States is contrary to the national interest of the United States. From these consultations, I find that:

(1) After renewed conflict in Liberia during the first half of 1996, and ongoing insecurity, there exist extraordinary and temporary conditions that prevent aliens who are nationals of Liberia (and aliens having no nationality who last habitually resided in Liberia) from returning to Liberia in safety; and

(2) Permitting nationals of Liberia (and aliens having no nationality who last habitually resided in Liberia) to remain temporarily in the United States is not contrary to the national interest of the United States.

Accordingly, extension of designation is ordered as follows:

(1) The designation of Liberia under section 244(b) of the Act is extended for an

additional 12-month period from March 29, 1997, to March 28, 1998.

(2) I estimate that there are approximately 4,000 nationals of Liberia (and aliens having no nationality who last habitually resided in Liberia) who have been granted Temporary Protected Status and who are eligible for re-registration.

(3) In order to maintain current registration for Temporary Protected Status, a national of Liberia (or an alien having no nationality who last habitually resided in Liberia) who received a grant of TPS during the initial period of designation from March 27, 1991, to March 27, 1992, must comply with the re-registration requirements contained in 8 CFR 244.17, formerly 8 CFR 240.17, which are described in pertinent part in paragraphs (4) and (5) of this notice.

(4) A national of Liberia (or an alien having no nationality who last habitually resided in Liberia) who previously has been granted TPS must re-register by filing a new Application for Temporary Protection Status, Form I-821, together with an Application for Employment Authorization, Form I-765, within the 30-day period beginning on April 7, 1997 and ending on May 6, 1997 in order to be eligible for Temporary Protected Status during the period from March 29, 1997, to March 28, 1998. Late re-registration applications will be allowed pursuant to 8 CFR 244.17(c), formerly 8 CFR 240.17(c).

(5) There is no fee for Form I-821 filed as part of the re-registration application. The fee prescribed in 8 CFR 103.7(b)(1), currently seventy dollars (\$70), will be charged for Form I-765, filed by an alien requesting employment authorization pursuant to the provisions of paragraph (4) of this notice (unless submitted with a fee waiver request properly documented in accordance with 8 CFR 244.20, formerly 8 CFR 240.20). An alien who does not request employment authorization must nonetheless file Form I-821 together with Form I-765, but in such cases both Form I-821 and Form I-765 should be submitted without fee.

(6) Pursuant to section 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before March 28, 1998, the designation of Liberia under the TPS program to determine whether the conditions for designation continue to be met. Notice of that determination, including the basis for the determination, will be published in the *Federal Register*. If there is an extension of designation, late initial registration for TSP shall be allowed only pursuant to the requirements of 8 CFR 244.2(f)(2), formerly 8 CFR 240.2(f)(2). Any such future determination will apply to the more recent Liberian TPS registrants under the TPS redesignation as well as the re-registrants for the TPS extension.

#### *Notice of Redesignation of Liberia Under the Temporary Protected Status Program*

By the authority vested in me as Attorney General under section 244 of the Immigration and Nationality Act, as amended, (8 U.S.C. 1254), and pursuant to the discretion vested in the Attorney General under subsection 244(b)(1) of

the Act, I have consulted with the appropriate agencies of the U.S. Government concerning redesignation of Liberia under the Temporary Protected Status program. From these consultations I find that after renewed conflict in Liberia during the first half of 1996, and ongoing insecurity, there exist extraordinary and temporary conditions that prevent aliens who are nationals of Liberia (and aliens having no nationality who last habitually resided in Liberia) from returning to Liberia in safety.

In consideration of these consultations and other relevant factors, and in the exercise of my discretion, I order redesignation of Liberia as follows:

(1) Liberia is redesignated under section 244(b)(1)(C) of the Act. Nationals of Liberia (and aliens having no nationality who last habitually resided in Liberia) who have "continuously resided in the United States" since June 1, 1996, and have been "continuously physically present" since April 7, 1997 may apply for Temporary Protected Status within the registration period which begins April 7, 1997 and ends on October 6, 1997.

(2) I estimate that there are no more than 5,000 nationals of Liberia (and aliens having no nationality who last habitually resided in Liberia) who are currently in nonimmigrant or unlawful status (in addition to the earlier Liberian TPS registrants) and are, therefore, eligible for Temporary Protected Status under this redesignation.

(3) Except as specifically provided in this notice, application for TPS by nationals of Liberia (and aliens having no nationality who last habitually resided in Liberia) must be filed pursuant to the provisions of 8 CFR part 244, formerly 8 CFR 240. Aliens who wish to apply for TPS must file an Application for Temporary Protected Status, Form I-821, together with an Application for Employment Authorization, Form I-765, during the registration period, which begins on April 7, 1997 and will remain in effect until October 6, 1997.

(4) A fee of fifty dollars (\$50) will be charged for each Application for Temporary Protected Status, Form I-821, filed during the registration period.

(5) The fee prescribed in 8 CFR 103.7(b)(1), which is currently seventy dollars (\$70), will be charged for each Application for Employment Authorization Form I-765, filed by an alien requesting employment authorization. An alien who does not request employment authorization must nevertheless file Form I-765, together with Form I-821, for informational purposes, but in such cases Form I-765 should be submitted without fee. Both Forms I-821 and I-765 may be submitted without the required fees if a properly documented fee waiver request in accordance with 8 CFR 244.20, formerly 8 CFR 240.20, accompanies the forms.

(6) Information concerning the TPS redesignation program for nationals of Liberia (and aliens having no nationality who last habitually resided in Liberia) will be

available at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: April 1, 1997.

**Janet Reno,**  
*Attorney General.*

[FR Doc. 97-8925 Filed 4-4-97; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Privacy Act of 1974; Publication of Two New Systems of Records; Amendments to an Existing System

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of two new systems of records; amendments to an existing system of records.

**SUMMARY:** The Privacy Act of 1974 requires that each agency publish notice of all of the systems of records that it maintains. This document adds two new systems of records to this Department's current systems of records. With the addition of these two new systems of records, the Department will be maintaining 144 systems of records. This document also proposes to amend the Routine Use Category for one of the Department's existing systems of records. The proposed amended system will permit the Department to provide important information to state unemployment insurance agencies in order to facilitate the processing of unemployment insurance claims for Department of Labor (DOI) employees. Finally, various administrative (non-substantive) amendments to this same existing system are being made at this time.

**DATES:** Persons wishing to comment on this new system of records and on the proposed new Routine Use may do so by May 19, 1997. Unless there is a further notice in the *Federal Register*, the two new systems of records, and the proposed amendment to the existing system, will become effective on June 2, 1997. The remaining amendments to DOL/OASAM-1 are administrative (non-substantive), and therefore, will become effective on April 7, 1997.

**ADDRESSES:** Written comments may be mailed or delivered to Robert A. Shapiro, Associate Solicitor, Division of Legislation and Legal Counsel, 200 Constitution Avenue, NW., Room N-2428, Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Miriam McD. Miller, Co-Counsel for Administrative Law, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N-

2428, Washington, DC 20210, telephone (202) 219-8188.

**SUPPLEMENTARY INFORMATION:** Pursuant to section three of the Privacy Act of 1974 (5 U.S.C. 552a(e)(4)), hereinafter referred to as the Act, the Department hereby publishes notice of two new systems of records currently maintained pursuant to the Act. This document supplements this Department's last publication in full of all of its Privacy Act systems of records. The document also proposes to amend the Routine Use Category for one of the Department's existing systems of records. On September 23, 1993, in Volume 58 at page 49548 of the *Federal Register*, we published a notice containing 138 systems of records which were maintained under the Act. Subsequent publications of new systems were made on April 15, 1994 (59 FR 18156) (two new systems); on May 10, 1995 (60 FR 24897) (one new system); and on June 15, 1995 (60 FR 31495) (one new system). The new system published herein will increase the total number of systems to 144.

1. The first new system published herein is entitled DOL/BLS-17, National Longitudinal Survey of Youth 1996 Database, which contains a random sample of the general population who were ages 12-17 on December 31, 1995, with an over-representation of disabled students. This system will serve a variety of policy-related research interests concerning the school-to-work transition and the labor market problems of youth.

2. The second new system published herein is entitled DOL/OCFO-2, Department of Labor Accounting and Related Systems. This new system has been developed by and is controlled by the Office of the Chief Financial Officer. This new system is an accounts payable and an accounts receivable system.

3. The Department also hereby proposes to amend an existing system of records, DOL/OASAM-1, Attendance, Leave and Payroll File, so that a new Routine Use can be established. The new Routine Use will permit the Department to provide certain important identified information to state unemployment insurance agencies, without the need for individual authorizations, so that DOL employees can have their unemployment insurance claims processed.

4. This document makes various administrative (non-substantive) amendments to DOL/OASAM-1 at this time. Since these administrative amendments are non-substantive, public comment is not required.

#### Universal Routine Uses

In its September 23, 1993 publication, the Department gave notice of eleven paragraphs containing routine uses which apply to all of its systems of records, except for DOL/OASAM-5 and DOL/OASAM-7. These eleven paragraphs were presented in the General Prefatory Statement for that document, and it appeared at pages 49554-49555 of Volume 58 of the *Federal Register*. Those eleven paragraphs were republished in an April 15, 1994 document in order to correct grammatical mistakes in the September 23, 1993 version. In both the May 10, 1995 and June 15, 1995 publication, the General Prefatory Statement was republished as a convenience to the reader of the document. We are again republishing the General Prefatory Statement as a convenience to the reader. At this time we are making a grammatical correction to paragraph 7. of these routine uses by substituting the word "any" in place of the word "this."

The public, the Office of Management and Budget (OMB), and the Congress are invited to submit written comments on the proposed amendment in this document. A report on these new systems, and on the first proposed amendment to DOL/OASAM-1, has been provided to OMB and to the Congress as required by OMB Circular A-130, Revised, and 5 U.S.C. 552a(r). The administrative (non-substantive) amendments do not have to be provided to OMB and to the Congress.

#### General Prefatory Statement

The following routine uses apply to and are incorporated by reference into each system of records published below unless the text of a particular notice of a system of records indicates otherwise. These routine uses *do not* apply to DOL/OASAM-5, Rehabilitation and Counseling File, nor to DOL/OASAM-7, Employee Medical Records.

1. It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is

compatible with the purpose for which the agency collected the records.

2. It shall be a routine use of the records in this system of records to disclose them in a proceeding before a court or adjudicative body, when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

3. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

4. A record from this system of records may be disclosed to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

5. Records from this system of records may be disclosed to the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

6. Disclosure may be made to agency contractors, or their employees, consultants, grantees, or their employees, or volunteers who have been engaged to assist the agency in the

performance of a contract, service, grant, cooperative agreement or other activity related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a; see also 5 U.S.C. 552a(m).

7. The name and current address of an individual may be disclosed from any system of records to the parent locator service of the Department of HHS or to other authorized persons defined by Pub. L. 93-647 for the purpose of locating a parent who is not paying required child support.

8. Disclosure may be made to any source from which information is requested in the course of a law enforcement or grievance investigation, or in the course of an investigation concerning retention of an employee or other personnel action, the retention of a security clearance, the letting of a contract, the retention of a grant, or the retention of any other benefit, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

9. Disclosure may be made to a Federal, State, local, foreign, or tribal or other public authority of the fact that this system of records contains information relevant to the hiring or retention of an employee, the granting or retention of a security clearance, the letting of a contract, a suspension or debarment determination or the issuance or retention of a license, grant, or other benefit.

10. A record from any system of records set forth below may be disclosed to the Office of Management and Budget in connection with the review of private relief, legislative coordination and clearance process.

11. Disclosure may be made to a debt collection agency that the United States has contracted with for collection services to recover debts owed to the United States.

#### I. Publication of the First New System of Records

##### DOL/BLS-17

###### SYSTEM NAME:

National Longitudinal Survey of Youth 1996 (NLSY96) Database.

###### SECURITY CLASSIFICATION:

None.

###### SYSTEM LOCATION:

National Opinion Research Center (NORC), University of Chicago, 1155 E. 60th Street, Chicago, IL 60637.

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A random sample of the general population who were ages 12-17 on December 31, 1995, with over-representation of disabled students.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

Records include name, Social Security Number, control number, marital history, education, job history, unemployment history, training history, fertility/family planning, child health history, alcohol use, drug use, reported police contacts, anti-social behavior, assets and income, program participation, childhood residence, child development, time use, time spent on child care, immigration history, and Armed Services Vocational and Aptitude Battery scores.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 2 and Office of Management and Budget Control No. 1220-0157.

#### PURPOSE(S):

To serve a variety of policy-related research interests concerning the school-to-work transition and the labor market problems of youth. Data are used for studies such as: Diffusion of useful information on labor, examination of Department of Labor employment and training programs, understanding labor markets, analysis of social indicators, measuring maternal and child inputs and outcomes, norming the Department of Defense and Armed Services Vocational Aptitude Battery in its computerized adaptive form, and creation of norms for the Department of Defense Interest Measure.

#### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

None, except for those uses listed in the General Prefatory Statement to this document.

#### DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

#### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

##### STORAGE:

Files are stored electronically and on paper.

##### RETRIEVABILITY:

Name or Control Number.

##### SAFEGUARDS:

Access by authorized personnel only. Passwords are used for electronically stored data, and locked file cabinets for paper files.

#### RETENTION AND DISPOSAL:

Indefinite.

#### SYSTEM MANAGER(S) AND ADDRESS:

Contracting Officer Technical Representative (COTR), NLS Youth Cohort Study, Office of Research and Evaluation, Room 4945, Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC 20212.

#### NOTIFICATION PROCEDURE:

Mail, or present in writing, all inquiries to the System Manager at the above address.

#### RECORD ACCESS PROCEDURES:

A request for access shall be addressed to the system manager at the address listed above. Individuals must furnish the following information for their records to be located and identified:

- a. Name.
- b. Individuals requesting access must also comply with the Privacy Act regulations regarding verification of identity to records at 29 CFR 70a.7.

#### CONTESTING RECORD PROCEDURE:

As in notification procedure.

#### RECORD SOURCE CATEGORIES:

From individuals concerned.

#### SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

#### II. Publication of the Second New System of Records

##### DOL/OCFO-2

###### SYSTEM NAME:

Department of Labor Accounting and Related Systems.

###### SECURITY CLASSIFICATION:

None.

###### SYSTEM LOCATION:

- A. Offices in Washington, DC:
1. Office of the Secretary of Labor, including:
    - a. Office of the Assistant Secretary for Administration and Management, (OASAM);
    - b. Office of the Solicitor of Labor;
    - c. Office of Public and International Affairs;
    - d. Bureau of International Labor Affairs;
    - e. Employees' Compensation Appeals Board;
    - f. Wage Appeals Board;
    - g. Benefits Review Board;
    - h. Office of Administrative Law Judges;
    - i. President's Committee on the Employment of People with Disabilities;

- j. National Occupational Information Coordinating Committee;  
 k. Veteran's Employment and Training Service.  
 2. Bureau of Labor Statistics;  
 3. Employment Standards Administration;  
 4. Employment and Training Administration;  
 5. Occupational Safety and Health Administration;  
 6. Mine Safety and Health Administration;  
 7. Office of the Inspector General;  
 8. Pension and Welfare Benefits Administration;  
 9. Office of the Chief Financial Officer for the Department.  
 B. Regional and Area Offices of the above.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All persons who receive a payment from agency/regional financial offices. Persons receiving payments include, but are not limited to: Employees, vendors, travelers on official business, grantees, contractors, consultants, and recipients of loans and scholarships. Persons owing monies include, but are not limited to persons who have been overpaid and who owe DOL a refund and persons who have received from DOL goods or services for which there is a charge or fee (e.g. Freedom of Information Act requesters).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name, identification number (Taxpayer Identification Number or other identifying number), address, purpose of payment, accounting classification, amount to be paid, and amount paid.

**PURPOSE(S):**

These records are an integral part of the accounting systems at principal operating components, agency regional offices and specific area locations. The records are used to keep track of all payments to individuals, exclusive of salaries and wages, based upon prior entry into the systems of the official commitment and obligation of government funds. When an individual is to repay funds advanced as a loan or scholarship, etc., the records will be used to establish a receivable record and to track repayment status. In event of an overpayment to an individual, the record is used to establish a receivable record for recovery of the amount claimed. The records are also used internally to develop reports to the Internal Revenue Service and applicable state and local taxing officials of taxable income. This is a Department-wide

notice of payment and collection activities at all locations listed under system locations.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

- A. Transmittal of the records to the U.S. Treasury to effect issuance of payments to payees.  
 B. Pursuant to section 13 of the Debt Collection Act of 1982, the name, address(es), telephone number(s), social security number, and nature, amount and history of the debts of an individual may be disclosed to private debt collection agencies for the purpose of collecting or compromising a debt existing in this system.  
 C. Information may be forwarded to the Department of Justice as prescribed in the Joint Federal Claims Collection Standards (4 CFR Ch. II) for the purpose of determining the feasibility of enforced collection, by referring the cases to the Department of Justice for litigation.  
 D. Pursuant to sections 5 and 10 of the Debt Collection Act of 1982, information relating to the implementation of the Debt Collection Act of 1982 may be disclosed to other Federal Agencies to effect salary or administrative offsets.  
 E. Information contained in the system of records may be disclosed to the Internal Revenue Service to obtain taxpayer mailing addresses for the purpose of locating such taxpayer to collect, compromise, or write off a Federal claim against the taxpayer.  
 F. Information may be disclosed to the Internal Revenue Service concerning the discharge of an indebtedness owed by an individual.  
 H. Information will be disclosed:

1. To credit card companies for billing purposes;
2. To other Federal agencies for travel management purposes;
3. To airlines, hotels, car rental companies and other travel related companies for the purpose of serving the traveler. This information will generally include the name, phone number, addresses, charge card information and itineraries.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

The amount, status, and history of overdue debts; the name and address, taxpayer identification number (SSN), and other information necessary to establish the identity of a debtor, the agency and program under which the claim arose, are disclosed pursuant to 5 U.S.C. 552a(b)(12) to consumer reporting agencies as defined by section 603(f) of the Fair Credit Reporting Act

(15 U.S.C. 1681a(f)), in accordance with section 3(d)(4)(A)(ii) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(f)) for the purpose of encouraging the repayment of an overdue debt.

**Note:** Debts incurred by use of the official travel charge card are personal and the charge card company may report account information to credit collection and reporting agencies.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file cabinets. Computer records within a computer, its attached equipment or some magnetic form.

**RETRIEVABILITY:**

This varies according to the particular operating accounting system within the Operating Division, Agency and Regional Office. Usually the hard copy document is filed by name within accounting classification. Computer records may be indexed by social security number and voucher number or on any field in the record.

**SAFEGUARDS:**

Records stored in lockable file cabinets or secured rooms. Computerized records protected by password system.

**RETENTION AND DISPOSAL:**

Records are purged from automated files once the accounting purpose has been served; printed copy and manual documents are retained and disposed of in accord with General Accounting Office principles and standards as authorized by the National Archives and Records Administration. Generally, on the accounting side, information is kept until at least the employee has left the Department, and perhaps longer, until all existing activity for the employee is closed out. Generally, on the payroll side, the information stays on the Master Employee Record until the retirement has been reconciled for the year in which the employee has left.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief Financial Officer, Office of the Chief Financial Officer, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

**NOTIFICATION PROCEDURE:**

Inquiries should be addressed to the appropriate agency's administrative office.

**RECORDS ACCESS PROCEDURES:**

Same as notification procedures. Requesters should also clearly specify

the record contents being sought, and may request an accounting of disclosures that have been made of their record, if any.

**CONTESTING RECORD PROCEDURES:**

Individuals wishing to request amendment of their records should contact the appropriate Department of Labor administrative office. Individuals must furnish their full name and the name of the authorizing agency, including duty station where they were employed, if applicable.

**RECORD SOURCE CATEGORIES:**

Individuals, other DOL systems, employees, other Federal agencies, consumer reporting agencies, credit card companies, government contractors, state and local law enforcement.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

**III. Publication of a Proposed Amendment**

DOL/OASAM-1, Attendance, Leave and Payroll File, is amended by amending the category for Routine Uses by adding the following new sentence at the end of Paragraph A. This additional sentence will be included within and as part of Paragraph A. The new sentence is as follows:

"Transmittal of employee's name, social security number, salary history to state unemployment insurance agencies in order to facilitate the processing of state unemployment insurance claims for DOL employees."

**IV. Publication of Administrative (Non-Substantive) Amendments**

A. DOL/OASAM-1, Attendance, Leave, and Payroll File, is amended by transferring it from the Office of the Assistant Secretary for Administration and Management (OASAM) to the Office of the Chief Financial Officer (OCFO)

and by revising its name to read as follows:

**DOL/OCFO-1**

**SYSTEM NAME:**

Attendance, Leave, and Payroll File.  
 B. Newly renamed DOL/OCFO-1, Attendance, Leave, and Payroll File is further amended by amending the category for ROUTINE USES by revising the first sentence under "ROUTINE USES" to read as follows:  
 "A. Transmittal of data to the U.S. Treasury to effect issuance of paychecks or electronic fund transfers (EFT) to employees and distribution of pay according to employee directions for savings bonds, allotments to financial institutions, and other authorized purposes."

C. Newly renamed DOL/OCFO-1, Attendance, Leave, and Payroll File, is further amended by amending the category for SYSTEM LOCATION by deleting existing location No. 11, which refers to the Office of the American Workplace, and by redesignating existing location No. 12 as location No. 11.

Signed at Washington, DC, this 28th day of March, 1997.

Cynthia A. Metzler,  
 Acting Secretary of Labor.  
 [FR Doc. 97-8759 Filed 4-4-97; 8:45 am]  
 BILLING CODE 4510-23-P

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance**

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this

**PETITIONS INSTITUTED ON 03/17/97**

notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than April 17, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than April 17, 1997.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 17th day of March, 1997.

Russell T. Kile,  
 Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

**Appendix**

TA-W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,292	Leica, Inc (Wkrs)	Depew, NY	02/27/97	Ophthalmic Instrumentation.
33,293	Zenith Electronic Corp (UEWIA)	Chicago, IL	03/05/97	PC Boards.
33,294	Theme Fabrication (Wkrs)	Vernon, CA	02/26/97	Uniforms for Disneyland Employees.
33,295	RMK Inc. (Wkrs)	Solebury, PA	01/24/97	Ladies' & Men's Knitted Apparel.
33,296	American West Trading Co. ( )	Dresden, TN	02/18/97	Boots—Western and Work
33,297	Lawton Manufacturing Co (Wkrs)	Lawton, OK	02/25/97	Men's and Ladies' Dress Pants.
33,298	N. Erlanger Blumgart (Wkrs)	New York, NY	02/28/97	Textiles (for Clothing).
33,299	Anchor Glass Container (AFGW)	Tampa, FL	02/27/97	Glass Containers.
33,300	McDonnell Douglas (UAW)	Long Beach, CA	03/03/97	Commercial & Military Aircraft.
33,301	Gillsville Manufacturing (Wkrs)	Gillsville, GA	01/27/97	Ladies' Pants, Skirts & Shorts.
33,302	WestPoint Management (Wkrs)	WestPoint, PA	02/27/97	Sweaters.
33,303	Emhart Glass Machinery (UAW)	Windsor, CT	02/24/97	Glass Bottle, Glass Wares.
33,304	Woodbridge Corporation (UAW)	Whitsmore Lake, MI	02/25/97	Polyurethane Foam for Auto Seats.
33,305	SPX Corporation (Wkrs)	Dowagiac, MI	02/26/97	Rack and Pinion Housing.



## PETITIONS INSTITUTED ON 03/17/97—Continued

TA-W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,306	Tecumseh Metal Products (Co)	Grand Rapids, MI	02/12/97	Metal Stampings & Weld Assemblies.
33,307	Nine West Group (Co)	Cincinnati, OH	02/27/97	Ladies' Footwear.
33,308	Nine West Group (Co)	Madison, IN	02/27/97	Ladies' Footwear.
33,309	Nine West Group (Co)	Flemingsburg, KY	02/27/97	Ladies Footwear.
33,310	Associated Milk Produce (Wkrs)	El Paso, TX	03/05/97	Polvo Whey Milk, Skim Milk Powder.
33,311	Pacificorp (Wkrs)	Portland, OR	03/03/97	Electrical Power.
33,312	Boise Cascade (Wkrs)	Portland, OR	02/20/97	Paper and Pulp.
33,313	Stoney Creek Knitting (Wkrs)	Rocky Mountain, NC	03/06/97	T-Shirts and Fabric.
33,314	Eagle Ottawa Leather (Wkrs)	Grand Haven, MI	03/04/97	Leather for Car Interiors.
33,315	Lexington Fabrics, Inc (Co)	Hamilton, AL	03/04/97	T-Shirts.
33,316	Secure Computing Corp (Wkrs)	Concord, CA	03/04/97	Computer Security.
33,317	Vanguard Plastics, Inc (IBT)	Paterson, NJ	03/03/97	Plastic Containers.
33,318	Alfred Angelo (Wkrs)	Hatboro, PA	03/07/97	Wedding and Prom Gowns.
33,319	Deluxe Corporation (Wkrs)	New Berlin, WI	02/21/97	Personal Checks & Business Checks.
33,320	Unifour Finishers (Wkrs)	Hickory, NC	03/03/97	Finished Fabrics.
33,321	Philips Elmet (Wkrs)	Lewiston, ME	02/27/97	Diode Studs (Coils for Light Bulbs).
33,322	Atlantic Power System (Wkrs)	Fayetteville, NC	02/07/97	Liquid Filled Distribution Transformers.
33,323	Bonaventure Textile, Inc (Wkrs)	Secaucus, NJ	02/01/97	Warehousing—Ladies' Clothing.
33,324	Chock Full O' Nuts (Co)	Linden, NJ	02/27/97	Instant Coffee.
33,325	Burlington Industries (Wkrs)	Denton, NC	03/03/97	Single & Double Knit Cloth.
33,326	Owens Illinois Closure (Wkrs)	Erie, PA	02/28/97	Metal Cans & Lids.
33,327	Louis Gallet, Inc (Wkrs)	Uniontown, PA	03/03/97	Full Fashion Sweaters.
33,328	Stride Rite Corp (Wkrs)	Hamilton, MO	02/24/97	Baby's & Childrens' Shoes.
33,329	Stride Rite Molding (Wkrs)	Tipton, MO	02/24/97	Soles for Baby's & Children's Shoe.
33,330	Commemorative Brands, Inc (Co)	Attleboro, MA	02/24/97	Balfour Rings.
33,331	American Fiber Resources (Co)	Fairmont, WV	03/04/97	Deinked Market Pulp.
33,332	Hazelhurst Textiles (Co)	Hazelhurst, GA	03/05/97	Ladies' & Childrens' Sportswear.
33,333	Ranco North American (Wkrs)	Brownsville, TX	03/07/97	Air Conditioning Controls.
33,334	Lan Technologies (Co)	Pueblo, CO	03/05/97	Computer Diskettes.
33,335	Unocal Corporation (Co)	Costa Mesa, CA	03/04/97	Refined Petroleum Products.
33,336	Inland Paperboard & Pack (UPIU)	Erie, PA	03/03/97	Corrugated Boxes.
33,337	Mitsubishi Consumer Elec. (Co)	Santa Ana, CA	03/05/97	Projection Televisions.
33,338	Standard Products (The) (Wkrs)	Lexington, KY	03/02/97	Rubber Auto Components.

[FR Doc. 97-8764 Filed 4-4-97; 8:45 am]

BILLING CODE 4510-30-M

## DEPARTMENT OF LABOR

## Employment and Training Administration

[TA-W-32,260, TA-W-32,260C, and TA-W-32,260D]

**Buster Brown Apparel, Inc., Garment Finishing Department Corporate Office, Central Distribution Center, Chattanooga, TN, Coeburn, VA, and Duffield, VA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 24, 1996, applicable to all workers of Buster Brown Apparel, Inc., Chattanooga, TN. The notice was published in the Federal Register on May 17, 1996 (61 FR 24950). The worker

certification was amended July 1, 1996 and again on August 13, 1996, to include other manufacturing facilities of the subject firm. Those notices were published in the Federal Register on July 12, 1996 (61 FR 36759) and August 27, 1996 (61 FR 44078), respectively.

At the request of a company official, the Department reviewed the certification for workers of the subject firm.

Based on new information received by the company, the Department is once again amending the certification. New findings show that worker separations have occurred at Buster Brown's Corporate Office and the Central Distribution Center in Chattanooga, TN and at a production facility in Duffield, VA. The company also reported that worker separations will occur at the Coeburn, VA production facility when it closes in April, 1997. The workers are engaged in employment related to the production of infants' and children's apparel.

The intent of the Department's certification is to include all workers of Buster Brown Apparel, Inc. adversely

affected by increased imports of infants' and children's apparel.

The amended notice applicable to TA-W-32,260 is hereby issued as follows:

All workers of Buster Brown Apparel, Inc., Garment Finishing Department, Corporate Office and Central Distribution Center, Chattanooga, TN (TA-W-32,260), and Buster Brown Apparel, Inc., Coeburn, VA (TA-W-32,260C) and Duffield, VA (TA-W-32,260D) who became totally or partially separated from employment on or after April 15, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 29th day of March 1997.

**Russell T. Kile,**

*Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 97-8763 Filed 4-4-97; 8:45 am]

BILLING CODE 4510-30-M

## DEPARTMENT OF LABOR

Employment and Training  
Administration

[TA-W-33,074]

**R and W Apparel, Scottsboro,  
Alabama, Including Leased Workers of  
Skillstaf/Stafco, Alexander City,  
Alabama; Amended Certification  
Regarding Eligibility To Apply for  
Worker Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 13, 1997, applicable to all workers of R and W Apparel located in Scottsboro, Alabama. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that some employees of Skillstaf/Stafco, Alexander City, AL were engaged in employment related to the production of children's apparel produced by R and W Apparel, Scottsboro, Alabama. Worker separations occurred at Skillstaf/Stafco as a result of worker separations at R & W Apparel.

Based on these findings, the Department is amending the certification to include workers of Skillstaf/Stafco, Alexander City, Alabama leased to R and W Apparel. The intent of the Department's certification is to include all workers of R and W Apparel adversely affected by imports.

The amended notice applicable to TA-W-33,074 is hereby issued as follows:

"All workers of R and W Apparel, Scottsboro, Alabama engaged in employment related to the production of children's apparel; and leased workers of Skillstaf/Stafco, Alexander City, Alabama engaged in employment related to the production of children's apparel for R and W Apparel, Scottsboro, Alabama who became totally or partially separated from employment on or after December 18, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 24th day of March, 1997.

**Russell T. Kile,**

*Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 97-8762 Filed 4-4-97; 8:45 am]

BILLING CODE 4510-30-M

## DEPARTMENT OF LABOR

Employment and Training  
Administration**Job Training Partnership Act, Title III,  
Demonstration Program: Older  
Dislocated Workers Demonstration  
Program**

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Availability of Funds and Solicitation for Grant Applications (SGA).

**SUMMARY:** All information required to submit a grant application is contained in this announcement. The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces a demonstration program to test the concept that providing services designed to address the specific needs of older workers facing a change in job status will help those individuals find employment that is appropriate to their individual circumstances and that brings satisfaction to those workers and their employers. The program will be funded with Secretary's National Reserve funds appropriated for Title III of the Job Training Partnership Act (JTPA) and administered in accordance with 29 CFR Part 95 and 97 as applicable.

This notice provides information on the process that eligible entities must use to apply for these demonstration funds and how grantees will be selected. It is anticipated that up to \$2.5 million will be available for funding demonstration projects covered by this solicitation, with no award being more than \$500,000.

**DATES:** The closing date for receipt of proposals is May 9, 1997 at 4:00 p.m. (Eastern Time).

**ADDRESSES:** Applications shall be mailed to: U.S. Department of Labor; Employment and Training Administration; Division of Acquisition and Assistance; Attention: Ms. Mamie D. Williams, Reference: SGA/DAA 97-011; 200 Constitution Avenue, N.W., Room S-4203; Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Mamie D. Williams, Division of Acquisition and Assistance, Telephone: (202) 219-8694 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** This announcement consists of five parts. Part I describes the authorities and purpose of the demonstration program and identifies demonstration policy. Part II describes the application process and provides guidelines for use in

applying for demonstration grants. Part III includes the statement of work for the demonstration projects. Part IV describes the selection process, including the criteria that will be used in reviewing and evaluating applications. Part V discusses the demonstration program evaluation.

**Part I. Background****A. Authorities**

Section 323 of JTPA (29 U.S.C. 1662b) authorizes the use for demonstration programs of funds reserved under Section 302 of JTPA (29 U.S.C. 1652) and provided by the Secretary for that purpose under Section 322 of JTPA (29 U.S.C. 1662a). Demonstration program grantees shall comply with all applicable federal and state laws and regulations in setting up and carrying out their programs.

**B. Purpose**

The Dislocated Worker Program provides a wide range of employment and training services to eligible dislocated workers. These services are designed to help them find and qualify for new jobs through an established service delivery network of States and Substate Grantees. This demonstration will test the concept that providing services designed to address the specific needs of older workers who are facing a change in job status will help those individuals find employment that is appropriate to their individual circumstances and that brings satisfaction to those workers and their employers. This demonstration will offer grantees the opportunity to identify needs or combinations of needs that may be peculiar to older dislocated workers, and to develop and deliver training and other services designed to meet those needs. Grantees will also have the opportunity to develop methods of educating employers as to the benefits of employing workers targeted in this demonstration.

The two-fold purpose of this demonstration is to: (1) identify specific employment-related needs of targeted dislocated workers at least 50 years old and (2) identify and test reemployment and retraining services and combinations of services designed to address those needs, so as to meet the demonstration program goals. Those goals are placement of the project participants in jobs related to project services; their satisfaction with project services and with their jobs; their employers' satisfaction with project services and with the participants' work; and identification and collection of information about successful and

unsuccessful retraining methods and job placement and retention strategies for the target population.

### C. Demonstration Policy

#### 1. Grant Awards

DOL anticipates awarding five (5) to seven (7) grants, not to exceed \$500,000 per grant. It is anticipated that awards will be made by June 30, 1997. Award decisions will be published on the Internet under the Department's Home Page at <http://www/doleta.gov>.

#### 2. Eligible Applicants

Entities eligible to apply for grants under this announcement are community service organizations, unions, trade associations, employer associations, individual employers, States, and other organizations and institutions, provided that the entity can demonstrate:

- (1) A national perspective with respect to issues of concern to older workers;
- (2) Experience in working with individuals 50 years of age or older; and
- (3) The ability to address the financial and social needs of these individuals, either directly or through collaboration with other entities.

Entities describes in Section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities are not eligible to receive funds under this SGA. The Lobbying Disclosure Act of 1995, Public Law No. 104-65, 109 Stat. 691, that became effective January 1, 1996, prohibits the award of federal funds to these entities if they engage in lobbying activities.

#### 3. Eligible Participants

All participants must be eligible dislocated workers as defined at JTPA Section 301(a)(1), 301(a)(2) and 314(h)(1) of JTPA. All participants must be at least 50 years old.

Proposed projects may target subgroups of the eligible population based on factors such as (but not limited to) occupation, industry, nature of dislocation, and reason for unemployment.

#### 4. Allowable Activities

Funds provided through this demonstration may be used only to provide services of the type described at Section 314(c) and (d) of JTPA. Job development services under Section 314(c)(14) of JTPA may include activities to educate employers as to the value of employing older dislocated workers, provided that such activities are directed toward potential employers of the target population. Supportive

services are defined in Section 4(24) of JTPA.

Grant funds may be used to reimburse employers for extraordinary costs associated with on-the-job training of program participants, in accordance with 20 CFR 627.240. Grant funds may not be used for the following purposes: (1) for training that an employer is in a position to provide and would have provided in the absence of the requested grant; (2) to pay salaries for program participants; and (3) for acquisition of production equipment. Applicants may budget limited amounts of grant funds to work with technical experts or consultants to provide advice and develop more complete project plans. The level of detail in the project plan may affect the amount of funding provided.

#### 5. Coordination

Applicant will coordinate the delivery of services under this demonstration with the delivery of services under other programs (public or private), available to all or part of the target group.

Applicant may wish to coordinate with universities and other research-oriented entities for demonstration project design and evaluation.

#### 6. Period of Performance

The period of performance shall be 24 months from the date of execution by the Government. Delivery of services to participants shall commence within 90 days of execution of a grant.

#### 7. Option to Extend

DOL may elect to modify and add funds to a Grant for an additional one (1) or two (2) years of operation, based on the availability of funds, successful program operation, and the needs of the Department.

### Part II. Applicant Process and Guidelines

#### A. Page Limitations

A grant application shall be limited to thirty-five (35) double-spaced, single-side, 8.5-inch x 11-inch pages with 1-inch margins. Attachments shall not exceed ten (10) pages. Text type shall be 11 point or larger. Applications that do not meet these requirements will not be considered.

#### B. Contents

An original and three (3) copies of the application shall be submitted. The application shall consist of two (2) separate and distinct parts: Part I, the Financial Proposal; and Part II, the Technical Proposal.

#### 1. Financial Application

Part I, the Financial Proposal, shall contain the SF-424, "Application for Federal Assistance" (Appendix A) and the "Budget Information" sheet (Appendix B). An applicant shall indicate on the SF-424 the type of organization for which it qualifies under the eligibility criteria in Part I, section C, paragraph 2 of this solicitation. The Federal Domestic Assistance Catalog number is 17.246.

The budget shall include on separate pages detailed breakdowns of each proposed budget line item, including detailed administrative costs and costs for one or more of the following categories as applicable: basic readjustment services, supportive services, and retraining services. For each budget line item that includes funds or in-kind contributions from a source other than the grant funds, identify the source, the amount, and in-kind contributions, including any restrictions that may apply to these funds.

#### 2. Technical Proposal

The technical proposal shall demonstrate the offeror's capabilities in accordance with the Statement of Work in Part III of this solicitation. **NO COST DATA OR REFERENCE TO PRICE SHALL BE INCLUDED IN THE TECHNICAL PROPOSAL.**

#### C. Hand-Delivered Applications

Applications should be mailed no later than five (5) days prior to the closing date for the receipt of applications. However, if applications are hand-delivered, they shall be received at the designated place by May 9, 1997, at 2 p.m., Eastern Time on the closing date for receipt of applications. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified time and closing date. Telegraphed and/or faxed proposals will not be honored. Applications that fail to adhere to the above instructions will not be honored.

#### D. Late Applications

Any application received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it:

- (1) Was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the closing date specified for receipt of applications (e.g., an offer submitted in response to a solicitation requiring receipt of application by the 30th of January must have been mailed by the 25th); or
- (2) Was sent by U.S. Postal Service Express Mail Next Day Service—Post

Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of application. The term "working days" excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service registered or certified mail is the U.S. postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if it had been mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by "Express Mail Next-Day Service—Post Office to Addressee" is the date entered by the post office receiving clerk on the "Express Mail Next Day Service—Post Office to Addressee" label and the postmarks on both the envelope and wrapper and the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, an applicant should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

#### **E. Withdrawal of Applications**

Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

#### **Part III. Statement of Work**

Each grant application must follow the format outlined in this Part. For sections A through G below, the application should include:

(1) information that indicates adherence to the provisions described in Part I, Background (Authorities, Purpose, and Demonstration Policy) and Part II, Application Process and Guidelines, of this announcement; and

(2) other information that the applicant believes will address the selection criteria identified in Part IV of this solicitation.

Information required under A and B below shall be provided separately for each labor market area where dislocated workers will be served. To the extent that the project design differs for different geographic areas, information required under section C below shall be provided for each geographic area.

#### **A. Target Population**

Describe the proposed target population for the project. If that population is limited to one or more subgroups of the older dislocated worker population, explain the basis for such limitation. Describe the size, location, and needs of the target population relative to the services to be provided. Provide documentation showing there is a significant number of dislocated workers with the target population's characteristics in the project area(s).

#### **B. Available Jobs**

Describe the jobs that will be available to project participants upon completion of training and placement services, and the information on which such description is based. If specific jobs are not identifiable, provide the labor market information that ensures the availability of suitable jobs for participants. Include information about the number and type of jobs and the insufficiency of qualified workers to fill those positions in the absence of the proposed project. Identify sources of information.

#### **C. Project Design**

Describe the specific purpose or purposes of the proposed project. The project might as an example, be designed to test one or more of the following: a particular training technique developed for use with older workers; a post-placement counseling program geared toward older workers' job retention; an employer education strategy combined with information on employers' conceptions about older workers before and after involvement with the project. Include planned comparisons, such as urban versus rural locations, group versus individual training, home versus education institution or business establishment training environments. Describe the major project components listed below.

##### **1. Outreach and Recruitment**

Describe how eligible dislocated workers will be identified and recruited for participation in the project.

Recruitment efforts may address public service communications and announcements, use of media, coordination with the JTPA Service Delivery Area or Substate Grantee, use of community-based organizations and other service groups. Describe the applicant's experience in reaching the target population.

##### **2. Eligibility Determination**

Describe the criteria and process to be used in determining the eligibility of potential participants in the project.

##### **3. Selection Criteria**

Describe the criteria and process to be used in selecting those individuals to be served by the project from among the total number of eligible persons recruited for the project. Explain how the selection criteria relate to the specific purpose of the proposed project.

##### **4. Services To Be Provided**

Describe the services to be provided from the time of selection of participants through placement of those participants in jobs. Describe any services to be provided subsequent to job placement. The descriptions shall provide a clear understanding of the services and support that will be necessary for participants to be placed successfully in jobs and to retain those jobs, including services not funded under the grant, and ways to address participants' financial needs during periods of training. Grant-funded activities should, at a minimum, include assessment, retraining, job placement, and supportive services.

Identify any assessment tools proposed to be used before or after services are provided, and include samples of any such tools designed for use in the proposed project. Assessment should be designed to facilitate evaluation of the project in terms of specific planned outcomes. Assessment shall include a financial component to ensure the participants' awareness of their financial situations that may influence retraining and employment needs. For example, an older dislocated worker may have unearned income or other financial resources sufficient to allow part-time work to be suitable for that individual. Assessment shall include a social/psychological component to ensure the participants' awareness of their personal circumstances that may influence retraining and employment needs. For example, low self-esteem could suggest the value of participation in a job club designed specifically for older workers, or of counseling to be provided through

an outside source. The proposal may provide for participants' self-assessment or waiver of the financial and/or the social/psychological component.

Describe how training will be customized to account for transferable skills, previous education, and particular circumstances of the target population. This description should include any participant groupings and training methods based on particular characteristics of the target group. Include information to demonstrate that any proposed training provider is qualified to deliver training that meets appropriate employment standards and any applicable certification or licensing requirement. Past performance, qualifications of instructors, accreditation of curricula, and similar matters should be addressed if appropriate. Address the costs of proposed training and other services relative to the costs of similar training and services through other providers.

Describe the limitations and eligibility criteria for limited income support and relocation assistance, if such support and assistance are included in the proposal.

#### 5. Participant Flow

Provide a flowchart with time indications to illustrate how the project will ensure access to necessary and appropriate reemployment and retraining services. Describe the sequence of services and the criteria to be used to determine the appropriateness of specific services for particular participants. Note if service choice options will be available to participants.

#### 6. Relationship to Prior Experience

Show how the applicant's prior experience in working with older individuals affects or influences the design of the proposed project. Show how the applicant can bring a national perspective to bear on the project. Describe the nature and impact of that national perspective.

#### D. Planned Outcomes

##### 1. Demonstration Program Goals

Provide the following information for the project:

(1) Planned number of program-related placements (number of participants placed in jobs related to the training or services funded by the grant within 60 days after completion of pre-placement services);

(2) Planned placement rate (number of program-related placements divided by the number of participants);

(3) Planned participant services satisfaction rate (number of participants

who, 60 days after completion of program services, rate program services as "very helpful" or "extremely helpful" when other allowable ratings are "not at all helpful" and "somewhat helpful," divided by the number of participants);

(4) Planned participant 90-day employment satisfaction rate (number of participants who, 90 days after program-related placement, rate their employment as "satisfactory" or "better than satisfactory" when the other allowable rating is "less than satisfactory," divided by the number of program-related placements);

(5) Planned employer services satisfaction rate (number of employers who, 90 days after program-related placement, rate overall project services to themselves and their employees as 4 or 5 on a scale of 1 to 5 (5 high), divided by number of employers with program-related placements); and

(6) Planned employer 90-day employment satisfaction rate (number of employers who, 90 days after program-related placements, rate participants' work as "satisfactory" or "better than satisfactory" when the third allowable rating is "less than satisfactory," divided by the number of program-related placements).

Briefly describe plans for identifying and providing information about successful and unsuccessful methods and strategies tested by the project.

2. Project goals. Provide the following information for the project:

(1) Planned number of participants;

(2) Planned number of program completions (number of participants who complete the services provided by the grant);

(3) Planned average cost per placement (amount of the grant request divided by the number of program-related placements); and

(4) Other planned outcomes related to specific project goals.

#### E. Coordination

Describe the nature and extent of coordination between the applicant and other entities in the design and implementation of the proposed project. Include services to be provided through resources other than grant funds under this demonstration. With reference to the sources and amounts of project funds and in-kind contributions identified in the financial proposal as being other than those requested under the grant applied for, describe the basis for valuation of those funds and contributions. Provide evidence that ensures the coordination described, such as letters of agreement, formally

established advisory councils, and lease agreements.

Documentation of consultation and support for the project concept from applicable labor organizations must be submitted when 20 percent or more of the targeted population is represented by one or more labor organizations, or where the training is for jobs when a labor organization represents a substantial number of workers engaged in similar work.

#### F. Innovation

Describe any innovation in the proposed project, including (but not limited to) innovations in concept to be tested, services, delivery of services, training methods, job development, or job retention strategies. Explain the impact of such innovation on project costs. Explain how the proposed project adopts or fosters a holistic approach to circumstances faced by older dislocated workers. Explain how the proposed project addresses issues of national scope. Explain how the proposed project is similar to and differs from the applicant's prior and current activities.

#### G. Project Management

##### 1. Structure

Describe the management structure for the project, including a staffing plan that describes each position and the percentage of its time to be assigned to this project. Provide an organizational chart showing the relationship among project management and operational components, including those at multiple sites of the project.

##### 2. Program Integrity

Describe the mechanisms to ensure financial accountability for grant funds and performance accountability relative to job placements, in accordance with standards for financial management and participant data systems in 29 CFR Part 95 or 97, as appropriate, and 20 CFR 627.425. Explain the basis for the applicant's administrative authority over the management and operational components. Describe how information will be collected to:

(1) Determine the achievement of project outcomes as indicated in section D of this part; and

(2) Report on participants, outcomes, and expenditures.

##### 3. Monitoring

a. Benchmarks. Provide a table or list of benchmarks to indicate the planned implementation of the project. Include:

(1) A monthly schedule of planned start-up events;

(2) A quarterly schedule of planned participant activity, showing cumulative

numbers of enrollments, participation in training and other services, placements, and terminations; and

(3) Quarterly cumulative expenditure projections.

b. Participant progress. Describe how a participant's continuing participation in the project will be monitored.

c. Project performance. Identify the information on project performance that will be collected on a short-term basis (weekly, monthly, etc.) by program managers for internal project management to determine whether the project is accomplishing its objectives as planned and whether project adjustments are necessary.

Describe the process and procedures to be used to obtain feedback from participants, employers, and any other appropriate parties on the responsiveness and effectiveness of the services provided. The description shall identify the types of information to be obtained, the methods and frequency of data collection, and ways in which the information will be used in implementing and managing the project. Grantees may employ focus groups and surveys, in addition to other methods, to collect feedback information. Technical assistance in the design and implementation of customer satisfaction data collection and analysis may be provided by DOL.

d. Impact of coordination and innovation. Describe the process for assessing and reporting on the impact of coordination and innovation in the project with respect to the purpose and goals of the demonstration program and the specific purpose and goals of the project.

4. Grievance procedure. Describe the grievance procedure to be used for grievances and complaints from participants, contractors, and other interested parties, consistent with the requirements at Section 144 of JTPA and 20 CFR 631.64 (b) and (c).

5. Previous project management experience. Provide an objective demonstration of the grant applicant's ability to manage the project, ensure the integrity of the grant funds, and deliver the proposed performance. Indicate the grant applicant's past experience in the management of grant-funded projects similar to that being proposed, particularly regarding oversight and operating functions including financial management.

#### Part IV. Evaluation Criteria

Selection of grantees for award will be made after careful evaluation of grant applications by a panel selected for that purpose by DOL. Panel results will be advisory in nature and not binding on

the ETA Grant Officer. Panelists shall evaluate proposals for acceptability based upon overall responsiveness in accordance with the factors below.

1. *Target population (15 points)*. The description of the characteristics of the target group is clear and meaningful, and sufficiently detailed to determine the potential participants' service needs. Documentation is provided showing that a significant number of dislocated workers who possess these characteristics is available for participation in the project area. Sufficient information is provided to explain how the number of dislocated workers to be enrolled in the project was determined. The recruitment plan supports the number of planned enrollments. The target population is appropriate for the specific purpose of the proposed project. The target population's characteristics and circumstances are likely to appear nationally.

2. *Service plan and Cost (30 points)*. The scope of services to be provided is consistent with the demonstration program and project purposes and goals. The scope of services to be provided is adequate to meet the needs of the target population given: (1) their characteristics and circumstances, (2) the jobs in which they are to be placed, and (3) the length of program participation planned prior to placement. The proposal demonstrates the applicant's ability to ensure effective assessment of participants' needs using a holistic approach, and delivery of services to meet those needs.

Preference will be given to proposals with multiple project sites that allow testing in more than one environment or under different conditions.

Proposed costs are reasonable in relation to the characteristics and circumstances of the target group, the services to be provided, planned outcomes, the management plan, and coordination with other entities. The impact of innovation on costs is explained clearly in the proposal and is reasonable.

3. *Management (20 points)*. The applicant has experience working with older individuals, and brings a national perspective to the project. The management structure and management plan for the proposed project will ensure the integrity of the funds requested. The project workplan demonstrates the applicant's ability to effectively track project progress with respect to planned performance and expenditures. Sufficient procedures are in place to use the information obtained by the project operator(s) to take corrective action if indicated.

The proposal provides for a satisfactory grievance process. Review by appropriate labor organizations, where applicable, is documented. The proposal includes a method of assessing customer satisfaction and taking into account the results of such assessment in the operation of the project.

4. *Coordination (15 points)*. The proposal includes coordination with other programs and entities for project design or provision of services. Such coordination contributes to a holistic approach to identifying and addressing the needs of individuals in the target population. Evidence is presented that ensures cooperation of coordinating entities, as applicable, for the life of the proposed project. The project includes a reasonable method of assessing and reporting on the impact of such coordination, relative to the demonstration purpose and goals and the specific purpose and goals of the proposed project.

5. *Innovation (20 points)*. The proposal demonstrates innovation in the concept(s) to be tested, the project's design, and/or the services to be provided.

The project includes a reasonable method of assessing and reporting on the impact of such innovation, relative to the demonstration program and project purposes and goals.

Grant applications will be evaluated for the reasonableness of proposed costs, considering the proposed target group, services, outcomes, management plan, and coordination with other entities.

Applicants are advised that discussions may be necessary in order to clarify any inconsistency or ambiguity in their applications. The final decision on awards will be based on what is most advantageous to the Federal Government as determined by the ETA Grant Officer. The Government may elect to award grant(s) without discussion with the applicant(s). The applicant's signature on the SF-424 constitutes a binding offer.

#### Part V. Evaluation

DOL will arrange for or provide technical assistance to grantees in establishing appropriate reporting and data collection methods and processes. DOL will arrange for or conduct an independent evaluation of the outcomes, impacts, and benefits of the demonstration projects. Grantees will be expected to make available records on participants and employers and to provide access to personnel, as specified by the evaluator(s).

Signed at Washington, DC, this 1st day of  
April, 1997.

**Janice E. Perry,**

*Grant Officer, Division of Acquisition and  
Assistance.*

BILLING CODE 4510-30-M

Appendices

1. Appendix A—"Application for Federal Assistance" (Standard Form 424)

2. Appendix B—"Budget Information"

**APPLICATION FOR  
FEDERAL ASSISTANCE**

OMB Approval No. 0348-0043

<b>1. TYPE OF SUBMISSION:</b> Application <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction Preapplication <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction		<b>2. DATE SUBMITTED</b>	Applicant Identifier
		<b>3. DATE RECEIVED BY STATE</b>	State Application Identifier
		<b>4. DATE RECEIVED BY FEDERAL AGENCY</b>	Federal Identifier
<b>5. APPLICANT INFORMATION</b>			
Legal Name:		Organizational Unit:	
Address (give city, county, State and zip code):		Name and telephone number of the person to be contacted on matters involving this application (give area code):	
<b>6. EMPLOYER IDENTIFICATION NUMBER (EIN):</b> □ □ - □ □ □ □ □ □ □ □		<b>7. TYPE OF APPLICANT: (enter appropriate letter in box)</b> <input type="checkbox"/>	
<b>8. TYPE OF APPLICATION:</b> <input type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision If Revision, enter appropriate letter(s) in box(es): <input type="checkbox"/> <input type="checkbox"/> A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify): _____		A. State H. Independent School Dist. B. County I. State Controlled Institution of Higher Learning C. Municipal J. Private University D. Township K. Indian Tribe E. Interstate L. Individual F. Intermunicipal M. Profit Organization G. Special District N. Other (Specify): _____	
<b>9. NAME OF FEDERAL AGENCY:</b>			
<b>10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:</b> □ □ - □ □ □ □		<b>11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:</b>	
TITLE:			
<b>12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):</b>			
<b>13. PROPOSED PROJECT:</b>		<b>14. CONGRESSIONAL DISTRICTS OF:</b>	
Start Date	Ending Date	a. Applicant	b. Project
<b>15. ESTIMATED FUNDING:</b>		<b>16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?</b>	
a. Federal	\$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____	
b. Applicant	\$ .00	b. NO. <input type="checkbox"/> PROGRAM IS NOT COVERED BY E.O. 12372 <input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW	
c. State	\$ .00		
d. Local	\$ .00		
e. Other	\$ .00		
f. Program Income	\$ .00	<b>17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?</b> <input type="checkbox"/> Yes If "Yes," attach an explanation. <input type="checkbox"/> No	
g. TOTAL	\$ .00		
<b>18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.</b>			
a. Typed Name of Authorized Representative		b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed	

Previous Editions Not Usable

Standard Form 424 (REV 4-88)  
Prescribed by OMB Circular A-102

Authorized for Local Reproduction



## INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

- | Item: | Entry:   | Item: | Entry:   |
|-------|--|-------|--|
| 1.    | Self-explanatory.  | 12.   | List only the largest political entities affected (e.g., State, counties, cities).   |
| 2.    | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).  | 13.   | Self-explanatory.  |
| 3.    | State use only (if applicable)   | 14.   | List the applicant's Congressional District and any District(s) affected by the program or project.  |
| 4.    | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.  | 15.   | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 5.    | Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.  | 16.   | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.  |
| 6.    | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.  | 17.   | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.  |
| 7.    | Enter the appropriate letter in the space provided.  | 18.   | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)  |
| 8.    | Check appropriate box and enter appropriate letter(s) in the space(s) provided.<br><br>- "New" means a new assistance award.<br>- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br>- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. |       |  |
| 9.    | Name of Federal agency from which assistance is being requested with this application.   |       |  |
| 10.   | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.   |       |  |
| 11.   | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.   |       |  |

**PART II - BUDGET INFORMATION****SECTION A - Budget Summary by Categories**

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

**SECTION B - Cost Sharing/ Match Summary (if appropriate)**

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

**NOTE:** Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

(INSTRUCTIONS ON BACK OF FORM)

## INSTRUCTIONS FOR PART II - BUDGET INFORMATION

### SECTION A - Budget Summary by Categories

1. Personnel: Show salaries to be paid for project personnel which you are required to provide with W2 forms.
2. Fringe Benefits: Indicate the rate and amount of fringe benefits.
3. Travel: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.
4. Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of \$5,000 or more. Also include a detailed description of equipment to be purchased including price information.
5. Supplies: Include the cost of consumable supplies and materials to be used during the project period.
6. Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.
7. Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.
8. Total, Direct Costs: Add lines 1 through 7.
9. Indirect Costs: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.
10. Training /Stipend Cost: (if allowable)
11. Total Federal funds Requested: Show total of lines 8 through 10.

### SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

#### NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

## DEPARTMENT OF LABOR

Employment and Training  
Administration

(NAFTA-01293)

Ekco Group, Inc., Kellogg Brush  
Manufacturing Company,  
Easthampton, Massachusetts; Notice  
of Termination of Certification

This notice terminates the Certification Regarding Eligibility to Apply For Worker Adjustment Assistance issued by the Department on December 2, 1996, for all workers of Ekco Group, Inc., Kellogg Brush Manufacturing Company, Easthampton, Massachusetts. The notice of certification was published in the *Federal Register* on December 24, 1996 (61 FR 67859).

At the request of the State agency, the Department reviewed the certification for workers of Ekco Group, Inc., Kellogg Brush Manufacturing Company. Workers of the subject firm produced brooms, brushes and mops. When the worker certification was issued it was determined that the requirements of (a)(1)(B) of Section 250 were met. The company was shifting production of brooms, brushes and mops from the workers' firm to Mexico.

New information provided by the company reveals that the Ekco Group will not shift production to Mexico as originally planned, but will instead consolidate the Easthampton, Massachusetts production into Ekco's Hamilton, Ohio location.

Further investigation was conducted to determine if imports from Mexico or Canada of articles like or directly competitive with the products produced at Kellogg Brush contributed to worker separations.

Investigation findings reveal there are no company imports of brooms brushes or mops from Mexico or Canada.

The Department surveyed the major declining customers of Ekco Group, Inc. regarding their purchases of brooms, brushes and mops during 1995 and 1996. The survey revealed that none of the respondents increased their purchases of imports while decreasing their purchases from the subject firm during the relevant period.

Since there are no adversely affected workers of the subject firm, the continuation of the certification would serve no purpose and the certification has been terminated.

Signed at Washington, D.C., this 24th day of March 1997.

**Russell T. Kile,**  
Program Manager, Policy and Reemployment  
Services, Office of Trade Adjustment  
Assistance.

[FR Doc. 97-8761 Filed 4-4-97; 8:45 am]

BILLING CODE 4510-30-M

NEIGHBORHOOD REINVESTMENT  
CORPORATIONSunshine Act Meeting; Nineteenth  
Annual Meeting of the Board of  
Directors

**TIME & DATE:** 3:00 p.m., Wednesday,  
April 16, 1997.

**PLACE:** Neighborhood Reinvestment  
Corporation, 1325, G Street, N.W., Suite  
800, Board Room, Washington, D.C.  
20005.

**STATUS:** Open.

**CONTACT PERSON FOR MORE INFORMATION:**  
Jeffrey T. Bryson, General Counsel/  
Secretary 202/376-2441.

## AGENDA:

- I. Call to Order
- II. Approval of Minutes: January 23,  
1997 Regular Meeting
- III. Election of Chairman
- IV. Election of Vice Chairman
- V. Audit Committee Report: April 11,  
1997 Meeting
  - a. Appointment of Internal Audit  
Director
- VI. Committee Appointments:
  - a. Audit Committee
  - b. Budget Committee
  - c. Personnel Committee
- VII. Election of Officers
- VIII. Board Appointment
- IX. Treasurer's Report
- X. Executive Director's Quarterly  
Management Report
- XI. Adjourn.

**Jeffrey T. Bryson,**  
General Counsel/Secretary  
[FR Doc. 97-8899 Filed 4-2-97; 4:39 pm]

BILLING CODE 7570-01-M

NUCLEAR REGULATORY  
COMMISSIONDocuments Containing Reporting or  
Recordkeeping Requirements; Office  
of Management and Budget (OMB)  
Review

**AGENCY:** Nuclear Regulatory  
Commission (NRC).

**ACTION:** Notice of the OMB review of  
information collection and solicitation  
of public comment.

**SUMMARY:** The Nuclear Regulatory  
Commission has recently submitted to

OMB for review the following proposal  
for collection of information under the  
provisions of the Paperwork Reduction  
Act of 1995 (44 U.S.C. Chapter 35).

1. *Type of submission, new, revised, or extension:* Revised.
2. *The title of the information collection:* Proposed Rule, 10 CFR 73 Changes to Nuclear Power Plant Security Requirements.
3. *The form number if applicable:* Not applicable.
4. *How often is the collection required:* Monthly.
5. *Who will be required or asked to report:* Nuclear power plant licensees.
6. *An estimate of the number of responses:* 900.
7. *An estimate of the number of respondents:* 75.
8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1,500 hrs. *Reduction of burden:* 7,500 hrs.
9. *An indication of whether Section 3504(h), Pub. L. 96-511 applies:* Applicable.
10. *Abstract:* Currently section 73.55(d)(7) requires the licensee to establish, maintain, and update an access authorization list monthly for each vital area. This requirement is used to limit unescorted access to vital areas during nonemergency conditions to individuals who require access in order to perform their duties. Thus, a licensee with ten vital areas is required to keep ten lists. The proposed regulation will require only one list per licensee which will encompass all vital areas.

Submit, by May 7, 1997, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW, (lower level), Washington, D.C. The proposed rule indicated in "Changes to Nuclear Power Plant Security Requirements, 10 CFR 73" is or has been published in the *Federal Register* within several days of the publication date of this *Federal Register* Notice. Instruction for accessing the electronic OMB clearance package for the rulemaking have been appended to the electronic rulemaking. Members of the

public may access the electronic OMB clearance package by following the directions for electronic access provided in the preamble to the titled rulemaking.

Comments and questions should be directed to the OMB reviewer by May 7, 1997: Edward Michlovich, Office of Information and Regulatory Affairs, 3150-0002, NEOB-10202, Office of Management and Budget, Washington, D.C. 20503.

Comments may also be communicated by telephone at (202) 395-3084. The NRC Clearance Officer is Brenda J. Shelton, (301) 415-7233.

Dated at Bethesda, Maryland, this 1st day of April, 1997.

**Gerald F. Cranford,**

*Designated Senior Official for Information Resources Management.*

[FR Doc. 97-8834 Filed 4-4-97; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-213]

### Connecticut Yankee Atomic Power Company; (Haddam Neck Plant); Correction to Notice of Withdrawal of Application for Amendment

The U.S. Nuclear Regulatory Commission issued a Notice of Withdrawal of Application for Amendment for Facility Operating License No. DPR-61 for the Haddam Neck Plant on March 13, 1997. In the *Federal Register* issue of Monday, March 24, 1997, make the following correction:

On page 13899, first column, last paragraph, the date as issued "this 13th day of March 1997," should have read "this 17th day of March 1997."

Dated at Rockville, Maryland, this 31st day of March.

For the Nuclear Regulatory Commission.

**James W. Andersen,**

*Project Manager, Special Projects Office—Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 97-8833 Filed 4-4-97; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket 70-7001]

### Notice of Amendment to Certificate of Compliance GDP-1 for the U.S. Enrichment Corporation Paducah Gaseous Diffusion Plant Paducah, Kentucky

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination the staff concluded that (1) There is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs. The basis for this determination for the amendment request is shown below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security, and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Paducah Gaseous Diffusion Plant. The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this *Federal Register* Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of

the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) The interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this *Federal Register* Notice.

A petition for review must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, 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, by the above date.

For further details with respect to the action see (1) The application for amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room.

*Date of amendment request:* February 28, 1997.

*Brief description of amendment:* The amendment proposes to add a definition for completion times and to define the maximum interval between repetitive action completion times in the Technical Safety Requirements and to make the same changes to the Safety Analysis Report.

*Basis for finding of no significance:*

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

The proposed amendment to include a definition for completion time and to define the maximum time interval for repetitive actions is an administrative action. As such, these changes have no

impact on plant effluents and will not result in any impact to the environment.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

The proposed amendment will not increase exposure.

3. The proposed amendment will not result in a significant construction impact.

The proposed amendment will not result in any construction, therefore, there will be no construction impacts.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

The proposed amendment to include a definition for completion time and to define the maximum time interval for repetitive actions will provide more formality for the conduct of plant operations. This inclusion will ensure consistent interpretation of the requirements. The proposed changes do not affect the potential for or radiological or chemical consequences from previously evaluated accidents.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

The proposed amendment to include a definition for completion time and to define the maximum time interval for repetitive actions will ensure consistent interpretation of the requirements. The changes will not create new operating conditions or a new plant configuration that could lead to a new or different type of accident.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

A definition for completion time and the definition for a maximum time interval for repetitive actions were not formally defined in the past and were subject to interpretation. The addition of these definitions for completion time and the maximum time interval for repetitive actions provides more formality for the conduct of plant operations. The proposed changes cause no reductions in the margins of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs.

The proposed amendment to include a definition for completion time and to define the maximum time interval for repetitive actions provides more formality for the conduct of plant operations. The effectiveness of the safety, safeguards, and security programs is not decreased.

*Effective date:* 30 days after issuance

*Certificate of Compliance No. GDP-1:* Amendment will incorporate a new Technical Safety Requirement, a revised Technical Safety Requirement and Safety Analysis Report changes.

Local Public Document Room location: Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003.

Dated at Rockville, Maryland, this 28th day of March 1997.

For the Nuclear Regulatory Commission.

**Carl J. Paperiello,**

*Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 97-8831 Filed 4-4-97; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Commonwealth of Massachusetts: Discontinuance of Certain Commission Regulatory Authority Within the Commonwealth

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of agreement with the Commonwealth of Massachusetts.

**SUMMARY:** Notice is hereby given that Shirley Ann Jackson, Chairman of the U.S. Nuclear Regulatory Commission (NRC) and William F. Weld, Governor of the Commonwealth of Massachusetts, have signed the Agreement set forth below for the discontinuance by the Commission and assumption by the Commonwealth of certain Commission regulatory authority. The Agreement is published pursuant to Section 274 of the Atomic Energy Act of 1954, as amended. Under the Agreement, certain persons would be exempted from certain of the regulatory requirements of the Commission. The pertinent exemptions have been previously published in the *Federal Register* and are codified in the Commission's regulations as 10 CFR part 150.

**FOR FURTHER INFORMATION CONTACT:** Richard L. Blanton, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone (301) 415-2322 or e-mail RLB@NRC.GOV.

The draft of the Agreement was published in the *Federal Register* for comment on four separate dates (see, e.g. 61 FR 68066, December 26, 1996). One comment was received which requested that NRC retain jurisdiction over a site listed on the Site Decommissioning Management Plan (SDMP) until the NRC license for the site is terminated. NRC expedited the actions necessary to terminate the

subject SDMP site license and on March 21, 1997, NRC terminated the license and removed the site from the SDMP list.

### Appendix—Text of the Agreement

#### Agreement Between the United States Nuclear Regulatory Commission and the Commonwealth of Massachusetts for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the Commonwealth Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to by-product materials as defined in Sections 11e.(1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, The Governor of the Commonwealth of Massachusetts is authorized under Massachusetts General Laws, Chapter 111H, to enter into this Agreement with the Commission; and,

Whereas, The Governor of the Commonwealth of Massachusetts certified on March 28, 1996, that the Commonwealth of Massachusetts (hereinafter referred to as the Commonwealth) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the Commonwealth covered by this Agreement, and that the Commonwealth desires to assume regulatory responsibility for such materials; and,

Whereas, The Commission found on March 3, 1997, that the program of the Commonwealth for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, The Commonwealth and the Commission recognize the desirability and importance of cooperation between the Commission and the Commonwealth in the formulation of standards for protection against hazards of radiation and in assuring that Commonwealth and Commission programs for protection against hazards

of radiation will be coordinated and compatible; and,

Whereas, The Commission and the Commonwealth recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to this Agreement; and,

Whereas, This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, Therefore, It is hereby agreed between the Commission and the Governor of the Commonwealth, acting in behalf of the Commonwealth, as follows:

#### Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

A. By-product materials as defined in Section 11e.(1) of the Act;

B. Source materials;

C. Special nuclear materials in quantities not sufficient to form a critical mass; and,

D. Licensing of Low-Level Radioactive Waste Facilities.

#### Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:

A. The construction and operation of any production or utilization facility;

B. The export from or import into the United States of by-product, source, or special nuclear material, or of any production or utilization facility;

C. The disposal into the ocean or sea of by-product, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

D. The disposal of such other by-product, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission; and,

E. The extraction or concentration of source material from source material ore and the management and disposal of the resulting by-product material.

#### Article III

This Agreement may be amended, upon application by the Commonwealth and approval by the Commission, to include the additional area(s) specified

in Article II, paragraph E, whereby the Commonwealth can exert regulatory control over the materials stated therein.

#### Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, by-product, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

#### Article V

This Agreement shall not affect the authority of the Commission under Subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material.

#### Article VI

The Commission will use its best efforts to cooperate with the Commonwealth and other Agreement States in the formulation of standards and regulatory programs of the Commonwealth and the Commission for protection against hazards of radiation and to assure that Commonwealth and Commission programs for protection against hazards of radiation will be coordinated and compatible. The Commonwealth will use its best efforts to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the Commonwealth and the Commission for protection against hazards of radiation and to assure that the Commonwealth's program will continue to be compatible with the program of the Commission for the regulation of like materials. The Commonwealth and the Commission will use their best efforts to keep each other informed of proposed changes in their respective rules and regulations and licensing, inspection and enforcement policies and criteria, and to obtain the comments and assistance of the other party thereon.

#### Article VII

The Commission and the Commonwealth agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State. Accordingly, the Commission and the State agree to use their best efforts to develop appropriate rules, regulations,

and procedures by which such reciprocity will be accorded.

#### Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the Commonwealth, or upon request of the Governor of the Commonwealth, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the Commonwealth has not complied with one or more of the requirements of Section 274 of the Act. The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the Commonwealth has failed to take necessary steps. The Commission shall periodically review this Agreement and actions taken by the Commonwealth under this Agreement to ensure compliance with Section 274 of the Act.

#### Article IX

This Agreement shall become effective on March 21, 1997, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Rockville, Maryland, in triplicate, this 10th day of March, 1997.

For the United States Nuclear Regulatory Commission.

Shirley Ann Jackson,  
Chairman.

Done at Boston, Massachusetts, in triplicate, this 19th day of March, 1997.

For the Commonwealth of Massachusetts.  
William F. Weld,  
Governor.

Dated at Rockville, MD., this 1st day of April, 1997.

For the U. S. Nuclear Regulatory Commission.

John C. Hoyle,  
Secretary of the Commission.

[FR Doc. 97-8829 Filed 4-4-97; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a guide planned for its Regulatory Guide Series. This series has been developed

to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG-3011, "Use of Fixed Neutron Absorbers at Fuels and Materials Facilities," is planned for Division 3, "Fuels and Materials Facilities." This regulatory guide is being developed to provide guidance that is acceptable to the NRC staff on procedures for preventing criticality accidents by using fixed neutron absorbers in operations involving handling, storing, and transporting special nuclear fuel at fuels and materials facilities.

The draft guide has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Rules Review and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by June 20, 1997.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Comments may be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number: 1-800-303-9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT-100 terminal emulation, the NRC NUREGs and RegGuides for Comment subsystem can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." For further information

about options available for NRC at FedWorld, consult the "Help/Information Center" from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and data bases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, 703-321-3339, or by using Telnet via Internet, fedworld.gov. If using 703-321-3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mail." At that point, a menu will be displayed that has an option "U.S. Nuclear Regulatory Commission" that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing "/go nrc" at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the "Return to FedWorld" option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is included. There is a 15-minute time limit for FTP access.

Although FedWorld can be accessed through the World Wide Web, like FTP that mode only provides access for downloading files and does not display the NRC Rules menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301)415-5780; e-mail AXD3@nrc.gov. For more information on this draft regulatory guide, contact S. Parra at the NRC, telephone (301)415-6433; e-mail SAP@nrc.gov.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW.,

Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section; or by fax at (301)415-2260. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 25th day of March 1997.

**Bill M. Morris,**

*Director, Division of Regulatory Applications  
Office of Nuclear Regulatory Research.*

[FR Doc. 97-8832 Filed 4-4-97; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Standard Review Plan for Applications for Licenses To Distribute Byproduct Material to Persons Exempt From the Requirements for an NRC License

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is announcing the completion and availability of NUREG-1562 which contains a draft of "Standard Review Plan for Applications for Licenses to Distribute Byproduct Material to Persons Exempt from the Requirements for an NRC License (10 CFR 30.14, 30.15, 30.16, 30.18, 30.19, and 30.20)" for review and comment.

**ADDRESSES:** Copies of NUREG-1562 may be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402-9328. A copy of the document is also available for inspection and/or copying in the NRC Public Document Room, 2120 L Street NW, Washington, DC, 20555-0001. NUREG-1562 can be accessed from the Sealed Sources and Devices Bulletin Board System (SSD BBS) on the FedWorld System. NRC has established a toll-free number that allows access to only the NRC portion of FedWorld at (800) 303-9672. For questions regarding the use of the NRC portion of FedWorld in general, please call Arthur Davis of the NRC at (301) 415-5780.

Written comments should be received at the address listed below within 90 days from the date of this notice.



Comments received after the due date will be considered to the extent practical.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan L. Greene, Mail Stop TWFN 8-F-5, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Telephone (301) 415-7843.

**SUPPLEMENTARY INFORMATION:** The NRC has prepared NUREG-1562, "Standard Review Plan for Applications for Licenses to Distribute Byproduct Material to Persons Exempt from the Requirements for an NRC License (10 CFR 30.14, 30.15, 30.16, 30.18, 30.19, and 30.20)" to provide assistance to applicants and licensees in preparing license applications and describes the methods acceptable to NRC license reviewers in implementing the regulations and the techniques used by the reviewers in evaluating the applications to determine if the proposed exempt distribution activity is acceptable for licensing purposes. The standard review plan will be revised periodically, as appropriate, to accommodate comments and to reflect new information and experience. The document is being made available to interested members of the public.

Dated at Rockville, Maryland, this 31st day of March 1997.

**Larry W. Camper,**

*Chief, Medical Academic and Commercial, Use Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 97-8830 Filed 4-4-97; 8:45 am]

BILLING CODE 7590-01-P

## OFFICE OF PERSONNEL MANAGEMENT

### January 1997 Pay Adjustments

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** The rates of basic pay and locality payments for certain categories of Federal employees were adjusted in January 1997, as authorized by the President. This notice documents those pay adjustments for the public record.

**FOR FURTHER INFORMATION CONTACT:** Sharon Herzberg, Office of Compensation Policy, Human Resources Systems Service, Office of Personnel Management, (202) 606-2858, FAX (202) 606-4264, or email to [payleave@opm.gov](mailto:payleave@opm.gov).

**SUPPLEMENTARY INFORMATION:** On November 22, 1996, the President transmitted to Congress an alternative plan under the authority of 5 U.S.C. 5304a that established the January 1997 locality pay adjustments for General Schedule (GS) employees in the 48 contiguous States and the District of Columbia. On December 27, 1996, the President signed Executive Order 13033 (62 FR 252). This order implemented increases in rates of basic pay for various categories of Federal employees effective on the first day of the first applicable pay period beginning on or after January 1, 1997, as required by 5 U.S.C. 5303. The 1997 General Schedule, reflecting the 2.3-percent general increase, was published in Schedule 1 of Executive Order 13033. Executive Order 13033 also included the percentage amounts of the 1997 locality payments as established by the President's alternative plan of November 22, 1996. (See Section 5 and Schedule 9 of Executive order 13033.) The publication of this notice satisfies the requirement in section 5(b) of Executive Order 13033 that the Office of Personnel Management (OPM) publish appropriate notice of the 1997 locality payments in *Federal Register*.

Locality payments are authorized for General Schedule employees under 5 U.S.C. 5304 and 5304a. They apply in the 48 contiguous States and the District of Columbia. In 1997, there are 30 separate locality pay areas with locality payments ranging from 4.81 percent to 11.52 percent. These 1997 locality pay percentages, which replaced the locality pay percentages that were applicable in 1996, became effective on the first day of the first applicable pay period beginning on or after January 1, 1997. An employee's locality-adjusted annual rate of pay is computed by increasing his or her scheduled annual rate of basic pay (as defined in 5 U.S.C. 5302(8) and 5 CFR 531.602) by the applicable locality pay percentage. (See 5 CFR 531.604 and 531.605.)

On December 5, 1996, the Director of OPM, on behalf of the President's Pay Agent, extended the 1997 locality-based comparability payments to the same Governmentwide and single-agency categories of non-GS employees that were authorized to receive the 1996 locality payments. The Governmentwide categories include members of the Senior Executive Service (SES), the Foreign Service, and the Senior Foreign Service; employees in senior-level (SL) and scientific or professional (ST) positions; administrative law judges; and members of Boards of Contracts Appeals.

Public Law 104-208, September 30, 1996, provided that there would be no increase in the rates of basic pay for the Executive Schedule. By law, the maximum rate of basic pay for members of the SES may not exceed level IV of the Executive Schedule. The President has established six rates of basic pay for members of the SES with the maximum SES rate of basic pay (ES-6) equivalent to the rate of basic pay for level IV (currently \$115,700). (See 5 U.S.C. 5382(b) and Schedule 5 of Executive Order 13033.) Schedule 4 of Executive Order 13033 reflects a decision by the President to increase the rates of basic pay for members of the SES by 2.3 percent at levels ES-1 through ES-4. Since level IV of the Executive Schedule was not increased, the new rate of basic pay for ES-5 is \$115,700 (an increase of about 1.5 percent), and the rate of basic pay for ES-6 rate remains unchanged at \$115,700.

The minimum rate of basic pay for senior-level (SL) and scientific or professional (ST) positions increased by 2.3 percent (to \$85,073) because it is calculated as a percentage of the minimum rate of basic pay for GS-15 of the General Schedule. The maximum rate of basic pay for SL and ST positions remains unchanged because it is linked to level IV of the Executive Schedule (\$115,700), which remains unchanged. Rates of basic pay for administrative law judges and members of Boards of Contract Appeals remain unchanged in 1997 because these rates are calculated as a percentage of the rate for level IV of the Executive Schedule, which remains unchanged.

OPM has published "Salary Table No. 97" (OPM Doc. 124-48-6, January 1997), which provides complete salary tables incorporating the 1997 pay adjustments, information on general pay administration matters, locality pay area definitions, Internal Revenue Service withholding tables, and other related information. The rates of pay shown in "Salary Table No. 97" are the official rates of pay for affected employees and are hereby incorporated as part of this notice. Copies of "Salary Table No. 97" may be purchased from the Government Printing Office (GPO) by calling (202) 512-1800 or FAX at (202) 512-2250. Copies of Salary Table 97" may also be ordered online from GPO at [http://www.gpo.gov/su\\_docs/sale/prf/prf.html](http://www.gpo.gov/su_docs/sale/prf/prf.html). In addition, individual pay schedules may be downloaded directly from OPM's electronic bulletin board, which is reached by dialing via modem (202) 606-4800. Pay tables may also be downloaded from OPM's Internet web cite at <http://www.opm.gov/pay>.

Office of Personnel Management.

**James B. King,**

*Director.*

[FR Doc. 97-8724 Filed 4-4-97; 8:45 am]

BILLING CODE 5301-01-M

## OFFICE OF PERSONNEL MANAGEMENT

### National Partnership Council Meeting

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice of meeting.

**TIME AND DATE:** 9:30 a.m., April 9, 1997.

**PLACE:** CAMI Auditorium, Mike Monroney Aeronautical Center, Federal Aviation Administration, 6500 South MacArthur Boulevard, Oklahoma City, Oklahoma 73169.

**STATUS:** This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Individuals with special access needs wishing to attend should contact OPM at the number shown below to obtain appropriate accommodations.

**MATTERS TO BE CONSIDERED:** The National Partnership Council (NPC) will receive a presentation on the Federal Aviation Administration's (FAA) Mike Monroney Aeronautical Center Partnership, and a presentation on partnership responses to crisis.

**CONTACT PERSON FOR MORE INFORMATION:** Michael Cushing, Director, Center for Partnership and Labor-Management Relations, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 7H28, Washington, DC 20415-0001, (202) 606-0010.

**SUPPLEMENTARY INFORMATION:** We invite interested persons and organizations to submit written comments. Mail or deliver your comments to Michael Cushing at the address shown above. To be considered at the April 9 meeting, written comments should be received by April 4.

Office of Personnel Management

**James B. King,**

*Director.*

[FR Doc. 97-8718 Filed 4-4-97; 8:45 am]

BILLING CODE 5325-01-P

## POSTAL RATE COMMISSION

[Order No. 1167; Docket No. A97-16]

**North Shapleigh, Maine 04060 (Harold W. Clark, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. § 404(b)(5)**

Issued April 1, 1997.

*Docket Number:* A97-16

*Name of Affected Post Office:* North Shapleigh, Maine 04060

*Name(s) of Petitioner(s):* Harold W. Clark

*Type of Determination:* Closing

*Date of Filing of Appeal Papers:* March 27, 1997

*Categories of Issues Apparently Raised:*

1. Effect on the community [39 U.S.C. § 404(b)(2)(A)].
2. Effect on postal services [39 U.S.C. § 404(b)(2)(C)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404(b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

### The Commission Orders

(a) The Postal Service shall file the record in this appeal by April 11, 1997.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

**Margaret P. Crenshaw,**  
*Secretary.*

### Appendix

March 27, 1997: Filing of Appeal letter  
April 1, 1997: Commission Notice and Order  
of Filing of Appeal

April 21, 1997: Last day of filing of petitions  
to intervene [see 39 CFR § 3001.111(b)]

May 1, 1997: Petitioner's Participant Statement or Initial Brief [see 39 CFR § 3001.115 (a) and (b)]

May 21, 1997: Postal Service's Answering Brief [see 39 CFR § 3001.115(c)]

June 5, 1997: Petitioner's Reply Brief should Petitioner choose to file one [see 39 CFR § 3001.115(d)]

June 12, 1997: Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR § 3001.116]

July 25, 1997: Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. § 404(b)(5)]

[FR Doc. 97-8713 Filed 4-4-97; 8:45 am]

BILLING CODE 7710-FW-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38445; File No. SR-CHX-96-30]

### Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change Relating to Standards for Approved Lessors of Exchange Memberships

March 26, 1997.

#### I. Introduction

On November 12, 1996, the Chicago Stock Exchange, Inc. ("CHX" 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to create standards for approved lessors of exchange memberships.

The proposed rule change was published for comment in the **Federal Register** on January 9, 1997.<sup>3</sup> No comments were received on the proposal. This order approves the proposal.

The purpose of the proposed rule change is to create a new form of membership known as an "Approved Lessor." An Approved Lessor will be an individual or entity that desires to purchase a membership in the CHX for the sole purpose of providing a financing mechanism for another person or entity that desires to become a member organization ("lessee"). A lessor that registers with and is

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 38114 (January 3, 1997), 62 FR 1348 (January 9, 1997).

approved by the CHX will be an Approved Lessor.<sup>4</sup>

When an Approved Lessor has entered into this financing relationship (or lease) with a lessee, the Approved Lessor will not be considered a "member" or "member organization" of the CHX for purposes of the Act, or for purposes of the CHX's Certificate of Incorporation, Constitution and Rules except that an Approved Lessor will have the right to vote on proposals to liquidate or dissolve the Exchange and shall possess liquidation rights, as set forth in Article IX, Sec. 2 of the Constitution, upon such dissolution. In addition, an Approved Lessor shall be subject to the Exchange's member arbitration rules. Among other things, this means that an Approved Lessor will be inactive with respect to CHX activities. For example, Approved Lessors will not be permitted to vote (except as stated above) or trade on the CHX as a member or have any access to the CHX trading floor unless an Approved Lessor is also a "member" (i.e., is a registered broker-dealer and has been approved by the Exchange as a "member" or "member organization") pursuant to another membership.

A lessee will be deemed a "member" or "member organization," and, as a result, a lessee must satisfy all the requirements to become a member or member organization currently set forth in CHX Certificate of Incorporation, constitution, Rules and the federal securities laws. A lessee will not, however, be entitled to vote on a proposal to dissolve or liquidate the Exchange and will not have any liquidation rights.

Because Approved Lessors will not be "members" of the CHX, they will not be required to be registered as broker-dealers. However, to prevent inappropriate persons or entities from having indirect dealings on the CHX, Approved Lessors will be required to submit information to the CHX on Form BD and/or Form U-4. The CHX will be permitted to disapprove registration as an Approved Lessor if the Lessor is the subject of the statutory disqualification or fails to meet other pre-requisites set forth in the rule. For example, a lessor may be denied registration as an Approved Lessor if, among other things, it or its employees or control persons are the subject of or a party to a disciplinary proceeding, are or have

been, suspended, barred or expelled by a regulatory entity (including a self-regulatory organization) described in the rule, have been convicted of certain criminal offenses set forth in the rule, or have not paid dues, fines, charges or other debts to a regulatory entity.

In addition, an Approved Lessor will be required to enter into a financing arrangement (or lease) with a lessee within sixty days (this time period may be extended upon request of an Approved Lessor for good cause shown) after becoming approved as an Approved Lessor or the termination of an earlier financing arrangement (or lease). If a financial arrangement (or lease) is not entered into, the Approved Lessor will be required to promptly dispose of the membership. If not promptly disposed of, the CHX will be permitted to sell the membership on the Approved Lessor's behalf. This provision will prevent Approved Lessors from acquiring one or more memberships purely to speculate on the price of the membership and will ensure that memberships do not sit idle.

Until an Approved Lessor enters into a financing arrangement (or lease) with a lessee, or, after such financing arrangement (or lease) has been terminated and the seat transferred to the Approved Lessor, the Approved Lessor will still not be a "member" for purposes of the federal securities laws or the Exchange's Certificate of Incorporation, Constitution and Rules (except with respect to voting on dissolution, rights to net proceeds on dissolution, and the Exchange's member arbitration rules). During this time, the membership shall be viewed as inactive, but the dues shall continue to accrue and will be the objection of the Approved Lessor.

Current CHX rules protect the CHX and other CHX members by providing that the proceeds received in the transfer of a membership are first to be applied to satisfy the debts owed by the transferor member to the Exchange or certain other persons. However, because Approved Lessors are not "members" of the Exchange, the Exchange will require Approved Lessors, and their lessees, to enter into a standard subordination and sale agreement with the CHX that provides that the CHX is authorized to sell the membership under certain circumstances when obligations are owed to the CHX or certain other creditors by the lessee and whereby the Approved Lessor agrees to be bound by CHX rules relating to Approved Lessors, among other things.

The proposed rule change also makes technical, non-substantive changes to improve the clarity of Article I, Rule 17.

The proposed rule change sets forth specific provisions that the CHX will require in any financing agreement or lease. The CHX will require that these agreements be filed with, and approved by, the CHX. Additionally, the transfer of the title to the membership to a lessee will be posted in the same manner as all other transfers of memberships.

Furthermore, the proposed rule change prohibits members and Approved Lessors from owning or controlling 10% or more of the outstanding memberships on the Exchange.

Finally, the proposed rule change amends Article XIV, Rule 2, relating to the imposition of transaction fees to reflect present practice. The rule currently provides that the rate of these fees shall be fixed before the close of each fiscal year. The proposed rule provides that they are fixed from time to time.

### III. Discussion

As discussed above, the proposal creates a new Approved Lessor membership category on the CHX. This new category will permit entities who are not registered broker-dealers to purchase a CHX membership for the purpose of leasing that seat to a qualified CHX member.

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).<sup>5</sup> In particular, the Commission believes the proposal is consistent with the Section 6(b)(5)<sup>6</sup> 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 also believes that the proposal is consistent with the Section 6(b)(7)<sup>7</sup> requirements that the rules of an exchange provide a fair procedure for the disciplining of members, the denial of membership to any person seeking membership therein, and the prohibition or limitation by an exchange of a person's access to services offered by the exchange. Finally, the Commission believes that the proposal is consistent with the Section 6(b)(8)<sup>8</sup> requirement that the rules of an exchange not impose any burden on competition not necessary or

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78f(b)(7).

<sup>8</sup> 15 U.S.C. 78f(b)(8).

<sup>4</sup> Article I, Rule 6 of the CHX Rules has been amended, reducing the Executive Committee vote required to approve a membership or approved lessor application from a 2/3 majority to a simple majority. Securities Exchange Act Release No. 38187 (January 21, 1997), 62 FR 4367 (January 29, 1997) (order approving File No. CHX 96-29).

appropriate in furtherance of the purposes of the Act.

Section 6(b)(5) requires the rules of an exchange to be designed to remove impediments and to perfect the mechanism of a free and open market. This proposal seeks to remove those barriers to exchange membership imposed by both the cost of an equity interest on the Exchange and the current availability of seats for purchase. The proposal further removes impediments to the mechanism of a free and open market by providing members with more alternatives in how they will structure their membership affiliations. Further, Section 6(b)(8) states that the rules of an exchange may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The CHX proposal would remove a burden on competition in that broker-dealers who are unable to purchase a seat on the CHX may enter into a leasing agreement and thus enhance their ability to compete with other CHX broker-dealers.

The Commission also believes that the proposed rule change is consistent with previous no action positions taken by the Commission construing the requirements of Section 6(c)(1) (A) and (B) of the Act and the definition of "member" under Section 3(a)(3)(A) of the Act.<sup>9</sup> We have interpreted those provisions to allow an exchange to permit a natural person to own an exchange membership, under circumstances like those required under the proposed CHX rule change, where that person has either inherited the membership or purchased it solely for the purpose of leasing that membership, where that person is not an associated person of the lessee, and where that person is not and has not been engaged in securities activities for which broker-dealer registration is required.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-CHX-96-30) is approved.

For the Commission, by the Division of Market Regulation, Pursuant to delegated authority.<sup>11</sup>

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 97-8793 Filed 4-4-97; 8:45 am]

BILLING CODE 8010-01-M

<sup>9</sup> See letter from Jeffrey L. Steel, Special Counsel, Division of Market Regulation, SEC to Arne R. Rode, Associate General Counsel, Chicago Board Options Exchange, dated January 2, 1980.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 15 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38461; File No. SR-MBSCC-97-03]

### Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Establishment of the Comparison Only System

April 1, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on February 18, 1997, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-MBSCC-97-03) as described in Items I, II, and III below, which items have been prepared primarily by MBSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies MBSCC's rules to establish the Comparison Only System ("COS") and to create a new category of participant, a "limited purpose participant", eligible to use this system.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>2</sup>

##### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify MBSCC's rules to establish the COS and to create a new category of participant, a limited purpose participant, eligible to use this system.

As a result of interest expressed by the Federal National Mortgage

Association and other organizations, the proposed COS, which will be a limited system for principals to compare trade data, was developed by MBSCC. The mortgage-backed securities marketplace has unique characteristics that affect how trades are compared and how industry participants communicate with each other. For example, the average time between a mortgage-backed securities trade and settlement date is much longer than that in the government bond and equity markets, forty-five to ninety days compared to one and three days, respectively. The objective of MBSCC's proposed system is to improve market communications for the comparison of trade data by providing qualified entities with an automated alternative to manually initiating verbal confirmations and then exchanging hardcopy trade confirmations and/or contract letters.

Under current MBSCC rules, MBSCC processes securities through the Comparison and Clearing System ("CCS") for qualified participants. CCS provides a centralized process to compare and confirm trades electronically, risk management services to continually assess the current value of each underlying trade and to ensure that all participants meet their margin requirements, and a netting facility that provides a multilateral netting service which creates netted receive and deliver obligations.

The proposed COS is a more limited system than the CCS in that it will only provide a centralized process to compare and confirm trades electronically. COS will be a system restricted to those that trade in a principal capacity where specified trade data must exactly and promptly compare between like contra-sides. Because the COS is limited to comparison, participants will not be required to put up margin or meet specific net worth financial requirements.

COS will require a limited purpose participant to submit financial information to demonstrate its financial ability to meet its cash balance debit obligations to MBSCC, which are limited to the fees for using the COS and any late fees imposed. It is expected that these fees will be significantly lower than those imposed on participants in the CCS; therefore, no basic deposit fee will be required of COS participants. MBSCC will bill the limited purpose participant on a monthly basis. The bill will be payable to MBSCC via the federal funds wire.

Each limited purpose participant will be required to maintain specified data processing and communications

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> The Commission has modified the text of the summaries prepared by MBSCC.

equipment to be able to process transactions through the facilities of MBSCC and be able to receive reports, notices, and other communications relating to transactions prepared by MBSCC. Any current MBSCC participant trading a COS eligible security in a principal capacity will be able to participate in COS if the counterparty is a limited purpose participant or the security traded is not eligible in CCS.

Under COS, a trade will be negotiated by the parties. Trade terms will then be submitted electronically by the parties to MBSCC for comparison. The submitted trade terms will then be compared in MBSCC's AM or PM processing pass. For a trade to compare in COS, certain trade data will have to match exactly.<sup>3</sup> If a trade compares, MBSCC will issue a purchase and sale report go each side of the trade. The purchase and sale report will serve as the sole binding confirmation of the trade. The trade will then be settled outside of the MBSCC system. Trade terms that do not compare will be reported as unmatched on a transaction summary report sent to the parties. Individually or jointly, the parties must then resolve or delete the unmatched trade by taking one or more of the following on-line actions: deletes, DK's (don't know), affirms, and new input. Unmatched trades will remain on a transaction summary report until resolved. MBSCC's current rule on CCS unmatched items will similarly be applied to COS unmatched items. Specifically, until the unmatched item is resolved or deleted, the participant(s) will be subject to the imposition of late fees by MBSCC. For purposes of computing the late fees, each missed processing pass after a two pass grace period will result in a separate assessment against the participant(s). If the unmatched trade is resolved, MBSCC will compare and confirm it with a purchase and sale report as described above.

MBSCC believes that the proposed rule change is consistent with the requirements of Section 17A(3)(F) of the Act<sup>4</sup> and the rules and regulations thereunder because it will facilitate the prompt and accurate clearance and settlement of securities transactions.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

MBSCC does not believe that the proposed rule change will have an

impact on or impose a burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

No written comments relating to the proposed rule change have been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which MBSCC consents, the Commission will: (A) by order approve such proposed rule change or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBSCC.

All submissions should refer to the file number SR-MBSCC-97-03 and should be submitted by April 28, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 97-8791 Filed 4-4-97; 8:45 am]

BILLING CODE 8010-01-M

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-38456; File No. SR-NASD-92-7]

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 3 and 4 to Proposed Rule Change Relating to the OTC Bulletin Board Service**

March 31, 1997.

**I. Introduction**

On March 12, 1992, the National Association of Securities dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> a proposal to obtain permanent approval of the OTC Bulletin Board Service ("OTCBB Service," "OTCBB" or "Service"). The Commission noticed and solicited comments regarding the proposal in the *Federal Register*.<sup>2</sup> On October 6, 1994 and on November 8, 1994, the NASD filed Amendment Nos. 1 and 2 to the proposal. The Commission noticed and solicited comment regarding Amendments 1 and 2.<sup>3</sup> On March 14, 1997, the NASD filed Amendment No. 3 to the proposed rule change. Amendment No. 3 supersedes Amendment Nos. 1 and 2. On March 21, 1997, the NASD filed Amendment No. 4 to the proposal.<sup>4</sup> This Order approves the proposed rule change as amended by Amendment Nos. 3 and 4 on an accelerated basis.

**II. Background**

On June 1, 1990, the NASD, through Nasdaq, initiated operation of the OTC

<sup>1</sup> 15 U.S.C. § 78s(b)(1).

<sup>2</sup> Securities Exchange Act Release No. 30766 (June 1, 1992), 57 FR 24261.

<sup>3</sup> Securities Exchange Act Release No. 34956 (November 9, 1994), 59 FR 59806. The amendments would have narrowed the universe of securities eligible for quotation on the Service. Specifically, the NASD proposed to narrow the subset of foreign equity securities, including those represented by American Depositary Receipts, that would have been OTCBB-eligible to those securities registered with the Commission pursuant to Section 12 of the Act. This requirement would have become effective on July 5, 1994. Any foreign equity security quoted in the OTCBB as of the close of business on July 1, 1994 that was not registered pursuant to Section 12 of the Act could remain OTCBB-eligible provided that the issuer maintained an exemption from Section 12 registration pursuant to Rule 12g3-2(b) under the Act.

<sup>4</sup> The NASD submitted a technical amendment on March 27, 1997, stating that the change to Paragraph 6540(b)(1)(c) would not be implemented until April 1, 1998. See Note 7 infra.

<sup>3</sup> Specifically, the trade data will be buyer versus seller, buyer account, seller account, class code or CUSIP/pool number, price, trade type, trade date, settlement date, and par value.

<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>5</sup> 17 CFR 200.30-3(a)(12).

Bulletin Board Service, which the Commission had approved on a temporary basis.<sup>5</sup> The OTCBB Service provides a real-time quotation medium that NASD member firms can use to enter, update, and retrieve quotation information (including unpriced indications of interest) for equity securities traded over-the-counter that are neither listed on The Nasdaq Stock Market<sup>SM</sup> nor on a primary national securities exchange (collectively referred to as "OTC Equities").<sup>6</sup> Essentially, the Service supports NASD members' market making in OTC Equities through displaying quotations entered through authorized Nasdaq Workstation units. Real-time access to quotation information captured in the Service is available to subscribers of Level 2/3 Nasdaq service as well as subscribers of vendor-sponsored services that now carry OTCBB service data.

The OTCBB disseminates quotations in electronic form for securities that, for many years, had quotations published only through reports known as the "pink sheets." Consistent with the goals and objectives respecting the development of a national market system, the OTCBB was initiated to allow the market makers in non-Nasdaq securities to enter and update quotation information on a real-time basis. This capability has enhanced the availability of market information for non-Nasdaq securities of domestic companies. Similarly, the OTCBB has provided order entry firms with real-time access to the trading interest in domestic securities being displayed by market makers in OTC equity securities. This access has assisted them in negotiating the execution of customer orders at the best available price. In addition, the inclusion on the OTCBB of the telephone numbers of participating market makers has expedited the retail firms' processing of market orders. The OTCBB also has strengthened the

NASD's ability to monitor quotations in these OTC equity securities.

### III. Description of Amendment Nos. 3 and 4

Amendment No. 3 proposes to require that foreign securities and ADRs be registered with the Commission pursuant to Section 12 of the Act to remain eligible for quotation on the OTCBB. The proposed requirement would be effective on April 1, 1998.<sup>7</sup> Amendment No. 4 amends the text of the proposed rule change and clarifies that the NASD will remove any foreign security from the OTCBB if it is brought to its attention that the security is no longer registered with the Commission pursuant to Section 12 of the Act. Proposed new language is in italics; proposed deletions are in brackets.

#### 6530. OTCBB-Eligible Securities

The following categories of securities shall be eligible for quotation in the Service:

(a) No change

[(b) any foreign equity security or American Depositary Receipt (ADR) that is not listed on Nasdaq or a registered national securities exchange in the U.S., except that foreign equity securities or ADRs that are (1) listed on one or more regional stock exchanges and (2) do not qualify for dissemination of transaction reports via the facilities Consolidate Tape shall be considered eligible.]

*(b) any foreign equity security or American Depositary Receipt (ADR) that:*

*(1) prior to April 1, 1998, is not listed on Nasdaq or a registered national securities exchange in the U.S., except that a foreign equity security or ADR shall be considered eligible if it is:*

*(A) listed on one or more regional stock exchanges and;*

*(B) does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape.*

*(2) after March 31, 1998, is registered with the Securities and Exchange Commission pursuant to Section 12 of the Securities Exchange Act of 1934 and is not listed on Nasdaq or a registered national securities exchange in the U.S., except that a foreign equity security or ADR shall be considered eligible if it is:*

*(A) listed on one or more regional stock exchanges and;*

<sup>7</sup> Under the temporary approval, foreign securities that are included on the OTCBB need not be registered with the Commission as long as they are in compliance with Rule 12g3-2(b) under the Act. Amendment No. 3 will provide a one-year sunset period for this part of the Pilot Program.

*(B) does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape.*

#### 6540. Requirements Applicable to Market Makers

(a) No change  
 (b) No change  
 (1) Permissible Quotation Entries  
 (A) No change  
 (B) No change  
 (C) A priced bid and/or offer entered into the Service for a [foreign equity security, and ADR, or a] \* Direct Participation Program security shall be non-firm.\* Moreover, a market maker is only permitted to update quotation entries in such securities twice daily, i.e., once between 8:30 a.m. and 9:30 a.m. Eastern Time, and once between noon and 12:30 p.m. Eastern Time.

<sup>2</sup> The non-firm or indicative nature of a priced entry [in a foreign or ADR issue] is specifically identified on the montage of market maker quotations accessible through the Nasdaq Workstation service for this subset of OTCBB-eligible securities.

\* The text in brackets in paragraph 6540(b)(1)(c) and the footnote will be amended effective April 1, 1998.<sup>9</sup>

#### IV. Comments Received

The Commission received twenty-four letters in response to its request for comments on the proposal and Amendment Nos. 1 and 2. Two comment letters supported permanent approval of the Service.<sup>9</sup> Twenty-two letters commented about Amendment Nos. 1 and 2 to the proposal. Although these amendments are superseded by Amendment Nos. 3 and 4, most of the commenters expressed views regarding the eligibility of foreign equity securities on the Service.

Nineteen commenters urged the Commission not to narrow the group of securities eligible for quotation on the Service.<sup>10</sup> These commenters argued

<sup>9</sup> See Letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, SEC (March 27, 1997).

<sup>9</sup> Letter from William F. Ross, Public Securities, Inc., to Jonathan G. Katz, Secretary, SEC (September 30, 1993); Letter from Arthur J. Pacheco and John L. Watson III, Security Traders Association, to Jonathan G. Katz, Secretary, SEC (June 23, 1992).

<sup>10</sup> Letter from Thomas D. Sanford, Vice President, The Bank of New York, to Jonathan G. Katz, Secretary, SEC (May 6, 1996); Letter from Zhi-jiong Xu, Vice Chairman and Chief Accountant, Shanghai Erfanji Co., Ltd. to Jonathan G. Katz, Secretary, SEC (October 10, 1995); Letter from P.F. Haesler and C.R. Rosset, Holderbank, to Jonathan G. Katz, Secretary, SEC (June 19, 1995); Letter from Todd M. Roberts, Roberts, Sheridan & Kotel, to Jonathan G. Katz, Secretary, SEC (April 18, 1995); Letter from Dr. Serfas Karran, Dresdner Bank, to Jonathan G. Katz, Secretary, SEC (March 8, 1995); Letter from

<sup>5</sup> Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19124. On March 12, 1992, the NASD filed with the Commission a proposal to obtain permanent approval of the Service. See Securities Exchange Act Release No. 30766 (June 1, 1992), 57 FR 24281. Since that time, the Commission has extended operation of the Pilot Program on several occasions. The most recent extension expires March 31, 1997.

<sup>6</sup> With the Commission's January 1994 approval of File No. SR-NASD-93-24, the universe of securities eligible for quotation in the OTCBB now includes certain equities listed on regional stock exchanges that do not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape Association. Securities Exchange Act Release No. 33507 (January 24, 1994), 59 FR 4300 (order approving File No. SR-NASD-93-24).

against limiting the Service to foreign equity securities registered pursuant to Section 12 of the Act. The commenters stated that the proposed amendment would adversely affect the market for Level I ADRs, which permits many foreign issuers to develop a U.S. equity market. They argued that the proposed amendment would hurt the liquidity of the market for Level I ADRs and impair the access of foreign issuers to the U.S. equity trading markets.

The American Stock Exchange, Inc. ("Amex") and the New York Stock Exchange, Inc. ("NYSE") submitted comment letters objecting to the inclusion of unregistered foreign securities on the Service.<sup>11</sup> Both the Amex and the NYSE urged the Commission not to grant permanent approval to the Service, and to disapprove the NASD's proposal to grandfather and make eligible for quotation those securities whose issuers had perfected their Rule 12g3-2(b) exemption by July 1, 1994. The NYSE asserted its belief that the Commission should act promptly to remove foreign securities from the Service. The Amex also objected to the grandfathering of foreign unregistered securities, and asserted that the Service provides a significant disincentive to listing and

registration for foreign issuers. In addition, the Amex argued against allowing foreign unregistered securities to be quoted on the Service because foreign issuers would be able to obtain much of the visibility of an exchange or Nasdaq listing without the burdens of registration.

#### V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 3 and 4 to File No. SR-NASD-92-7. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by April 28, 1997.

#### VI. Commission's Findings and Order Granting Accelerated Approval

The Commission finds that approval of the proposed rule change is consistent with the Act and the rules and regulations thereunder, and, in particular, with the requirements of Section 15A(b)(6), which provides that the rules of the NASD must be designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and of Section 15A(b)(11) of the Act, which provides that the rules of the NASD relating to quotations must be designed to produce fair and informative quotations, prevent fictitious or misleading quotations, and promote orderly procedures for collecting, distributing, and publishing quotations.

The Commission believes that permanent approval of the NASD's proposal is appropriate at this time. The OTCBB has fulfilled the NASD's objectives of increasing the visibility, liquidity, and surveillance of non-Nasdaq OTC equity securities.<sup>12</sup> As

currently configured, the OTCBB provides firm quotations and 90 second trade reporting for domestic securities, which has brought much needed transparency to the market for these securities. The enhanced transparency facilitates price discovery and the execution of customers' orders at the best available price. Additionally, continued operation of the Service will materially assist the NASD's surveillance of its members' trading in OTC Equities that are eligible and quoted in the Service, and in regional exchange securities that are not reported to the Consolidated Tape and that are quoted in the OTCBB by NASD members.

The domestic issues included on the OTCBB do not meet Nasdaq inclusion standards and are less widely held, more illiquid, and do not have the operating history of Nasdaq companies.<sup>13</sup> While the potential for trading abuses is greater for these types of securities, these abuses can be reduced by according more transparency to these securities. Nevertheless, the operation of the OTCBB places a concomitant responsibility on the NASD to surveil adequately the quotes and prices disseminated over the Service. Indeed, the additional transparency from the OTCBB should assist the NASD in its surveillance efforts.

With respect to foreign issuers on the OTCBB, the Commission believes a different analysis is warranted. Since the OTCBB's inception, the inclusion of unregistered foreign securities and ADRs on the Service has raised concern. As part of the Pilot Program, the Commission permitted the inclusion of quotations on the OTCBB of foreign securities that were not registered under the Act although in compliance with Rule 12g3-2(b), because the OTCBB was viewed as merely providing transparency to trading in foreign issues already occurring in the over-the-counter market. In contrast, securities listed on an exchange or quoted on Nasdaq must be registered securities. Registration requires, in part, that the issuer provide financial information in accordance with U.S. accounting standards. The quotation of foreign securities on the OTCBB has raised

trade reporting. The NASD has made improvements to the OTCBB since then. Pursuant to NASD rules, all quotations for domestic securities must be two-sided and firm; trades are reported within 90 seconds.

<sup>13</sup> Issuers whose securities are included in the OTCBB generally are required to register and report pursuant to Section 12 of the act when the issuer has more than 500 record holders of its equity securities and \$10 million in total assets.

Sergio Luiz Concalves Pereira, Director of Economy and Finance and Market Relations, Telebras, to Jonathan G. Katz, SEC (March 8, 1995); Letter from Peter B. Tisne, Emmet, Marvin & Martin, LLP, to Jonathan G. Katz, Secretary, SEC (March 16, 1995); Letter from Alan Mercer, Peregrine Investments Holdings Limited, to Jonathan G. Katz, Secretary, SEC (March 21, 1995); Letter from P. Barnes-Wallis, Director of Public Affairs, Rolls-Royce plc, to Jonathan G. Katz, Secretary, SEC (March 9, 1995); Letter from Murilo Bueno Kammer, General Director, Iochpe-Maxion, to Jonathan G. Katz, Secretary, SEC (March 17, 1995); Letter from Yauaki Hirata, Director of Finance, Kobe Steel, Ltd., to Jonathan G. Katz, Secretary, SEC (March 14, 1995); Letter from John T. Hung, Executive Director, Wheelock and Company Limited, to Jonathan G. Katz, Secretary, SEC (March 21, 1995); Letter from EVN Energie vernunftig nutzen, to Jonathan G. Katz, Secretary, SEC (March 17, 1995); Letter from Ralph Marinello, Vice President, Citibank, to Jonathan G. Katz, Secretary, SEC (April 27, 1995); Letter from Song Zhuangfei, Chairman of the Board and General Manager, Shanghai Tyre & Rubber Co., Ltd., to Jonathan G. Katz, Secretary, SEC (February 1995); Letter from Shanghai Aklai Chemical Co., Ltd., to Jonathan G. Katz, Secretary, SEC (October 7, 1995); Letter from Shenzhen Special Economic Zone Real Estate & Properties (Group) Co. Ltd., to Jonathan G. Katz, Secretary, SEC (February 1995); Letter from Robert Courtney Mangone, Fox & Horan, to Jonathan G. Katz, SEC (February 27, 1995); Letter from Thomas D. Sanford, Vice President, The Bank of New York, to Brandon Becker and Linda Quinn, SEC (November 15, 1994); Letter from Scott A. Ziegler, Ziegler, Ziegler & Altman, to Jonathan G. Katz, Secretary, SEC (December 11, 1994).

<sup>11</sup> Letter from James F. Duffy, Executive Vice President and General Counsel, Amex, to Jonathan G. Katz, Secretary, SEC (December 9, 1994); Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC (March 18, 1993).

<sup>12</sup> At its inception, the OTCBB rules did not require firm quotations, two-sided quotations, or

concerns that the OTCBB would provide an active secondary trading market in unregistered securities. To address these concerns, the quotation of foreign securities on the OTCBB was limited to "non-firm" quotations that could be updated a maximum of two times per day. Thus, each quotation in a foreign security on the OTCBB is "stale" and serves more as an indication of a market maker's interest in dealing in the security than as an actual bid and offer in the security. In addition, while market makers must report trades in foreign securities to the NASD, the NASD uses this information for surveillance purposes only and does not make this information public.

The Commission believes that it is appropriate to require that foreign securities be registered pursuant to Section 12 of the Act to be eligible for inclusion in the OTCBB. As a general matter, transparency benefits the markets. However, in the context of the inclusion of unregistered foreign securities on the OTCBB, the benefits may be outweighed by the potential from including unregistered securities on a visible U.S. market operated by a self-regulatory organization. Although the OTCBB provides some increase in transparency for foreign securities, this transparency is limited by the restriction to non-firm quotations updated twice daily. At the same time, the OTCBB may be inconsistent with the full disclosure goals of the securities laws in allowing a regulated public marketplace for unregistered securities. The Commission believes that the NASD could increase transparency with less customer confusion by requiring transaction reporting for foreign securities traded over-the-counter in the U.S. Transaction reporting information has the potential to greatly enhance the amount of market information available to investors and better enable investors to monitor the executions they receive in foreign securities. In the meantime, the Commission believes that it is preferable for the NASD to require foreign issuers that trade on the OTCBB to be registered. Under the NASD's amendment, this requirement will apply one year from the date of this Order. The one-year sunset provision for unregistered foreign issuers on the OTCBB will give issuers an opportunity to consider whether to register so that they can continue to have their securities included on the OTCBB in the U.S. or to make other arrangements. It also will provide the public with one-year's notice of the fact that these issuers will no longer be quoted on the OTCBB. The requirement that foreign

securities be registered will be effective on April 1, 1998.<sup>14</sup>

The Commission finds good cause for approving Amendment Nos. 3 and 4 to the proposed rule change prior to the 30th day after the date of publishing notice of the filing thereof. The Commission finds that approval of this proposed rule change is appropriate because the Commission has considered the comments received from interested parties and believes that the continued operation of the Service, as amended by this Order, is in the public interest. In particular, the Commission notes that the OTCBB has been operating continuously since June 1, 1990 on a pilot basis, and the Commission finds that a one-year phase-out of the system for unregistered foreign securities would prove less disruptive to trading than an immediate removal of unregistered foreign issuers from the OTCBB.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-NASD-92-7 be, and hereby is, approved as amended. The change to Paragraph 6540(b)(1)(c) and the footnote will be effective on April 1, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 97-8792 Filed 4-4-97; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38452; File No. 600-25]

### Self-Regulatory Organizations; Participants Trust Company; Notice of Filing of Request and Order Approving Application for Extension of Temporary Registration as a Clearing Agency

March 28, 1997.

On February 14, 1997, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") a request pursuant to Section 19(a) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> for extension of its registration as a clearing agency under Section 17A

<sup>14</sup> The Commission expects that the NASD will act with diligence in attempting to ensure that this change as amended is enforced, and that the NASD will remove those securities from the OTCBB upon gaining knowledge that a foreign issuer included on the OTCBB is not registered and reporting under Section 12 of the Act, and the rules thereunder.

<sup>15</sup> U.S.C. 78s(a).

of the Act<sup>2</sup> for a period of one year.<sup>3</sup> The Commission is publishing this notice and order to solicit comments from interested persons and to grant PTC's request for an extension of its temporary registration as a clearing agency through March 31, 1998.

On March 28, 1989, the Commission granted PTC's application for registration as a clearing agency pursuant to Sections 17A(b)(2) and 19(a) of the Act<sup>4</sup> on a temporary basis for a period of one year.<sup>5</sup> Subsequently, the Commission issued orders that extended PTC's temporary registration as a clearing agency, the last of which extended PTC's registration through March 31, 1997.<sup>6</sup>

As discussed in detail in the initial order granting PTC's temporary registration,<sup>7</sup> one of the primary reasons for PTC's registration was to allow it to develop depository facilities for mortgage-backed securities, particularly securities guaranteed by the Government National Mortgage Association. PTC services include certificate safekeeping, book-entry deliveries, and other services related to the immobilization of securities certificates.

PTC continues to make significant progress in the areas of financial performance, regulatory commitments, and operational capabilities. For example, the original face value of securities on deposit at PTC as of December 31, 1996, totaled \$1.2 trillion, an increase of approximately \$125 billion over the amount on deposit as of December 31, 1995. Total pools on deposit, which were held at PTC in a total of 1.3 million participant positions, rose from 302,000 as of December 31, 1995, to more than 350,000 as of December 31, 1996.<sup>8</sup>

During its most recent temporary approval period, PTC established a new category of participant for Federal Reserve Banks.<sup>9</sup> The Federal Reserve Bank of New York became a Federal Reserve participant on December 31, 1996. On December 31, 1996, PTC's

<sup>2</sup> 15 U.S.C. 78q-1.

<sup>3</sup> Letter from John J. Sceppe, President and Chief Executive Officer, PTC (February 13, 1997).

<sup>4</sup> 15 U.S.C. 78q-1(b)(2) and 78s(a).

<sup>5</sup> Securities Exchange Act Release No. 26671 (March 28, 1989), 54 FR 13266.

<sup>6</sup> Securities Exchange Act Release Nos. 27858 (March 28, 1990), 55 FR 12614; 29024 (March 28, 1991), 56 FR 13848; 30537 (April 9, 1992), 57 FR 12351; 32040 (March 23, 1993), 58 FR 16902; 33734 (March 8, 1994), 59 FR 11815; 35482 (March 13, 1995), 60 FR 14806; and 37024 (March 26, 1996), 61 FR 14357.

<sup>7</sup> *Supra* note 5.

<sup>8</sup> *Supra* note 3.

<sup>9</sup> Securities Exchange Act Release No. 37813 (October 11, 1996), 61 FR 54483.



participants included twenty-seven banks, twenty-three broker-dealers, two government-sponsored enterprises, and the Federal Reserve Bank of New York. In addition, PTC declared a dividend of \$.98 per share to stockholders of record on December 31, 1996.<sup>10</sup>

In connection with PTC's original temporary registration, PTC committed to the Commission and to the Federal Reserve Bank of New York to make a number of operational and procedural changes.<sup>11</sup> Over the past year, PTC has continued its efforts to implement these operational and procedural changes. Currently, only one of PTC's original nine commitments, the commitment to make principal and interest advances optional, remains outstanding. In connection with this commitment, PTC has made significant progress in improving the collection process for principal and interest payments and is discussing with the Commission and the Federal Reserve Bank of New York means by which PTC can satisfy the commitment.<sup>12</sup>

PTC has functioned effectively as a registered clearing agency for the past eight years. In light of PTC's past performance, the Commission believes that PTC has the operational and procedural capacity to comply with the statutory obligations set forth under Section 17A(b)(3) of the Act<sup>13</sup> as prerequisites for registration as a clearing agency. Comments received during PTC's temporary registration will be considered in determining whether PTC should receive permanent registration as a clearing agency under Section 17A(b) of the Act.<sup>14</sup>

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 request for extension of temporary registration as a clearing agency that are filed with the Commission, and all written communications relating to the requested extension between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of PTC. All submissions should refer to File No. 600-25.

On the basis of the foregoing, the Commission finds that PTC's request for extension of temporary registration as a clearing agency is consistent with the Act and in particular with Section 17A of the Act.

It is therefore ordered, that PTC's registration as a clearing agency be and hereby is approved on a temporary basis through March 31, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 97-8794 Filed 4-4-97; 8:45 am]

BILLING CODE 8010-01-M

comment period soliciting comments on the following collection of information was published on December 19, 1996 [FR 61, page 67091-67092].

**DATES:** Comments on this notice must be received on or before May 7, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth C. Edgell, DOT Drug Program Office, Office of the Secretary, S-1, DEPC, Room 10317, Department of Transportation, at the address above. Telephone: (202) 366-3784.

**SUPPLEMENTARY INFORMATION:**

Office of the Secretary, Drug Program Office

*Title:* U. S. Department of Transportation (DOT) Breath Alcohol Testing Form.

*OMB Control Number:* 2105-0529.

*Affected Public:* Transportation industries.

*Abstract:* Under the Omnibus Transportation Employee Testing Act of 1991, DOT is required to implement an alcohol testing program in various transportation industries.

Breath-alcohol technicians (BAT) must fill out testing form. The form includes the employee's name, the type of test taken, the date of the test, and the name of the employer. Custody and control is essential to the basis purpose of the alcohol testing program. Data on each test conducted, including test results, are necessary to document tests conducted and actions taken to ensure safety in the workplace.

*Need:* This specific requirement is elaborated in 49 CFR Part 40, Procedures for Transportation workplace Drug and Alcohol Testing Programs.

*Burden Estimate:* The estimated burden is 1 hour annually.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725-17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer.

*Comments are invited on:* whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

<sup>10</sup> Securities Exchange Act Release No. 38280 (February 12, 1997), 62 FR 8072.

<sup>11</sup> The operational and procedural changes PTC committed to make were: (1) Eliminating trade reversals from PTC's procedures to cover a participant default; (2) phasing out the aggregate excess net debit limitation for extensions under the net debit monitoring level procedures; (3) making principal and interest advances, now mandatory, optional; (4) allowing participants to retrieve securities in the abeyance account and not allowing participants to reverse transfers because customers may not be able to fulfill financial obligations to the participants; (5) eliminating the deliverer's security interest and replacing it with a substitute; (6) reexamining PTC's account structure rules to make them consistent with PTC's lien procedures; (7) expanding and diversifying PTC's lines of credit; (8) assuring operational integrity by developing and constructing a back-up facility; and (9) reviewing PTC rules and procedures for consistency with current operations.

<sup>12</sup> On February 7, 1997, PTC filed an amended Form CA-1 with the Commission requesting permanent registration as a clearing agency under Section 17A of the Act. PTC's request is currently under review by the Commission.

<sup>13</sup> 15 U.S.C. 78q-1(b)(3).

<sup>14</sup> 15 U.S.C. 78q-1(b)(3).

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

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

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3501, *et seq.*) this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden. The Federal Register Notice with a 60-day

<sup>15</sup> 17 CFR 200.30-3(a)(50).

Issued in Washington, DC, on April 1, 1997.

**Vanester M. Williams,**  
Clearance Officer, United States Department  
of Transportation.

[FR Doc. 97-8822 Filed 4-4-97; 8:45 am]

BILLING CODE 4910-62-P

## DEPARTMENT OF TRANSPORTATION

### Aviation Proceedings, Agreements Filed During the Week of March 28, 1997

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

*Docket Number:* OST-97-2264.

*Date Filed:* March 25, 1997.

*Parties:* Members of the International Air Transport Association.

*Subject:*

COMP Telex Mail Vote 865  
Fares from Botswana

*Intended effective date:* April 1, 1997

*Docket Number:* OST-97-2276.

*Date Filed:* March 27, 1997.

*Parties:* Members of the International Air Transport Association.

*Subject:*

COMP Mail Vote 866 as amended  
Advance Intended effective Date of  
Mail Vote 835  
(MV835 was given rubber-stamp  
approval on 3/24/97).

*Intended effective date:* April 7, 1997

**Paulette V. Twine,**

Chief, Documentary Services.

[FR Doc. 97-8716 Filed 4-4-97; 8:45 am]

BILLING CODE 4910-62-P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. 97-018; Notice 1]

#### Notice of Receipt of Petition for Decision That Nonconforming 1991 Jeep Cherokee Multi-Purpose Passenger Vehicles Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of receipt of petition for decision that nonconforming 1991 Jeep Cherokee multi-purpose passenger vehicles (MPVs) cars are eligible for importation.

**SUMMARY:** This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1991 Jeep Cherokee

manufactured for the European market that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) It is substantially similar to a vehicle that was originally manufactured for sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

**DATES:** The closing date for comments on the petition is May 7, 1997.

**ADDRESSES:** Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm.]

**FOR FURTHER INFORMATION CONTACT:** George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

#### SUPPLEMENTARY INFORMATION:

##### Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the *Federal Register* of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the *Federal Register*.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90-009) has petitioned NHTSA to decide whether 1991 Jeep Cherokee MPVs manufactured for the European market are eligible for importation into the United States. The

vehicle which Champagne believes is substantially similar is the 1991 Jeep Cherokee that was manufactured for sale in the United States and certified by its manufacturer, Chrysler Corporation, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1991 Jeep Cherokee to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1991 Jeep Cherokee, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1991 Jeep Cherokee is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* \* \* \*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 119 *New Pneumatic Tires*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, petitioner contends that the non-U.S. certified 1991 Jeep Cherokee complies with the Bumper Standard found in 49 CFR part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a)

Installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

**Standard No. 111 Rearview Mirror:** Replacement of the convex passenger side rearview mirror.

**Standard No. 114 Theft Protection:** Installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

**Standard No. 118 Power Window Systems:** Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

**Standard No. 120 Tire Selection and Rims:** Installation of a tire information placard.

**Standard No. 208 Occupant Crash Protection:** (a) Installation of a U.S. model seat belt in the driver's position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer. The petitioner states that the vehicle is equipped with a combination lap and shoulder restraint that adjusts by means of an automatic retractor and releases by means of a single push button in each front designated seating position, with a combination lap and shoulder restraint that releases by means of a single push button in each rear outboard designated seating position, and with a lap belt in the rear center designated seating position.

**Standard No. 301 Fuel System Integrity:** Installation of a rollover valve in the fuel tank vent line.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the *Federal Register* pursuant to the authority indicated below.

**Authority:** 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 2, 1997.

**Marilynne Jacobs,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 97-8823 Filed 4-4-97; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

[Docket No. RSPA-97-2236; Notice 1]

#### Liquefied Natural Gas Facilities Petition for Waiver; Pine Needle LNG Company

Pine Needle LNG Company (Pine Needle) has petitioned the Research and Special Programs Administration (RSPA) for a waiver from compliance with 49 CFR 193.2155(c), Liquefied Natural Gas (LNG) storage tank impounding system. Section 193.2155(c) requires a Class 1 impounding system whenever an LNG storage tank is located within 20,000 feet from the nearest runway serving large aircraft. The petition applies to the Pine Needle's proposed LNG storage facility in the northwest Guilford County, North Carolina.

The petitioner's rationale for the waiver from compliance rests on the following reasons:

1. A horizontal distance between the nearest Pine Needle LNG tank and the nearest point of the Landmark Airpark runway is approximately 19,500 feet. This is 500 feet less than the 20,000 foot offset required for compliance with § 193.2155(c).

2. A vertical clearance of an aircraft over the top of the Pine Needle earthen containment dikes would be 1023 feet, after factoring in a minimum airport approach/departure ratio of 20:1 to/from Landmark Airpark and the elevation differences between the Landmark Airpark runway and the Pine Needle location. This exceeds the minimum requirements under the Federal Aviation Administration (FAA) regulations.

3. Correspondence between FAA and the Landmark Airpark developer describes operation of the Landmark Airpark as being limited to private aircraft under visual flight rules (VFR) conditions.

4. The turf runway surface and 2600-foot runway length would likely preclude large aircraft, as defined by 14 CFR Part 1.1, from using the Landmark Airpark.

5. Pine Needle owns, leases or controls all properties within the exclusion zones required under 49 CFR 193.2057 and 193.2059. There is presently no development within the prescribed exclusion zones. Pine Needle will allow no development within the required exclusion zones which would be inconsistent with the requirements of §§ 193.2057 and 193.2059.

6. The Class 2 impounding system proposed for the Pine Needle LNG storage tanks would remain intact in the event of a large aircraft impact, and with a design volume of 150% of tank capacity would meet the volumetric requirements of § 193.2181(a).

7. The earthen dikes, in combination with hilly terrain and the undeveloped safety exclusion zones around the facility would adequately provide for hazard containment.

Because of the unusual circumstances described above at Pine Needle's proposed LNG facility, located 19,500 feet from the nearest point of the Landmark Airpark runway, suitable for landing smaller aircrafts and any larger aircrafts that could reasonably use this facility, relatively low risk to the public safety due to combination of Class 2 earthen dikes in a hilly terrain with 150% volumetric capacity, and undeveloped safety exclusion zones around facility owned and controlled by the Pine Needle, RSPA believes that granting a waiver from the requirements of 49 CFR 193.2155(c) would not be inconsistent with pipeline safety, nor would it lessen public safety in this case. The operator must comply with all other requirements of Part 193. Therefore, RSPA proposes to grant the waiver.

Interested parties are invited to comment on the proposed waiver by submitting in duplicate such data, views, or arguments as they may desire. Comments should identify the docket number and the RSPA rulemaking number. Comments should be addressed to the Docket Facility, U.S. Department of Transportation, plaza 401, 400 Seventh Street SW., Washington, DC 20590-0001.

All comments received before May 7, 1997 will be considered before final action is taken. Late filed comments will be considered so far as practicable. No public hearing is contemplated, but one may be held at a time and place set in a notice in the *Federal Register* if required by an interested person desiring to comment at a public hearing and raising a genuine issue. All comments and other docketed material will be available for inspection and copying in room 401 Plaza between the

hours of 10:00 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Authority:** 49 App. U.S.C. 2002(h) and 2015; and 49 CFR 1.53.

Issued in Washington, DC, on April 1, 1997.

**Richard B. Felder,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 97-8745 Filed 4-4-97; 8:45 am]

**BILLING CODE 4810-60-P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

March 28, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

#### Departmental Office/Community Development Financial Institution (CDFI) Fund

**Special Request:** In order to make this application available to the public by no later than April 4, 1997, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by April 1, 1997. To obtain a copy of this application, please contact the Community Development Financial Institution (CDFI) Fund at (202) 622-8662.

**OMB Number:** 1505-0154.

**Form Number:** CDFI-0001.

**Type of Review:** Revision.

**Title:** Community Development Financial Institutions Program, Notice of Funds Availability (NOFA), Regulations and Application.

**Description:** The CDFI Program documents will be used to invite applications and award funds for the Program. Information collected will be used to determine eligibility for an award, according to relevant law and regulation.

**Respondents:** Business or other for-profit, Not-for-profit institutions.

**Estimated Number of Respondents/Recordkeepers:** 300.

**Estimated Burden Hours Per**

**Respondent/Recordkeeper:** 100 hours.

**Frequency of Response:** Quarterly.  
**Estimated Total Reporting/**

**Recordkeeping Burden:** 30,000 hours.

**Clearance Officer:** Lois K. Holland (202) 622-1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**OMB Reviewer:** Alexander T. Hunt (202) 395-7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 97-8725 Filed 4-4-97; 8:45 am]

**BILLING CODE 4810-25-P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

March 31, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**Special Request:** In order to conduct the focus group study described below in late April 1997, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by April 9, 1997. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

#### Internal Revenue Service (IRS)

**OMB Number:** 1545-1432.

**Project Number:** PC:V 97-008-G.

**Type of Review:** Revision.

**Title:** Form 1040 With Remittance

**Focus Group Study.**

**Description:** The objective of the focus group study is to gather information on taxpayer reactions to the different mailing concepts as well as information on the burden associated with each concept.

**Respondents:** Individuals or households, Business or other for-profit.

**Estimated Number of Respondents:** 80.

**Estimated Burden Hours Per**

**Response:** Interviews .....3 hours

Recruiting .....5 minutes

**Frequency of Response:** Other.

**Estimated Total Reporting Burden:** 480 hours.

**Clearance Officer:** Garrick Shear (202) 622-3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

**OMB Reviewer:** Alexander T. Hunt (202) 395-7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 97-8726 Filed 4-4-97; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

March 31, 1997.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**Special Request:** In order to conduct the focus group study described below in late April 1997, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by April 11, 1997. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

#### Internal Revenue Service (IRS)

**OMB Number:** 1545-1432.

**Project Number:** M:SP:V 97-009-G.

**Type of Review:** Revision.

**Title:** Customer Service Performance Development System (PDS) Implementation Customer Satisfaction Survey.

**Description:** This project will result in the establishment of two data bases. One data base will contain the knowledges, skills, and attributes needed by the organization to accomplish its work (Business Competencies). The other data base will contain the certified knowledges, skills, and attributes of individual employees (Employee Competencies). These data bases will

support the work of a number of Human Resource functions and performance management. This survey will be used to determine whether the targeted development/training experiences and the PDS process have a positive effect on the level of taxpayer satisfaction.

*Respondents:* Individuals or households.

*Estimated Number of Respondents:* 16,640.

*Estimated Burden Hours Per Response:* 1 minute, 30 seconds.

*Frequency of Response:* Other.

*Estimated Total Reporting Burden:* 416 hours.

*Clearance Officer:* Garrick Shear (202) 622-3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt (202) 395-7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*  
[FR Doc. 97-8730 Filed 4-4-97; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Submission to OMB for Review; Comment Request

March 31, 1997.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

#### Internal Revenue Service (IRS)

*OMB Number:* 1545-0166.

*Form Number:* IRS Form 4255.

*Type of Review:* Revision.

*Title:* Recapture of Investment Credit.

*Description:* Internal Revenue Code (IRC) section 50(a) and Regs. section 1.47 require that taxpayers attach a statement to their return showing the computation of the recapture tax when investment credit property is disposed of before the end of the recapture period used in the original computation investment credit.

*Respondents:* Business and other for-profit, Individuals or households, Farms.

*Estimated Number of Respondents/Recordkeepers:* 20,000.

*Estimated Burden Hours Per*

*Respondent/Recordkeeper:*

Recordkeeping—6 hr., 28 min.

Learning about the law or the form—1 hr., 23 min.

Preparing, copying, assembling, and sending the form to the IRS—1 hr., 33 min.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/*

*Recordkeeping Burden:* 188,000 hours.

*OMB Number:* 1545-0177.

*Form Number:* IRS Form 4784.

*Type of Review:* Extension.

*Title:* Casualties and Thefts.

*Description:* Form 4784 is used by all taxpayers to compute their gain or loss from casualties or thefts, and to summarize such gains and losses. The data is used to verify that the correct gain or loss has been computed.

*Respondents:* Individuals or households.

*Estimated Number of Respondents/Recordkeepers:* 300,000.

*Estimated Burden Hours Per*

*Respondent/Respondent:*

Recordkeeping—1 hr., 12 min.

Learning about the law or the form—13 min.

Preparing the form—1 hr., 2 min.

Copying, assembling, and sending the form to the IRS—35 min.

*Frequency of Response:* Annually.

*Estimated Total Reporting/*

*Recordkeeping Burden:* 906,000 hours.

*OMB Number:* 1545-0233.

*Form Number:* IRS Form 7004.

*Type of Review:* Extension.

*Title:* Application for Automatic

Extension of Time to File Corporation Income Tax Return.

*Description:* Form 7004 is used by corporations and certain non-profit institutions to request an automatic 6-month extension of time to file their income tax returns. The information is needed to determine whether Form 7004 was timely filed so as not to impose a late filing penalty in error and also to insure that the proper amount of tax was computed and deposited.

*Respondents:* Business or other for-profit, Not-for-profit institutions.

*Estimated Number of Respondents/Recordkeepers:* 1,097,748.

*Estimated Burden Hours Per*

*Respondent/Recordkeeper:*

Recordkeeping—5 hr., 30 min.

Learning about the law or the form—58 min.

Preparing the form—2 hr., 1 min.

Copying, assembling, and sending the form to the IRS—6 min.

*Frequency of Response:* Annually.

*Estimated Total Reporting/*

*Recordkeeping Burden:* 9,616,272 hours.

*Clearance Officer:* Garrick Shear, (202) 622-3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt, (202) 395-7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 97-8731 Filed 4-4-97; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Submission to OMB for Review; Comment Request

March 31, 1997.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

#### Internal Revenue Service (IRS)

*OMB Number:* 1545-0274.

*Form Number:* IRS Form 2163.

*Type of Review:* Extension.

*Title:* Employment—Reference Inquiry.

*Description:* Form 2163 is used by IRS to verify past employment history and to question listed and developed references as to the character and integrity of current and potential IRS employees. The information received is incorporated into a report on which a security clearance determination is based.

*Respondents:* Business and other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

*Estimated Number of Respondents:* 20,000.

*Estimated Burden Hours Per*

*Respondent:* 12 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/*

*Recordkeeping Burden:* 4,000 hours.

*OMB Number:* 1545-0887.

*Form Number:* IRS Form 8281.

**Type of Review:** Extension.

**Title:** Information Return for Publicly Offered Original Issue Discount Instruments.

**Description:** Form 8281 is filed by the issuer of a publicly offered debt instrument having Original Issue Discount (OID). The information is used to update Publication 1212, List of Original Issue Discount Instruments.

**Respondents:** Business or other for-profit.

**Estimated Number of Respondents/Recordkeepers:** 500.

**Estimated Burden Hours Per Respondent/Respondent:**

Recordkeeping—5 hr., 16 min.  
Learning about the law or the form—24 min.

Preparing, copying, assembling, and sending the form to the IRS—35 min.

**Frequency of Response:** On occasion.

**Estimated Total Reporting/Recordkeeping Burden:** 3,080 hours.

**OMB Number:** 1545-0892.

**Form Number:** IRS Form 8300.

**Type of Review:** Revision.

**Title:** Report of Cash Payments Over \$10,000 Received in a Trade or Business.

**Description:** Anyone in a trade or business who, in the course of such trade or business, receives more than \$10,000 in cash or foreign currency in one or more related transactions must report it to the IRS and provide a statement to the payor. Any transaction which must be reported under Title 31 on Form 4789 is exempted from reporting the same transaction on Form 8300.

**Respondents:** Business or other for-profit, Farms, Federal Government.

**Estimated Number of Respondents/Recordkeepers:** 46,800.

**Estimated Burden Hours Per Respondent/Recordkeeper:** 21 minutes.

**Frequency of Response:** On occasion.

**Estimated Total Reporting/Recordkeeping Burden:** 63,539 hours.

**OMB Number:** 1545-1131.

**Regulation Project Number:** INTL-485-89 Final.

**Type of Review:** Extension.

**Title:** Taxation of Gain or Loss from Certain Nonfunctional Currency Transactions (Section 988 Transactions).

**Description:** Section 988(c)(1)(D) and (E) require taxpayers to make certain elections which determine whether section 988 applies. In addition, sections 988(a)(1)(B) and 988(d) requires taxpayers to identify transactions which generate capital gain or loss or which are hedges of other transactions.

**Respondents:** Business or other for-profit, Individuals or households.

**Estimated Number of Respondents/Recordkeepers:** 5,000.

**Estimated Burden Hours Per Respondent/Recordkeeper:** 40 minutes.

**Frequency of Response:** Annually.

**Estimated Total Reporting/Recordkeeping Burden:** 3,333 hours.

**Clearance Officer:** Garrick Shear (202) 622-3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

**OMB Reviewer:** Alexander T. Hunt (202) 395-7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 97-8732 Filed 4-4-97; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Customs Service

#### Country of Origin Marking Requirements for Wearing Apparel

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Notice of withdrawal of proposed change of practice.

**SUMMARY:** This notice advises the public that Customs is withdrawing its proposed change of practice regarding the country of origin marking of wearing apparel. As provided in T.D. 54640(6), wearing apparel, such as shirts, blouses, coats, sweaters, etc., must be marked with the name of the country of origin by means of a fabric label or label made from natural or synthetic film, sewn or otherwise permanently affixed on the inside center of the neck midway between the shoulder seams or in that immediate area, or otherwise permanently marked in that area in some other manner. Button tags, string tags and other hang-tags, paper labels, and other similar methods of marking will not be acceptable.

**EFFECTIVE DATE:** Withdrawal effective April 7, 1997.

**FOR FURTHER INFORMATION CONTACT:** Monika Rice, Special Classification & Marking Branch, Office of Regulations & Rulings (202-482-6980).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the

ultimate purchaser in the U.S. the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

A proposed change of practice was published in the *Federal Register* (60 FR 57621) on November 16, 1995, advising the public that Customs intended to review the country of origin marking of certain wearing apparel. By T.D. 54640(6), 93 Treas. Dec. 301 (1995), Customs requires wearing apparel, such as shirts, blouses, coats, sweaters, etc., to be legibly and conspicuously marked with the name of the country of origin by means of a fabric label or label made from natural or synthetic film, sewn or otherwise permanently affixed on the inside center of the neck midway between the shoulder seams or in that immediate area, or otherwise permanently marked in that area in some other manner. Button tags, string tags and other hang-tags, paper labels and other similar methods of marking are not considered acceptable.

The proposed change of practice, if adopted, would have modified that portion of T.D. 54640(6) relating to the requirement of a fabric label or label made from natural or synthetic film sewn to the article, and the disallowance of button tags, string tags and other hang-tags, paper labels and other similar methods of marking. Rather, it was proposed to evaluate the country of origin marking of wearing apparel, such as shirts, blouses, coats, sweaters, etc., on a case-by-case basis to determine if it is conspicuous, legible, indelible, and permanent to a degree sufficient enough to remain on the shirt until it reaches the ultimate purchaser.

The notice of the proposed change of practice arose from a ruling request dated June 1, 1994, concerning the country of origin marking on a man's football shirt which featured a woven textile label, identified as a "jock tag," 2 inches long by 4½ inches wide, stitched on the exterior right-hand side of the shirt, approximately 2 inches above the bottom hem and 1 inch from the side seam. Embroidered on the left side of this label in red and blue threads on a white background was a stitched logo and trade name. The size of the garment, care instructions, the country of origin, and RN number were stitched on the right side of the label in bright blue lettering on a light background. The inquirer requested that Customs allow the use of a hang-tag in the center of the neck midway between the shoulder seams to indicate the country of origin of the shirt, rather than require

a sewn-in label since the woven textile label on the outside of the shirt satisfies the conspicuous, legible, indelible, and permanent requirements of 19 U.S.C. 1304.

Customs has provided an exception to the sewn-in label requirement of T.D. 54640(6) only in the context of reversible garments. By T.D. 55015(4), 95 Treas. Dec. 3 (1960), the country of origin marking of reversible garments was permitted to be looped around a hanger. On the basis of this extension, Customs has allowed ladies' reversible jackets to be marked with a cardboard hang-tag affixed to the neck area by means of a plastic anchor tag. Customs noted that since the jacket was reversible, a fabric label sewn into the jacket could damage the jacket when the label was removed. See Headquarters Ruling Letter (HRL) 731513 dated November 15, 1988. Similarly, in HRL 733890 dated December 31, 1990, Customs allowed women's reversible silk tank tops to be marked with a cloth label, showing the country of origin and other pertinent information sewn into a lower side seam, and a hang-tag which also provided the required information attached at the neck. See also HRL 734889 dated June 22, 1993.

Upon request, an extension of time to March 15, 1996, within which to submit comments on the proposal was granted, and a notice to that effect was published in the Federal Register (61 FR 3763) on February 1, 1996.

#### Analysis of Comments

Seventeen comments were received in response to the notice; seven favored the change of practice, ten opposed. Supporters of the change stated their belief that a more flexible approach, other than only allowing a sewn-in label, will be consistent with the conspicuous and permanent requirements of 19 U.S.C. 1304. Several commenters stated that, as with sewn-in labels, other marking methods would have to be permanently affixed to the garment sufficient enough to remain on the article until it reaches the ultimate consumer. Some supporters stated that hang-tags display the country of origin more conspicuously than sewn-in labels, and compliance costs would decrease if sewn-in labels were not required.

Several commenters alleged that the use of sewn-in labels has not discouraged unlawful behavior, and a company determined to misrepresent the true country of origin will simply sew in false labels. Supporters also stated that hang-tags withstand normal commercial and retail handling. These commenters also alleged that sewn-in

labels irritate the consumer's neck, and that the garment may be damaged when the label is removed from the garment. The supporters also noted that the Federal Trade Commission country of origin requirement (16 CFR 303.15) does not require a sewn-in label. One commenter also stated that under NAFTA and the Uruguay Round Agreements Act, the U.S. made commitments to achieve global harmonization in labeling regulations, and the use of other means other than a sewn-in label would facilitate cross-border trade and just-in-time deliveries. However, while supporters favored a more flexible approach, several commenters suggested that rather than a case-by-case evaluation, Customs should establish clear standards as to acceptable alternatives to sewn-in labels.

All of the comments opposing the proposal alleged that methods of marking, other than sewn-in labels, will make it easier to transship garments and misrepresent the true country of origin by changing the label without damaging the garment. The easiest method of discovering transshipments is claimed to either be an incorrect country of origin label, a missing country of origin label, or a damaged country of origin label. One commenter stated that the reason for section 334 of the Uruguay Round Agreements Act (codified at 19 U.S.C. 2592) is to improve the ability to track and investigate illegal transshipments, especially in circumstances where assembly confers origin and the country of origin label is sewn into the good in the country of assembly.

Some of the opposing commenters also stated that the use of hang-tags, paper labels, or other markings not permanently attached will not satisfy the requirements of 19 U.S.C. 1304 that the country of origin marking shall be in a conspicuous place as legibly, indelibly, and permanently as the nature of the article will permit. Another commenter stated that consumers know and have expected for 40 years that the care label shows the country of origin. Some commenters stated that hang-tags are often lost during packing and shipping, when garments are tried on, when hangers are switched or not used, or are discarded at the point of sale by sales people who see little or no need for them and may even see them as a deterrent to a sale. Finally, one commenter stated that there would be less concern over the proposed modification of T.D. 54640(6) if permanent country of origin markings were required for articles made in the U.S.

#### Withdrawal of Proposed Change of Practice

Customs has determined, after reviewing all of the comments and upon considering all factors, that the requirement imposed by T.D. 54640(6) shall remain in effect. As required by 19 CFR 134.41, the degree of permanence should be at least sufficient to insure that in any reasonably foreseeable circumstance the marking shall remain on the article until it reaches the ultimate purchaser unless it is deliberately removed. All of the commenters in opposition to hang-tags have warned against the deliberate removal of hang-tags. While supporters claim that hang-tags remain on an article until it reaches the ultimate purchaser and that any misrepresentation of the true country of origin usually occurs at the time of assembly, it is Customs' opinion that because of the long-standing expectations by importers and ultimate purchasers that the country of origin marking will be found at the center of the neckline on a sewn-in label, the requirements of T.D. 54064(6) should remain in effect without modification. Accordingly, the subject proposed change of practice is withdrawn.

Therefore, wearing apparel, such as shirts, blouses, coats, sweaters, etc., must be marked with the name of the country of origin by means of a fabric label or label made from natural or synthetic film, sewn or otherwise permanently affixed on the inside center of the neck midway between the shoulder seams or in that immediate area, or otherwise permanently marked in that area in some other manner. Button tags, string tags and other hang-tags, paper labels, and other similar methods of marking will not be acceptable. While Customs has allowed and will continue to allow, due to exigent circumstances, various exceptions from the required location of the sewn-in label, no exception from the sewn-in (permanently affixed) labeling requirement imposed by T.D. 54640(6) will be granted, other than the one allowed under T.D. 55015(4), and proposals for further exceptions from T.D. 54640(6) will not be evaluated on a case-by-case basis.

George J. Weise,  
Commissioner of Customs.

Approved: March 5, 1997.

Dennis M. O'Connell,  
Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 97-8774 Filed 4-4-97; 8:45 am]

BILLING CODE 4820-02-P

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****[CO-8-91]****Proposed Collection; Comment Request For Regulation Project****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulations, CO-8-91 (TD 8643), Distributions of Stock and Stock Rights (§ 1.305(b)(5)).

**DATES:** Written comments should be received on or before June 6, 1997 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or

copies of the information collection should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Distributions of Stock and Stock Rights.

*OMB Number:* 1545-1438.

*Regulation Project Number:* CO-8-91.

*Abstract:* The requested information is required to notify the Service that a holder of preferred stock callable at a premium by the issuer has made a determination regarding the likelihood of exercise of the right to call that is different from the issuer's determination.

*Affected Public:* Individuals or households, and business or other for-profit organizations.

*Estimated Number of Respondents:* 2,000.

*Estimated Time Per Respondent:* 10 minutes.

*Estimated Total Annual Burden Hours:* 333.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long

as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request For Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 1, 1997.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 97-8847 Filed 4-4-97; 8:45 am]

**BILLING CODE 4830-01-P**



# Federal Register

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Monday  
April 7, 1997

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## Part II

### Department of Commerce

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National Oceanic and Atmospheric  
Administration

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50 CFR Part 678

Atlantic Shark Fisheries: Quotas, Bag  
Limits, Prohibitions, and Requirements  
and Large Coastal Shark Species; Final  
Rules

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 678

[Docket No. 961211348-7065-03; I.D. 092396B]

RIN 0648-AH77

## Atlantic Shark Fisheries; Quotas, Bag Limits, Prohibitions, and Requirements

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

ACTION: Final rule.

**SUMMARY:** NMFS issues this final rule to implement certain measures authorized by the Fishery Management Plan for Sharks of the Atlantic Ocean (FMP). These measures: Reduce commercial quotas for large coastal sharks, reduce recreational bag limits; establish a commercial quota for small coastal sharks; prohibit directed commercial fishing for, landing of, or sale of five species of sharks; establish a recreational catch-and-release only fishery for white sharks; prohibit filleting of sharks at sea; and refers to the requirement for species-specific identification by all owners or operators, dealers, and tournament operators of all sharks landed under the framework provisions of the FMP. This rule is intended to reduce effective fishing mortality, stabilize the large coastal shark population, facilitate enforcement, and improve management of Atlantic shark resources.

**EFFECTIVE DATE:** April 2, 1997.

**ADDRESSES:** Copies of the Final Environmental Assessment and Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) may be obtained from the Highly Migratory Species Management Division (SF1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, (301) 713-2347, fax (301) 713-1917.

**FOR FURTHER INFORMATION CONTACT:** C. Michael Bailey, John D. Kelly or Margo B. Schulze, 301-713-2347, FAX 301-713-1917.

**SUPPLEMENTARY INFORMATION:** The Atlantic shark fishery is managed under the FMP prepared by NMFS under authority of Section 304(g) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and implemented through regulations found at 50 CFR part 678. The current status of the commercial and recreational

shark fisheries, the status of the shark stocks, the proposed management measures, and the anticipated effects of the proposed management measures were discussed in the preamble to the proposed rule (61 FR 67295, December 20, 1996) and are not repeated here.

The framework provisions of the FMP allow the Assistant Administrator (AA) to make adjustments in specified management measures in order to achieve the FMP's objectives of preventing overfishing, and increasing the benefits of shark resources to the nation while reducing waste. This action is being taken by the AA under authority of the framework provisions of the FMP and consistent with the provisions of 305(c) of the Magnuson-Stevens Act.

**Comments and Responses**

Comments were requested for the measures in the proposed rule. The comment period on the proposed rule was originally scheduled to end on January 21, 1997. Four public hearings were held on the proposed rule. Due to scheduling conflicts for the final hearing, the public comment period was extended until January 24, 1997 (62 FR 1872, January 14, 1997). Based on public request, the comment period was again extended until February 7, 1997 (62 FR 4239, January 29, 1997), to allow for additional public input.

NMFS received more than 600 written comments from members of Congress, regional fishery management councils, states, the U.S. Coast Guard, conservation organizations, a scientific organization, scientists from four universities, scientists from a marine laboratory, recreational fishing associations, marine oriented publications, recreational fishermen involved in the party/charter boat business, a business that sells shark parts, commercial fishermen, commercial fishermen's associations, a fisheries development foundation, individuals, and a shark fishery observer. NMFS also received verbal comments on this rule at public hearings and other public meetings. Agency responses to public comments follow.

**1. Large Coastal Shark Commercial Quota**

NMFS received several hundred comments regarding the large coastal shark commercial quota. In addition to numerous individuals, seventy-four comments from members of Congress, regional fishery management councils, states, conservation organizations, a scientific organization, and recreational fishing associations support a 50

percent or higher commercial quota reduction for large coastal sharks as a minimum measure to rebuild the large coastal shark population. Other commentators, including one state and several commercial fishermen's associations, questioned the effectiveness of the quota reduction and/or strenuously opposed the quota reduction and stated that the scientific data, upon which the 1996 Stock Evaluation Workshop (SEW) final report is based, are incomplete, flawed, and/or biased.

*Comment:* Stock assessment results indicate that large coastal sharks remain overfished and that rebuilding has not begun. Demographic analyses show that effective fishing mortality needs to be halved in order for large coastal sharks to recover. NMFS needs to take action immediately and reduce the commercial quota for large coastal sharks by 50 percent at a minimum.

*Response:* NMFS agrees that the 1996 SEW final report indicates that large coastal sharks remain overfished and that a risk-averse approach is needed. A 50 percent reduction in commercial quota for large coastals is an approximation to halving current effective fishing mortality. Production model analyses indicate that a 50 percent reduction in effective fishing mortality is likely to maintain large coastal sharks near 1996 levels. This will ensure that allowable catches of large coastals are consistent with the best available scientific information and reduce the probability of further declines until a new rebuilding schedule can be developed. The final action is intended as an interim measure because NMFS intends to update the scientific information to the extent practicable and to develop a long-term rebuilding schedule for large coastal sharks. NMFS intends to implement this updated rebuilding schedule through an FMP amendment in consultation with an Advisory Panel (AP) as required by the amended Magnuson-Stevens Act. At that time, NMFS will analyze alternative management measures, such as nursery/pupping ground closures and minimum sizes, and may adjust commercial quota levels if alternative management measures can supplement quotas in controlling effective fishing mortality. Towards this end, NMFS has accelerated an ongoing effort to determine the potential effects of these alternative management measures on fishing mortality.

*Comment:* NMFS should close the large coastal commercial fishery until there is clear evidence that rebuilding has been initiated.

*Response:* NMFS disagrees that a fishery closure is necessary to initiate rebuilding of large coastal sharks at this time. The 1996 SEW final report indicates that the rapid rate of decline that characterized the stock in the mid 1980's has slowed significantly and that there is no statistically significant evidence of further decline since the FMP was implemented, indicating that the FMP management measures implemented have been working. While it is true that clear evidence of rebuilding is not available, NMFS believes that the final action will reduce the probability of further declines until alternative management measures are developed. The 1996 SEW production model analyses, which are probabilistic in nature, also indicate that a 50 percent reduction in quota may lead to slow rebuilding. Additionally, a fishery closure would impose substantial hardship on the commercial fishing sector and would likely increase fishing pressure on other fishery resources, particularly the fully fished small coastal and pelagic sharks.

*Comment:* NMFS should not reduce the large coastal shark quota at all. Recent increases in some catch per unit effort indices in addition to significant uncertainty in accuracy of data, model simulation results, and interpretation of assessment results do not warrant drastic reductions. NMFS should address alternative management measures, which might mitigate or eliminate the need for quota reductions, before making significant changes in commercial quotas.

*Response:* NMFS is aware that different interpretations exist regarding the accuracy and interpretation of the 1996 SEW stock assessment results. These differences are an important part of the scientific process which involves rigorous discussion and analysis of all interpretations of assessment results. However, NMFS does not believe that disagreement or uncertainty preclude valid management actions. It is true that some catch rate indices have shown recent increases and that assessment results can be interpreted to support the status quo for quota levels. However, it should be noted that none of those increases in catch rate indices were statistically significant because of high variability in the data. Until a long-term rebuilding schedule which includes alternative management measures can be analyzed and developed, NMFS believes that a risk-averse approach is necessary to reduce the probability of further declines.

*Comment:* The State of North Carolina expressed concern with the proposed 50 percent reduction in the quota by

stating: "Our concern with quota reduction as the sole method of achieving the reduction in fishing mortality is that the population simulation models are based on data that are inadequate to incorporate the benefits of the management measures implemented in the FMP in 1993. These data are not available because increases in production since the 1993 FMP have not entered the fishery."

*Response:* NMFS believes that there is measurable evidence of the effects of management since implementation of the FMP. The 1996 SEW final report states that the rapid rate of decline that characterized the large coastal shark stocks in the mid 1980's has slowed significantly. However, no clear evidence is available that rebuilding has begun. The report also states that additional reductions in fishing mortality would improve the probability of stock increases. The commercial quota reduction for large coastal species is intended to be an interim measure while other management options are examined.

*Comment:* The 1996 SEW analyses did not account for gear changes made by the industry to use lighter leaders and smaller hooks that result in increased bite-offs, lowered catches and catch rate indices, and smaller size of fish landed.

*Response:* NMFS is aware that changes in fishing patterns, including gear modifications, can affect stock assessment results but currently is unable to account for such gear modifications quantitatively due to lack of detailed data. Nevertheless, this change in fishing practice was taken into account by comparing trends in affected and unaffected catch rate indices. Gear modifications including changes like lighter leaders and smaller hooks occurred only in the longline commercial fisheries. However, the 1996 SEW stock assessment for large coastal sharks included many different catch rate indices from several different commercial and recreational fisheries (see the 1996 SEW final report detailed discussion), including fishery independent longline indices which also show catch per unit effort declines. Therefore, NMFS believes that declines in catch rates, as evidenced from all catch rates indices analyzed in the stock assessment, are real. NMFS will continue to include consideration of these issues in analyzing and developing a long-term rebuilding plan.

*Comment:* Significant amounts of data on shark landings, particularly data on fin landings, have not been incorporated in the stock assessments, which may substantially bias assessment results.

*Response:* It is NMFS' practice to incorporate landings information into stock assessments, to the extent appropriate, once it has been verified for authenticity, and is in a usable format. Not all data that exist in raw form can or should be included in stock assessments. However, NMFS is aware that some data may not have been included in the stock assessments because they were unavailable (e.g., copies not provided to NMFS, not in electronic form, etc.). To this end, NMFS intends to work with industry to recover missing data and use them, if appropriate and practicable, in order to increase stock assessment accuracy and precision.

*Comment:* Quota reductions may increase, not decrease, effective fishing mortality as well as increase regulatory discards and mortality of sharks that cannot be landed during a closed season. Thus National Standard 5, which requires that "conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources," and National Standard 9, which requires that "conservation and management measures shall, to the extent practicable, minimize bycatch and to the extent such bycatch cannot be avoided, minimize the mortality of such bycatch," will be violated as the shark fishery becomes increasingly less efficient and regulatory discards increase.

*Response:* NMFS believes that the large coastal shark quota reduction will reduce effective fishing mortality, consistent with the best available scientific information. NMFS has concluded that any decrease in efficiency due to a reduced quota is outweighed by the benefits of preventing further declines while alternative management measures are developed. In terms of increased regulatory discards and the associated mortality of sharks during a closed season, NMFS does not believe that maintaining commercial quota levels above sustainable levels in order to reduce discards is consistent with the Magnuson-Stevens Act. Alternative fishing methods are available to reduce the unwanted catch of sharks (e.g., gear modifications like lighter leaders, avoiding inshore pupping and nursery grounds where juvenile sharks congregate, checking and resetting gear frequently if shark catches are high, etc.) that could reduce regulatory discards. At this time, the AA does not have the authority to create a bycatch set-aside from the commercial quota for the Atlantic shark fishery. However, as this final rule is intended to be effective until an FMP amendment can be

developed, NMFS may examine the need to restructure the shark commercial fishery to create a bycatch and discard set-aside to account for this source of mortality. Finally, NMFS has proposed regulations to address overcapitalization of the shark commercial fishery through a limited access proposal that is intended to help reduce derby fishing conditions and thereby, reduce inefficiency in the shark fishery (61 FR 68202). Some preliminary comments on this proposed rule, which would include creation of an incidental permit category, also call for an "incidental" quota or set-aside.

*Comment:* The State of North Carolina was concerned that there may be a conflict with National Standards 4 and 6. The state also requested clarification of National Standard 10, which requires that "Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea" as it relates to the shortened quota coinciding with the state's winter season.

*Response:* Regarding National Standard 4, the FMP established an allocation scheme between recreational and commercial catches, and semiannual commercial quotas allow for two fishing seasons with equal harvest allocations. The large coastal shark quota reduction reduces the quota equally for both fishing seasons and the recreational bag limits are reduced to maintain the FMP's allocation scheme; therefore, the final management measures are fair and equitable to all fishermen.

NMFS' action is consistent with National Standard 6. NMFS has examined the biological and socio-economic impacts of this final rule in the accompanying Final Environmental Assessment and Regulatory Impact Review/Final Regulatory Flexibility Analysis. National Standard 6 requires flexibility and the ability to address circumstances as they arise; NMFS is responding to the most recent stock assessment. The agency did account for variations and contingencies by reducing the large coastal commercial quota, thereby preventing further decline while a rebuilding program is developed. Any changed circumstances in the future will be addressed by NMFS, in consultation with the AP.

Regarding National Standard 10, NMFS' analyses indicate that the winter shark fishery for North Carolina ranges from October through December and that the fishery has not previously been open during these months for that state. NMFS is aware that derby fishing conditions can develop when quota reductions are proposed and, within the constraints of regulatory processes,

NMFS has attempted to prevent these conditions from developing. For example, NMFS implemented a 4,000 lb trip limit for large coastal sharks in an attempt to slow the pace of the fishery; this trip limit is currently in effect. However, individuals must decide for themselves whether or not it is safe to fish, and NMFS encourages fishermen to consider safety issues first and foremost prior to making the decision to participate in the fishery.

*Comment:* One commercial fishermen's association commented that NMFS should follow through on the 1994 SEW's recommendation to protect pupping areas and juvenile sharks, rather than halve the quota.

*Response:* NMFS does not have regulatory authority over inshore waters where most shark nursery/pupping areas are located; however, NMFS has been actively working with the coastal states to reach agreement on cooperative efforts to protect these critical nursery/pupping areas. NMFS has greatly accelerated ongoing research to develop a nursery ground index and may use the information from these research efforts to develop, as part of the long-term rebuilding plan, management measures with states to close specific areas to fishing activity when gravid females and/or shark pups are present in those areas.

*Comment:* One commercial fishermen's association commented that foreign catches of large coastal and pelagic sharks must be quantified and considered in order for stock assessments to include complete and accurate data and be in compliance with National Standard 3, which states that "to the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination."

*Response:* NMFS has and will continue to work closely with fisheries scientists and managers from Atlantic coastal states, Canada, and Mexico to assess the state of shared stocks. NMFS believes that international cooperation and management of shared shark stocks is very important to shark conservation and prevention of overfishing. However, NMFS believes that domestic action is needed immediately and this interim quota reduction is a risk-averse action, based on the best scientific data available, to protect all sharks found in U.S. waters, not only shared stocks.

*Comment:* The lack of a rational rebuilding schedule should be addressed before severe, short term measures are implemented.

*Response:* NMFS agrees that a rebuilding schedule needs to be developed to address the overfished

status of large coastal sharks. However, NMFS disagrees that action should await a rebuilding schedule to be implemented in an amendment to the shark FMP. The rebuilding plan outlined in the original FMP was determined to be inadequate to achieve the goal of rebuilding the large coastal shark resource to a level consistent with MSY (60 FR 21468, May 2, 1995). The 1996 SEW final report indicates that a 50 percent reduction in effective fishing mortality should stabilize the large coastal shark population near current levels. This action is intended to reduce the probability of further declines as the rebuilding schedule is developed.

*Comment:* NMFS has not taken into account the impacts of a large coastal shark quota reduction on shoreside entities, which are primarily small businesses. Reducing the large coastal shark quota will ruin the domestic shark meat market because the extended fishery closures and market gluts disallow advanced planning required for shark meat buyers to distribute and advertise the product.

*Response:* NMFS believes that most shoreside entities in the shark fishery process and sell wet and/or dry shark fins. Information available to NMFS indicates that few shoreside entities deal exclusively in domestic shark fins. Such fin dealers import the majority of fins from other countries and then re-export them unprocessed or semi-processed to the Asian fin market. Accordingly, U.S. shoreside fin dealers supplement exports with domestic shark fins but do not rely on the domestic market. Because domestic shark fins make up a very small percentage of the U.S. fin dealer product, a large coastal shark domestic quota reduction would have negligible impact on such shoreside entities gross revenues.

On the other hand, there is a limited domestic market for shark meat that could be negatively impacted by a reduced supply of product. However, the commercial large coastal shark fishery has been open for only a few months each year such that shark meat buyers necessarily have diversified. Additionally, shark meat is not a high value product and is readily substituted by other products. Reducing the season, even if by half, should not have a substantial impact because of the already short fishing season, low value and volume of shark meat processed, and the high degree of diversity in shoreside operations. In consultation with an AP, NMFS may develop a market analysis for the shark fin industry which may include an estimate

of the impacts of regulations on processors and society.

*Comment:* Numerous commentors were concerned that the final rule is inconsistent with National Standard 2, which states: "Conservation and management measures shall be based upon the best available scientific information available." Several fishermen's associations questioned the accuracy and reliability of the 1996 SEW Report, and stated that the 50% quota reduction was not a mandate, or even a recommendation of, the SEW. In addition, some commentors contended that the SEW Report did not recommend a 50% reduction in effective fishing effort through a 50% quota reduction.

*Response:* The 1996 Report of the SEW is based on a meeting of NMFS and non-NMFS scientists. The non-NMFS scientists included representatives from two fishery management councils, two states, a fisheries development foundation, industry, and academia. All 1996 SEW participants were given the opportunity to comment on drafts of the report. However, the final report was written and edited by NMFS scientists and is not, nor was ever intended to be, a consensus document. The 1996 SEW final report heavily weighs all stock assessment participants' views in its conclusions and recommendations. While different interpretations exist regarding the accuracy and implications of the stock assessment results, the 1996 SEW final report represents the best scientific data available to NMFS. The commercial quota reduction is a risk-averse action to ensure that allowable catch levels of Atlantic sharks are consistent with the best available scientific information until an updated rebuilding schedule can be developed.

*Comment:* One fishermen's association commented that the Shark Operations Team (OT) did not consent to a 50% quota reduction, and claims that NMFS apparently selectively consulted outside of the OT meeting with certain OT members who support dramatic reductions, which may violate the Federal Advisory Committee Act.

*Response:* In the proposed rule (61 FR 67295, December 20, 1996), the statement "Members of the OT were consulted and some members have been instrumental in the formulation of this proposed rule; \* \* \*" meant that: 1) some OT members agreed with the determination of the SEW, and 2) NMFS scientists who are also OT members have been and will continue to be routinely consulted on an ongoing basis. NMFS did not meet with non-NMFS OT members except at the public OT meeting in August 1996. NMFS agrees

that the OT did not reach consensus regarding a commercial quota reduction. The final action is being taken independently by the AA under authority of the framework provisions of the FMP because no consensus was reached by the OT and NMFS has concluded that action was necessary. NMFS did, however, take into account the various opinions raised at the OT meeting.

## 2. Pelagic Shark Commercial Quota

NMFS received 65 comments regarding the pelagic shark commercial quota from members of Congress, regional fishery management councils, states, conservation organizations, scientific organizations, and recreational fishing associations. *Comment:* NMFS should maintain the current commercial pelagic shark quota. Pelagic sharks are determined to be fully-fished and the commercial quota, which was established to ensure that the total allowable catch (TAC) does not exceed a level that would preclude maximum sustainable yield (MSY), should not be adjusted without new scientific analyses and information.

*Response:* NMFS agrees.

*Comment:* NMFS should reduce the pelagic shark commercial quota by 50 percent because the quota has never been reached.

*Response:* No change in the commercial quota for pelagic sharks was proposed in this action. No new analyses have been presented upon which to modify MSY or the TAC of pelagic sharks. Accordingly, the estimates of MSY and TAC presented in the FMP still constitute the best available scientific information. Until new analyses are presented, adjustments to the pelagic shark quota are not warranted. NMFS intends to amend the FMP to address the overfished status of large coastal sharks. At that time, the pelagic shark quota may be adjusted if new analyses warrant modifications.

## 3. Small Coastal Shark Commercial Quota

NMFS received numerous comments regarding the small coastal shark commercial quota from members of Congress, regional fishery management councils, states, conservation organizations, scientific organizations, and recreational fishing associations. Several commentors support establishment of the proposed commercial quota for small coastal sharks, while others argued that no quota was justified or that smaller commercial quotas for small coastal sharks were more appropriate.

*Comment:* NMFS should implement a commercial quota for small coastal sharks to prevent large increases in fishing pressure that may result from closure of other fishery resources.

*Response:* NMFS agrees.

*Comment:* NMFS should not implement a commercial quota for small coastal sharks because they are not considered overfished and because the proposed quota is much greater than historical landings.

*Response:* The FMP concluded that small coastal sharks were fully fished, meaning that fishing mortality levels should not increase or overfishing may occur. NMFS believes that potential displacement of vessels and crews from the large coastal shark fishery into other fisheries, including pelagic and small coastal shark fisheries, may result in increased fishing mortality on small coastal sharks. NMFS believes that implementing the commercial quota outlined in the FMP is a preventative measure to ensure that any increases in fishing mortality do not exceed allowable levels.

## 4. Recreational Bag Limits

NMFS has received numerous comments concerning recreational bag limits from members of Congress, regional fishery management councils, states, individual scientists, conservation organizations, recreational fishing associations, one fisheries development foundation, and party/charter boat owners.

*Comment:* Recreational bag limits should be reduced as they are currently excessively high and promote waste.

*Response:* NMFS agrees, with one exception noted below.

*Comment:* Recreational bag limits should not be reduced.

*Response:* The 1996 SEW final report determined that large coastal sharks continue to be overfished and that a 50 percent reduction in effective fishing mortality should stabilize the stock at current levels. Based on this report, which constitutes the best available scientific information, NMFS believes that the bag limits, as well as the commercial quota, should be reduced to further protect and conserve the stocks. Recreational bag limits are reduced within the current allocation scheme (established in the FMP) between commercial and recreational fishing interests. Without a reduction in the bag limit equal to the percentage reduction in the commercial quota, the positive benefits of a reduction in effective fishing mortality in the commercial sector may be negated by increased fishing mortality in the recreational sector.

*Comment:* Given the status of the small coastal stock and recent landings, adding this group into an aggregate bag limit is overly restrictive and unfair to party/charterboats.

*Response:* The rationale for adding the small coastal sharks into an aggregate bag limit is the significant, widespread misidentification of sharks, especially juvenile large coastal sharks identified as small coastal sharks. NMFS believes that adding small coastal sharks to a species aggregate with large coastals will reduce fishing mortality on large coastals and contribute to stock recovery. However, after further review of landings data and consultation with NMFS and non-NMFS scientists, NMFS recognizes that an additional allowance for Atlantic sharpnose sharks, *Rhizoprionodon terraenovae*, would alleviate some of the impacts on recreational operations. A separate bag limit for Atlantic sharpnose is likely to increase fishing mortality on this species as fishing patterns shift away from other species. However, the life history of this species and stable population trends since the 1970's despite considerable bycatch mortality indicate that Atlantic sharpnose sharks will not be negatively impacted by a separate bag limit. Accordingly, NMFS is changing the proposed reduction in bag limits (two sharks per vessel per trip) to the following: Two sharks per vessel per trip, for any combination of species except Atlantic sharpnose sharks, which will have a bag limit of two fish per person per trip.

*Comment:* Several commentators stated grouping all shark species into one recreational bag limit is not warranted given the status of pelagic and small coastal sharks, the ease of differentiating pelagic sharks from other species, and the differences in the fisheries.

*Response:* NMFS agrees that species-specific management would be a preferred means of managing the fishery given sufficient stock assessment data and accuracy of species identification in landings. However, as stated above, widespread misidentification of sharks continues to be a problem that requires attention because of the overfished large coastals. Additionally, NMFS believes that potential displacement of vessels and crews from the large coastal shark fishery into other fisheries, including pelagic and small coastal shark fisheries, warrants adopting a single recreational bag limit for all shark species combined with the exception for Atlantic sharpnose sharks as stated above. NMFS agrees that, for certain species that are readily identifiable, species-specific management measures may be possible in the future. NMFS has

accelerated efforts to develop a useful shark identification manual and training for fishermen.

##### 5. Prohibited Species

Numerous members of Congress, regional fishery management councils, states, conservation organizations, scientific associations, and recreational fishing associations support the species prohibitions whereas other recreational fishing associations oppose the prohibitions. Numerous scientists expressed their concern that a prohibition would adversely affect ongoing research into these five species.

*Comment:* Some species of sharks are especially vulnerable to overexploitation and extra protection should be afforded those species in the form of directed fishery closures or prevention of fishery development.

*Response:* NMFS agrees and has determined that five species of sharks that are highly susceptible to overfishing should be excluded from directed fishing to prevent overfishing and to prevent development of commercial and/or recreational fisheries. The whale shark (*Rhincodon typus*), basking shark (*Cetorhinus maximus*), sand tiger shark (*Odontaspis taurus*), bigeye sand tiger shark (*Odontaspis noronhai*), and white shark (*Carcharodon carcharias*), are removed from the large coastal species group and are reclassified as prohibited species. These species are either encountered very rarely in commercial shark fisheries or are not landed because they are not marketable. Therefore, this action is a preventative measure to ensure that overfishing of these species does not occur. In order to continue scientific research on these species, previously issued provisions that allow for scientific research activity and exempted fishing apply (61 FR 26435, May 28, 1996).

##### 6. White Shark Recreational Catch-and-Release Only Fishery

Numerous members of Congress, regional fishery management councils, states, conservation organizations, scientific associations, and recreational fishing associations support the proposed prohibitions on directed fishing for, landing of, or sale of white sharks. Several recreational fishing associations and commercial fishermen's associations oppose the prohibition. One conservation organization commented that the catch-and-release program may cause increased mortality. Numerous scientists expressed concern that a prohibition on landing would adversely affect ongoing research on white sharks.

*Comment:* The white shark is especially vulnerable to overfishing and since no directed commercial fishery exists at this time, prohibited status should be afforded this species to prevent a directed fishery from developing.

*Response:* NMFS agrees. The white shark is relatively rare in commercial landings data and very little is known of its reproductive biology and potential. Some evidence suggests that white sharks may practice uterine cannibalism, like sand tiger sharks, and may be highly susceptible to overfishing. NMFS believes that the white shark deserves special protection but acknowledges that there is, in parts of their range, an active recreational fishery for the white shark. Therefore, NMFS removes the white shark from the large coastal species group, making it a commercially prohibited species, and restricts fishing for white sharks to recreational catch-and-release only. This action will prevent a directed fishery from developing, thereby preventing overfishing, while still allowing traditional recreational fishing to continue. Similar to other prohibitions, previously issued provisions that allow for scientific research activity and exempted fishing apply. Additionally, NMFS may consider tagging and reporting requirements for the white shark fishery in the future. Those fishermen who wish to tag white sharks are encouraged to participate in a NMFS-approved tag-and-release program. Tags may be obtained from the NMFS Cooperative Tagging Program, Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL, 33149, or the NMFS APEX Predator Investigation Cooperative Shark Tagging Program, 28 Tarzwell Drive, Narragansett, RI, 02882.

*Comment:* Catch-and-release fishing for white sharks may cause increased mortality.

*Response:* NMFS is aware that there is limited information regarding post-release survival for white sharks and that there may be some mortality associated with a catch-and-release-only fishery. However, it is unlikely that mortality would increase from this action because all recreationally caught white sharks will be required to be released, whereas not all are released now. Therefore, even with some post-release mortality, the increased release rate should decrease mortality overall.

##### 7. Prohibition on Filleting at Sea

NMFS received general support for the prohibition on filleting sharks prior to landing; however, the Office of Advocacy of the U.S. Small Business

Administration (SBA) commented that costs would increase.

*Comment:* Prohibiting filleting at sea will increase costs to vessel owner/operators because they will be required to fillet only once in port. Currently, they are allowed to fillet sharks while steaming into port, which saves processing time and reduces labor costs.

*Response:* NMFS recognizes that costs will likely increase somewhat but believes that the benefits of increased species-specific identification and verification greatly outweigh those costs. NMFS believes that the prohibition is necessary to aid in identification of landings by dealers who must report by species. Additionally, NMFS believes that many fishermen currently allow processors to fillet their sharks such that any increase in costs for the fleet would be minimized. NMFS adopts this prohibition without change. Sharks must be landed and brought to the point of first landing with the flesh attached and the spinal column present. Fishermen may remove the head and fins and eviscerate the catch.

#### 8. Species-Specific Identification Requirement

NMFS generally received support that requiring species-specific identification of all sharks landed will improve management. Numerous dealers and commercial and recreational fishermen requested information on identification of sharks.

#### 9. Other comments.

*Comment:* Several commercial shark fishermen, persons involved in shark processing, commercial fishermen's associations, and one legal representative of shark fishery interests commented that NMFS' determination of no significant economic impact was flawed and vastly underestimated the impact of a 50 percent quota reduction on all shark fishermen. In addition, the SBA issued a letter to NMFS indicating their disagreement with the determination. The SBA stated that most, if not all, shark fishermen are small businesses that would suffer a directly corresponding reduction in gross revenue from a large coastal shark quota reduction.

*Response:* No evidence is available to NMFS to support the assumption that there exists a directed fishery for sharks that consists exclusively of specialist shark fishermen who do not harvest any other species of fish. NMFS' permit database indicates that 97.7 percent of shark fishers hold permits for other commercial fishing permits from the Southeast Regional Permit Office

(SERO), which further supports the multi-species nature of the fleet. Even so, the 2.4 percent who do not hold other SERO permits might hold permits from other offices (e.g., Atlantic tunas) or may not be active in the shark fishery, although no integrated database exists for cross-comparison. Since vessels habitually switch to other fisheries as part of the multi-species nature of the fleet, reduction of the time spent in the shark fishery will not affect switching cost; switching still occurs once or twice a year. In addition, since implementation of the FMP in 1993, the fishery has only been open for a short period of time annually and NMFS believes that few, if any, fishermen are exclusively dependent upon income from the large coastal shark fishery. Therefore, alternative sources of income have been necessary, either from other fisheries or other occupations. While NMFS agrees with SBA that most shark vessels are considered small businesses, SBA incorrectly assumes that a reduction in large coastal shark quotas will lead to a directly corresponding reduction in gross ex-vessel revenues of fishermen.

*Comment:* The State of Florida and two conservation organizations requested that NMFS prohibit the landing of additional species, namely certain rays and sawfish.

*Response:* NMFS may investigate the need for affording protection to additional species not currently included in the management unit. Adjustment of the management unit to include additional species would require an FMP amendment.

*Comment:* The State of Georgia requested that NMFS place additional restrictions on the use of gillnets in the shark fishery.

*Response:* Gear restrictions are not currently within the scope of the framework authority under the FMP. NMFS intends to amend the FMP to address alternative management measures and, at that time, may examine the possibility of gear restrictions.

*Comment:* Numerous conservation organizations and individuals suggested a 100 lb. minimum size for mako sharks.

*Response:* NMFS has previously considered a minimum size for mako sharks. A minimum size for mako sharks was rejected in the FMP because of inadequate supporting biological information. No new analyses have been presented to indicate a modification of the current management for mako sharks is warranted. NMFS may address possible use of minimum sizes for this and other species as part of the long-term rebuilding plan.

*Comment:* Two conservation organizations commented that quota overruns should be subtracted from the following years' quotas.

*Response:* This is not currently within the authority of the FMP. Current regulations allow for the adjustment between quota periods within a single year. NMFS may investigate the need for adjusting quotas from year to year during the FMP amendment process.

*Comment:* One fishermen's association commented that NMFS must not implement retroactive quota reductions.

*Response:* This is not a retroactive quota reduction. The proposed rule was published on December 20, 1996. The fishing year for the Atlantic shark fishery began on January 1, 1997, and the fishery has been ongoing while NMFS has considered comments on the proposed rule. While this action affects all landings beginning January 1, 1997, it is reasonable because quotas have been in place since 1993 and fishery participants are cognizant of annual quota adjustments. Additionally, NMFS believes that any delay in the implementation of the effective date of this action will result in the quota being exceeded for the first season and possibly for the second season.

*Other Issues:* NMFS was provided with additional data and analyses from a fishermen's association for further consideration. The submitted data include species composition, nominal catch rate, and standardized abundance index information from research surveys conducted by the Bureau of Commercial Fisheries (the precursor to NMFS), the Woods Hole Oceanographic Institute, and NMFS during the period 1957-1996. No conclusions were presented about the status of sharks. Further, this information has not been reviewed or analysed by any other scientists so the scientific reliability of the approaches taken to developing the depicted trends in catch rates is unknown. Therefore, it is inappropriate to use the statistics presented to modify the conclusions made in the 1996 SEW final report until such analyses are conducted. The commentor concludes that the analysis presented raises questions about the reliability of the large coastal shark stock declines developed in the 1996 stock assessment. However, the information depicted for the standardized abundance index for combined catches of sandbar, dusky, silky, and blacktip sharks caught in the western North Atlantic Ocean indicates a decline of about 80 percent from 1986-1996, with each year's abundance index being less than the previous year's abundance index, except in 1992 and

1994. While these data may raise questions about the magnitude of declines in shark populations, as estimated by the 1996 SEW final report, they do indicate, consistent with the 1996 SEW final report, a substantial decline. Indeed, they may represent an even greater decline than that presented in the 1996 SEW final report. In any event, NMFS has concluded that they are not sufficient to justify allowing the fishery to continue without the recommended reduction in effective fishing mortality. The data presented apparently warrant further assessment by the scientific community and should be examined for possible additional modification to future commercial quotas by the scientific community.

#### Changes From the Proposed Rule

##### *Recreational Bag Limits*

Based on public comments, one management measure has been changed. NMFS has determined that a separate bag limit for Atlantic sharpnose sharks is warranted for the reason outlined above. Therefore, the recreational bag limit is as follows: 2 sharks per vessel per trip, for any combination of species except Atlantic sharpnose sharks, which will have a bag limit of 2 fish per person per trip.

##### *White shark recreational fishery*

NMFS has changed tag-and-release to catch-and-release-only recreational fishing for the white shark. NMFS intends to submit for OMB approval a new collection-of-information reporting requirement to require that recreational fishing for white sharks operate under a tag-and-release-only program.

##### *Classification*

The AA has determined that this rule is necessary for the conservation and management of shark resources in the Atlantic Ocean and is consistent with the national standards and other provisions of the Magnuson-Stevens Act and other applicable law. This rule has been determined to be not significant for purposes of E.O. 12866. Copies of the EA/RIR/FRFA are available (see ADDRESSES). The EA/RIR/FRFA, in combination with the SEW Report, constitutes the annual SAFE Report.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified at the proposed rule stage to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule would not have a significant economic impact on a substantial number of small entities. No Initial Regulatory Flexibility Analysis was prepared. During the comment period, NMFS received

comments from the public and SBA that indicated that the proposed rule may have a significant economic impact on a substantial number of small entities. NMFS, in response to the issues raised during the comment period, prepared a Final Regulatory Flexibility Analysis (FRFA) to ensure a thorough analysis of the impacts.

In summary, given the multispecies and multigear nature of the commercial shark fishery and the existing management regulations that control the harvest of sharks, few additional costs are expected to be incurred by reducing the size of the directed shark fishery quota. At present, the shark fishery for large coastal species lasts only a few months twice a year and most, if not all, participants have already had to diversify into other fisheries to maintain their financial viability. Evidence available to NMFS indicates that it is highly unlikely that vessel operators could survive a fishery that lasts a total of less than four months a year without alternative sources of income, either from other fisheries or other occupations. In addition, the permit database indicates that 97.7 percent of permitted shark fishers hold other fishing permits from the Southeast Regional Permit Office (SERO). Even so, the 2.4 percent who do not hold other SERO permits might hold permits from other offices (e.g. Atlantic tunas) or may not participate in the Atlantic shark fishery. NMFS estimates that a directed shark fisher would earn at most \$26,426 in gross revenues - not income - from the large coastal shark fishery alone. These revenues would be supplemented by income from fishing on other Atlantic sharks and other species such as tunas and swordfish. Additionally, nearly all Atlantic shark fishers operate in the multispecies longline fishery where gear requirements are substantially similar and require only a modification to fish at different depths. Since vessels habitually access other fisheries, reduction of the time spent in the shark fishery will not affect switching cost; the switching still occurs once or twice a year. Accordingly, a reduction in large coastal shark quotas is highly unlikely to lead to a directly-corresponding reduction in gross ex-vessel revenues of fishers. The result is that a reduction in quota should have relatively little impact on commercial shark fishing firms since the season, even if cut by more than half, would not adversely impact other harvesting operations that take up the majority of the fishing season.

Additionally, nearly all Atlantic shark commercial fishers operate in the multispecies longline fishery where gear

requirements are substantially similar and require only a modification to fish at different depths. Since vessels habitually access other fisheries, reduction of the time spent in the shark fishery will not affect switching cost; the switching still occurs once or twice a year. Estimates of additional cost to access other fisheries are therefore expected to be minimal. The fact remains that most shark fishermen are longline operators and that longlines are used to target Atlantic tunas, swordfish, and other sharks as well. The other Atlantic sharks, i.e. small coastals and pelagic sharks, are subject to quotas which are higher than historical catch levels (the pelagic shark fishery has never been closed). It should also be noted that, the current trip limit for large coastal sharks is designed, in part, to mitigate the impact of restrictive quotas on the industry. Trip limits help to extend the season, minimize market glut, and thereby maintain higher prices.

NMFS notes that the Atlantic tunas fishery is open access, and that with the exception of bluefin tuna, Atlantic tunas are not subject to quotas. The Atlantic swordfish fishery is currently open access and subject to a quota, although the fishery has not been closed since the fall of 1995. There is a proposal being developed to limit access to the swordfish fishery, however any current participant with a history of swordfish catch will be allowed to land and sell swordfish under the rule as proposed. Therefore, displaced fishers could transfer effort to the Atlantic tuna, reef fish, or coastal pelagic fisheries for king and Spanish mackerel, and potentially to Atlantic swordfish if previous participation can be documented.

The recreational shark fisheries are exploited primarily by private boat, charter boat, and head boat based fishers although some shore based fishers are active in the fishery in the Florida Keys. The restriction of 2 shark per vessel per day could reduce consumer surplus generated by a directed recreational shark fishing trip. However, the costs of reducing the landings rate should be mitigated by the 2 Atlantic sharpnose per person per trip exception as well as alternative directed recreational fishing trips for other fish species and by catch-and-release fishing. In addition, the state territorial seas should remain open subject to their respective landings regulations. This could cause a reallocation of effort from offshore waters to nearshore waters which could increase fishing pressure on juvenile stocks. However, major changes in net benefits are not expected for recreational fishers.



The prohibition of fishing for, landing or sale of whale, basking, sand tiger, and bigeye sand tiger sharks will not adversely affect gross revenue because whale, basking, and bigeye sand tiger sharks are only incidentally encountered in commercial fisheries and sand tiger sharks are not a marketable species at this time. The prohibition of fishing for, landing or sale of white sharks will not adversely affect gross revenue because they are only incidentally encountered in the commercial fishery. Requiring the recreational white shark fishery to operate under a catch-and-release-only program may reduce the willingness of recreational anglers to pay for a fishing trip. The prohibition on filleting of sharks at sea will have little economic impact but will increase costs to operators through increased labor to fillet carcasses once in port.

In response to comments, NMFS did modify the recreational bag limits to allow additional limits for Atlantic sharpnose sharks. It was determined that providing this additional allowance would alleviate some of the impacts on recreational operations while not negatively impacting the resource. NMFS is aware that there may be alternative actions that could stabilize or improve the population status of sharks. However, the 1996 SEW final report indicated the need for immediate reductions in effective fishing mortality. Alternative actions, such as minimum sizes and/or nursery and pupping area closures, were recommended in general by the 1996 SEW as mechanisms to implement the immediate reductions in effective fishing mortality required. However, specific area closures or minimum sizes were not examined. Further, implementation of such alternative actions would require more scientific analyses and coordination with Atlantic states and regional fishery management councils, which would delay the implementation of fishing mortality reductions beyond the recommendation of immediate action. However, NMFS, consistent with recent requirements of the Magnuson-Stevens Act, is establishing an advisory panel that will consider these alternatives and others that could be less burdensome and could achieve the appropriate levels of fishing mortality necessary to rebuild the shark resource in the context of the FMP.

Further, under 5 U.S.C. § 553(d)(3), NMFS has determined that there is good cause to waive the 30-day delay in effective date as such a delay would be contrary to the public interest. Preliminary commercial landings estimates indicate that as of March 15,

1997, approximately 740 metric tons dressed weight of large coastal sharks had been taken, which is 115 percent of the first semiannual quota of 642 metric tons dressed weight. If this harvest rate continues, it is possible that a significant portion or the entire first semiannual quota might be taken prior to the effective date of this action, if delayed. Further, the second semiannual quota would have to be decreased by the overage in the first semiannual quota, and this could adversely affect the northern states if that overage is significant. If this authority results in a closure action for the large coastal shark fishery, NMFS has the ability to rapidly communicate the closure to fishery participants through its FAX network or NOAA weather radio. To the extent practicable, advance notice of such closure will be provided.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

This rule contains no new collection of information that may be subject to the Paperwork Reduction Act but refers to requirements that have been approved by the Office of Management and Budget under Control Number 0648-0016, 0648-0013, 0648-0205, 0648-0229, and 0648-0306. NMFS intends to submit a tagging reporting requirement to OMB for approval.

The prohibitions section has been reordered to group similar or associated prohibitions. In addition, paragraphs are now designated by numbers for the purposes of clarification.

#### List of Subjects in 50 CFR Part 678

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 1, 1997.

**Rolland A. Schmitt**,  
Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 678 is amended as follows:

#### PART 678—ATLANTIC SHARKS

1. The authority citation for part 678 continues to read as follows:

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

2. In § 678.2, the definitions for "Dress", "Eviscerate", and "Fillet" are added; and the definition for "Management Unit" is amended by

removing under paragraph (1), "Basking sharks—Cetorhinidae", "Basking shark, *Cetorhinus maximus*"; "Sand tiger sharks—Odontaspidae", "Bigeye sand tiger, *Odontaspis noronhai*", "Sand tiger, *Odontaspis taurus*" and "Whale sharks—Rhincodontidae", "Whale shark, *Rhincodon typus*", and by adding a new paragraph (4) to read as follows:

#### § 678.2 Definitions

\* \* \* \* \*

**Dress** means to remove head, viscera, and fins, but does not include removal of the backbone, halving, quartering, or otherwise further reducing the carcass.

\* \* \* \* \*

**Eviscerate** means removal of the alimentary organs only.

**Fillet** means to remove slices of fish flesh, of irregular size and shape, from the carcass by cuts made parallel to the backbone.

\* \* \* \* \*

**Management Unit** \* \* \*

(4) Prohibited species:  
Basking sharks - Cetorhinidae  
Basking shark - *Cetorhinidae maximus*  
Mackerel sharks - Lamnidae  
White shark - *Carcharodon carcharias*  
Sand tiger sharks - Odontaspidae  
Bigeye sand tiger - *Odontaspis noronhai*  
Sand tiger - *Odontaspis taurus*  
Whale sharks - Rhincodontidae  
Whale shark - *Rhincodon typus*  
\* \* \* \* \*

#### § 678.5 [Amended]

3. In § 678.5, in paragraph (b)(1)(iv)(A) and (B) after "market category" add "and species,".

4. Section 678.7 is revised to read as follows:

#### § 678.7 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, and except as permitted under § 678.29, it is unlawful for any person to do any of the following:

(1) Fish for, purchase, trade, barter, or possess or attempt to fish for, purchase, trade, barter, or possess the following prohibited species:

Basking sharks—Cetorhinidae  
Basking shark, *Cetorhinus maximus*  
Mackerel sharks—Lamnidae  
White sharks—*Carcharodon carcharias*  
Sand tiger sharks—Odontaspidae  
Bigeye sand tiger, *Odontaspis noronhai*

Sand tiger shark, *Odontaspis taurus*  
Whale sharks—Rhincodontidae  
Whale shark, *Rhincodon typus*

(2) Sell shark from the management unit or be exempt from the bag limits without a vessel permit as specified in § 678.4(a)(1).

(3) Purchase, trade, or barter, or attempt to purchase, trade, or barter, a shark from the management unit without an annual dealer permit, as specified in § 678.4(a)(2).

(4) Falsify information required in § 678.4(b) and (c) on an application for a permit.

(5) Fail to display a permit, as specified in § 678.4(h).

(6) Falsify or fail to provide information required to be maintained, submitted, or reported, as specified in § 678.5.

(7) Fail to make a shark available for inspection or provide data on catch and effort, as required by § 678.5(d).

(8) Falsify or fail to display and maintain vessel identification, as required by § 678.6.

(9) Falsify or fail to provide requested information regarding a vessel's trip, as specified in § 678.10(a).

(10) Fail to embark an observer on a trip when selected, as specified in § 678.10(b).

(11) Assault, resist, oppose, impede, harass, intimidate, or interfere with a NMFS-approved observer aboard a vessel or prohibit or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer from conducting his/her duties aboard a vessel.

(12) Fail to provide an observer with the required food, accommodations, access, and assistance, as specified in § 678.10(c).

(13) Remove the fins from a shark and discard the remainder, as specified in § 678.22 (a)(1).

(14) Possess shark fins, carcasses, or parts on board, or offload shark fins from, a fishing vessel, except as specified in § 678.22, or possess shark carcasses or parts on board, or offload shark fins, carcasses, or parts from, a vessel, except as specified in § 678.22(a)(2) and (3).

(15) Fail to release a shark that will not be retained in the manner specified in § 678.22(b).

(16) Land, or possess on any trip, shark in excess of the vessel trip limit, as specified in § 678.22(c)(1).

(17) Transfer a shark at sea, as specified in §§ 678.22(c)(2) and 678.23(e).

(18) Fillet a shark at sea, as specified in § 678.22(d), except that sharks may be eviscerated and the head and fins may be removed.

(19) Exceed the bag limits, as specified in § 678.23 (a) through (c), or operate a vessel with a shark on board in excess of the bag limits, as specified in § 678.23(d).

(20) Sell, trade, or barter, or attempt to sell, trade, or barter, a shark harvested in the EEZ, except as an owner or operator of a vessel with a permit, as

specified in § 678.25(a), or sell, trade, or barter, or attempt to sell, trade or barter, a shark from the management unit, except as an owner or operator of a vessel with a permit, as specified in § 678.26.

(21) Purchase, trade, or barter, or attempt to purchase, trade or barter, shark meat or fins from the management unit from an owner or operator of a vessel that does not possess a vessel permit, as specified in § 678.26(b); or sell, trade, or barter, or attempt to sell, trade, or barter, a shark from the management unit, except to a permitted dealer, as specified in § 678.26(d).

(22) Sell, purchase, trade, or barter, or attempt to sell, purchase, trade, or barter, shark fins that are disproportionate to the weight of carcasses landed, as specified in § 678.26(c).

(23) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson-Stevens Act.

(24) During a closure for a shark species group, retain a shark of that species group on board a vessel that has been issued a permit under § 678.4, except as provided in § 678.24(a), or sell, purchase, trade, or barter or attempt to sell, purchase, trade, or barter a shark of that species group, as specified in § 678.24.

(25) Fish for sharks with a drift gillnet that is 2.5 km or more in length or possess a shark aboard a vessel possessing such drift gillnet, as specified in § 678.21.

(b) [Reserved]

5. In § 678.22, a new paragraph (d) is added to read as follows:

**§ 678.22 Harvest limitations.**

(d) *Filleting.* (1) A shark from any of the three management units that is possessed in the EEZ, or harvested by a vessel that has been issued a permit pursuant to § 678.4, may not be filleted at sea. Sharks may be eviscerated and the head and fins may be removed.

6. In § 678.23, paragraphs (b) and (c) are revised to read as follows:

**§ 678.23 Bag limits.**

(b) Large coastal, small coastal and pelagic species, combined—2 per vessel per trip.

(c) Atlantic sharpnose shark—2 per person per trip.

7. In § 678.24, paragraph (b) is revised to read as follows:

**§ 678.24 Commercial quotas.**

(b) *Semiannual.* The following commercial quotas apply:

(1) For the period January 1 through June 30:

(i) Large coastal species—642 metric tons, dressed weight.

(ii) Small coastal species—880 metric tons, dressed weight.

(iii) Pelagic species—290 metric tons, dressed weight.

(2) For the period July 1 through December 31:

(i) Large coastal species—642 metric tons, dressed weight.

(ii) Small coastal species—880 metric tons, dressed weight.

(iii) Pelagic species—290 metric tons, dressed weight.

\* \* \* \* \*

8. Section 678.29 is added to read as follows:

**§ 678.29 Catch-and-release program.**

(a) Notwithstanding other provisions of this part, a person may fish for, but not retain, white sharks with rod and reel only under a catch and release program, provided the person releases and returns such fish to the sea immediately with a minimum of injury.

(b) [Reserved]

[FR Doc. 97-8754 Filed 4-2-97; 8:53 am]

BILLING CODE 3510-22-F

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 678**

[I.D. 031797B]

**Atlantic Shark Fisheries; Large Coastal Shark Species**

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

**ACTION:** Closure.

**SUMMARY:** NMFS is closing the commercial fishery for large coastal sharks conducted by vessels with a Federal Atlantic shark permit in the Western North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. This action is necessary because the semiannual quota of 642 metric tons (mt) for the period January 1 through June 30, 1997 has been exceeded.

**EFFECTIVE DATE:** The closure is effective from 11:30 p.m. local time April 7, 1997, through June 30, 1997.

**FOR FURTHER INFORMATION CONTACT:** C. Michael Bailey, John Kelly or Margo B. Schulze, 301-713-2347.

**SUPPLEMENTARY INFORMATION:** The Atlantic shark fishery is managed by NMFS according to the Fishery Management Plan (FMP) for Atlantic Sharks prepared by NMFS under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR part 678.

Section 678.24(b) of the regulations provides for two semiannual quotas of large coastal sharks to be harvested from Atlantic, Caribbean, and Gulf of Mexico waters by commercial fishermen. The first semiannual quota of 642 mt is available for harvest from January 1 through June 30, 1997.

The Assistant Administrator for Fisheries, NOAA (AA), is required under § 678.25 to monitor the catch and landing statistics and, on the basis of these statistics, to determine when the

catch of Atlantic, Caribbean, and Gulf of Mexico sharks will equal any quota under § 678.24(b). When shark harvests reach, or are projected to reach, a quota established under § 678.24(b), the AA is further required under § 678.25 to close the fishery.

The AA has determined, based on the reported catch and other relevant factors, that the semiannual quota for the period January 1 through June 30, 1997, for large coastal sharks, in or from the Western North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, had been attained as of March 14, 1997. During the closure retention of large coastal sharks from the management unit is prohibited for vessels issued a permit under § 678.4, unless the vessel is operating as a charter vessel or headboat, in which case the vessel limit per trip is two large coastal sharks. Also, the sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of carcasses and/or fins of large coastal sharks harvested by a person aboard a vessel

that has been issued a permit under § 678.4, is prohibited, except for those that were harvested, offloaded, and sold, traded, or bartered prior to the closure, and were held in storage by a dealer or processor.

Vessels that have been issued a Federal permit under § 678.4 are reminded that, as a condition of permit issuance, the vessel may not retain a large coastal shark during the closure, except as provided by § 678.24(a). Fishing for pelagic and small coastal sharks may continue. The recreational fishery is not affected by this closure.

#### Classification

This action is taken under 50 CFR part 678 and is exempt from review under E.O. 12866.

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

**Dated:** April 1, 1997.

**Gary C. Matlock,**

*Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.*

[FR Doc. 97-8755 Filed 4-2-97; 8:54 am]

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supplementary rules; published 4-7-97

**INTERIOR DEPARTMENT Surface Mining Reclamation and Enforcement Office****Permanent program and abandoned mine land reclamation plan submissions:**

Iowa; published 4-7-97

**SECURITIES AND EXCHANGE COMMISSION****Securities:****Securities Investor****Protection Corporation rules—**

Contracts closeout and completion for purchase or sale of securities made by debtors in liquidation; published 3-7-97

**TRANSPORTATION DEPARTMENT****Coast Guard****Drawbridge operations:**

Louisiana; published 3-3-97

**TRANSPORTATION DEPARTMENT****Organization, functions, and authority delegations:**

Transportation Administrative Service Center, Director; published 4-7-97

**TRANSPORTATION DEPARTMENT****Federal Aviation Administration****Airworthiness directives:**

Schweizer Aircraft Corp. et al.; published 3-3-97

**COMMENTS DUE NEXT WEEK****AGRICULTURE DEPARTMENT****Animal and Plant Health Inspection Service****Exportation and importation of animals and animal products:**

Exotic Newcastle Disease; disease status change—  
Great Britain; comments due by 4-8-97; published 2-7-97

**AGRICULTURE DEPARTMENT****Cooperative State Research, Education, and Extension Service**

Small business innovation research grants program; administrative provisions; comments due by 4-10-97; published 3-11-97

**AGRICULTURE DEPARTMENT****Food and Consumer Service****Child nutrition programs:**

Child and adult care food program—

**Day care home**

reimbursements; targeting improvement; comments due by 4-7-97; published 1-7-97

**COMMERCE DEPARTMENT National Oceanic and Atmospheric Administration****Fishery conservation and management:****Northeastern United States fisheries—**

Northeast multispecies; comments due by 4-7-97; published 3-19-97

**West Coast States and Western Pacific fisheries—**

Pacific Coast groundfish; comments due by 4-8-97; published 2-7-97

**Magnuson-Stevens Fishery Conservation and Management Act;****implementation:**

Limited access permits; central title and lien registry; comments due by 4-7-97; published 3-6-97

**DEFENSE DEPARTMENT****Acquisition regulations:**

Berry Amendment application to synthetic fabric and coated synthetic fabric and contracts and subcontracts for commercial items; comments due by 4-8-97; published 2-7-97

**ENERGY DEPARTMENT Federal Energy Regulatory Commission****Natural gas companies (Natural Gas Act):**

Authorization to construct, operate, or modify facilities used for exportation or importation of natural gas; comments due by 4-11-97; published 2-10-97

**ENVIRONMENTAL PROTECTION AGENCY****Air quality implementation plans:**

Preparation, adoption, and submittal—  
Sulfur oxide (sulfur dioxide) emissions reduction; comments due by 4-11-97; published 3-20-97

**Air quality implementation plans; approval and promulgation; various States:**

Delaware; comments due by 4-11-97; published 3-12-97

- Illinois; comments due by 4-11-97; published 3-12-97
- Oregon; comments due by 4-7-97; published 3-7-97
- Pennsylvania; comments due by 4-10-97; published 3-11-97
- Virginia; comments due by 4-11-97; published 3-12-97
- Air quality implementation plans; VA approval and promulgation; various States; air quality planning purposes; designation of areas:
- Oregon; comments due by 4-7-97; published 3-7-97
- Virginia; comments due by 4-11-97; published 3-12-97
- Washington et al.; comments due by 4-7-97; published 3-7-97
- Hazardous waste program authorizations:
- Nevada; comments due by 4-7-97; published 3-7-97
- FEDERAL COMMUNICATIONS COMMISSION**
- Radio stations; table of assignments:
- Arkansas; comments due by 4-7-97; published 2-21-97
- Idaho; comments due by 4-7-97; published 2-21-97
- Illinois; comments due by 4-7-97; published 2-21-97
- Kentucky; comments due by 4-7-97; published 2-21-97
- Louisiana; comments due by 4-7-97; published 2-21-97
- Montana; comments due by 4-7-97; published 2-21-97
- North Dakota; comments due by 4-7-97; published 2-21-97
- Tennessee; comments due by 4-7-97; published 2-21-97
- Utah; comments due by 4-7-97; published 2-21-97
- Washington; comments due by 4-7-97; published 2-21-97
- FEDERAL EMERGENCY MANAGEMENT AGENCY**
- Disaster assistance:
- Robert T. Stafford Disaster Relief and Emergency Assistance Act—
- Criminal and Civil penalties; comments due by 4-11-97; published 2-10-97
- GOVERNMENT ETHICS OFFICE**
- Conflict of interests;
- Executive agency ethics training programs; comments due by 4-11-97; published 3-12-97
- HEALTH AND HUMAN SERVICES DEPARTMENT**
- Food and Drug Administration**
- Food additives:
- Paper and paperboard components—
- Perfluoroalkyl substituted phosphate ester acids, ammonium salts; comments due by 4-7-97; published 3-7-97
- HEALTH AND HUMAN SERVICES DEPARTMENT**
- Public Health Service**
- Fellowships, internships, training:
- National Institutes of Health clinical research loan repayment program for Individuals from disadvantaged backgrounds; comments due by 4-11-97; published 2-10-97
- JUSTICE DEPARTMENT**
- Privacy Act; implementation; comments due by 4-7-97; published 3-7-97
- PERSONNEL MANAGEMENT OFFICE**
- Employment:
- Reduction in force—
- Retention service credit received based on job performance; comments due by 4-7-97; published 2-4-97
- TRANSPORTATION DEPARTMENT**
- Federal Aviation Administration**
- Airworthiness directives:
- British Aerospace; comments due by 4-9-97; published 2-28-97
- Construcciones Aeronauticas, S.A.; comments due by 4-10-97; published 3-3-97
- Eurocopter Deutschland GmbH; comments due by 4-7-97; published 2-4-97
- McDonnell Douglas; comments due by 4-7-97; published 2-26-97
- Mitsubishi; comments due by 4-7-97; published 2-26-97
- Raytheon; comments due by 4-7-97; published 1-29-97
- Class D airspace; comments due by 4-7-97; published 2-20-97
- Class E airspace; comments due by 4-7-97; published 2-19-97
- TREASURY DEPARTMENT**
- Internal Revenue Service**
- Income taxes, etc.:
- Basis reduction due to discharge of indebtedness; comments due by 4-7-97; published 1-7-97
- Income taxes:
- Inflation-indexed debt Instruments; cross-reference; comments due by 4-7-97; published 1-6-97
- Obligation-shifting transactions, multiple-party; realized income and deductions; comments due by 4-8-97; published 12-27-96



## FEDERAL REGISTER WORKSHOP

**THE FEDERAL REGISTER: WHAT IT IS AND  
HOW TO USE IT**

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

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**Kansas City—Independence, MO**

- WHEN:** May 6, 1997 at 9:00 am to 12:00 noon
- WHERE:** Harry S. Truman Library  
Whistle Stop Room  
U.S. Highway 24 and Delaware Street<sup>th</sup>  
Independence, MO 64050
- 

**Long Beach, CA**

- WHEN:** May 20, 1997 at 9:00 am to 12:00 noon
- WHERE:** Glenn M. Anderson Federal Building  
501 W. Ocean Blvd.  
Conference Room 3470  
Long Beach, CA 90802
- 

**San Francisco, CA**

- WHEN:** May 21, 1997 at 9:00 am to 12:00 noon
- WHERE:** Phillip Burton Federal Building and  
Courthouse  
450 Golden Gate Avenue  
San Francisco, CA 94102
- 

**Anchorage, AK**

- WHEN:** May 23, 1997 at 9:00 am to 12:00 noon
- WHERE:** Federal Building and U.S. Courthouse  
222 West 7th Avenue  
Executive Dining Room (Inside Cafeteria)  
Anchorage, AK 99513

**RESERVATIONS:** For Kansas City, Long Beach, San Francisco and Anchorage workshops please call  
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1-800-688-9889 x 0

## CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (\*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A "●" precedes each entry that is now available on-line through the Government Printing Office's GPO Access service at <http://www.access.gpo.gov/nara/cfr>. For information about GPO Access call 1-888-293-6498 (toll free).

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Title	Stock Number	Price	Revision Date
*●1, 2 (2 Reserved)	(869-032-00001-8)	\$5.00	Feb. 1, 1997
*●3 (1995 Compilation and Parts 100 and 101)	(869-032-00002-6)	20.00	Jan. 1, 1997
●4	(869-032-00003-4)	7.00	Jan. 1, 1997
<b>5 Parts:</b>			
●1-699	(869-028-00004-5)	26.00	Jan. 1, 1996
●700-1199	(869-032-00005-1)	26.00	Jan. 1, 1997
●1200-End, 6 (6 Reserved)	(869-028-00006-1)	25.00	Jan. 1, 1996
<b>7 Parts:</b>			
●0-26	(869-032-00007-7)	26.00	Jan. 1, 1997
●27-45	(869-028-00008-8)	11.00	Jan. 1, 1996
46-51	(869-028-00009-6)	13.00	Jan. 1, 1996
52	(869-028-00010-0)	5.00	Jan. 1, 1996
●53-209	(869-028-00011-8)	17.00	Jan. 1, 1996
●210-299	(869-028-00012-6)	35.00	Jan. 1, 1996
●300-399	(869-032-00011-5)	22.00	Jan. 1, 1997
*●400-699	(869-032-00012-3)	28.00	Jan. 1, 1997
700-899	(869-028-00015-1)	25.00	Jan. 1, 1996
900-999	(869-032-00014-0)	40.00	Jan. 1, 1997
●1000-1199	(869-028-00017-7)	35.00	Jan. 1, 1996
●1200-1499	(869-028-00018-5)	29.00	Jan. 1, 1996
1500-1899	(869-028-00019-3)	41.00	Jan. 1, 1996
●1900-1939	(869-028-00020-7)	16.00	Jan. 1, 1996
●1940-1949	(869-028-00021-5)	31.00	Jan. 1, 1996
1950-1999	(869-028-00022-3)	39.00	Jan. 1, 1996
2000-End	(869-028-00023-1)	15.00	Jan. 1, 1996
*●8	(869-032-00022-1)	30.00	Jan. 1, 1997
<b>9 Parts:</b>			
1-199	(869-028-00025-8)	30.00	Jan. 1, 1996
200-End	(869-028-00026-6)	25.00	Jan. 1, 1996
<b>10 Parts:</b>			
0-50	(869-028-00027-4)	30.00	Jan. 1, 1996
*●51-199	(869-032-00026-3)	31.00	Jan. 1, 1997
200-399	(869-028-00029-1)	5.00	Jan. 1, 1996
400-499	(869-028-00030-4)	21.00	Jan. 1, 1996
500-End	(869-028-00031-2)	34.00	Jan. 1, 1996
●11	(869-032-00029-8)	20.00	Jan. 1, 1997
<b>12 Parts:</b>			
1-199	(869-023-00033-9)	12.00	Jan. 1, 1996
200-219	(869-028-00034-7)	17.00	Jan. 1, 1996
220-299	(869-028-00035-5)	29.00	Jan. 1, 1996
300-499	(869-028-00036-3)	21.00	Jan. 1, 1996
●500-599	(869-028-00037-1)	20.00	Jan. 1, 1996

Title	Stock Number	Price	Revision Date
600-End	(869-028-00038-0)	31.00	Jan. 1, 1996
●13	(869-028-00039-8)	18.00	Mar. 1, 1996
<b>14 Parts:</b>			
1-59	(869-028-00040-1)	34.00	Jan. 1, 1996
60-139	(869-028-00041-0)	30.00	Jan. 1, 1996
140-199	(869-028-00042-8)	13.00	Jan. 1, 1996
200-1199	(869-028-00043-6)	23.00	Jan. 1, 1996
●1200-End	(869-028-00044-4)	16.00	Jan. 1, 1996
<b>15 Parts:</b>			
0-299	(869-028-00045-2)	16.00	Jan. 1, 1996
300-799	(869-028-00046-1)	26.00	Jan. 1, 1996
800-End	(869-028-00047-9)	18.00	Jan. 1, 1996
<b>16 Parts:</b>			
0-149	(869-028-00048-7)	6.50	Jan. 1, 1996
150-999	(869-028-00049-5)	19.00	Jan. 1, 1996
1000-End	(869-028-00050-9)	26.00	Jan. 1, 1996
<b>17 Parts:</b>			
1-199	(869-028-00052-5)	21.00	Apr. 1, 1996
200-239	(869-028-00053-3)	25.00	Apr. 1, 1996
240-End	(869-028-00054-1)	31.00	Apr. 1, 1996
<b>18 Parts:</b>			
1-149	(869-028-00055-0)	17.00	Apr. 1, 1996
150-279	(869-028-00056-8)	12.00	Apr. 1, 1996
280-399	(869-028-00057-6)	13.00	Apr. 1, 1996
400-End	(869-028-00058-4)	11.00	Apr. 1, 1996
<b>19 Parts:</b>			
1-140	(869-028-00059-2)	26.00	Apr. 1, 1996
141-199	(869-028-00060-6)	23.00	Apr. 1, 1996
200-End	(869-028-00061-4)	12.00	Apr. 1, 1996
<b>20 Parts:</b>			
1-399	(869-028-00062-2)	20.00	Apr. 1, 1996
●400-499	(869-028-00063-1)	35.00	Apr. 1, 1996
500-End	(869-028-00064-9)	32.00	Apr. 1, 1996
<b>21 Parts:</b>			
●1-99	(869-028-00065-7)	16.00	Apr. 1, 1996
●100-169	(869-028-00066-5)	22.00	Apr. 1, 1996
●170-199	(869-028-00067-3)	29.00	Apr. 1, 1996
●200-299	(869-028-00068-1)	7.00	Apr. 1, 1996
●300-499	(869-028-00069-0)	50.00	Apr. 1, 1996
●500-599	(869-028-00070-3)	28.00	Apr. 1, 1996
●600-799	(869-028-00071-1)	8.50	Apr. 1, 1996
●800-1299	(869-028-00072-0)	30.00	Apr. 1, 1996
●1300-End	(869-028-00073-8)	14.00	Apr. 1, 1996
<b>22 Parts:</b>			
1-299	(869-028-00074-6)	36.00	Apr. 1, 1996
300-End	(869-028-00075-4)	24.00	Apr. 1, 1996
23	(869-028-00076-2)	21.00	Apr. 1, 1996
<b>24 Parts:</b>			
0-199	(869-028-00077-1)	30.00	May 1, 1996
200-219	(869-028-00078-9)	14.00	May 1, 1996
220-499	(869-028-00079-7)	13.00	May 1, 1996
500-699	(869-028-00080-1)	14.00	May 1, 1996
700-899	(869-028-00081-9)	13.00	May 1, 1996
900-1699	(869-028-00082-7)	21.00	May 1, 1996
1700-End	(869-028-00083-5)	14.00	May 1, 1996
25	(869-028-00084-3)	32.00	May 1, 1996
<b>26 Parts:</b>			
§§1.0-1-1.60	(869-028-00085-1)	21.00	Apr. 1, 1996
§§1.61-1.169	(869-028-00086-0)	34.00	Apr. 1, 1996
§§1.170-1.300	(869-028-00087-8)	24.00	Apr. 1, 1996
§§1.301-1.400	(869-028-00088-6)	17.00	Apr. 1, 1996
§§1.401-1.440	(869-028-00089-4)	31.00	Apr. 1, 1996
§§1.441-1.500	(869-028-00090-8)	22.00	Apr. 1, 1996
§§1.501-1.640	(869-028-00091-6)	21.00	Apr. 1, 1996
§§1.641-1.850	(869-028-00092-4)	25.00	Apr. 1, 1996
§§1.851-1.907	(869-028-00093-2)	26.00	Apr. 1, 1996
§§1.908-1.1000	(869-028-00094-1)	26.00	Apr. 1, 1996
§§1.1001-1.1400	(869-028-00095-9)	26.00	Apr. 1, 1996
§§1.1401-End	(869-028-00096-7)	35.00	Apr. 1, 1996

Title	Stock Number	Price	Revision Date	Title	Stock Number	Price	Revision Date
2-29	(869-028-00097-5)	28.00	Apr. 1, 1996	●136-149	(869-028-00150-5)	35.00	July 1, 1996
3C-39	(869-028-00098-3)	20.00	Apr. 1, 1996	●150-189	(869-028-00151-3)	33.00	July 1, 1996
40-49	(869-028-00099-1)	13.00	Apr. 1, 1996	●190-259	(869-028-00152-1)	22.00	July 1, 1996
50-299	(869-028-00100-9)	14.00	Apr. 1, 1996	●260-299	(869-028-00153-0)	53.00	July 1, 1996
300-499	(869-028-00101-7)	25.00	Apr. 1, 1996	●300-399	(869-028-00154-8)	28.00	July 1, 1996
500-599	(869-028-00102-5)	6.00	Apr. 1, 1990	●400-424	(869-028-00155-6)	33.00	July 1, 1996
600-End	(869-028-00103-3)	8.00	Apr. 1, 1996	●425-699	(869-028-00156-4)	38.00	July 1, 1996
<b>27 Parts:</b>				●700-789	(869-028-00157-2)	33.00	July 1, 1996
1-199	(869-028-00104-1)	44.00	Apr. 1, 1996	●790-End	(869-028-00158-7)	19.00	July 1, 1996
200-End	(869-028-00105-0)	13.00	Apr. 1, 1996	<b>41 Chapters:</b>			
<b>28 Parts:</b>				1, 1-1 to 1-10		13.00	<sup>3</sup> July 1, 1984
1-42	(869-028-00106-8)	35.00	July 1, 1996	1, 1-11 to Appendix, 2 (2 Reserved)		13.00	<sup>3</sup> July 1, 1984
43-End	(869-028-00107-6)	30.00	July 1, 1996	3-6		14.00	<sup>3</sup> July 1, 1984
<b>29 Parts:</b>				7		6.00	<sup>3</sup> July 1, 1984
0-99	(869-028-00108-4)	26.00	July 1, 1996	8		4.50	<sup>3</sup> July 1, 1984
100-499	(869-028-00109-2)	12.00	July 1, 1996	9		13.00	<sup>3</sup> July 1, 1984
500-899	(869-028-00110-6)	48.00	July 1, 1996	10-17		9.50	<sup>3</sup> July 1, 1984
900-1899	(869-028-00111-4)	20.00	July 1, 1996	18, Vol. I, Parts 1-5		13.00	<sup>3</sup> July 1, 1984
1900-1910 (§§ 1900 to 1910.999)	(869-028-00112-2)	43.00	July 1, 1996	18, Vol. II, Parts 6-19		13.00	<sup>3</sup> July 1, 1984
1910 (§§ 1910.1000 to end)	(869-028-00113-1)	27.00	July 1, 1996	18, Vol. III, Parts 20-52		13.00	<sup>3</sup> July 1, 1984
1911-1925	(869-028-00114-9)	19.00	July 1, 1996	19-100		13.00	<sup>3</sup> July 1, 1984
1926	(869-028-00115-7)	30.00	July 1, 1996	1-100	(869-028-00159-9)	12.00	July 1, 1996
1927-End	(869-028-00116-5)	38.00	July 1, 1996	101	(869-028-00160-2)	36.00	July 1, 1996
<b>30 Parts:</b>				102-200	(869-028-00161-1)	17.00	July 1, 1996
1-199	(869-028-00117-3)	33.00	July 1, 1996	201-End	(869-028-00162-9)	17.00	July 1, 1996
200-699	(869-028-00118-1)	26.00	July 1, 1996	<b>42 Parts:</b>			
700-End	(869-028-00119-0)	38.00	July 1, 1996	●1-399	(869-028-00163-7)	32.00	Oct. 1, 1996
<b>31 Parts:</b>				●400-429	(869-028-00164-5)	34.00	Oct. 1, 1996
0-199	(869-028-00120-3)	20.00	July 1, 1996	●430-End	(869-028-00165-3)	44.00	Oct. 1, 1996
200-End	(869-028-00121-1)	33.00	July 1, 1996	<b>43 Parts:</b>			
<b>32 Parts:</b>				●1-999	(869-028-00166-1)	30.00	Oct. 1, 1996
1-39, Vol. I		15.00	<sup>2</sup> July 1, 1984	●1000-end	(869-028-00167-0)	45.00	Oct. 1, 1996
1-39, Vol. II		19.00	<sup>2</sup> July 1, 1984	●44	(869-028-00168-8)	31.00	Oct. 1, 1996
1-39, Vol. III		18.00	<sup>2</sup> July 1, 1984	<b>45 Parts:</b>			
1-190	(869-028-00122-0)	42.00	July 1, 1996	●1-199	(869-028-00169-6)	28.00	Oct. 1, 1996
191-399	(869-028-00123-8)	50.00	July 1, 1996	●200-499	(869-028-00170-0)	14.00	<sup>6</sup> Oct. 1, 1995
400-629	(869-028-00124-6)	34.00	July 1, 1996	●500-1199	(869-028-00171-8)	30.00	Oct. 1, 1996
630-699	(869-028-00125-4)	14.00	<sup>5</sup> July 1, 1991	●1200-End	(869-028-00172-6)	36.00	Oct. 1, 1996
700-799	(869-028-00126-2)	28.00	July 1, 1996	<b>46 Parts:</b>			
800-End	(869-028-00127-1)	28.00	July 1, 1996	●1-40	(869-028-00173-4)	26.00	Oct. 1, 1996
<b>33 Parts:</b>				●41-69	(869-028-00174-2)	21.00	Oct. 1, 1996
1-124	(869-028-00128-9)	26.00	July 1, 1996	●70-89	(869-028-00175-1)	11.00	Oct. 1, 1996
125-199	(869-028-00129-7)	35.00	July 1, 1996	●90-139	(869-028-00176-9)	26.00	Oct. 1, 1996
200-End	(869-028-00130-1)	32.00	July 1, 1996	●140-155	(869-028-00177-7)	15.00	Oct. 1, 1996
<b>34 Parts:</b>				●156-165	(869-028-00178-5)	20.00	Oct. 1, 1996
1-299	(869-028-00131-9)	27.00	July 1, 1996	●166-199	(869-028-00179-3)	22.00	Oct. 1, 1996
300-399	(869-028-00132-7)	27.00	July 1, 1996	●200-499	(869-028-00180-7)	21.00	Oct. 1, 1996
400-End	(869-028-00133-5)	46.00	July 1, 1996	●500-End	(869-028-00181-5)	17.00	Oct. 1, 1996
<b>35</b>	(869-028-00134-3)	15.00	July 1, 1996	<b>47 Parts:</b>			
<b>36 Parts</b>				●0-19	(869-028-00182-3)	35.00	Oct. 1, 1996
1-199	(869-028-00135-1)	20.00	July 1, 1996	●20-39	(869-028-00183-1)	26.00	Oct. 1, 1996
200-End	(869-028-00136-0)	48.00	July 1, 1996	●40-69	(869-028-00184-0)	18.00	Oct. 1, 1996
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<sup>1</sup> Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

<sup>2</sup> The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

<sup>3</sup> The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

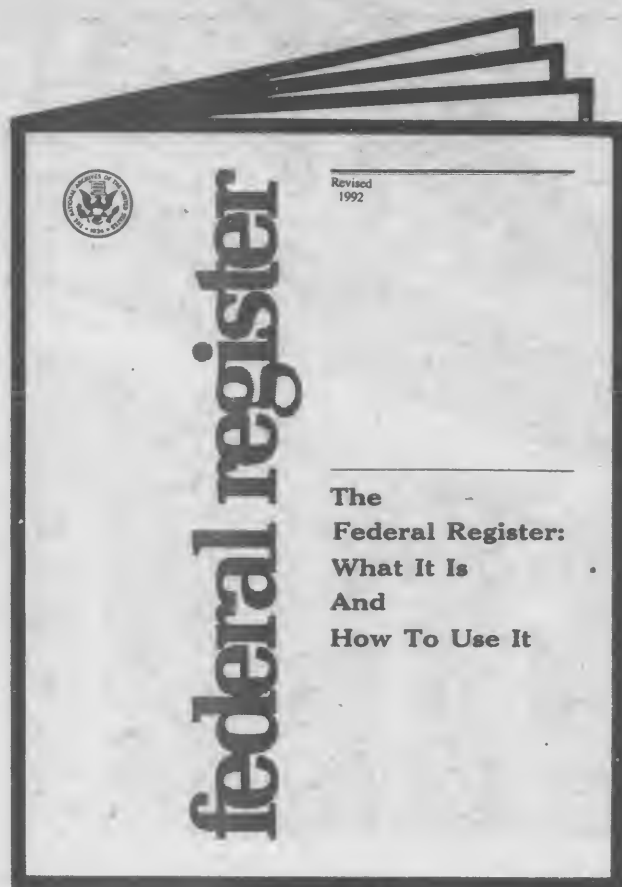
<sup>4</sup> No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

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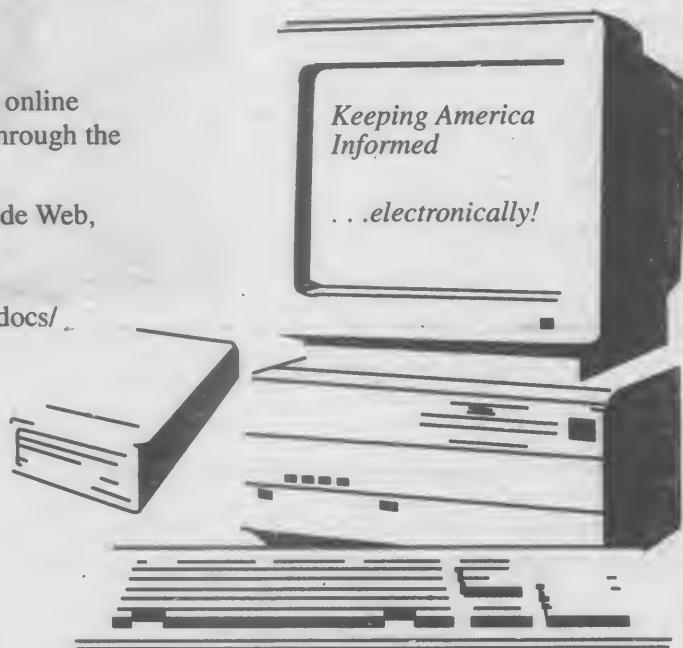
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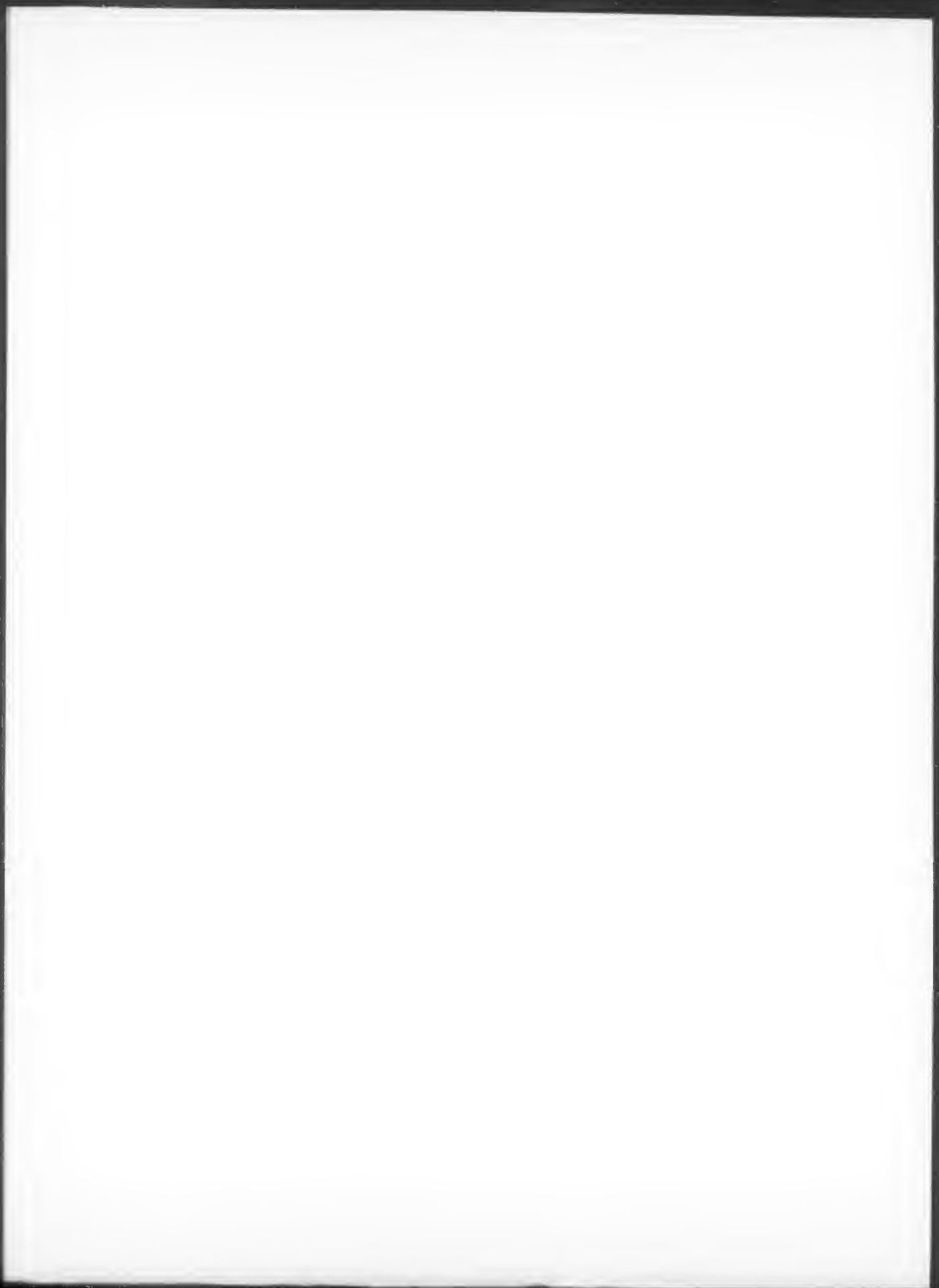
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