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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Parts 272 and 273

[Amendment No. 359]

RIN 0584–AB78

### Food Stamp Program; Medical Expense Deduction

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Interim rule.

**SUMMARY:** This action will change Food Stamp Program rules relating to the excess medical expense deduction. The changes will simplify the means by which households with elderly and disabled members claim deductions from income for verified, prospective, non-reimbursed medical expenses.

**DATES:** Effective Date: This rule is effective and must be implemented no later than October 1, 1994.

Comments: Comments must be received on or before December 2, 1994 to be assured of consideration.

**ADDRESSES:** Comments should be submitted to Judith M. Seymour, Eligibility and Certification Regulation Section, Certification Policy Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Comments may also be datafaxed to the attention of Ms. Seymour at (703) 305–2454. All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 720.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding this rulemaking should be addressed to Ms. Seymour at the above address or by telephone at (703) 305–2496.

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

#### Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

#### Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Ellen Haas, the Assistant Secretary for Food and Consumer Services, has certified that this interim rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

#### Paperwork Reduction Act

This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

#### Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the EFFECTIVE DATE paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) for Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or Part 284 (for rules related to QC liabilities); (3) for Program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

#### Public Participation and Effective Date

The amendment to section 5(e) of the Food Stamp Act of 1977 (7 U.S.C. 2014(e)) which is reflected in this rule was enacted in 1990 as section 1717 of the Mickey Leland Memorial Domestic Relief Act (1990 Leland Act), Title XVII, Pub. L. 101–624 (104 Stat. 3783, Nov. 28, 1990). This amendment was effective February 1, 1992. The provisions of this rule are required to be implemented not later than October 1, 1994, in order to assure that all State agencies are in full compliance with the amendment as soon as possible. For this reason, Ellen Haas, Assistant Secretary for Food and Consumer Services, has determined pursuant to 5 U.S.C. 553 that public comment on this rule prior to implementation is impracticable and that good cause exists for making this rule effective less than 30 days after its publication. However, because we believe the administration of the rule may be improved by public comment, comments are solicited on this rule for 60 days after publication. All comments received within the comment period will be analyzed, and any appropriate changes will be incorporated in the subsequent publication of a final rule.

#### Background

Section 351 of the Hunger Prevention Act of 1988, Pub. L. 100–435 (102 Stat. 1645, September 19, 1988) (HPA) amended Section 5(e) of the Food Stamp Act of 1977, as amended, 7 U.S.C. 2014(e), to require State agencies to offer eligible households with an elderly or disabled member a method for claiming a deduction for recurring medical expenses in place of provisions that had required households to report and verify expenses monthly. On June 7, 1989, the Department published an interim rulemaking at 54 FR 24518, which implemented Section 351 of Pub. L. 100–435. The interim rules are still in effect.

The 1989 interim rule amended several provisions of the regulations pertaining to the medical deduction, particularly in the area of reporting and verification requirements for allowable medical expenses. Under the 1989 interim rule, households subject to monthly reporting are given the option of either reporting and verifying all medical expenses monthly, or of reporting and verifying changes in medical expenses in excess of $25 occurring during the certification period, but they cannot be required to report under both procedures. The 1989 interim rule amended 7 CFR 273.21(h)(3) (i) and (ii), (i)(1), and (j)(3)(iii) to specify the household's options with regard to reporting and verifying medical expenses in a monthly reporting and retrospective budgeting (MRRB) system. In addition, 7 CFR 273.12(a)(1)(vi) and 7 CFR 273.21(h)(3)(iii) were amended by the 1989 interim rule to simplify reporting changes in medical expenses. The 1989 interim rule required that changes in total medical expenses greater than $25 must be reported, as opposed to a $25 change in each individual allowable medical expense.

Following publication of the 1989 interim rule, the 1990 Leland Act was enacted. Regulations published to implement provisions of that Act superseded some of the changes made in the 1989 interim rule. Section 1724 of the 1990 Leland Act delegated to each State agency the responsibility for design of the monthly report form, including the determination of what information relevant to eligibility and benefits was to be included on that form. These provisions of section 1724 were implemented by the Monthly Reporting and Retrospective Budgeting Amendments and Mass Changes final rule, published on December 4, 1991 at 56 FR 63597. Conforming amendments to verification requirements associated with the monthly report were also made at that time. The regulatory amendments in the December 4, 1991 final rule superseded the changes made to 7 CFR 273.21(h)(3) (i), (ii), and (iii), and (i)(1) by the 1989 interim rule, because the interim provisions concerned the information that the Department mandated be contained on the monthly report form.

The amendments made to the regulations at 7 CFR 273.12(a)(vi) and 273.21(j)(iii) (C) and (D) by the 1989 interim rule were neither finalized nor superseded by subsequent regulations. As explained below, however, the Department is now making new amendments to these sections.

Section 1717 of the 1990 Leland Act amended section 5(e) of the Food Stamp Act to provide for a simplified means for eligible households to claim the excess medical expense deduction for recurring medical costs. Section 1717 requires State agencies to estimate at certification a recipient's recurring medical expenses for the certification period based upon the recipient's current verified medical expenses, as well as available information about the recipient's medical condition, and public or private medical insurance coverage. The household's medical deduction would be based on these estimates, and further verification would not be required. In a proposed rule entitled "Miscellaneous Provisions of the Mickey Leland Memorial Domestic Hunger Relief Act and Food Stamp Certification Policy," published on June 28, 1991 (56 FR 29594), the Department stated that food stamp regulations at 7 CFR 273.2(f)(8) and 273.12(a)(6) already reflected the intent of the statute and that, therefore, no change to the regulations was required. No comments disputing this position were received, and the position was reiterated in a final rule published on December 4, 1991 (56 FR 63594).

It has come to the attention of the Department that some State agencies may not be properly applying section 1717. This may be due to confusion on the part of State agencies with regard to the Department's decision not to issue regulations in connection with section 1717. To ensure that State agencies are in compliance with section 1717, the Department issued three memoranda to FNS regional offices, dated February 3, 1994, April 1, 1994, and May 12, 1994. In the memoranda, the Department instructed the regional offices to remind State agencies that they must be in compliance with the provisions of section 1717. The Department also offered direction as to how the State agencies can implement the provisions of section 1717.

In a further effort to insure that State agencies are implementing the provisions of section 1717, the Department is amending food stamp regulations that concern the medical expense deduction. These changes will clarify current regulations to better express the intent of section 1717. Accordingly, this rule amends 7 CFR 273.10(d)(1)(i), 273.10(d)(4), 273.12(a)(vi), 273.21 (h), (i), and (j)(iii) (C) and (D).

Under the amendments, the household will be required to report and verify all medical expenses at certification and recertification. The household's monthly medical deduction for its certification period will be based on the information reported and verified by the household, and any anticipated changes in the household's medical expenses that can be reasonably expected to occur during the certification period based on available information about the recipient's medical condition, public or private insurance coverage, and current verified medical expenses. If the household reports a medical expense at certification but cannot verify the expense at that time, and if the amount of the expense cannot be reasonably anticipated based on available information about the recipient's medical condition, public or private insurance coverage, and current verified medical expenses, the expense will be considered at the time the amount of the expense or reimbursement is reported and verified. The household will not be required to file reports about its medical expenses during the certification period. If the household voluntarily reports a change in its medical expenses, the State agency will act on the changes in accordance with current regulations at 7 CFR 273.12(c).

The Department is also making a related amendment to the regulations at 7 CFR 273.12(c) for changes in medical expenses that are discovered from a source other than the household. Currently, those regulations require the State agency to act on all changes in a household's circumstances, including those it discovers from a source other than the household. Often times, however, the State agency must contact the household to verify such unreported changes. Since the intent of section 1717 is to avoid recurrent reporting and verification on the part of households receiving the medical expense deduction, the Department is amending 7 CFR 273.12(c) to require that the State agency act on those changes in medical expenses it learns of from a source other than the household only if it can act without contacting the household for further information or verification. The household will be informed about the changes in accordance with the notice requirements at 7 CFR 273.13. Those changes learned from a source other than the household which are not verified upon receipt and therefore necessitate contact with the household for verification purposes shall not be acted upon until the household is recertified.

**Implementation**

This rule is effective and must be implemented no later than October 1, 1994. For quality control purposes, any variances resulting from the

implementation of the rule shall be excluded from error analysis for 120 days from the required implementation date, in accordance with 7 CFR 275.12(d)(2)(vii). The provision must be implemented for all households that newly apply for Program benefits on or after the required implementation date. The current caseload shall be converted to these provisions at the household's request, at the time of recertification, or when the case is next reviewed, whichever occurs first. The State agency must provide restored benefits to such households back to the required implementation date or the date of application whichever is later. If for any reason a State agency fails to implement on the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of application whichever is later.

**List of Subjects**

*7 CFR Part 272*

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

*7 CFR Part 273*

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Records, Reporting and recordkeeping requirements, Social Security.

Accordingly, 7 CFR parts 272 and 273 are amended as follows:

1. The authority citation for 7 CFR parts 272 and 273 continues to read as follows:

**Authority:** 7 U.S.C. 2011–2032.

## PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, paragraph (g)(138) is added to read as follows:

**§ 272.1 General terms and conditions.**

* * * * *

(g) *Implementation* * * *

(138) *Amendment No. 359* The provision of *Amendment No. 359* regarding the medical expense deduction is effective and must be implemented no later than October 1, 1994. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 120 days from this required implementation date in accordance with 7 CFR 275.12(d)(2)(vii). The provision must be implemented for all households that newly apply for Program benefits on or after the required implementation date. The current caseload shall be converted to these provisions at the household's request, at the time of recertification, or when the case is next reviewed, whichever occurs first. The State agency must provide restored benefits to such households back to the required implementation date or the date of application whichever is later. If for any reason a State agency fails to implement on the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of application whichever is later.

## PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In 273.10:

a. The fifth sentence of paragraph (d)(1)(i) is revised;

b. Four sentences are added to the end of paragraph (d)(4).

The revisions and additions read as follows:

**§ 273.10 Determining household eligibility and benefit levels.**

* * * * *

(d) *Determining deductions.* * * *

(1) *Disallowed expenses.*

(i) * * * If the household reports an allowable medical expense at the time of certification but cannot provide verification at that time, and if the amount of the expense cannot be reasonably anticipated based upon available information about the recipient's medical condition and public or private medical insurance coverage, the household shall have the nonreimbursable portion of the medical expense considered at the time the amount of the expense or reimbursement is reported and verified. * * *

* * * * *

(4) *Anticipating expenses.* * * * At certification and recertification, the household shall report and verify all medical expenses. The household's monthly medical deduction for the certification period shall be based on the information reported and verified by the household, and any anticipated changes in the household's medical expenses that can be reasonably expected to occur during the certification period based on available information about the recipient's medical condition, public or private insurance coverage, and current verified medical expenses. The household shall not be required to file reports about its medical expenses during the certification period. If the household voluntarily reports a change in its medical expenses, the State agency shall verify the change in accordance with § 273.2(f)(8) and act on the change in accordance with current regulations at § 273.12(c).

* * * * *

4. In 273.12:

a. Paragraph (a)(1)(vi) is removed;

b. Paragraph (c) introductory text is amended by adding two sentences after the first sentence to read as follows:

**§ 273.12 Reporting changes.**

* * * * *

(c) *State agency action on changes.* * * * However, during the certification period, the State agency shall not act on changes in the medical expenses of households eligible for the medical expense deduction which it learns of from a source other than the household and which, in order to take action, require the State agency to contact the household for verification. The State agency shall only act on those changes in medical expenses that it learns about from a source other than the household if those changes are verified upon receipt and do not necessitate contact with the household. * * *

* * * * *

5. In § 273.21:

a. Paragraph (h)(3) is revised.

b. A third sentence is added to paragraph (i).

c. Paragraph (j)(3)(iii)(C) is revised.

d. Paragraph (j)(3)(iii)(D) is removed and paragraph (j)(3)(iii)(E) is redesignated as paragraph (j)(3)(iii)(D).

The revisions read as follows:

**§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB)**

* * * * *

(h) *The monthly report form.* * * *

(3) *Reported information.* The State agency may determine the information relevant to eligibility and benefit determination to be included on the monthly report form except that the State agency shall not require households to monthly report medical expenses. Medical expenses may be reported in accordance with § 273.10(d)(4).

* * * * *

(i) *Verification.* * * * Medical expenses shall be verified in accordance with § 273.2(f).

(j) *State agency action on reports.* * * *

(3) *Incomplete filing.* * * *

(iii) * * *

(C) If a household fails to verify changes in reported medical expenses in accordance with § 273.2(f)(8), the State agency shall not make the change.

* * * * *

Dated: September 27, 1994.

**Ellen Haas,**

*Assistant Secretary for Food and Consumer Services.*

[FR Doc. 94–24384 Filed 9–30–94; 8:45 am]

BILLING CODE 3410–30–P

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### 15 CFR Parts 770, 771, and 775

[Docket No. 94083–4243]

RIN 0694–AB00

## Exports to Taiwan: Expansion of Import Certificate/Delivery Verification (IC/DV) Procedure, Shorter Processing Time Frames and General License GCG; and Revision of Romanian IC/DV Authority Address

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

**ACTION:** Final rule.

**SUMMARY:** As part of the Department of Commerce initiative to streamline export licensing requirements for exports to countries that are demonstrating increased ability to safeguard reexports of U.S.-origin strategic goods and technology, the Bureau of Export Administration (BXA) is extending to Taiwan export licensing benefits available under the provisions of section 5(k) of the Export Administration Act of 1979, as amended (EAA). This action will lessen the administrative burden on U.S. exporters and their foreign customers.

Specifically, BXA is: Providing shorter processing times for license applications for Taiwan; and amending General License GCG to authorize certain shipments of U.S.-origin commodities to Taiwan.

This rule also amends the Export Administration Regulations (EAR) to include new requirements based on the implementation of Import Certificate/Delivery Verification (IC/DV) procedures for Taiwan.

The address for the authority administering the IC/DV system within Romania is also revised by this rule.

**DATES:** *Effective date:* This rule is effective October 3, 1994.

*Grace period:* In lieu of the 45 day grace period provided in 15 CFR 775.10(c)(2), a 90 day grace period will apply to the requirement to obtain the Taiwan Import Certificate to support an export license application.

**FOR FURTHER INFORMATION CONTACT:** Rodney Joseph, Office of Technology and Policy Analysis, Telephone: (202) 482–0171.

**SUPPLEMENTARY INFORMATION:**

### Grace Period

During the 90 day grace period indicated in **DATES**, applications destined for Taiwan will be accepted if supported by a Taiwan Import Certificate from either the Board of Foreign Trade, Hsinchu Science-based Industrial Park, or the Export Processing Zone Administration, or a Form BXA–629P (Statement by Ultimate Consignee and Purchaser).

### Background

In April, 1994, Taiwan implemented an island-wide IC/DV system. This system extends the Hsinchu Science-based Industrial Park IC/DV system and makes Taiwan eligible for general license GCG and 15 day/15 day license processing.

The Bureau of Export Administration (BXA) requires a foreign importer to file an International Import Certificate (IC) in support of individual validated license applications to export certain commodities controlled for national security reasons to specified destinations. The commodities are identified by the code letter "A" following the Export Control Classification Number on the Commerce Control List, which identifies those items subject to Department of Commerce export controls. An IC is an undertaking by the government of the country of ultimate destination to exercise legal control over the disposition of those commodities covered by an IC.

BXA also requires a Delivery Verification Certificate (DV) on a selective basis, as described in 15 CFR 775.3(i). A DV is issued by the government of the country of ultimate destination after the exported commodities have either entered the export jurisdiction of that country or are otherwise accounted for by the importer.

New documentation practices adopted by Taiwan warrant the inclusion of that country in the IC/DV procedure. This rule amends the EAR by revising Taiwan's entry within the list of countries that issue Import Certificates and by revising the name and address of the Taiwan authorities in the list of foreign offices that administer the IC/DV systems.

The main authority for administering the Taiwan IC/DV program is the Board of Foreign Trade, Ministry of Economic Affairs. There are also two satellite offices: the Science-Based Industrial Park Administration and the Export Processing Zone Administration. If the destination of the export is within the Science-Based Industrial Park or the Export Processing Zone, then one should apply for the IC/DV at the appropriate satellite office.

This rule also revises the Romanian IC/DV authority address to the "Authorities Administering Import Certificate/Delivery Verification System in Foreign Countries" table, Supplement No. 1 to Part 775.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994.

### Rulemaking Requirements

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

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget (OMB) under control numbers 0694–0001, 0694–0005, 0694–0007, 0695–0010, and 0694–0016. Licensing requirements under OMB control numbers 0694–0005, 0694–0007, and 0694–0010 will be reduced as a result of this rule, while there will be a small increase under 0694–0001 and 0694–0016, thereby reducing overall the paperwork burden on the public.

The Import Certificate issued by the Government of Taiwan does not constitute a collection of information under the Paperwork Reduction Act of 1980.

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

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

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

and an opportunity for public comment be given for this rule.

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

**List of Subjects**

*15 CFR Part 770*

Administrative practice and procedure, Exports.

*15 CFR Parts 771 and 775*

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 770, 771, and 775 of the Export Administration Regulations (15 CFR parts 770, 771, and 775) are amended as follows:

1. The authority citations for 15 CFR Parts 770 and 771 are revised to read as follows:

**Authority:** 50 U.S.C. App. 5, as amended; Pub. L. 264, 59 Stat. 619 (22 U.S.C. 287c), as amended; Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); Pub. L. 102–484, 106 Stat. 2575 (22 U.S.C. 6004); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 12, 1993 (58 FR 60361, November 15, 1993); E.O. 12851 of June 11, 1993 (58 FR 33181, June 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); E.O. 12868 of September 30, 1993 (58 FR 51749, October 4, 1993); E.O. 12918 of May 26, 1994 (59 FR 28205, May 31, 1994); and E.O. 12924 of August 19, 1994 (59 FR 43437 of August 23, 1994).

2. The authority citation for 15 CFR Part 775 is revised to read as follows:

**Authority:** Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40 and Pub. L. 103–277, 108 Stat. 1407); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 12, 1993 (58 FR 60361, November 15, 1993); E.O. 12851 of June 11, 1993 (58 FR 33181, June 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); E.O. 12868 of September 30, 1993 (57 FR 51749, October 4, 1993); E.O. 12924 of August 19, 1994 (59 FR 43437 of August 23, 1994).

**PART 770—[AMENDED]**

**§ 770.14 [Amended]**

3. Section 770.14(a) introductory text is amended by revising the phrase "New Zealand, Sweden, and Switzerland." to read "New Zealand, Sweden, Switzerland, and Taiwan.".

**PART 771—[AMENDED]**

4. Section 771.14(b) is amended by revising the second sentence to read as follows:

**§ 771.14 General License GCG; shipments to agencies of cooperating governments.**

* * * * *

(b) * * * Cooperating governments are the national governments of Argentina, Australia, Austria, Belgium, Canada, Denmark, Finland, France, the Federal Republic of Germany, Greece, Hong Kong, Ireland, Italy, Japan, Korea (Republic of), Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Taiwan, Turkey, the United Kingdom, and the United States. * * * * *

**PART 775—[AMENDED]**

**§ 775.1 [Amended]**

5. The Table in § 775.1(b), entry number 1, column 2 is amended by removing the phrase "(Hsinchu Science-based Industrial Park)".

**§ 775.3 [Amended]**

6. The list of countries in § 775.3(b) is amended by revising the entry "Taiwan (Hsinchu Science-based Industrial Park)" to read "Taiwan".

7. The notes in § 775.3(b) are amended by removing Note 2 and redesignating Note 3 as Note 2.

*Supplement No. 1 to Part 775 [Amended]*

8. In Supplement No. 1 to Part 775 the entries for Romania and Taiwan (Hsinchu Science-based Industrial Park) and footnote 1 at the end of the table are revised to read as follows:

SUPPLEMENT NO. 1.—AUTHORITIES ADMINISTERING IMPORT CERTIFICATE/DELIVERY VERIFICATION SYSTEM IN FOREIGN COUNTRIES [1]

[See footnotes at end of table]

| Country | IC/DV Authorities | System administered [2] |
|---|---|---|
| * * * * * * * | | |
| Romania | National Agency for Control of Strategic Exports and Prohibition of Chemical Weapons, 13, Calea 13 Septembrie Casa Republicii, Gate A 1 Bucharest, Sector 5, Romania, P.O. Box 5–10, Phone: 401–311–2083, Fax : 401–311–1265. | IC/DV |
| * * * * * * * | | |
| Taiwan | Board of Foreign Trade, Ministry of Economic Affairs, 1 Hu-Kou Street, Taipei, Taiwan, R.O.C | IC/DV |
| | Science-Based Industrial Park Administration, No. 2 Hsin Ann Road, Hsinchu, Taiwan | IC/DV |
| | Export Processing Zone Administration, 600 Chiachang Road, Nantz, Kaohsiung, Taiwan. | |
| * * * * * * * | | |

[1] Facsimiles of Import Certificates and Delivery Verifications issued by each of these countries may be inspected at the Bureau of Export Administration Western Regional Office, 3300 Irvine Avenue, Suite 345, Newport Beach, California 92660–3198 or at any U.S. Department of Commerce District Office (see listing in Commerce Office Addresses section of the publication U.S. Export Administration Regulations) or at the Office of Export Licensing, Room 1099D, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Copies not available.

[2] IC—Import Certificate and/or DV—Delivery Verification.

Dated: September 26, 1994.

**Sue E. Eckert,**

*Assistant Secretary for Export Administration.*

[FR Doc. 94–24270 Filed 9–30–94; 8:45 am]

BILLING CODE 3510–DT–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

### 24 CFR Part 791

**[Docket No. R–94–1752; FR–3737–F–01]**

### Allocation of Budget Authority for Indian Housing

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Final rule.

**SUMMARY:** This rule amends HUD's regulations at 24 CFR part 791 on the allocation of budget authority with respect to the data to be used in determining the relative need for housing assistance in each HUD Field Office jurisdiction for the Indian housing program under 24 CFR part 905.

**EFFECTIVE DATE:** November 2, 1994.

**FOR FURTHER INFORMATION CONTACT:** Dom Nessi, Director, Office of Native American Programs, Room 8204, L'Enfant Plaza, Building 490 East, Washington, DC 20410; telephone (202) 755–0066; (TDD) (202) 708–9300. (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** Subpart D of 24 CFR part 791 provides the procedures for allocating budget authority under section 213(d) of the Housing and Community Development Act of 1974 among the HUD Field Offices for certain programs specified in 24 CFR 791.101(a). The regulations currently provide that budget authority for the Indian housing program under 24 CFR part 905 shall be allocated on the basis of the relative housing needs of the Indian tribal population, "as measured by the Bureau of Indian Affairs, and by data for non-BIA recognized groups served by the Indian housing program." (See 24 CFR 791.402(c)(2).)

The Bureau of Indian Affairs (BIA) no longer provides data upon which HUD can make its determination. This rule amends § 791.402(c)(2) to provide that HUD will base its determination upon data from the most recent, available decennial census and, where appropriate, more recent data from the Bureau of the Census or other Federal agencies.

### Justification for Final Rule Making

In accordance with its own regulations on rulemaking in 24 CFR part 10, the Department generally publishes a rule for public comment before issuing a rule for effect, unless to do so would be impracticable, unnecessary, or contrary to the public interest. This rule is being published for effect without prior public comment because the Department believes to do so would be unnecessary. The decennial census is the source of data used in making determinations for allocating budget authority in non-Indian housing programs, and therefore, is one the Department has confidence in as a reliable and objective source.

### Other Matters

*Environmental Impact*

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to internal administrative procedures whose content does not constitute a development decision nor affect the physical condition of project areas or building sites and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this document before publication and by approving it certifies that the rule would not have a significant economic impact on a substantial number of small entities. The rule revises existing procedures for the allocation of housing assistance funds, but will make no change in the economic impact of these procedures on small entities.

*Executive Order 12606, the Family*

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule will not have

a significant impact on family formation, maintenance, or well-being. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

*Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule does not involve the preemption of State law by Federal statute or regulation and does not have Federalism implications. Specifically, the rule will not substantially alter the established roles of HUD and the States and local governments, including IHAs, in administering affected programs. As a result, the rule is not subject to review.

*Regulatory Agenda*

This rule was not listed on the Department's semi-annual regulatory agenda published on April 25, 1994, at 59 FR 20424, under Executive Order 12866 and the Regulatory Flexibility Act.

**List of Subjects in 24 CFR Part 791**

Grant programs—housing and community development, Indians, Intergovernmental relations, Public housing, Rent subsidies.

Accordingly, 24 CFR part 791 is amended as follows:

## PART 791—REVIEW OF APPLICATIONS FOR HOUSING ASSISTANCE AND ALLOCATIONS OF HOUSING ASSISTANCE FUNDS

1. The authority citation for 24 part 791 continues to read as follows:

**Authority:** 42 U.S.C. 1439; 42 U.S.C. 3535(d).

2. Section 791.402 is amended by revising paragraph (c)(2) to read as follows:

**§ 791.402 Determination of lower income housing needs.**

* * * * *

(c) * * *

(2) Budget authority for the Indian housing program under 24 CFR part 905 shall be allocated on the basis of the relative housing needs of the Indian tribal population, based upon data from the most recent, available decennial census and, where appropriate, upon more recent data from the Bureau of the Census or other Federal agencies.

* * * * *

Dated: September 20, 1994.

**Henry G. Cisneros,**

*Secretary.*

[FR Doc. 94–24328 Filed 9–30–94; 8:45 am]

BILLING CODE 4210–32–P

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

[TD 8562]

RIN 1545–AM92

## Research or Experimental Expenditures

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains amendments to the Income Tax Regulations clarifying the definition of *research or experimental expenditures* and providing guidance regarding the reasonableness requirement of section 174(e), added to the Internal Revenue Code by the Revenue Reconciliation Act of 1989. These amendments affect taxpayers conducting research or experimentation in connection with a trade or business.

**EFFECTIVE DATE:** October 3, 1994.

**FOR FURTHER INFORMATION CONTACT:** Lisa J. Shuman, (202) 622–3120 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 174 of the Internal Revenue Code (Code) provides two alternative methods that taxpayers may use to account for research or experimental expenditures. A taxpayer may either deduct the expenditures in the year in which they are paid or incurred, or treat the expenditures as deferred expenses, amortizable over a period of at least 60 months. In 1957, the IRS adopted § 1.174–2(a)(1), which defines the term *research or experimental expenditures* as expenditures which represent research and development costs in the experimental or laboratory sense (22 FR 7901 (October 4, 1957)).

In 1993, the IRS proposed amendments to § 1.174–2(a)(1) to clarify the definition of *research or experimental expenditures* (58 FR 15819 (March 24, 1993)). The amendments also provide guidance regarding section 174(e), which was added to the Code by the Revenue Reconciliation Act of 1989. Section 174(e) provides that the accounting rules of section 174 apply to a research or experimental expenditure only to the extent that the amount of the expenditure is reasonable under the circumstances.

The IRS received comments on the proposed amendments both in writing and at a public hearing on June 18, 1993. This Treasury decision adopts the proposed amendments with several revisions in response to public comments.

**Explanation of Provisions**

*A. Clarification of Uncertainty Test*

As noted above, the 1957 regulations define *research or experimental expenditures* as expenditures which represent research and development costs in the experimental or laboratory sense. The proposed amendments provide that expenditures represent research and development costs in the experimental or laboratory sense if they are for activities intended to discover information that would eliminate uncertainty concerning the development or improvement of a product. Under the proposed amendments, the requisite uncertainty exists if the information reasonably available to the taxpayer does not establish the capability or method for developing or improving the product.

Several commentators expressed concern that the uncertainty test provided in the proposed amendments could be construed to limit unduly the definition of *research or experimental expenditures*. In particular, the commentators argued that the test could exclude expenditures incurred to determine the appropriate design of a product if the taxpayer knows at the outset that the procedure will be successful. In such a case, the taxpayer is not uncertain as to either its capability to develop the product or the method by which it will develop the product.

The Treasury Department and the IRS agree that a taxpayer's knowledge that a product development project will be successful does not preclude the process of determining the appropriate design of the product from qualifying as research. The Treasury Department and the IRS also agree that the language of the uncertainty test provided in the proposed amendments could be construed to reach a result contrary to that intended. The final amendments thus clarify the uncertainty test. Under the final amendments, the requisite uncertainty exists if the information available to the taxpayer does not establish either (i) The capability or method for developing or improving the

product, or (ii) the appropriate design of the product.

The uncertainty test, as clarified in the final amendments, reflects the dual purposes of section 174. Congress enacted section 174 not only to encourage research, but also to avoid the difficult tax accounting questions that would arise regarding research expenditures in the absence of special tax accounting rules. See H. Rep. 1337, 83d Cong., 2d Sess. (1954), reprinted in 1954 U.S.C.C.A.N. 4017, 4053. These difficult tax accounting questions would not be limited to cases in which the success of a product development project is in doubt. If a given line of inquiry proves to be unfruitful, questions could arise regarding whether the costs involved could be deducted, or whether the knowledge gained from the inquiry might contribute sufficiently to the ultimate design of the product that the costs must be capitalized. In short, the tax accounting questions that section 174 was meant to resolve can arise whenever the taxpayer is uncertain as to the capability or method for developing or improving the product, or the appropriate design of the product.

The proposed amendments apply the uncertainty test with reference to "the information reasonably available to the taxpayer." The Treasury Department and the IRS agree with the commentators that the meaning of the phrase *reasonably available* is unclear. Further, the phrase could be read to impose an unintended restriction on the definition of research or experimental expenditures. Information could be considered to be *reasonably available* to a taxpayer if the taxpayer can obtain the information through procedures that, while not particularly involved, are nonetheless in the nature of research activities. To avoid the ambiguities resulting from the term *reasonably*, the final amendments provide for the application of the uncertainty test with reference to the information actually available to the taxpayer. The removal of the term *reasonably* is not intended to expand the information considered to be available to the taxpayer.

*B. Validation Testing*

The 1957 regulations exclude from the definition of research the ordinary testing or inspection of materials or products for quality control. Several commentators on the proposed amendments asked for clarification that research includes validation testing to ensure that a product design meets its intended objectives. In response to these comments, the final amendments clarify that the existing exclusion for quality control testing does not apply to testing to determine if the design of a product is appropriate.

*C. Effective Date*

The final amendments retain the effective date of the proposed amendments, and thus apply to taxable years beginning after October 3, 1994. Some commentators requested that the proposed amendments apply to all open taxable years. Because the amendments merely clarify the existing definition of *research or experimental expenditures*, retroactive application of the amendments is unnecessary. Return positions consistent with the amendments will be consistent with the existing regulations and will be recognized as such by the IRS.

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on their impact on small business.

**Drafting Information**

The principal author of these regulations is Lisa J. Shuman of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 2.** Section 1.174–2 is amended as follows:

1. Paragraph (a)(1) is revised.

2. Paragraphs (a) (2) and (3) are redesignated as paragraphs (a) (8) and (9), respectively.

3. New paragraphs (a) (2) through (7) are added.

4. Paragraph (c) is amended by removing the reference "sections 615" and adding "sections 617" in its place.

5. The additions and revisions read as follows:

**§ 1.174–2 Definition of research and experimental expenditures.**

(a) *In general.* (1) The term *research or experimental expenditures*, as used in section 174, means expenditures incurred in connection with the taxpayer's trade or business which represent research and development costs in the experimental or laboratory sense. The term generally includes all such costs incident to the development or improvement of a product. The term includes the costs of obtaining a patent, such as attorneys' fees expended in making and perfecting a patent application. Expenditures represent research and development costs in the experimental or laboratory sense if they are for activities intended to discover information that would eliminate uncertainty concerning the development or improvement of a product. Uncertainty exists if the information available to the taxpayer does not establish the capability or method for developing or improving the product or the appropriate design of the product. Whether expenditures qualify as research or experimental expenditures depends on the nature of the activity to which the expenditures relate, not the nature of the product or improvement being developed or the level of technological advancement the product or improvement represents.

(2) For purposes of this section, the term *product* includes any pilot model, process, formula, invention, technique, patent, or similar property, and includes products to be used by the taxpayer in its trade or business as well as products to be held for sale, lease, or license.

(3) The term *research or experimental expenditures* does not include expenditures for—

(i) The ordinary testing or inspection of materials or products for quality control (quality control testing);

(ii) Efficiency surveys;

(iii) Management studies;

(iv) Consumer surveys;

(v) Advertising or promotions;

(vi) The acquisition of another's patent, model, production or process; or

(vii) Research in connection with literary, historical, or similar projects.

(4) For purposes of paragraph (a)(3)(i) of this section, testing or inspection to determine whether particular units of materials or products conform to specified parameters is quality control

testing. However, quality control testing does not include testing to determine if the design of the product is appropriate.

(5) See section 263A and the regulations thereunder for cost capitalization rules which apply to expenditures paid or incurred for research in connection with literary, historical, or similar projects involving the production of property, including the production of films, sound recordings, video tapes, books, or similar properties.

(6) Section 174 applies to a research or experimental expenditure only to the extent that the amount of the expenditure is reasonable under the circumstances. In general, the amount of an expenditure for research or experimental activities is reasonable if the amount would ordinarily be paid for like activities by like enterprises under like circumstances. Amounts supposedly paid for research that are not reasonable under the circumstances may be characterized as disguised dividends, gifts, loans, or similar payments. The reasonableness requirement of this paragraph (a)(6) does not apply to the reasonableness of the type or nature of the activities themselves.

(7) This paragraph (a) applies to taxable years beginning after October 3, 1994.

* * * * *

Dated: September 9, 1994.

**Margaret Milner Richardson,**

*Commissioner of Internal Revenue.*

Approved: September 9, 1994.

**Leslie Samuels,**

*Assistant Secretary of the Treasury.*

[FR Doc. 94–24153 Filed 9–30–94; 8:45 am]

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**26 CFR Part 1 and 602**

**[TD 8563]**

**RIN 1545–AQ41**

## State Housing Credit Ceiling and Other Rules Relating to the Low-Income Housing Credit

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations concerning the low-income housing credit under section 42 of the Internal Revenue Code. The regulations provide rules relating to the order in which housing credit dollar amounts are allocated from each State's housing credit ceiling under section 42(h)(3)(C) and the determination of which States qualify to receive credit from a national pool of credit under section 42(h)(3)(D). The regulations affect State and local housing credit agencies and taxpayers receiving credit allocations, and provide them with guidance for complying with section 42. The final regulations also amend § 1.42–5 to provide a cross reference to section 42(g)(8)(B).

**EFFECTIVE DATE:** These regulations are effective January 1, 1994.

**FOR FURTHER INFORMATION CONTACT:** Christopher J. Wilson 202–622–3040 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1423. The estimated annual burden per State or local government respondent varies from 2 hours to 6 hours, with an estimated average of 4 hours. The estimated annual burden for all other respondents varies from .5 hours to 1.5 hours, with an estimated average of 1 hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the IRS, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

### Background

On December 29, 1993, the IRS published a notice of proposed rulemaking in the **Federal Register** (58 FR 68799) proposing amendments to the Income Tax Regulations (26 CFR part 1) under section 42 of the Internal Revenue Code of 1986, as amended. These amendments provide guidance on several requirements of the low-income housing tax credit relating to determinations of the housing credit dollar amount available to housing credit agencies for allocation in any given year.

Written comments responding to the notice of proposed rulemaking were received. A public hearing was scheduled for April 26, 1994, pursuant to a notice of public hearing published simultaneously with the notice of proposed rulemaking. The IRS received one request to speak at the public hearing. This request was withdrawn before the hearing date. On April 14, 1994, the IRS published a notice (59 FR 17747) cancelling the public hearing on the proposed regulations. After consideration of the comments received, the proposed regulations are adopted as revised by this Treasury decision.

### Explanation of Provisions

Section 42 provides for a low-income housing credit that may be claimed as part of the general business credit under section 38. In general, the credit is allowable only if the owner of a qualified low-income building receives a housing credit allocation from a State or local housing credit agency (Agency) of the jurisdiction where the building is located.

The aggregate housing credit dollar amount that an Agency may allocate for any calendar year is limited to the State housing credit ceiling apportioned to the Agency for that year. Under section 42(h)(3)(C), the State housing credit ceiling of any State for any calendar year is an amount equal to the sum of: (a) $1.25 multiplied by the State population (the population component); (b) the unused State housing credit ceiling, if any, of the State for the preceding calendar year (the unused carryforward component); (c) the amount of State housing credit ceiling returned in the calendar year (the returned credit component); plus (d) the amount, if any, allocated to the State by the Secretary under section 42(h)(3)(D) from a national pool of unused credit (the national pool component).

The final regulations set forth the rules governing the order in which credit is allocated from the various components of the State housing credit ceiling under section 42(h)(3)(C) (the stacking rules). In general, under the stacking rules, credit is allocated first from the sum of the population and returned credit components, then from the unused carryforward component, and finally from the national pool component. The final regulations also reflect the statutory rule that unallocated credit attributable to the national pool component cannot be carried forward, and, therefore, is not included in the carryforward component for the following year. In addition, the final regulations provide that no credit allocated prior to calendar year 1990, and no credit allowable under section 42(h)(4) (relating to the portion of credit attributable to eligible basis financed by certain tax-exempt obligations under section 103), may be returned for reallocation. Thus, this credit is not included in the returned credit component for any year.

One commentator requested clarification of the rule in the proposed regulations that if the terms of the

allocation violate any requirement of section 42, the allocation is not valid. Specifically, the commentator expressed concern that a misrepresentation by a taxpayer to an Agency would result in the allocation being treated as not valid and as if it had never been made and ineligible for treatment as a returned credit. The final regulations do not include this statement. First, the determination of whether an allocation is valid is not within the scope of these regulations. Second, given the general requirement that an allocation must be valid to qualify as a returned credit, it is unnecessary to include the additional statement that, if the terms of the allocation violate any requirement of section 42, the allocation is not valid and is treated as if it had not been made. However, for all purposes of section 42, including qualification as a returned credit, an allocation must be validly made. See, for example, §§ 1.42–1T and 1.42–6.

The final regulations adopt the provision of the proposed regulations requiring that if a credit is returned within 180 days following the close of the first taxable year of a building's credit period and a Form 8609, *Low-Income Housing Credit Allocation Certification,* has been issued for the building, an Agency must notify the IRS that the credit has been returned. One commentator requested that the procedure for notifying the IRS be clarified. Accordingly, the final regulations clarify that if all of the credit is returned, the Agency must follow the procedures in § 1.42–5(e)(3) for filing the Form 8823, *Low-Income Housing Credit Agencies Report of Noncompliance.* In situations where the credit is only partially returned, the Agency must follow the procedures prescribed for filing an amended Form 8610, *Annual Low-Income Housing Credit Agencies Report.*

The proposed regulations permit an Agency to treat credit returned from a project to the Agency after October 31 of any calendar year and not reallocated by the Agency by the close of the year as returned at the beginning of the succeeding calendar year (the two-month rule). One commentator suggested that the two-month rule of the proposed regulations be changed to allow more time to reallocate credits before the close of the calendar year. Accordingly, the final regulations provide that credit returned to the Agency after September 30 of any calendar year and not reallocated by the close of the year may be treated as returned at the beginning of the succeeding calendar year. In response to another comment, the final regulations clarify that an Agency, in its discretion, may treat a portion of a credit that is so returned and that is not reallocated before the close of the calendar year as returned in the next calendar year. However, to the extent any portion of a credit returned after September 30 of any calendar year is allocated by the close of the calendar year in which it is returned, that portion of the credit is included as part of the returned credit component of the State housing credit ceiling for the year in which the credit is returned.

The proposed regulations provide that, if an allocation is cancelled by mutual consent, a signed and dated written agreement between the Agency and the allocation recipient (or its successor in interest) must indicate the amount of the allocation returned and the date on which the credit is returned. Commentators suggested that, if the terms of an allocation state that any unused amounts are automatically returned to the Agency by mutual agreement, the regulations should not require a signed and dated written agreement. If this suggestion were adopted, neither the IRS nor the Agency would know with enough precision the amount of credit returned and the date on which the credit is returned. This information is necessary to determine with certainty the returned credit component of the State housing credit ceiling and to avoid discrepancies in the amount of credit allocated to a particular project. Thus, the final regulations do not adopt this suggestion.

Under section 42(h)(3)(D), States that have unused housing credit carryovers must assign them to the Secretary for inclusion in a national pool of unused housing credit carryovers (National Pool), and the Secretary must allocate National Pool credit among qualified States.

In determining whether there is any unallocated credit within the State at the close of a calendar year, the housing credit dollar amounts apportioned to all Agencies within the State (including Agencies of constitutional home rule cities in the State) and the allocations of all Agencies within the State are considered. One commentator suggested that a constitutional home rule city be considered alone rather than in combination with other constitutional home rule cities or Agencies within a State in determining access to the National Pool. Section 42(h)(3)(E) does provide special rules for apportioning credits to constitutional home rule cities. Under these rules, however, credits are apportioned to these cities from the State housing credit ceiling. There is no provision in the Code that permits a constitutional home rule city to receive credit that is not apportioned from the State housing credit ceiling. Accordingly, the final regulations do not adopt this suggestion.

In addition to a de minimis exception for States that have 1 percent or less of unallocated credit remaining in their State housing credit ceiling at the close of a calendar year (de minimis rule), the proposed regulations provide that, in other circumstances where relief is deemed appropriate, the IRS may determine that a State is a qualified State eligible to participate in the National Pool. One commentator requested that States that cannot allocate their entire ceiling as a result of a natural disaster be allowed to participate in the National Pool. This type of relief exceeds the scope and intent behind the limited exception provided in the proposed regulations. Further, this type of relief would be inequitable to other States that qualify for the National Pool. Thus, the final regulations do not adopt this suggestion.

Another commentator suggested that the de minimis rule provide an alternative fixed dollar amount measurement of de minimis amount to reflect unallocated amounts that are, as a practical matter, insufficient to provide an allocation to a project. Due to variations in construction and housing costs across the United States, this suggestion was not adopted. Similarly, a suggestion that the final regulations provide a separate de minimis rule for the set-aside for nonprofit organizations was not adopted. Under the regulations, however, these situations can be addressed by the IRS on a case-by-case basis. Moreover, if appropriate, additional safe harbors could be provided in the future (e.g., to respond to other common situations not addressed by the 1 percent rule).

The final regulations also amend § 1.42–5 to provide a cross reference to section 42(g)(8)(B), as added by section 13142(b)(3) of the Revenue Reconciliation Act of 1993. Section 42(g)(8)(B) provides that on application by the taxpayer, the Secretary may waive any annual recertification of tenant income (the Waiver) for purposes of section 42(g), if the entire building is occupied by low-income tenants. Instructions on how to obtain the Waiver will be contained in a forthcoming revenue procedure.

## Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory

assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal author of these regulations is Christopher J. Wilson, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

**List of Subjects**

*26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority for part 1 is amended by adding an entry in numerical order to read as follows:

**Authority:** 26 U.S.C. 7805 * * *

Section 1.42–14 also issued under 26 U.S.C. 42(n). * * *

**Par. 2.** Section 1.42–5 is amended by:

1. Revising paragraph (b)(1)(vi).
2. Adding a sentence after the first sentence in paragraph (b)(1)(vii).
3. Revising paragraph (c)(1)(iii).
4. The revisions and additions read as follows:

**§ 1.42–5 Monitoring compliance with low-income housing credit requirements.**

* * * * *

(b) * * * (1) * * *

(vi) The annual income certification of each low-income tenant per unit. For an exception to this requirement, see section 42(g)(8)(B) (which provides a special rule for a 100 percent low-income building);

(vii) * * * For an exception to this requirement, see section 42(g)(8)(B) (which provides a special rule for a 100 percent low-income building). * * *

* * * * *

(c) * * * (1) * * *

(iii) The owner has received an annual income certification from each low-income tenant, and documentation to support that certification; or, in the case of a tenant receiving Section 8 housing assistance payments, the statement from a public housing authority described in paragraph (b)(1)(vii) of this section. For an exception to this requirement, see section 42(g)(8)(B) (which provides a special rule for a 100 percent low-income building);

* * * * *

**Par. 3.** Section 1.42–14 is added to read as follows:

**§ 1.42–14 Allocation rules for post-1989 State housing credit ceiling amounts.**

(a) *In general.* The State housing credit ceiling for a State for any calendar year after 1989 is comprised of four components. The four components are—

(1) $1.25 multiplied by the State population (the population component);

(2) The unused State housing credit ceiling, if any, of the State for the preceding calendar year (the unused carryforward component);

(3) The amount of State housing credit ceiling returned in the calendar year (the returned credit component); plus

(4) The amount, if any, allocated to the State by the Secretary under section 42(h)(3)(D) from a national pool of unused credit (the national pool component).

(b) *The population component.* The population component of the State housing credit ceiling of a State for any calendar year is determined pursuant to section 146(j). Thus, a State's population for any calendar year is determined by reference to the most recent census estimate, whether final or provisional, of the resident population of the State released by the Bureau of the Census before the beginning of the calendar year for which the State's housing credit ceiling is set. Unless otherwise prescribed by applicable revenue procedure, determinations of population are based on the most recent estimates of population contained in the Bureau of the Census publication, *Current Population Report, Series P–25; Population Estimates and Projections, Estimates of the Population of States.* For convenience, the Internal Revenue Service publishes the population estimates annually in the Internal Revenue Bulletin. (See § 601.601(d)(2)(ii)(*b*)).

(c) *The unused carryforward component.* The unused carryforward component of the State housing credit ceiling for any calendar year is the excess, if any, of the sum of the population and returned credit components, over the aggregate housing credit dollar amount allocated for the year. Any credit amounts attributable to the national pool component of the State housing credit ceiling that remain unallocated at the close of a calendar year are not carried forward to the succeeding calendar year; instead, the credit expires and cannot be reallocated by any Agency.

(d) *The returned credit component—*

(1) *In general.* The returned credit component of the State housing credit ceiling for any calendar year equals the housing credit dollar amount returned during the calendar year that was validly allocated within the State in a prior calendar year to any project that does not become a qualified low-income housing project within the period required by section 42, or as required by the terms of the allocation. The returned credit component also includes credit allocated in a prior calendar year that is returned as a result of the cancellation of an allocation by mutual consent or by an Agency's determination that the amount allocated is not necessary for the financial feasibility of the project. For purposes of this section, credit is allocated within a State if it is allocated from the State's housing credit ceiling by an Agency of the State or of a constitutional home rule city in the State.

(2) *Limitations and special rules.* The following limitations and special rules apply for purposes of this paragraph (d).

(i) *General limitations.* Notwithstanding any other provision of this paragraph (d), returned credit does not include any credit that was—

(A) Allocated prior to calendar year 1990;

(B) Allowable under section 42(h)(4) (relating to the portion of credit attributable to eligible basis financed by certain tax-exempt bonds under section 103); or

(C) Allocated during the same calendar year that it is received back by the Agency.

(ii) *Credit period limitation.* Notwithstanding any other provision of this paragraph (d), an allocation of credit may not be returned any later than 180 days following the close of the first taxable year of the credit period for the building that received the allocation. After this date, credit that might otherwise be returned expires, and cannot be returned to or reallocated by any Agency.

(iii) *Three-month rule for returned credit.* An Agency may, in its discretion, treat any portion of credit that is returned from a project after September 30 of a calendar year and that is not

reallocated by the close of the calendar year as returned on January 1 of the succeeding calendar year. In this case, the returned credit becomes part of the returned credit component of the State housing credit ceiling for the succeeding calendar year. Any portion of credit that is returned from a project after September 30 of a calendar year that is reallocated by the close of the calendar year is treated as part of the returned credit component of the State housing credit ceiling for the calendar year that the credit was returned.

(iv) *Returns of credit.* Subject to the limitations of paragraphs (d)(2) (i) and (ii) of this section, credit is returned to the Agency in the following instances in the manner described in paragraph (d)(3) of this section.

(A) *Building not qualified within required time period.* If a building is not a qualified building within the time period required by section 42, it loses its credit allocation and the credit is returned. For example, a building is not qualified within the required time period if it is not placed in service within the period required by section 42 or if the project of which the building is a part fails to meet the minimum set-aside requirements of section 42(g)(1) by the close of the first year of the credit period.

(B) *Noncompliance with terms of the allocation.* If a building does not comply with the terms of its allocation, it loses the credit allocation and the credit is returned. The terms of an allocation are the written conditions agreed to by the Agency and the allocation recipient in the allocation document.

(C) *Mutual consent.* If the Agency and the allocation recipient cancel an allocation of an amount of credit by mutual consent, that amount of credit is returned.

(D) *Amount not necessary for financial feasibility.* If an Agency determines under section 42(m)(2) that an amount of credit allocated to a project is not necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period, that amount of credit is returned.

(3) *Manner of returning credit—*(i) *Taxpayer notification.* After an Agency determines that a building or project no longer qualifies under paragraph (d)(2)(iv)(A), (B), or (D) of this section for all or part of the allocation it received, the Agency must provide written notification to the allocation recipient, or its successor in interest, that all or part of the allocation is no longer valid. The notification must also state the amount of the allocation that is no longer valid. The date of the notification is the date the credit is returned to the Agency. If an allocation is cancelled by mutual consent under paragraph (d)(2)(iv)(C) of this section, there must be a written agreement signed by the Agency, and the allocation recipient, or its successor in interest, indicating the amount of the allocation that is returned to the Agency. The effective date of the agreement is the date the credit is returned to the Agency.

(ii) *Internal Revenue Service notification.* If a credit is returned within 180 days following the close of the first taxable year of a building's credit period as provided in paragraph (d)(2)(ii) of this section, and a Form 8609, *Low-Income Housing Credit Allocation Certification,* has been issued for the building, the Agency must notify the Internal Revenue Service that the credit has been returned. If only part of the credit has been returned, this notification requirement is satisfied when the Agency attaches to an amended Form 8610, *Annual Low-Income Housing Credit Agencies Report,* the original of an amended Form 8609 reflecting the correct amount of credit attributed to the building together with an explanation for the filing of the amended Forms. The Agency must send a copy of the amended Form 8609 to the taxpayer that owns the building. If the building is not issued an amended Form 8609 because all of the credit allocated to the building is returned, notification to the Internal Revenue Service is satisfied by following the requirements prescribed in § 1.42–5(e)(3) for filing a Form 8823, *Low-Income Housing Credit Agencies Report of Noncompliance.*

(e) *The national pool component.* The national pool component of the State housing credit ceiling of a State for any calendar year is the portion of the National Pool allocated to the State by the Secretary for the calendar year. The national pool component for any calendar year is zero unless a State is a *qualified State.* (See paragraph (i) of this section for rules regarding the National Pool and the description of a qualified State.) Credit from the national pool component of a State housing credit ceiling must be allocated prior to the close of the calendar year or the credit expires and cannot be reallocated by any Agency. A national pool component credit that is allocated during a calendar year and returned after the close of the calendar year may qualify as part of the returned credit component of the State housing credit ceiling for the calendar year that the credit is returned.

(f) *When the State housing credit ceiling is determined.* For purposes of accounting for the State housing credit ceiling on Form 8610 and for purposes of determining the set-aside apportionment for projects involving qualified nonprofit organizations described in section 42(h)(5) and § 1.42-1T(c)(5), the State housing credit ceiling for any calendar year is determined at the close of the calendar year.

(g) *Stacking order.* Under section 42(h)(3)(C), credit is treated as allocated from the various components of the State housing credit ceiling in the following order. The first credit allocated for any calendar year is treated as credit from the sum of the population and returned credit components of the State housing credit ceiling. Once all of the credit in these components has been allocated, the next credit allocated is treated as credit from the unused carryforward component of the State housing credit ceiling. Finally, after all of the credit from the population component, returned credit component, and unused carryforward component has been allocated, any further credit allocated is treated as credit from the national pool component.

(h) *Nonprofit set-aside—*(1) *Determination of set-aside.* Under section 42(h)(5) and § 1.42–1T(c)(5), at least 10 percent of a State housing credit ceiling in any calendar year must be set aside exclusively for projects involving qualified nonprofit organizations (the nonprofit set-aside). However, credit allocated from the nonprofit set-aside in a calendar year and returned in a subsequent calendar year does not retain its nonprofit set-aside character. The credit becomes part of the returned credit component of the State housing credit ceiling for the calendar year that the credit is returned and must be included in determining the nonprofit set-aside of the State housing credit ceiling for that calendar year. Similarly, credit amounts that are not allocated from the nonprofit set-aside in a calendar year and are returned in a subsequent calendar year become part of the returned credit component of the State housing credit ceiling for that year and are also included in determining the set-aside for that year.

(2) *Allocation rules.* An Agency may allocate credit from any component of the State housing credit ceiling as part of the nonprofit set-aside and need not reserve 10 percent of each component for the nonprofit set-aside. Thus, an Agency may satisfy the nonprofit set-aside requirement of section 42(h)(5) and § 1.42–1T(c)(5) in any calendar year by setting aside for allocation an amount equal to at least 10 percent of the total State housing credit ceiling for the calendar year.

(i) *National Pool*—(1) *In general.* The unused housing credit carryover of a State for any calendar year is assigned to the Secretary for inclusion in a national pool of unused housing credit carryovers (National Pool) that is reallocated among qualified States the succeeding calendar year. The assignment to the Secretary is made on Form 8610.

(2) *Unused housing credit carryover.* The unused housing credit carryover of a State for any calendar year is the excess, if any, of the unused carryforward component of the State housing credit ceiling for the calendar year over the excess, if any, of—

(i) The total housing credit dollar amount allocated for the year; over

(ii) The sum of the population and returned credit components of the State housing credit ceiling for the year.

(3) *Qualified State*—(i) *In general.* The term *qualified State* means, with respect to any calendar year, any State that has allocated its entire State housing credit ceiling for the preceding calendar year and for which a request is made by the State, not later than May 1 of the calendar year, to receive an allocation of credit from the National Pool for that calendar year. Except as provided in paragraph (i)(3)(ii) of this section, a State is not a qualified State in a calendar year if there remains any unallocated credit in its State housing credit ceiling at the close of the preceding calendar year that was apportioned to any Agency within the State for the calendar year.

(ii) *Exceptions*—(A) *De minimis amount.* If the amount remaining unallocated at the close of a calendar year is only a de minimis amount of credit, the State is a qualified State eligible to participate in the National Pool. For that purpose, a credit amount is de minimis if it does not exceed 1 percent of the aggregate State housing credit ceiling of the State for the calendar year.

(B) *Other circumstances.* Pursuant to the authority under section 42(n), the Internal Revenue Service may determine that a State is a qualified State eligible to participate in the National Pool even though the State's unallocated credit is in excess of the 1 percent safe harbor set forth in paragraph (A) of this section. The Internal Revenue Service will make this determination based on all the facts and circumstances, weighing heavily the interests of the States who would otherwise qualify for the National Pool. The Internal Revenue Service will generally grant relief under this paragraph only where a State's unallocated credit is not substantial.

(iii) *Time and manner for making request.* For further guidance as to the time and manner for making a request of housing credit dollar amounts from the National Pool by a qualified State, see Rev. Proc. 92–31, 1992–1 C.B. 775. (See 601.601(d)(2)(ii)(*b*)).

(4) *Formula for determining the National Pool.* The amount allocated to a qualified State in any calendar year is an amount that bears the same ratio to the aggregate unused housing credit carryovers of all States for the preceding calendar year as that State's population for the calendar year bears to the population of all qualified States for the calendar year.

(j) *Coordination between Agencies.* The Agency responsible for filing Form 8610 on behalf of all Agencies within a State and making any request on behalf of the State for credit from the National Pool (the Filing Agency) must coordinate with each Agency within the State to ensure that the various requirements of this section are complied with. For example, the Filing Agency of a State must ensure that all Agencies within the State that were apportioned a credit amount for the calendar year have allocated all of their respective credit amounts for the calendar year before the Filing Agency can make a request on behalf of the State for a distribution of credit from the National Pool.

(k) *Examples.* (1) The operation of the rules of this section may be illustrated by the following examples. Unless otherwise stated in an example, Agency A is the sole Agency authorized to make allocations of housing credit dollar amounts in State M, all of Agency A's allocations are valid, and for calendar year 1994 Agency A has available for allocation a State housing credit ceiling consisting of the following housing credit dollar amounts:

| | |
|---|---|
| A. Population component | $100 |
| B. Unused carryforward component | 50 |
| C. Returned credit component | 10 |
| D. National pool component | 0 |
| Total | 160 |

(2) In addition, the $10 of returned credit component was returned before October 1, 1994.

*Example 1*—(i) *Additional facts.* By the close of 1994, Agency A had allocated $80 of the State M housing credit ceiling. Of the $80 allocated, $16 was allocated to projects involving qualified nonprofit organizations.

(ii) *Application of stacking rules.* The first credit allocated is treated as allocated from the population and returned credit components of the State housing credit ceiling, to the extent of those components. In this case, the $80 of credit allocated is less than the sum of the population and returned credit components. The excess of the sum of the population and returned credit components over the total amount allocated for the calendar year ($110 − 80=$30) becomes the unused carryforward component of State M's 1995 State housing credit ceiling. Because Agency A did not allocate credit in excess of the sum of the population and returned credit components, no credit is treated as allocated from State M's $50 unused carryforward component in 1994. Because none of this component may be carried forward, all $50 is assigned to the Secretary for inclusion in the National Pool. Under paragraph (i)(3) of this section, State M does not qualify for credit from the National Pool for the 1995 calendar year.

(iii) *Nonprofit set-aside.* Agency A allocated exactly the amount of credit to projects involving qualified nonprofit organizations as necessary to meet the nonprofit set-aside requirement ($16, 10% of the $160 ceiling).

*Example 2*—(i) *Additional facts.* By the close of 1994, Agency A had allocated $130 of the State M housing credit ceiling. Of the $130 allocated, $20 was allocated to projects involving qualified nonprofit organizations.

(ii) *Application of stacking rules.* The first $110 of credit allocated is treated as allocated from the population and returned credit components. In this case, because all of the population and returned credit components are allocated, no amount is included in State M's 1995 State housing credit ceiling as an unused carryforward component. The next $20 of credit allocated is treated as allocated from the $50 unused carryforward component. The $30 remaining in the unused carryforward component is assigned to the Secretary for inclusion in the National Pool for the 1995 calendar year. Under paragraph (i)(3) of this section, State M does not qualify for credit from the National Pool for the 1995 calendar year.

(iii) *Nonprofit set-aside.* Agency A allocated $4 more credit to projects involving qualified nonprofit organizations than necessary to meet the nonprofit set-aside requirement. This does not reduce the application of the 10% nonprofit set-aside requirement to the State M housing credit ceiling for the succeeding year.

*Example 3*—(i) *Additional fact.* None of the applications for credit that Agency A received for 1994 are for projects involving qualified nonprofit organizations.

(ii) *Nonprofit set-aside.* Because at least 10% of the State housing credit ceiling must be set aside for projects involving a qualified nonprofit organization, Agency A can allocate only $144 of the $160 State housing credit ceiling for calendar year 1994 ($160 − 16=$144). If Agency A allocates $144 of credit, the credit is treated as allocated $110 from the population and returned credit components and $34 from the unused carryforward component. The $16 of unallocated credit that is set aside for projects involving qualified nonprofit organizations is treated as the balance of the unused carryforward component, and is assigned to the Secretary for inclusion in the National Pool. Under paragraph (i)(3) of this section, State M does not qualify for credit

from the National Pool for the 1995 calendar year.

*Example 4*—(i) *Additional facts.* The $10 of returned credit component was returned prior to October 1, 1994. However, a $40 credit that had been allocated in calendar year 1993 to a project involving a qualified nonprofit organization was returned to the Agency by a mutual consent agreement dated November 15, 1994. By the close of 1994, Agency A had allocated $160 of the State M housing credit ceiling, including $16 of credit to projects involving qualified nonprofit organizations.

(ii) *Effect of three-month rule.* Under the three-month rule of paragraph (d)(2)(iii) of this section, Agency A may treat all or part of the $40 of previously allocated credit as returned on January 1, 1995. If Agency A treats all of the $40 amount as having been returned in calendar year 1995, the State M housing credit ceiling for 1994 is $160. This entire amount, including the $16 nonprofit set-aside, has been allocated in 1994. Under paragraph (i)(3) of this section, State M qualifies for the National Pool for the 1995 calendar year.

(iii) *If three-month rule not used.* If Agency A treats all of the $40 of previously allocated credit as returned in calendar year 1994, the State housing credit ceiling for the 1994 calendar year will be $200 of which $50 will be attributable to the returned credit component ($10+$40=$50). Because credit amounts allocated in a prior calendar year that are returned in a subsequent calendar year do not retain their nonprofit character, the nonprofit set-aside for calendar year 1994 is $20 (10% of $200). The $160 that Agency A allocated during 1994 is first treated as from the population and returned credit components, which total $150. The next $10 of credit allocated is treated as from the unused carryforward component. The $40 of unallocated credit from the unused carryforward component includes the $4 of unallocated nonprofit set-aside. The entire $40 of credit from the carryforward component is assigned to the Secretary for inclusion in the National Pool for the 1995 calendar year. State M does not qualify for credit from the National Pool for the 1995 calendar year.

*Example 5*—(i) (A) *Additional facts.* For calendar year 1994, Agency A has a State housing credit ceiling that consists of the following housing credit dollar amounts:

| | |
|---|---|
| A. Population component | $100 |
| B. Unused carryforward component | 0 |
| C. Returned credit component | 20 |
| D. National pool component | 10 |
| Total | 130 |
| Minimum nonprofit set-aside | 13 |
| Ceiling amount not set-aside | 117 |

In addition, the $20 of returned credit component was returned before October 1, 1994. By the close of 1994, Agency A had allocated $100 of the State housing credit ceiling.

(ii) *Application of stacking rules.* The $20 excess of the sum of the population component and the returned credit component over the total amount allocated for the calendar year ($120 − 100=$20) becomes the unused carryforward component of the State housing credit ceiling for the 1995 calendar year. The $10 of unallocated credit from the national pool component expires and cannot be reallocated. This amount is neither carried over to 1995 by State M nor assigned to the Secretary for inclusion in the National Pool. Under paragraph (i)(3) of this section, State M does not qualify for credit from the National Pool for the 1995 calendar year.

(l) *Effective date.* The rules set forth in § 1.42–14 are effective January 1, 1994.

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

**Par. 4.** The authority citation for part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

**§ 602.101(c) [Amended]**

**Par. 5.** Section 602.101(c) is amended by adding the entry "1.42–14....1545–1423" in numerical order to the table.

**Margaret Milner Richardson,**

*Commissioner of Internal Revenue.*

Approved: September 9, 1994.

**Leslie Samuels,**

*Assistant Secretary of the Treasury.*

[FR Doc. 94–24283 Filed 9–30–94; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 117

**[CGD09–94–008]**

**RIN–2115–AE47**

## Drawbridge Operation Regulations; Black Rock Canal, NY

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** At the request of the Canadian National Railway Company, the Coast Guard is changing the operating regulations governing the Canadian National railroad bridge at mile 3.8 across the Black Rock Canal in Buffalo, New York, by not requiring bridgetenders to be in constant attendance at the bridge during periods of time when there is little or no significant navigation on the Canal. This action will relieve the bridge owner of the burden of having a bridgetender in constant attendance and will provide for the reasonable needs of navigation. Additionally, this rule adjusts the hours of the Ferry Street bridge at mile 2.6 across the Black Rock Canal when the bridge is not required to have a bridgetender in attendance.

**EFFECTIVE DATE:** This rule becomes effective on November 2, 1994.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert W. Bloom, Jr., Chief, Bridge Branch, Ninth Coast Guard District, at (216) 522–3993.

**SUPPLEMENTARY INFORMATION:**

### Drafting Information

The principal person involved in drafting this document is Mr. Fred H. Mieser, Project Manager.

### Regulatory History

On June 1, 1994, the Coast Guard published a notice of proposed rulemaking entitled Drawbrige Operation Regulations; Black Rock Canal, NY, in the **Federal Register** (59 FR 28324 and 28325). On June 17, 1994, the commander, Ninth Coast Guard District published the proposed rule as a Public Notice (PN 09–03/94). Interested persons were given until August 1, 1994, and July 18, 1994, respectively, to submit comments. Two letters were received commenting on the proposal. A public hearing was not requested and one was not held.

### Background and Purpose

Presently, the Canadian National railroad bridge is required to have bridgetenders in constant attendance at all times. The owner requested that they be allowed to remove bridgetenders from the bridge between the hours of 11 p.m. and 7 a.m., seven days a week, from April 15 through November 30, with a requirement to open the bridge on signal when notice is given at least two hours in advance of a vessel's time of intended passage through the draw. From December 1 through April 14, the bridge would be unattended at all times with a requirement to open the bridge on signal if notice is given at least four hours in advance of a vessel's time of intended passage through the draw. At all times, the bridge will be required to open as soon as possible for the passage of public vessels of the United States, State or local government vessels used for public safety, and vessels in distress.

### Discussion of Comments and Changes

Two comments were received from the notice of proposed rulemaking requesting that the hours when the bridges are unattended be changed. The commenters requested the unattended periods for the bridges listed in the proposed rule, 11 p.m. to 7 a.m., be changed to conform with the period of time when the Black Rock Locks are

unattended, between the hours of 12 midnight and 8 a.m., seven days a week. In addition, the regulations contained in 33 CFR 117.769 do not require the Ferry Street bridge across the Black Rock Canal to be manned from 11 p.m. to 7 a.m. The requested change of time is a reasonable request and will benefit marine traffic using the Black Rock Canal by bringing the time period for the bridges and locks in line when a vessel owner/operator is required to give an advance notice to transit the Canal. Therefore, section 117.769(a) of the proposed rule has been changed in the final rule by not requiring the bridges to be manned between the hours of 12 midnight to 8 a.m.

**Regulatory Evaluation**

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The Coast Guard concludes this because the rule which is being changed allows for the removal of bridgetenders during a period of time when there is little or no significant navigation on a waterway. In addition this rule establishes a consistent period of time when an advance notice is required to have the bridges manned which is less confusing to the person requesting passage through the locks and draws of the bridges.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this action 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 otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The time period addressed by this regulation is consistent with the time period when most traffic using the Black Rock Canal is already controlled by the operation of the Black Rock Locks and when there is little or no significant vessel traffic on the waterway. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant impact on a substantial number of small entities.

**Collection of Information**

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

**Federalism**

The Coast Guard has analyzed this action under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.5 of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination Statement has been prepared and placed in the docket.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Final Regulations**

For reasons set out in the preamble, the Coast Guard amends 33 CFR 117 as follows:

## PART 117—DRAWBRIDGE OPERATING REGULATIONS

1. The authority citation for Part 117 continues to read as follows.

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.769 is revised to read as follows:

**§ 117.769 Black Rock Canal.**

The draws of the Ferry Street bridge, mile 2.6, and Canadian National Railway bridge, mile 3.8, both at Buffalo, shall operate as follows:

(a) From April 15 through November 30, the draws shall open on signal. However, between the hours of 12 midnight and 8 a.m., seven days a week, no bridgetender is required to be in attendance at the bridges and the draws shall open on signal if notice is given to the owners at least two hours in advance of a vessel's intended time of passage through the draws.

(b) From December 1 through April 14, no bridgetender is required to be in attendance at the bridges and the draws shall open on signal if notice is given to the owners at least four hours in advance of a vessel's time of intended passage through the draws.

Dated: September 19, 1994.

**Rudy K. Peschel,**

*Rear Admiral, U.S. Coast Guard Commander, Ninth Coast Guard District.*

[FR Doc. 94–24386 Filed 9–30–94; 8:45 am]

BILLING CODE 4910–14–M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 0**

**[Docket No. DA94–1063]**

### List of Office of Management and Budget Approved Information Collection Requirements

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This action amends the Commission's list of Office of Management and Budget approved information collection requirements contained in the Commission's Rules.

This action will provide the public with a current list of information collection requirements in the Commission's Rules which have OMB approval and a current list of OMB-approved information collection requirements which do not have a FCC Form number or rule section associated with it.

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

**FOR FURTHER INFORMATION CONTACT:** Judy Boley, Office of Managing Director, (202) 418–0214.

**SUPPLEMENTARY INFORMATION:**

**Order**

In the matter of: Editorial amendment of list of Office of Management and Budget approved information collection requirements contained in Part 0 of the Commission's Rules.

By the Managing Director:

*Adopted:* September 28, 1994.

*Released:* September 29, 1994.

1. Section 3507(f) of the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3507(f), requires agencies to display a current control number assigned by the Director of the Office of Management and Budget ("OMB") for each agency information collection requirement.

2. Section 0.408 of the Commission's Rules displays the OMB control numbers assigned to the Commission's non-form information collection requirements. OMB control numbers assigned to Commission forms are not

listed in this section since those numbers appear on the forms.

3. This Order amends Section 0.408 to remove listings of information collections which the Commission has eliminated and to add listings of new information collections which OMB has approved.

4. Authority for this action is contained in Section 4(i) of the Communications Act of 1934 (47 U.S.C. 154(i)), as amended, and Section 0.231(d) of the Commission's Rules. Since this amendment is a matter of agency organization procedure or practice, the notice and comment and effective date provisions of the Administrative Procedure Act do not apply. See 5 U.S.C. Section 553(b)(A)(d).

5. Accordingly, it is ordered, that § 0.408 of the Rules is amended as set forth in the Amendatory text, effective on the date of publication in the **Federal Register**.

6. Persons having questions on this matter should contact Judy Boley at (202) 418–0214.

**List of Subjects in 47 CFR Part 0**

Reporting and Recordkeeping Requirements.

Federal Communications Commission.

**Andrew S. Fishel,**

*Managing Director.*

**Amendatory Text**

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 0.408, paragraph (b) is amended by removing the following rule sections and their corresponding control numbers.

**§ 0.408 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

(b) * * *

| 47 CFR part or section where identified and described | Current OMB control No. |
|---|---|
| * * * * * | |
| 76.33 | 3060–0416 |

* * * * *

**§ 0.408 [Amended]**

3. Section 0.408, paragraph (b) is amended by adding the following rule sections and their corresponding OMB control to read as follows:

* * * * *

(b) * * *

| 47 CFR part or section where identified and described | Current OMB control no. |
|---|---|
| * * * * * | |
| 76.503 | 3060–0581 |
| 76.504 | 3060–0580 |
| * * * * * | |
| 76.917 | 3060–0602 |
| 76.922 | 3060–0607 |
| 76.923 | 3060–0603 |
| * * * * * | |
| 76.934(d) | 3060–0609 |
| * * * * * | |
| 76.958 | 3060–0610 |
| * * * * * | |
| 76.964(b) | 3060–0608 |
| * * * * * | |
| 76.1302 | 3060–0582 |
| * * * * * | |
| 80.605 | 3060–0325 |
| * * * * * | |
| 80.1061 | 3060–0556 |
| * * * * * | |
| 90.173 | 3060–0461 |
| * * * * * | |
| 90.673 | 3060–0587 |
| 90.677 | 3060–0588 |

* * * * *

**§ 0.408 [Amended]**

4. Section 0.408, paragraph (c) is amended by adding the following miscellaneous information and their corresponding OMB control numbers to read as follows:

* * * * *

(c) * * *

| Description of miscellaneous information collections | Current OMB control No. |
|---|---|
| * * * * * | |
| Rewrite and Update of Part 22 of the Public Mobile Service rules—CC Docket No. 92–115 | 3060–0508 |
| Licensing Policies and Procedures for Low-Earth Orbit Satellite Operating Below 1 GHz—CC Docket 92–76 | 3060–0539 |
| Expanded Interconnection with Local Telephone Company Facilities—CC Docket No. 91–141 | 3060–0577 |
| Expanded Interconnection with Local Telephone Company Facilities for Interstate Switched Transport Services | 3060–0579 |
| Amendment of Part 32 and 64 of the Commission's Rules to Account for Transactions Between Carriers and Their Nonregulated Affiliates—CC Docket No. 93–251 | 3060–0583 |
| Implementation of Sections 3(n) and 332 of the Communications Act, First Report and Order—GN Docket No. 93–252 | 3060–0586 |
| Transport Rate Structure and Pricing, CC Docket No. 91–213 | 3060–0590 |
| Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610–1626.5/2483.5–2500 MHz Frequency Bands | 3060–0591 |
| Implementation of Sections 3(n) and 332 of the Communications Act, Second Report and Order, GN Docket No. 93–252 | 3060–0599 |
| Implementation of Section 309(j) of the Communications Act, Competitive Bidding, Third Report and Order, PP Docket No. 93–253 (47 CFR Part 24) | 3060–0604 |
| Expanded Interconnection with Local Telephone Company Facilities, Commission Requirements for Cost Support Material to be Filed with Virtual Collocation Tariffs | 3060–0614 |

[FR Doc. 94–24393 Filed 9–30–94; 8:45 am]

BILLING CODE 6712–01–M

## 47 CFR Part 73

## Radio Broadcasting Services; Various Locations

**AGENCY:** Federal Communications Commission.

**ACTION:** Final Rule; Correction.

**SUMMARY:** This document contains a correction to the *Report and Order* (Amendment of Section 73.202(b) Table of Allotments, FM Broadcasting Stations (Various Locations)), which was published July 27, 1994. The *Order* amended the FM Table of Allotments to specify the classes of channels allotted to various communities.

**EFFECTIVE DATE:** October 3, 1994.

**FOR FURTHER INFORMATION CONTACT:** Andrew J. Rhodes, Mass Media Bureau (202) 632–5414.

**SUPPLEMENTARY INFORMATION:**

### Need for Correction

As published, the *Order* contained errors which need to be corrected.

**Correction of Publication**

Accordingly, the publication on July 27, 1994, of the Public Notice regulations which were the subject of FR Doc. 94–18245, is corrected as follows:

**§ 73.202 [Corrected]**

On page 38129, in the third column, paragraph 2, on line five of the paragraph, the language "removing Channel 293C2 and adding Channel 293C3 at Sheffield" should be corrected to read: "removing Channel 292C2 and adding Channel 292C3 at Sheffield."

On page 38129, in the third column, paragraph 12 should be removed.

On page 38130, in the first column, paragraph 26, the paragraph should be corrected to read as follows:

"Section 73.202(b), the Table of FM Allotments for Texas, is amended by removing Channel 236C and adding Channel 236C1 at Beaumont, by removing Channel 300C and adding Channel 300C1 at Canyon, by removing Channel 253A and adding Channel 253C3 at Clarksville, by removing Channel 228C2 and adding Channel 228C3 at Greenville, by removing Channel 250C and adding Channel 250C1 at Odessa, and by removing Channel 256C and adding Channel 256C1 at Odessa."

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 94–24284 Filed 9–30–94; 8:45 am]

BILLING CODE 6712–01–M

## 47 CFR Part 73

**[MM Docket No. 93–312; RM–8394]**

## Radio Broadcasting Services; Gallup, NM

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Lewis J. Wallach, allots Channel 268A to Gallup, NM, as the community's fifth local commercial FM channel. *See* 59 FR 43, January 3, 1994. Channel 268A can be allotted to Gallup in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 35–31–30 North Latitude and 108–44–30 West Longitude. With this action, this proceeding is terminated.

**DATES:** Effective November 14, 1994. The window period for filing applications will open on November 15, 1994, and close on December 15, 1994.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 93–312, adopted September 21, 1994, and released September 28, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, D.C. 20037.

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

Radio broadcasting.

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

**PART 73—[AMENDED]**

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

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Channel 268A at Gallup.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 94–24344 Filed 9–30–94; 8:45 am]

BILLING CODE 6712–01–M

## 47 CFR Part 73

**[MM Docket No. 94–6; RM–8410]**

## Radio Broadcasting Services; The Dalles, OR

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Larson-Wynn, Inc., allots Channel 224C3 to The Dalles, Oregon, as the community's third local FM transmission service. *See* 59 FR 7966, February 17, 1994. Channel 224C3 can be allotted to The Dalles in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 45–35–42 North Latitude and 121–10–24 West Longitude. With this action, this proceeding is terminated.

**DATES:** Effective November 14, 1994. The window period for filing applications will open on November 15, 1994, and close on December 15, 1994.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 94–6, adopted September 21, 1994, and released Sept. 28, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, D.C. 20037.

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

Radio broadcasting.

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

**PART 73—[AMENDED]**

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

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Channel 224C3 at The Dalles.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 94–24345 Filed 9–30–94; 8:45 am]

BILLING CODE 6712–01–M

# DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 672

**[Docket No. 930222–4274; I.D. 091294C]**

## Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Technical amendment.

**SUMMARY:** NMFS issues a technical amendment to clarify regulations that prohibit a vessel from participating in the Gulf of Alaska (GOA) directed

sablefish hook-and-line gear fishery when hook-and-line gear was deployed from that vessel within 72 hours prior to the opening of that fishery. This technical amendment clarifies this prohibition by stating that it applies only to vessels that deployed hook-and-line gear in the GOA within 72 hours prior to the start of that fishery.

**EFFECTIVE DATE:** October 3, 1994.

**FOR FURTHER INFORMATION CONTACT:** Ellen R. Varosi, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS published a final rule (58 FR 28520, May 14, 1993) that prohibits participation in the GOA directed sablefish fishery by a vessel that has deployed hook-and-line gear within 72 hours prior to the opening of that fishery. The rule was intended to apply only to vessels that deployed gear in the GOA in advance of that fishery. As written, the rule implied that a vessel is prohibited from participating in the GOA directed sablefish fishery if the vessel deployed hook-and-line gear in any fishery within 72 hours prior to that opening. This interpretation is inconsistent with the preamble to the proposed rule, published in the **Federal Register** on April 1, 1993 (58 FR 17193), which explains that the prohibition applies only to vessels that deploy hook-and-gear in the GOA within 72 hours prior to the opening. Because hook-and-line vessel operators participating in fisheries in the Bering Sea and Aleutian Islands management area have expressed uncertainty as to the regulatory intent, § 672.7(k) is clarified to specify that this prohibition applies only to vessels that fished in the GOA.

### Classification

Because this rule clarifies the regulation to make its text consistent with the intent set forth in its preamble, it is an interpretive rule that may be published without notice and opportunity for comment and without a 30-day delay in effective date under section 553 of the Administrative Procedure Act (5 U.S.C. 553).

This rule is exempt from review under E.O. 12866.

### List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Dated: September 27, 1994.

**Gary Matlock,**

*Program Management Officer, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 672 is amended as follows:

## PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

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

2. In § 672.7, paragraph (k) is revised to read as follows:

**§ 672.7 Prohibitions.**

* * * * *

(k) Engage in directed fishing for sablefish with hook-and-line gear from a vessel that was used to deploy hook-and-line gear in the Gulf of Alaska within 72 hours prior to the opening of the sablefish hook-and-line directed fishery.

* * * * *

[FR Doc. 94–24381 Filed 9–30–94; 8:45 am]

**BILLING CODE 3510–22–W**

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**50 CFR Part 672**

**[Docket No. 931199–4042; I.D. 092394A]**

## Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Modification of a closure.

**SUMMARY:** NMFS is opening directed fishing for Atka mackerel in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to fully use the total allowable catch (TAC) of Atka mackerel in that area.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), September 30, 1994, until 12 midnight, A.l.t., December 31, 1994.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, 907–586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the annual TAC for Atka mackerel was established by the final 1994 specifications (59 FR 7647, February 16, 1994), as 1,000 metric tons (mt) for the Central Regulatory Area. At the same time, the directed fishery for Atka mackerel in the GOA was closed under § 672.20(c)(2)(ii) in the final 1994 specifications in order to reserve amounts anticipated to be needed for incidental catch by other fisheries.

The Director, Alaska Region, NMFS, has determined that, as of September 17, 1994, 995 mt of Atka mackerel in the Central Regulatory Area of the GOA remains unharvested. This amount is in excess of the amount necessary as incidental catch for other groundfish fisheries. Therefore, NMFS is terminating this closure and opening directed fishing for Atka mackerel in the Central Regulatory Area of the GOA effective at 12 noon, A.l.t., September 30, 1994, until 12 midnight, A.l.t., December 31, 1994.

All other closures remain in full force and effect.

### Classification

This action is taken under § 672.20 and is exempt from review under E.O 12866.

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

Dated: September 27, 1994.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 94–24322 Filed 9–28–94; 11:34 am]

**BILLING CODE 3510–22–F**

# Proposed Rules

Federal Register
Vol. 59, No. 190
Monday, October 3, 1994

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

## OFFICE OF GOVERNMENT ETHICS

### 5 CFR Part 2604

RIN 3209–AA17

### Freedom of Information Act Rules and Schedule of Fees for the Production of Public Financial Disclosure Reports

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Government Ethics is issuing a proposed rule to establish procedures for the implementation of the Freedom of Information Act (FOIA). The rule also proposes to establish a schedule of fees which will be charged for the reproduction and mailing of public financial disclosure reports (SF 278s).

**DATES:** Public comments on this proposed rule are invited and must be received by December 2, 1994.

**ADDRESSES:** Submit comments to the Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: Ms. Roell.

**FOR FURTHER INFORMATION CONTACT:** Janet K. Roell, Office of Government Ethics, telephone (202) 523–5757, FAX (202) 523–6325.

**SUPPLEMENTARY INFORMATION:** The Freedom of Information Act, 5 U.S.C. 552, requires every agency to promulgate regulations implementing certain of its provisions. On October 1, 1989, the Office of Government Ethics, formerly part of the Office of Personnel Management, was established as a separate executive branch agency and is therefore proposing to adopt this rule incorporating many of its existing practices for the implementation of the Freedom of Information Act, as amended by the Freedom of Information Reform Act of 1986 (Pub. L. 99–570). This rule would also implement the Guidelines for a uniform Freedom of Information Act fee schedule published by the Office of Management and Budget on March 27, 1987 (52 FR 10012) and the Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act dated December, 1987. Subpart G of the rule proposes to establish a separate schedule of fees for the reproduction and mailing of public financial disclosure reports requested pursuant to section 105 of the Ethics in Government Act of 1978, as amended.

#### I. General Provisions

Subpart A of the proposed rule contains general provisions describing the purpose of the Freedom of Information Act and its coverage. Section 2604.102 describes the types of records to which the Freedom of Information Act applies, and the relationship between the FOIA and the Privacy Act of 1974, 5 U.S.C. 552a. The proposed rule also provides that if another statute, such as the Ethics Act, sets forth procedures for the disclosure of specific types of records, the Office will process a request for those records in accordance with the procedures that apply to those specific records. However, in cases where the record is not required to be released under the specific procedures set forth in another statute, the Office will consider the request under FOIA.

Section 2604.102 as proposed also explains that records which are available through an established distribution system (for example, the National Technical Information Service) should preferably be obtained through that system, rather than pursuant to the provisions of the FOIA. The terms frequently used in the rule are defined in proposed § 2604.104.

#### II. Public Reading Room

Subpart B of the proposed rule describes the location of OGE's public reading room and the materials available there. The subpart would also set forth the indexing requirements as to any records OGE maintains which are required to be indexed under 5 U.S.C. 552(a)(2). Proposed § 2604.202 contains the Director's determination that, because of OGE's size and the relatively small number of requests for records required to be indexed, such indexes do not need to be published quarterly.

#### III. Production and Disclosure of Records Under FOIA

Subpart C as proposed contains detailed rules of procedure for requesting records under FOIA. It also describes the format to which OGE will adhere in responding to these requests.

Requests for OGE records have generally been directed to the Office of the General Counsel. Since this approach is administratively practical, this system is being proposed for codification. Proposed § 2604.301 states that requests for records should be addressed to the General Counsel of OGE. Requesters will generally be required to submit FOIA requests in writing. Each request should contain sufficient detail to allow the Office to locate the record with a reasonable amount of effort. If a request is too broad or too vague to allow the Office to locate the record with a reasonable amount of effort, the Office would assist the requester in revising the request as appropriate.

The filing of a request would be deemed to constitute an agreement to pay any applicable fees up to $25.00, unless a waiver were sought. The request could also specify a limit on fees the requester is willing to pay.

The General Counsel of OGE, or his designee, has been delegated responsibility in proposed § 2604.302 to grant or deny requests and to determine appropriate fees.

Consistent with the terms of proposed § 2604.302(b), OGE will ordinarily refer FOIA requests for records that originated in another Government agency to the other agency for response. In such cases, the requester will be notified of the referral. Section 2604.302(c) as proposed specifies that, in cases where a requester asks for a record in a format which does not currently exist, OGE will provide whatever records reasonably respond to the request, but will not create a new record in order to respond. Under § 2604.302(d) of the proposed rule, if a record cannot be located from the information supplied, the General Counsel will so inform the requester.

Proposed § 2604.303 requires the General Counsel to notify a requester in writing of the determination to grant a request in whole or in part. The response must describe the manner in which the record will be disclosed and inform the requester of any fees which will be charged. Similarly, the General Counsel's determination to deny a request in whole or in part must be made in writing and signed by the

General Counsel (or his designee). Consistent with § 2604.303(b) as proposed, any denial is to contain a brief statement describing the basis for the denial, including the FOIA exemptions which were relied upon. Moreover, the denial must state that requesters have a right to appeal and must explain OGE's appeal procedures.

The Office's appeal procedures are set forth in § 2604.304 of the proposed rule. Denials may be appealed to OGE's Deputy Director within 30 days after receipt of a denial letter. Appeals must be in writing and must contain reasons or arguments in support of disclosure. The Office will respond to appeals in writing, and will specify the reason for affirming any original denial. When a denial is reversed in whole or in part, the request for disclosure will be processed promptly. The decision on appeal is the Office's final action on a request. Requesters have a right to seek judicial review of the action under 5 U.S.C. 552(a)(4).

Section 2604.305 of the proposed rule describes the time limits to which the Office will adhere in responding to requests. The time limits may be extended up to a total of 10 working days in unusual circumstances, i.e., when the records are in a location other than the Office, the request is for a large number of records, or the Office must consult with another agency or consult with various OGE components.

**IV. Exemptions Under FOIA**

The Freedom of Information Act contains nine exemptions from its mandatory disclosure provisions. These exemptions permit an agency to withhold a requested record in certain circumstances. Section 2604.401 in subpart D of the proposed rule generally references the nine classes of records that may be exempted from disclosure under FOIA. Proposed § 2604.401(a) states that OGE will not withhold a requested record unless it falls within a FOIA exemption and that in deciding whether to withhold material, OGE will consider whether another statute, Executive order or regulation prohibits release or, if not, whether there is a need in the public interest to withhold it. Further, under proposed § 2604.401(b), the Office with withhold information which falls within an exemption if the information was furnished on a pledge of confidentiality authorized by statute, Executive order or regulation.

Section 2604.401(c) also provides that certain information compiled for law enforcement purposes may not be subject to the requirement of FOIA. Additionally, proposed § 2604.401(d) provides for partial application of the exemptions to a record.

Proposed § 2604.402 contains OGE's procedures for disclosure of business information provided to the Office. Generally, § 2604.402 would require submitters of business information to designate those portions of their submissions they believe may be exempt from disclosure under any exemption of the FOIA. If records so designated are subsequently requested under FOIA, in most cases the submitter will have an opportunity to provide a written objection to disclosure.

**V. Fees**

Subpart E of the proposed rule contains provisions relating to the fees which will be assessed for services rendered in responding to and processing requests for records under FOIA. Fees are to be based on the type of service provided (e.g., search, review, duplication) as well as the category of person making the request (e.g., commercial user, educational institution, news media). Generally, commercial requesters will pay the full amount of permissible fees; educational and noncommercial scientific institutions and news media will pay only duplication costs. As a matter of policy, OGE will not change fees for any individual request if the total charge would be $10.00 or less. Additionally, under the proposal OGE may furnish records without charge or at a reduced charge where disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester. In making this determination, OGE will apply the factors suggested by the Department of Justice in the Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act dated December, 1987. These factors have been incorporated in proposed § 2604.503.

Section 2604.504 as proposed contains a number of miscellaneous provisions concerning fees, including a requirement that requesters pay in advance fees likely to exceed $250.00. However, advance payment may not be required in the case of a requester who has a history of prompt payment.

**VI. Annual Report to Congress**

On or before March 15 of each year, the Office sends a report of OGE's FOIA activities for the prior calendar year to the Speaker of the House of Representatives and the President of the Senate. Section 2604.602 of the proposed rule lists the information included in this annual report.

**VII. Fees for the Production and Mailing of Public Financial Disclosure Reports**

Section 105(a) of the Ethics in Government Act of 1978, as amended, requires an agency, with certain limited exceptions, to make available to the public any public financial disclosure report (SF 278) filed with the agency. Section 105(b)(1) permits an agency to charge a fee adequate to recover the cost of reproduction and mailing of a public financial disclosure report (SF 278) requested by any person in accordance with the requirements of section 105. However, the fee may not include any charge attributable to the salary of any employee involved in the reproduction or mailing of these reports. To implement this provision for such reports filed with it, OGE is proposing to create a fee structure separate from the FOIA fee structure set forth in subpart E of this proposed rule. Proposed subpart G contains provisions to implement this authority.

Section 2604.702 as proposed provides that public financial disclosure reports will be furnished upon payment of $.03 per page and the actual direct cost of mailing. The $.03 per page charge includes the actual cost of the paper used and the cost of operating duplicating machinery. It does not include any overhead charges (such as lighting and heat), nor does it include the salary of any employee involved in operating a duplicating machine. No change will be made for individual requests if the total charge would be $10.00 or less. Proposed § 2604.702(d) specifically provides that the miscellaneous fee provisions in § 2604.504 of subpart E will apply to requests for public financial disclosure reports (SF 278s). However, no other provisions in subpart E concerning fees, fee waivers, and fee reductions apply to requests for public financial disclosure reports.

*Executive Order 12866*

In promulgating this proposed rule, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulations set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This proposed regulation has been reviewed by the Office of Management and Budget under that Executive order.

*Regulatory Flexibility Act*

As Director of the Office of Government Ethics, I certify under the

Regulatory Flexibility Act (5 U.S.C. chapter 6) that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

*Paperwork Reduction Act*

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this proposed regulation because it does not contain information collection requirements that require the approval of the Office of Management and Budget.

**List of Subjects in 5 CFR Part 2604**

Administrative practice and procedure, Archives and records, Confidential business information, Conflict of interests, Freedom of Information, Government employees.

Approved: September 27, 1994.

**Stephen D. Potts,**

*Director, Office of Government Ethics.*

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics proposes to amend subchapter A of chapter XVI of title 5 of the Code of Federal Regulations by adding the text of and an authority citation for part 2604, previously reserved, and by revising the title thereof to read as follows:

## PART 2604—FREEDOM OF INFORMATION ACT RULES AND SCHEDULE OF FEES FOR THE PRODUCTION OF PUBLIC FINANCIAL DISCLOSURE REPORTS

**Subpart A—General Provisions**

Sec.

2604.101 Purpose.
2604.102 Applicability.
2604.103 Definitions.

**Subpart B—Public Reading Room and Index Identifying Information for the Public**

2604.201 Public reading room.
2604.202 Index identifying information for the public.

**Subpart C—Production and Disclosure of Records Under FOIA**

2604.301 Requests for records.
2604.302 Response to requests.
2604.303 Form and content of responses.
2604.304 Appeal of denials.
2604.305 Time limits.

**Subpart D—Exemptions Under FOIA**

2604.401 Policy.
2604.402 Business information.

**Subpart E—Schedule of Fees**

2604.501 Fees to be charged—general.
2604.502 Fees to be charged—categories of requesters.
2604.503 Limitations on charging fees.
2604.504 Miscellaneous fee provisions.

**Subpart F—Annual Report to Congress**

2604.601 Submission of report.
2604.602 Contents of the report.

**Subpart G—Fees for the Reproduction and Mailing of Public Financial Disclosure Reports**

2604.701 Policy.
2604.702 Charges.

**Authority:** 5 U.S.C. 552; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

### Subpart A—General Provisions

**§ 2604.101 Purpose.**

This part contains the regulations of the Office of Government Ethics (OGE) implementing the Freedom of Information Act (FOIA) and Executive order 12600. It describes how any person may obtain records from OGE under the FOIA. It also implements section105(b)(1) of the Ethics in Government Act of 1978, as amended, which authorizes an agency to charge reasonable fees to cover the cost of reproduction and mailing of public financial disclosure reports requested by any person.

**§ 2604.102 Applicability.**

(a) *General.* The FOIA and this rule apply to all OGE records. However, if another law sets forth procedures for the disclosure of specific types of records, such as section 105 of the Ethics in Government Act of 1978, 5 U.S.C. appendix, OGE will process a request for those records in accordance with the procedures that apply to those specific records. See 5 CFR 2634.603 and subpart G of this part. If there is any record which is not required to be released under those provisions, OGE will consider the request under the FOIA and this rule, provided that the special Ethics Act access procedures cited must be complied with as to any record within the scope thereof.

(b) *The relationship between the FOIA and the Privacy Act of 1974.* The Privacy Act of 1974, 5 U.S.C. 552a, applies to records that are about individuals, but only if the records are in a system of records as defined in the Privacy Act. Requests from individuals for records about themselves which are contained in an OGE system of records will be processed under the provision of the Privacy Act as well as the FOIA. OGE will not deny access by a first party to a record under the FOIA or the Privacy Act unless the record is not available to that individual under both the Privacy Act and the FOIA.

(c) *Records available through routine distribution procedures.* When the record requested includes material published and offered for sale (e.g., by the Superintendent of Documents, Government Printing Office) or which is available to the public through an established distribution system (such as that of the National Technical Information Service of the Department of Commerce), OGE will instead explain how the record may be obtained through those channels.

**§ 2604.103 Definitions.**

As used in this part,

(a) *Agency* has the meaning given in 5 U.S.C. 551(1) and 5 U.S.C. 552(f).

(b) *Business information* means trade secrets or other commercial or financial information, provided to the Office by a submitter, which arguably is protected from disclosure under Exemption 4 of the Freedom of Information Act.

(c) *Business submitter* means any person who provides business information, directly or indirectly, to the Office and who has a proprietary interest in the information.

(d) *Commercial use* means, when referring to a request, that the request is from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or of a person on whose behalf the request is made. Whether a request is for a commercial use depends on the purpose of the request and the use to which the records will be put. When a request is from a representative of the news media, a purpose or use supporting the requester's news dissemination function is not a commercial use.

(e) *Direct costs* means those expenditures actually incurred in searching for and duplicating (and, in the case of commercial use requesters, reviewing) records to respond to a FOIA request. Direct costs include the salary of the employee performing the work and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting of the facility in which the records are stored.

(f) *Duplication* means the process of making a copy of a record. Such copies include paper copy, microform, audio-visual materials, and magnetic tapes, cards, and discs.

(g) *Educational institution* means a preschool, elementary or secondary school, institution of undergraduate or graduate higher education, or institute of professional or vocational education, which operates a program of scholarly research.

(h) *Freedom of Information Act* or *FOIA* means section 552 of Title 5, United States Code, as amended.

(i) *General Counsel* means the General Counsel of the Office of Government Ethics. The General Counsel may delegate any of his responsibilities in handling FOIA requests in this part to a designee on OGE's staff.

(j) *He, his* and *him* include she, hers and her.

(k) *Noncommercial scientific institution* means an institution that is not operated solely for purposes of furthering its own or someone else's business, trade, or profit interests, and that is operated for purposes of conducting scientific research the results of which are not intended to promote any particular product or industry.

(l) *Office* or *OGE* means the United States Office of Government Ethics.

(m) *Person* has the meaning given in 5 U.S.C. 551(2).

(n) *Records* means any handwritten, typed, or printed documents (such as memoranda, books, brochures, studies, writings, drafts, letters, transcripts, and minutes) and documentary material in other forms (such as punchcards, magnetic tapes, cards or discs, paper tapes, audio or video recordings, maps, photographs, slides, microfilm and motion pictures) that are either created or obtained by the Office and are under Office control. It does not include objects or articles such as exhibits, models, equipment, and duplication machines or audiovisual processing materials.

(o) *Representative of the news media* means a person actively gathering information for an entity organized and operated to publish or broadcast news to the public. News media entities include television and radio broadcasters, publishers of periodicals who distribute their products to the general public or who make their products available for purchase or subscription by the general public, and entities that may disseminate news through other media, such as electronic dissemination of text. Freelance journalists will be considered as representatives of a news media entity if they can show a solid basis for expecting publication through such an entity. A publication contract is such a basis, and the requester's past publication record may show such a basis.

(p) *Request* means any request for records made pursuant to 5 U.S.C. 552(a)(3).

(q) *Requester* means any person who makes a request for records to OGE.

(r) *Review* means the process of initially, or upon appeal (see § 2604.501(b)(3)), examining documents located in a response to a request to determine whether any portion of any document is permitted to be withheld. It also includes processing documents for disclosure, such as redacting portions which may be withheld. Review does not include time spent resolving general legal and policy issues regarding the application of exemptions.

(s) *Search* means the time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

(t) *Working days* means calendar days, excepting Saturdays, Sundays, and legal public holidays.

## Subpart B—Public Reading Room and Index Identifying Information for the Public

### § 2604.201 Public reading room.

(a) *Location of public reading room.* The Office of Government Ethics maintains a public reading room at its offices located at 1201 New York Avenue, NW., Suite 500, Washington, DC 20005–3917. Persons desiring to utilize the reading room should contact the Office, in writing or by telephone at (202) 523–5757 or FAX (202) 523–6325, to arrange a time to inspect the materials available there.

(b) *Records available.* The Office of Government Ethics public reading room contains OGE records which are required by 5 U.S.C. 552(a)(2) to be made available for public inspection and copying, including:

(1) Any final opinions, as well as orders, made in the adjudication of cases;

(2) Any statements of policy and interpretation which have been adopted by the agency and are not published in the **Federal Register**;

(3) Any administrative staff manuals and instructions to staff that affect a member of the public, and which are not exempt from disclosure under section (b) of the FOIA; and

(4) Current indexes providing identifying information for the public as to any matter which was issued, adopted or promulgated after July 4, 1967, and is required by 5 U.S.C. 552(a)(2) to be made available or published.

(c) *Copying.* The cost of copying information available in OGE's public reading room shall be imposed on a requester in accordance with the provisions of subpart E of this part.

### § 2604.202 Index identifying information for the public.

(a) The Office of Government Ethics will maintain and make available for public inspection and copying a current index of the materials available at its public reading room which are required to be indexed under 5 U.S.C. 552(a)(2).

(b) The Director of the Office of Government Ethics has determined that it is unnecessary and impracticable to publish quarterly or more frequently and distribute (by sale or otherwise) copies of each index and supplements thereto, as provided in 5 U.S.C. 552(a)(2). The Office will provide copies of such indexes upon request, at a cost not to exceed the direct cost of duplication and mailing, if sending records by other than ordinary mail.

## Subpart C—Production and Disclosure of Records Under FOIA

### § 2604.301 Requests for records.

(a) *Addressing requests.* Requests for copies of records may be made in person or by telephone, (202) 523–5757, during normal business hours at the Office of Government Ethics, 1201 New York Avenue NW., Suite 500, Washington, DC 20005–3917 or by mail addressed to the General Counsel of OGE. Although oral requests may be honored, a requester generally will be asked to submit his request under the FOIA in writing. In the case of a written request, the envelope containing the request and the letter itself should both clearly indicate that the subject is a Freedom of Information Act request.

(b) *Description of records.* Each request must reasonably describe the desired records in sufficient detail to enable Office personnel to locate the records with a reasonable amount of effort. A request for a specific category of records will be regarded as fulfilling this requirement if it enables responsive records to be identified by a technique or process that is not unreasonably burdensome or disruptive of Office operations.

(1) Wherever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record.

(2) If the General Counsel determines that a request does not reasonably describe the records sought, he will either advise the requester what additional information is needed to locate the record, or otherwise state why the request is insufficient. The General Counsel will also extend to the requester an opportunity to confer with Office personnel with the objective of reformulating the request in a manner which will meet the requirements of this section.

(c) *Agreement to pay fees.* The filing of a request under this subpart will be deemed to constitute an agreement by the requester to pay all applicable fees

charged under subpart E of this part, up to $25.00, unless a waiver of fees is sought. The request may also specify a limit on the amount the requester is willing to spend, or may indicate a willingness to pay an amount greater than $25.00, if applicable. In cases where a requester has been notified that actual or estimated fees may amount to more that $25.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated total fee.

(d) *Requests for records relating to corrective actions.* No record developed pursuant to the authority of 5 U.S.C. app. 402(f)(2) concerning the investigation of an employee for a possible violation of any provision relating to a conflict of interest shall be made available pursuant to this part unless the request for such information identifies the employee to whom the records relate and the subject matter of any alleged violation to which the records relate. Nothing in this subsection shall affect the application of subpart D of this part to any record so identified.

**§ 2604.302 Response to requests.**

(a) *Response to initial request.* The General Counsel is authorized to grant or deny any request for a record and to determine appropriate fees.

(b) *Referral to another agency.* When a requester seeks records that originated in another Government agency, OGE will normally refer the request to the other agency for response. If OGE refers the request to another agency, it will notify the requester of the referral. If release of certain records may adversely affect United States relations with foreign governments, the Office will usually consult with the Department of State. A request for any records classified by some other agency will be referred to that agency for response.

(c) *Creating records.* If a person seeks information from OGE in a format that does not currently exist, OGE will not ordinarily reformat the information for the purpose of responding to the request. OGE will advise the requester that it does not have the record in the format sought, but will provide whatever records in existing formats that would reasonably respond to the request. Additionally, OGE will not generally develop a new record of information to satisfy a request.

(d) *Record cannot be located.* If a requested record cannot be located from the information supplied, the General Counsel will so notify the requester in writing.

**§ 2604.303 Form and content of responses.**

(a) *Form of notice granting a request.* After the General Counsel has made a determination to grant a request in whole or in part, the requester will be notified in writing. The notice shall describe the manner in which the record will be disclosed, whether by providing a copy of the record with the response or at a later date, or by making a copy of the record available to the requester for inspection at a reasonable time and place. The procedure for such an inspection may not unreasonably disrupt the operations of the Office. The response letter will also inform the requester with the provisions of subpart E of this part.

(b) *Form of notice denying a request.* When the General Counsel denies a request in whole or in part, he will so notify the requester in writing. The response will be signed by the General Counsel and will include:

(1) The name and title or position of the person making the denial;

(2) A brief statement of the reason or reasons for the denial, including the FOIA exemption or exemptions which the General Counsel has relied upon in denying the request; and

(3) A statement that the denial may be appealed under § 2604.304 of this subpart, and a description of the requirements of that section.

**§ 2604.304 Appeal of denials.**

(a) *Right of appeal.* If a request has been denied in whole or in part, the requester may appeal the denial to the Deputy Director of the Office of Government Ethics, 1201 New York Avenue, NW., Suite 500, Washington, DC 20005–3917.

(b) *Letter of appeal.* The appeal must be in writing and must be sent within 30 days of receipt of the denial letter. An appeal should include a copy of the initial request, a copy of the letter denying the request in whole or in part, and a statement of the circumstances, reasons or arguments advanced in support of disclosure of the request for the record. Both the envelope and the letter of appeal must be clearly marked "Freedom of Information Act Appeal."

(c) *Action on appeal.* The disposition of an appeal will be in writing and will constitute the final action of the Office on a request. A decision affirming in whole or in part the denial of a request will include a brief statement of the reason or reasons for affirmance, including each FOIA exemption relied on. If the denial of a request is reversed in whole or in part on appeal, the request will be processed promptly in accordance with the decision on appeal.

(d) *Judicial review.* If the denial of the request for records is upheld in whole or in part, the Office will notify the person making the request of his right to seek judicial review under 5 U.S.C. 552(a)(4).

**§ 2604.305 Time limits.**

(a) *Initial request.* Following receipt of a request for records, the General Counsel will determine whether to comply with the request and will notify the requester in writing of his determination within 10 working days.

(b) *Appeal.* A written determination on a appeal submitted in accordance with § 2604.304 of this subpart will be issued within 20 working days after receipt of the appeal.

(c) *Extension of time limits.* The time limits specified in either paragraph (a) or (b) of this section may be extended in unusual circumstances up to a total of 10 working days, after written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be made. As used in this paragraph, *unusual circumstances* means that there is a need to:

(1) Search for and collect records from archives;

(2) Search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) Consult with another agency having a substantial interest in the determination of the request, or consult with various OGE components that have substantial subject matter interest in the records requested.

## Subpart D—Exemptions under FOIA

**§ 2604.401 Policy.**

(a) *Policy on application of exemptions.* Section 552(b) of the Freedom of Information Act contains nine exemptions to the mandatory disclosure of records. A requested record will not be withheld from inspection or copying unless it comes within one of the classes of records exempted by 5 U.S.C. 552. In making its determination on withholding, OGE will consider whether another statute, Executive order or regulation prohibits release or, if not, whether there is a need in the public interest to withhold material which is otherwise exempt under FOIA.

(b) *Pledge of confidentiality.* Information obtained from any individual or organization, furnished in reliance on a provision for confidentiality authorized by applicable statute, Executive order or regulation,

will not be disclosed to the extent it can be withheld under one of the exemptions. However, this paragraph does not itself authorized the giving of any pledge of confidentiality by any officer or employee of the Office of Government Ethics.

(c) *Exception for law enforcement information.* The Office may treat records compiled for law enforcement purposes as not subject to the requirements of the Freedom of Information Act when:

(1) The investigation or proceeding involves a possible violation of criminal law;

(2) There is reason to believe that the subject of the investigation or proceeding is unaware of its pendency; and

(3) The disclosure of the existence of the records could reasonably by expected to interfere with the enforcement proceedings.

(d) *Partial application of exemptions.* Any reasonably segregable portion of a record will be provided to any person requesting the record after deletion of the portions which are exempt under this subpart.

**§ 2604.402 Business information.**

(a) *In general.* Business information provided to the Office of Government Ethics by a submitter will not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section.

(b) *Designation of business information.* Submitters of business information should use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, those portions of their submissions which they deem to be protected under Exemption 4 of the FOIA. Any such designation will expire 10 years after the records were submitted to the Government, unless the submitter requests, and provides reasonable justification for, a designation period of longer duration.

(c) *Predisclosure notification.* The General Counsel will provide a submitter with prompt written notice of a FOIA request regarding its business information if:

(1) The information has been designated by the submitter as information deemed protected from disclosure under Exemption 4 of the FOIA; or

(2) The General Counsel has reason to believe that the information may be protected from disclosure under Exemption 4 of the FOIA.

Such written notice shall either describe the exact nature of the business information requested or provide copies of the records containing the business information. The requester also shall be notified that notice and an opportunity to object are being provided to a submitter.

(d) *Opportunity to object to disclosure.* A submitter has five working days from receipt of the predisclosure notification to provide a written statement of any objection to disclosure. Such statement shall specify all the grounds for withholding any of the information under any exemption of the FOIA and, in the case of Exemption 4, shall demonstrate why the information is deemed to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(e) *Notice of intent to disclose.* The General Counsel will consider all objections raised by a submitter and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever the General Counsel decides to disclose business information over the objection of a submitter, he will send the submitter a written notice at least 10 working days before the date of disclosure containing:

(1) A statement of the reasons why the submitter's objections were not sustained;

(2) A copy of the records which will be disclosed or a written description of the records; and

(3) A specified disclosure date. The requester shall also be notified of the General Counsel's determination to disclose records over a submitter's objections.

(f) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information, the General counsel shall promptly notify the submitter.

(g) *Exceptions to predisclosure notification.* The notice requirements in paragraph (c) of this section do not apply if:

(1) The General Counsel determines that the information should not be disclosed;

(2) The information has been published previously or has been officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The designation made by the submitter in accordance with paragraph (b) of this section appears obviously frivolous; except that, in such a case, the General Counsel will provide the submitter with written notice of any final decision to disclose business information within a reasonable number of days prior to a specified disclosure date.

## Subpart E—Schedule of Fees

**§ 2604.501 Fees to be charged—general.**

(a) *Policy.* Fees shall be assessed according to the schedule contained in paragraph (b) of this section and the category of requesters described in § 2604.502 for services rendered in responding to and processing requests for records under subpart C of this part. All fees shall be charged to the requester, except where the charging of fees is limited under § 2604.503 (a) and (b) or where a waiver or reduction of fees is granted under § 2604.503(c). Requesters shall pay fees by check or money order made payable to the Treasury of the United States.

(b) *Types of charges.* The types of charges that may be assessed in connection with the production of records in response to a FOIA request are as follows:

(1) *Searches—*

(i) *Manual searches for records.* Whenever feasible, the office will charge at the salary rate (i.e., basic pay plus 16%) of the employee making the search. However, where a homogeneous class of personnel is used exclusively in a search (e.g., all clerical time or all professional time) the Office will charge $10.00 per hour for clerical time and $20.00 per hour for professional time. Charges for search time will be billed by fifteen minute segments.

(ii) *Computer searches for records.* Requesters will be charged the actual direct cost of conducting a search using existing programming. These direct costs shall include the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a request, as well as the cost of operator/programmer salary apportionable to the search. The Office will not alter or develop programming to conduct a search.

(iii) *Unproductive searches.* The Office will charge search fees even if no records are found which are responsive to the request, of if the records found are exempt from disclosure.

(2) *Duplication.* The standard copying charge for documents in paper copy is $.15 per page. When responsive information is provided in a format other than paper copy, such as in the form of computer tapes and discs, the requester may be charged the direct costs of the tape, disc, or whatever medium is used to produce the

information, as well as any related reproduction costs.

(3) *Review.* Costs associated with the review of documents, as defined in § 2604.104(q), will be charged at the salary rate (i.e., basic pay plus 16%) of the employee conducting the review. Except as noted below, charges may be assessed only for review at the initial level, i.e., the review undertaken the first time the documents are analyzed to determine the applicability of specific exemptions to a particular record or portion of the records. A requester will not be charged for review at the administrative appeal level concerning the applicability of an exemption already applied at the initial level. However, when a record has been withheld pursuant to an exemption which is subsequently determined not to apply and the record is reviewed again at the appeal level to determine the potential applicability of other exemptions, the costs of such additional review may be assessed.

(4) *Other services and materials.* Where the Office elects, as a matter of administrative discretion, to comply with a request for a special service or materials, such as certifying that records are true copies or sending records by special methods, the actual direct costs of providing the service or materials will be charged.

**§ 2604.502 Fees to be charged—categories of requesters.**

(a) *Fees for various requester categories.* The paragraphs below state, for each category of requester, the type of fees generally charged by the Office. However, for each of these categories, the fees may be limited, waived or reduced in accordance with the provisions set forth in § 2604.503. In determining whether a requester belongs in any of the following categories, the Office will determine the use to which the requester will put the documents requested. If the Office has reasonable cause to doubt the use to which the requester will put the records sought, or where the use is not clear from the request itself, the Office will seek clarification before assigning the request to a specific category.

(b) *Commercial use requester.* The Office will charge the full costs of search, review, and duplication. Commercial use requesters are not entitled to two hours of free search time or 100 free pages of reproduction as described in § 2604.503(a); however, the de minimis fees provision of § 2604.503(b) does apply to such requesters.

(c) *Educational and noncommercial scientific institutions and news media.* If the request is from an educational institution or a noncommercial scientific institution, operated for scholarly or scientific research, or a representative of the news media, and the request is not for a commercial use, the Office will charge only for duplication of documents, excluding charges for the first 100 pages.

(d) *All other requesters.* If the request is not one described in paragraph (b) or (c) of this section, the Office will charge the full and direct costs of searching for and reproducing records that are responsive to the request, excluding the first 100 pages of duplication and the first two hours of search time.

**§ 2604.503 Limitations on charging fees.**

(a) *In general.* Except for requesters seeking records for a commercial use as described in § 2604.502(b), the Office will provide, without charge, the first 100 pages of duplication and the first two hours of search time, or their cost equivalent.

(b) *De minimis fees.* The Office will not assess fees for individual requests if the total charge would be $10.00 or less.

(c) *Waiver or reduction of fees.* Records responsive to a request under 5 U.S.C. 552 will be furnished without charge or at a reduced charge where the Office determines, based upon information provided by a requester in support of a fee waiver request, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester. Requests for a waiver or reduction of fees will be considered on a case-by-case basis.

(1) In determining whether disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, the Office will consider the following factors:

(i) *The subject of the request: Whether the subject of the requested records concerns the operations or activities of the Government.* The subject matter of the requested records, in the context of the request, must specifically and directly concern identifiable operations or activities of the Federal Government. Furthermore, the records must be sought for their information value with respect to those Government operations or activities;

(ii) *The informative value of the information to be disclosed: Whether the information is likely to contribute to an understanding of Government operations or activies.* The disclosable portions of the requested records must be meaningfully information on specific Government operations or activities in order to hold potential for contributing to increased public understanding of those operations and activities. The disclosure of information which is already in the public domain, in either a duplicative or substantially identical form, would not be likely to contribute to such understanding, as nothing new would be added to the public record;

(iii) *The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding.* The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons. A requester's identity and qualifications e.g., expertise in the subject area and ability and intention to convey information to the general public—will be considered; and

(iv) *The significance of the contribution to public understanding: Whether the disclosure is likely to contribute significantly to public understanding of Government operations or activities.* The public's understanding of the subject matter in question, as compared to the level of public understanding existing prior to the disclosure, must be likely to be significantly enhanced by the disclosure.

(2) In determining whether disclosure of the requested information is not primarily in the commercial interest of the requester, the Office will consider the following factors:

(i) *The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.* The Office will consider all commercial interests of the requester, or any person on whose behalf the requester may be acting, which would be furthered by the requested disclosure. In assessing the magnitude of identified commercial interests, consideration will be given to the effect that the information disclosed would have on those commercial interests; and

(ii) *The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.* A fee waiver or reduction is warranted only where the public interest can fairly be regarded as greater in magnitude than

the requester's commercial interest in disclosure. The Office will ordinarily presume that, where a news media requester has satisfied the public interest standard, the public interest will be served primarily by disclosure to that requester. Disclosure to data brokers and others who compile and market Government information for direct economic return will not be presumed to primarily serve the public interest.

(3) Where only a portion of the requested record satisfies the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(4) A request for a waiver or reduction of fees must accompany the request for disclosure of records, and should include:

(i) A clear statement of the requester's interest in the documents;

(ii) The proposed use of the documents and whether the requester will derive income or other benefit from such use;

(iii) A statement of how the public will benefit from release of the requested documents; and

(iv) If specialized use of the documents is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(5) A requester may appeal the denial of a request for a waiver or reduction of fees in accordance with the provisions of § 2604.304.

**§ 2604.504 Miscellaneous fee provisions.**

(a) *Notice of anticipated fees in excess of $25.00.* Where the Office determines or estimates that the fees to be assessed under this section may amount to more than $25.00, the Office shall notify the requester as soon as practicable of the actual or estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Where a requester has been notified that the actual or estimated fees may exceed $25.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice to the requester pursuant to this paragraph will include the opportunity to confer with Office personnel in order to reformulate the request to meet the requester's needs at a lower cost.

(b) *Aggragating requests.* A requester may not file multiple requests, each seeking portions of a document or documents in order to avoid the payment of fees. Where there is reason to believe that a requester or group of requesters acting in concert, is attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, the Office may aggregate the requests and charge accordingly. The Office will presume that multiple requests of this type made within a 30-day period have been made in order to evade fees. Multiple requests regarding unrelated matters will not be aggregated.

(c) *Advance payments.* An advance payment before work is commenced or continued will not be required unless:

(1) The Office estimates or determines that the total fee to be assessed under this section is likely to exceed $250.00. When a determination is made that the allowable charges are likely to exceed $250.00, the requester will be notified of the likely cost and will be required to provide satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or will be required to submit an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing). In such cases the requester may be required to pay the full amount owed plus any applicable interest as provided by paragraph (e) of this section, and to make an advance payment of the full amount of the estimated fee before the Office begins to process a new request.

(3) When the Office requests an advance payment of fees, the administrative time limits described in subsection (a)(6) of the FOIA will begin to run only after the Office has received the advance payment.

(d) *Billing and payment.* Normally the Office will require a requester to pay all fees before furnishing the requested records. However, the Office may send a bill along with, or following the furnishing of records, in cases where the requester has a history of prompt payment.

(e) *Interest charges.* Interest charges on an unpaid bill may be assessed starting on the 31st day following the day on which the billing was sent. Interest shall be at the rate prescribed in 31 U.S.C. 3717 and shall accrue from the date of billing. To collect unpaid bills, the Office will follow the provisions of the Debt Collection Act of 1982 (P.L. 97–365) including the use of consumer reporting agencies, collection agencies, and offset.

## Subpart F—Annual Report to Congress

**§ 2604.601 Submission of report.**

On or before March 15 of each calendar year, a report of OGE's activities over the preceding year relating to the Freedom of Information Act will be submitted to the Speaker of the House of Representatives and the President of the Senate.

**§ 2604.602 Contents of the report.**

Th annual report to Congress will include for the relevant reporting period:

(a) The number of FOIA requests made to OGE, determinations made by OGE not to comply with requests for records made to it under the FOIA and the reasons for each such determination;

(b) The number of appeals made by persons under the FOIA, the results of such appeals, and the reasons for the action by OGE upon each appeal that results in a denial of information;

(c) The names and titles or positions of each person responsible for the denial of records requested under the FOIA;

(d) The results of each proceeding conducted pursuant to subsection (a)(4)(F) of the FOIA, including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(e) A copy of every rule made by OGE regarding the FOIA;

(f) A copy of the fee schedule and the total amount of fees collected by OGE for making records available under the FOIA; and

(g) Such other information as indicates efforts by OGE to administer fully the FOIA.

## Subpart G—Fees for the Reproduction and Mailing of Public Financial Disclosure Reports

**§ 2604.701 Policy.**

Fees for the reproduction and mailing of public financial disclosure reports (SF 278s) requested pursuant to section 105 of the Ethics in government Act of 1978, as amended, and § 2634.603 of this title shall be assessed according to the schedule contained in § 2604.702. Requesters shall pay fees by check or money order made payable to the Treasury of the United States. Except as provided in § 2604.702(d), nothing concerning fees in subpart E of this part supersedes the charges set forth in this subpart for records covered in this subpart.

2604.702 Charges.

(a) *Duplication.* Except as provided in paragraph (c) of this section, copies of public financial disclosure reports (SF 278s) requested pursuant to section 105 of the Ethics in Government Act of 1978, as amended, and § 2634.603 of this chapter will be provided upon payment of $.03 per page furnished.

(b) *Mailing.* Except as provided in paragraph (c) of this section, the actual direct cost of mailing public financial disclosure reports will be charged for all forms requested. Where the Office elects to comply, as a matter of administrative discretion, with a request for special mailing services, the actual direct cost of such service will be charged.

(c) *De minimis fees.* The Office will not assess fees for individual requests if the total charge would be $10.00 or less.

(d) *Miscellaneous fee provision.* The miscellaneous fee provisions set forth in § 2604.504 apply to requests for public financial disclosure reports pursuant to § 2634.603 of this chapter.

[FR Doc. 94–24229 Filed 9–30–94; 8:45 am]
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## DEPARTMENT OF JUSTICE

### Bureau of Prisons

### 28 CFR Part 542

[BOP–1014–P]

RIN 1120–AA20

### Administrative Remedy Program

**AGENCY:** Federal Bureau of Prisons, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Bureau of Prisons is proposing to revise its regulations on the Administrative Remedy Program. These regulations describe the process through which inmates may seek formal review of any issue related to their confinement. The proposed changes are deemed necessary in order to attend to increased numbers of remedy requests occasioned by the continued growth of the inmate population. Proposed procedural changes include increases in the time limits set for inmate filing of requests and for Bureau responses; additional specifications for the provision of assistance to inmates; and increased access to Administrative Remedy indexes.

**DATES:** Comments due by December 2, 1994.

**ADDRESSES:** Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street NW., Washington, DC 20534.

**FOR FURTHER INFORMATION CONTACT:** Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

**SUPPLEMENTARY INFORMATION:** The Bureau of Prisons is proposing to amend its regulations on the Administrative Remedy Program. A final rule on this subject was published in the Federal Register on October 29, 1979 (44 FR 62250), and was amended December 27, 1979 (44 FR 76726), November 20, 1991 (56 FR 58634), and on October 29, 1993 (58 FR 58246).

The proposed revision set forth below is the first major change to the Bureau's Administrative Remedy Program since its adoption on October 29, 1979. Subsequent growth of the inmate population has resulted in an increase in the number of remedy requests filed. As a means of effectively addressing this situation, the Bureau has reorganized its regulation, currently entitled Administrative Remedy Procedure for Inmates, for the sake of clarity, and is proposing various efficiencies in the procedures for processing remedy requests.

Procedural efficiencies include making adjustments to the time limits for filing requests by inmates and for responses by the Bureau. The time limit for submission of an initial remedy request by an inmate has been lengthened to 20 calendar days following the date on which the basis for the request had occurred. Current regulations specify a 15-day limit. The time limit for submission of an appeal to the General Counsel has been lengthened to 30 calendar days following the date Regional Counsel signed the response. The proposed time limits for agency responses have also been lengthened, from 15 to 20 calendar days at the institution level, and from 30 to 40 calendar days at the Central Office level.

Additional revisions include additional guidelines in the following areas: informal resolution, forms, and assistance to inmates. Also, advances in recordkeeping technology have now made it possible to expand the provisions for access to remedy indexes.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

**List of Subjects in 28 CFR Part 542**

Prisoners.

**Wade B. Houk,**

*Acting Director, Bureau of Prisons.*

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), it is proposed to revise part 542 in subchapter C of 28 CFR, chapter V as set forth below.

**SUBCHAPTER C—INSTITUTIONAL MANAGEMENT**

1. 28 CFR part 542 is revised to read as follows:

## PART 542—ADMINISTRATIVE REMEDY

**Subpart A—[Reserved]**

**Subpart B—Administrative Remedy Program**

Sec.

542.10 Purpose and scope.
542.11 Responsibility.
542.12 Excluded matters.
542.13 Informal resolution.
542.14 Initial filing.
542.15 Appeals.
542.16 Assistance.
542.17 Resubmission.
542.18 Response time.
542.19 Access to indexes and responses.

**Authority:** 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 [Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

### Subpart A—[Reserved]

### Subpart B—Administrative Remedy Program

**§ 542.10 Purpose and scope.**

The Administrative Remedy Program is a process through which inmates may seek formal review of an issue which relates to any aspect of their confinement, except as excluded in § 542.12, if less formal procedures have not resolved the matter. This Program applies to all inmates confined in

Bureau of Prisons institutions, to inmates designated to contract Community Corrections Centers (CCCs) under Bureau of Prisons responsibility, and to former inmates for issues that arose during their confinement, but does not apply to inmates confined in other non-federal facilities.

**§ 542.11 Responsibility.**

(a) The Community Corrections Manager (CCM), Warden, Regional Director, and General Counsel are responsible for the implementation and operation of the Administrative Remedy Program at the Community Corrections Center (CCC), institution, regional and Central Office levels, respectively, and shall:

(1) Establish procedures for receiving, recording, reviewing, investigating, and responding to Administrative Remedy Requests (Requests) or Appeals (Appeals) submitted by an inmate;

(2) Acknowledge receipt of a Request or Appeal by returning a receipt to the inmate;

(3) Conduct an investigation into each Request or Appeal;

(4) Respond to and sign all Requests or Appeals filed at their levels. At the regional level, signatory authority may be delegated to the Deputy Regional Director. At the Central Office level, signatory authority may be delegated to the National Inmate Appeals Administrator. Signatory authority extends to staff designated as acting in the capacities specified in this § 542.11, but may not be further delegated without the written approval of the General Counsel.

(b) Inmates have the responsibility to use this Program in good faith and in an honest and straightforward manner.

**§ 542.12 Excluded matters.**

(a) An inmate may not use this Program to submit a Request or Appeal on behalf of another inmate. This program is intended to address concerns that are personal to the inmate making the Request or Appeal, but shall not prevent an inmate from obtaining assistance in preparing a Request or Appeal, as provided in § 542.16 of this part.

(b) Requests or Appeals will not be accepted under the Administrative Remedy Program for claims for which other administrative procedures have been established, including tort claims, Inmate Accident Compensation claims, and Freedom of Information or Privacy Act requests. Staff shall inform the inmate in writing of the appropriate administrative procedure if the Request or Appeal is not acceptable under the Administrative Remedy Program.

**§ 542.13 Informal resolution.**

(a) *Informal Resolution.* Except as provided in § 542.13(b), an inmate shall first present an issue of concern informally to staff, and staff shall attempt to informally resolve the issue before an inmate submits a Request for Administrative Remedy.

(b) *Exceptions.* Inmates in CCCs are not required to attempt informal resolution. An informal resolution attempt is not required prior to submission to the Regional or Central Office as provided for in § 542.14(d) of this part. An informal resolution attempt may be waived in individual cases at the Warden or institution Administrative Remedy Coordinator's discretion when the inmate demonstrates an acceptable reason for bypassing informal resolution.

**§ 542.14 Initial filing.**

(a) *Submission.* After the required informal resolution attempt, an inmate may submit a formal written Administrative Remedy Request on the appropriate form (BP–9), within 20 calendar days of the date on which the basis for the Request occurred.

(b) *Extension.* Where the inmate demonstrates a valid reason for delay, an extension in filing time may be allowed. In general, valid reason for delay means a situation which prevented the inmate from submitting the request within the established time frame. Valid reasons for delay include the following: an extended period in-transit during which the inmate was separated from documents needed to prepare the Request or Appeal; an extended period of time during which the inmate was physically incapable of preparing a Request or Appeal; an unusually long period taken for informal resolution attempts; indication by an inmate, verified by staff, that a response to the inmate's request for copies of dispositions requested under § 542.19 of this part has not been received.

(c) *Form.* (1) The inmate shall obtain the appropriate form from CCC staff or institution staff (ordinarily, the correctional counselor).

(2) The inmate shall place a single complaint or a reasonable number of closely related issues on the form. If the inmate includes on a single form multiple unrelated issues, the submission shall be rejected and returned without response, and the inmate shall be advised to use a separate form for each unrelated issue. For DHO and UDC appeals, each separate incident report number must be appealed on a separate form.

(3) The inmate shall complete the form with all requested identifying information and shall state the complaint in the space provided on the form. If more space is needed, the inmate may use up to one letter-size (8 ½" by 11") continuation page. The inmate must provide an additional three copies of any continuation page. The inmate must submit one copy of supporting exhibits. Exhibits will not be returned with the response. Because copies of exhibits must be filed for any appeal (see § 542.15(b)(3)), the inmate is encouraged to retain a copy of all exhibits for his or her personal records.

(4) The inmate shall date and sign the Request and submit it to the institution staff member designated to receive such Requests (ordinarily a correctional counselor). CCC inmates may mail their Requests to the CCM.

(d) *Exceptions to initial filing at institution—(1) Sensitive issues.* If the inmate reasonably believes the issue is sensitive and the inmate's safety or well-being would be placed in danger if the Request became known at the institution, the inmate may submit the Request directly to the appropriate Regional Director. The inmate shall clearly mark "Sensitive" upon the Request and explain, in writing, the reason for not submitting the Request at the institution. If the Regional Administrative Remedy Coordinator agrees that the Request is sensitive, the Request shall be accepted. Otherwise, the Request will not be accepted, and the inmate shall be advised in writing of that determination, without a return of the Request. The inmate may pursue the matter by submitting an Administrative Remedy Request locally to the Warden. The Warden shall allow a reasonable extension of time for such a resubmission.

(2) *DHO appeals.* DHO appeals shall be submitted initially to the Regional Director for the region where the inmate is currently located.

(3) *Control unit appeals.* Appeals related to Executive Panel Reviews of Control Unit placement shall be submitted directly to the General Counsel.

(4) *Controlled housing status appeals.* Appeals related to the Regional Director's review of controlled housing status placement may be filed directly with the General Counsel.

**§ 542.15 Appeals.**

(a) *Submission.* An inmate who is not satisfied with the Warden's response may submit an Appeal on the appropriate form (BP–10) to the appropriate Regional Director within 20 calendar days of the date the Warden

signed the response. An inmate who is not satisfied with the Regional Director's response may submit an Appeal on the appropriate form (BP–11) to the General Counsel within 30 calendar days of the date the Regional Director signed the response. When the inmate demonstrates a valid reason for delay, these time limits may be extended. Valid reasons for delay include those situations described in § 542.14(b) of this part. Appeal to the General Counsel is the final administrative appeal.

(b) *Form.* (1) Appeals to the Regional Director shall be submitted on the form designed for regional Appeals (BP–10) and accompanied by one complete copy or duplicate original of the institution Request and response. Appeals to the General Counsel shall be submitted on the form designed for Central Office Appeals (BP–11) and accompanied by one complete copy or duplicate original of the institution and regional filings and their responses. Appeals shall state specifically the reason for appeal.

(2) An inmate may not raise in an Appeal issues not raised in the lower level filings. An inmate may not combine Appeals of separate lower level responses (different case numbers) into a single Appeal.

(3) An inmate shall complete the appropriate form with all requested identifying information and shall state the reasons for the Appeal in the space provided on the form. If more space is needed, the inmate may use up to one letter-size (8½"×11") continuation page. The inmate shall provide two additional copies of any continuation page and exhibits with the regional Appeal, and three additional copies with an Appeal to the Central Office (the inmate is also to provide copies of exhibits used at the prior level(s) of appeal). The inmate shall date and sign the Appeal and mail it to the appropriate Regional Director, if a Regional Appeal, or to the National Inmate Appeals Section, Office of General Counsel, if a Central Office Appeal (see 28 CFR part 503 for addresses of the Central Office and Regional Offices).

**§ 542.16 Assistance.**

(a) An inmate may obtain assistance from another inmate or from institution staff in preparing a Request or an Appeal. An inmate may also obtain assistance from outside sources, such as family members or attorneys. However, no person may submit a Request or Appeal on the inmate's behalf, and obtaining assistance will not be considered a valid reason for exceeding a time limit for submission unless the delay was caused by staff.

(b) Wardens shall ensure that assistance is available for inmates who are illiterate, disabled, or who are not functionally literate in English. Such assistance includes provision of reasonable accommodation in order for an inmate with a disability to prepare and process a Request or an Appeal.

**§ 542.17 Resubmission.**

(a) *Rejections.* The Coordinator at any level (CCM, institution, region, Central Office) may reject and return to the inmate without response a Request or an Appeal that is written in a manner that is obscene or abusive, or does not meet any other requirement of this part.

(b) *Notice.* When a submission is rejected, the inmate shall be provided a written notice, signed by the Administrative Remedy Coordinator, explaining the reason for rejection. If the defect on which the rejection is based is correctable, the notice shall inform the inmate of a reasonable time extension within which to correct the defect and resubmit the Request or Appeal.

(c) *Appeal of rejections.* When a Request or Appeal is rejected and the inmate is not given an opportunity to correct the defect and resubmit, the inmate may appeal the rejection, including a rejection on the basis of an exception as described in § 542.14(d), to the next appeal level. The Coordinator at that level may affirm the rejection, may direct that the submission be accepted at the lower level (either upon the inmate's resubmission or direct return to that lower level), or may accept the submission for filing. The inmate shall be informed of the decision by delivery of either a receipt or rejection notice.

**§ 542.18 Response time.**

If accepted, a Request or Appeal is considered filed on the date it is logged into the Administrative Remedy Index as received. Once filed, response shall be made by the Warden or CCM within 20 calendar days; by the Regional Director within 30 calendar days; and by the General Counsel within 40 calendar days. If the Request is determined to be of an emergency nature which threatens the inmate's immediate health or welfare, the Warden shall respond not later than the third calendar day after filing. If the time period for response to a Request or Appeal is insufficient to make an appropriate decision, the time for response may be extended once by 20 days at the institution level, 30 days at the regional level, or 20 days at the Central Office. Staff shall inform the inmate of this extension in writing. Staff shall respond in writing to all filed Requests or Appeals. If the inmate does not receive a response within the time allotted for reply, including extension, the inmate may consider the absence of a response to be a denial at that level.

**§ 542.19 Access to indexes and responses.**

Inmates and members of the public may request access to Administrative Remedy indexes and responses, for which inmate names and Register Numbers have been removed, as indicated below. Each institution shall make available its index, and the indexes of its regional office and the Central Office. Each regional office shall make available its index, the indexes of all institutions in its region, and the index of the Central Office. The Central Office shall make available its index and the indexes of all institutions and regional offices. Responses may be requested from the location where they are maintained and must be identified by Remedy ID number as indicated on an index. Copies of indexes or responses may be inspected during regular office hours at the locations indicated above, or may be purchased in accordance with the regular fees established for copies furnished under the Freedom of Information Act (FOIA).

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## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

### 37 CFR Part 1

[Docket No. 940968–4268]

RIN 0651–AA71

### Patent Appeal and Interference Practice

**AGENCY:** Patent and Trademark Office, Commerce..

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Patent and Trademark Office proposes to amend the rules of practice in patent cases, part 1 of title 37, Code of Federal Regulations, relating to patent appeal and interference proceedings. The proposed changes include amendments to conform the interference rules to 35 U.S.C. 104 as amended by Public Law 103–182, 107 Stat. 2057 (1993) (North American Free Trade Agreement Implementation Act) and a number of clarifying and housekeeping amendments.

**DATES:** Written comments must be submitted no later than November 30, 1994. A public hearing will be held on

December 7, 1994. Requests to present oral testimony must be received no later than December 2, 1994.

**ADDRESSES:** Address written comments to Board of Patent Appeals and Interference, P.O. Box 15647, Arlington, Virginia 22215, marked to the attention of Fred E. McKelvey. Written comments will be available for public inspection in the interference copy room, which is located on the 10th floor of Crystal Gateway 2, 1225 Jefferson Davis Highway, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Fred E. McKelvey by telephone at (703) 603–3320 or by mail marked to the attention of Fred E. McKelvey at P.O. Box 15647, Arlington, Virginia 22215.

**SUPPLEMENTARY INFORMATION:**

**I. Amendments Responsive to Adoption of Public Law 103–182**

Several of the proposed amendments to the interference rules (i.e., 37 CFR 1.601 *et seq.*) are responsive to Public Law 103–182, 107 Stat. 2057 (1993) (North American Free Trade Agreement Implementation Act), which amended 35 U.S.C. 104 to permit reliance on activities occurring in a "NAFTA country" to prove a date of invention. Paragraph (b) of § 104 as amended states that "the term 'NAFTA country' has the meaning given that term in section 2(4) of the North American Free Trade Agreement Implementation Act." That section of Public Law 103–182 has been codified at 19 U.S.C. 3301(4), which reads:

(4) NAFTA Country

Except as provided in section 3332 of this title, the term "NAFTA country" means—

(A) Canada for such time as the [North American Free Trade] Agreement is in force with respect to, and the United States applies the Agreement to, Canada; and

(B) Mexico for such time as the Agreement is in force with respect to, and the United States applies the Agreement to, Mexico.

Accordingly, it is proposed to amend 37 CFR 1.601 by adding a new paragraph (r) defining the term "NAFTA country" and "non-NAFTA country" and to amend the following interference rules, which set forth the requirements for preliminary statements, so as to permit reliance on activities occurring in a NAFTA country: §§ 1.622(b), 1.623(a), 1.624(a) and 1.628(b)(2).

37 CFR 1.684, which relates to the taking of testimony in a foreign country, is proposed to be deleted and reserved in view of proposed amendments to §§ 1.671 and 1.672. Section 1.671 is proposed to be amended by redesignating paragraph (h) as paragraph (i) and adding new paragraphs (h) and (j). New paragraph (h) would set forth the requirements for a motion § 1.635 to compel testimony or the production of documents or things in a foreign country. New paragraph (j) would provide that the weight to be given testimony taken in a foreign country will be determined on a case-by-case basis. Little, if any, weight would be given to testimony taken in a foreign country unless the party taking the testimony proves by clear and convincing evidence (1) that giving false testimony in an interference proceeding is punishable as perjury under the laws of the foreign country where the testimony is taken and (2) that the punishment in a foreign country for giving such false testimony is similar to the punishment for perjury committed in the United States. The proposed amendments to § 1.672 include amending paragraphs (a) and (b), redesignating current paragraphs (c) through (f) as paragraphs (e) through (h) and adding new provisions identified as paragraphs (c) and (d). Paragraph (a) as proposed to be amended would limit a party's case-in-chief testimony to affidavits, except where testimony is to be compelled under 35 U.S.C. 24 or compelled from a party or in a foreign country. New paragraph (c) would provide that where an opponent objects to the admissibility of any evidence contained in or submitted with an affidavit, the opponent must file and serve objections stating with particularity the nature of the objection, to which the party may respond by filing supplemental affidavits and supplemental official records and printed publications. New paragraph (c) further would provide that any objections to the admissibility of any evidence contained in or submitted with a supplemental affidavit shall be by a motion to suppress under § 1.656(h). New paragraph (d) of § 1.672 would require any cross-examination of affiants to be by deposition within the United States, which is defined in current § 1.601(p) as the United States of America, its territories and possessions. New paragraph (d) of § 1.672 would require that the party whose witness is to be cross-examined notice the deposition under § 1.673(e), obtain a court reporter and provide a translator of the witness will not testify in English. Although not set forth in the proposed rules, any party attending the deposition can bring its own translator or the parties can agree to share the cost of single mutually agreeable translator. Paragraphs (g) and (h) of § 1.671 as proposed to be amended would provide that a party seeking to compel testimony or production of documents or things pursuant to 35 U.S.C. 24 or to compel testimony or production from a party or in a foreign country would have to first file a § 1.635 motion to obtain permission from an administrative patent judge. A motion to compel testimony or the production of documents or things in a foreign country would have to show that the witness has been asked to testify in the United States and has refused to do so or that the individual or entity having possession, custody, and control of the document or thing has refused to produce the document or thing in the United States, even though the moving party has offered to pay the expenses involved in bringing the witness or the document or thing to the United States. When permission has been obtained from the administrative patent judge, the party, after also complying with the current requirements for an oral conference (§ 1.673(g)) and service of documents and a proffer of access to things (§ 1.673(b)), would be required to notice the deposition under § 1.673(a).

Section 1.616 is proposed to be amended by adding a paragraph (c) stating that to the extent that any information under the control of an individual or entity located in a NAFTA country concerning knowledge, use, or other activity relevant to proving or disproving a date of invention has been ordered to be produced by an administrative patent judge or the Board (§ 1.671(h)), but is not produced for use in the interference to the same extent as such information could be made available in the United States, the administrative patent judge or the Board shall draw such adverse inferences as may be appropriate under the circumstances, or take such other action permitted by statute, rule, or regulation, in favor of the party that requested the information in the interference, including imposition of appropriate sanctions under § 1.616(a).

Section 1.647, which currently requires a party who relies on a non-English language document to provide an English-language translation and an affidavit attesting to its accuracy, is proposed to be amended to extend these requirements to non-English language documents that a party is required to produce via discovery (see § 1.671(h)).

**II. Attorney Fees and Expenses**

Section 1.616 is proposed to be amended by redesignating current paragraphs (a) through (e) as paragraphs (a)(1) through (a)(4) and (a)(6) and adding new paragraphs (a)(5) and (b). New paragraph (a)(5) would authorize the award of compensatory (as opposed to punitive) expenses and/or attorney

fees as a sanction for failing to comply with the rules or an order, since there are occasions when such a sanction would be more commensurate in scope with the infraction than the sanctions that are currently authorized. New paragraph (b) would authorize the imposition of a sanction, including a sanction in the form of compensatory expenses and/or attorney fees, against a party for taking or maintaining a frivolous position.

### III. Certificates of Prior Consultation

Paragraph (b) of § 1.637 currently requires that a miscellaneous motion under § 1.635 contain a certificate stating that the moving party has conferred with all opponents in a good faith effort to resolve by agreement the issues raised by the motion and indicating whether any other party plans to oppose the motion. It is proposed to amend paragraph (b) to extend the requirement for such a certificate to motions filed under §§ 1.633 and 1.634 and also to require the certificate to indicate that the reasons and facts in support of the motion were discussed with each opponent and, if an opponent has indicated that it will oppose the motion, to identify the issues and/or facts believed to be in dispute. The proposed requirement for consultation should result in a reduction in the number of issues raised by motions under § 1.633 and 1.634 as well as a reduction in the number of motions filed under those rules.

### IV. Service of a "Developing Record"

In addition to the amendments to § 1.672 discussed above under the heading "Amendments responsive to adoption of Public Law 103–182," it is proposed to amend §§ 1.672, 1.682, 1.683 and 1.688 to require each party to serve on each opponent a "developing record" that will evolve into the record required to be filed under § 1.653. Specifically, in § 1.672, it is proposed to amend paragraph (b) to provide that a party presenting testimony of a witness by affidavit shall, no later than the time set by the administrative patent judge for serving affidavits, file (which includes serve) the affidavit, whether it is a new affidavit or an affidavit that was previously filed by that party during *ex parte* prosecution of an application or under § 1.608 or 1.639(b).

Sections 1.682, 1.683 and 1.688 are proposed to be amended to parallel the proposed amendments to § 1.672. Specifically, paragraph (a) of § 1.682 as proposed to be amended would provide that a party may introduce into evidence, if otherwise admissible, an official record or printed publication not identified in an affidavit or on the record during an oral deposition of a witness, by filing (which includes serving) a copy of the official record or publication no later than the time set for filing affidavits under § 1.672(b), thereby dispensing with the current requirement to file a notice of intent to rely on the official record or printed publication. In § 1.683, paragraph (a) as proposed to be amended would provide that a party may introduce into evidence, if otherwise admissible, testimony by affidavit or oral deposition from another interference, proceeding, or action involving the same parties by filing (which includes serving) a copy of the affidavit or a copy of the deposition transcript no later than the time set for filing affidavits under § 1.672(b), thereby dispensing with the current requirement for a party to file a motion under § 1.635 for leave to rely on such testimony. Section 1.688 as proposed to be amended would provide that, if otherwise admissible, a party may introduce into evidence an answer to a written request for an admission or an answer to a written interrogatory obtained by discovery under § 1.687 by filing a copy of the request for admission or the written interrogatory and the answer no later than the time set for filing affidavits under § 1.672(b). Thus, all evidence filed under §§ 1.672, 1.682, 1.683 and 1.688 that relates to a party's case-in-chief should be filed together no later than the date set by an administrative patent judge for the party to serve affidavits under § 1.672(b) for its case-in-chief and all evidence under those sections that relates to the party's rebuttal should be filed no later than the date set for the party to serve affidavits under § 1.672(b) for its case-in-rebuttal.

The pages of all affidavits and deposition transcripts would be required to have sequential numbers that would also serve as the record page numbers for the affidavits and transcripts in the party's record when it is filed under § 1.653. Likewise, the exhibits identified in the affidavits and deposition transcripts and any official records and printed publications served under § 1.682(a) would be required to have sequential numbers which would serve as the exhibit numbers when the exhibits are filed with the party's record. Affidavits and § 1.683(a) testimony would have to be accompanied by an index giving the name of each witness and the number of the page where the testimony of each witness begins. The exhibits would have to be accompanied by an index briefly describing the nature of each exhibit and giving the number of the page of affidavit or § 1.683(a) testimony where each exhibit identified in an affidavit or during an oral deposition is first identified and offered into evidence.

An opponent who objects to the admissibility of any evidence filed under §§ 1.672(b), 1.682(b), 1.683(a) and 1.688(a) would have to file objections under §§ 1.672(c), 1.682(c), 1.683(b) and 1.688(b) no later than the date set by the administrative patent judge for filing objections to affidavits under paragraph § 1.672(c). An opponent who fails to challenge the admissibility of the evidence on a ground that could have been raised in a timely objection under §§ 1.672(c), 1.682(c), 1.683(b) or 1.688(b) would not be permitted to move under § 1.656(h) to suppress the evidence on that ground. If an opponent timely files an objection to evidence filed under §§ 1.672(b), 1.682(b), 1.683(a) or 1.688(a), the party may respond by filing supplemental affidavits and, in the case of objections to evidence filed under §§ 1.672(b), 1.682(b) and 1.683(a), may also file supplemental official records and printed publications. No objection to the admissibility of supplemental evidence shall be made, except as provided by § 1.656(h). The page numbers of the supplemental affidavits would be sequentially numbered beginning with the number following the last page number of the testimony served under §§ 1.672(b), 1.683(a) and 1.688(a). Likewise, any additional exhibits identified in the supplemental affidavits and any supplemental official records and printed publications would be given sequential numbers beginning with the number following the last number of the previously identified exhibits. After the time expires for filing objections and supplemental affidavits, or earlier when appropriate, the administrative patent judge would set a time within which any opponent may file a request to cross-examine an affiant on oral deposition.

If any opponent requests cross-examination of an affiant, the party shall notice a deposition at a reasonable location within the United States under § 1.673(e) for the purpose of cross-examination. Any redirect and recross shall take place at the deposition. Within 45 days of the close of the period for taking cross-examination (§ 1.678 is proposed to be amended to change the time for filing certified transcripts from 45 days to 30 days), the party would serve (but not file) a copy of each deposition transcript on each opponent together with copies of any additional documentary exhibits identified by a witness during a deposition. The pages of the transcripts served under this

paragraph and the accompanying exhibits would be sequentially numbered in the manner discussed above. The deposition transcripts would be accompanied by an index of the names of the witnesses, giving the number of the page where cross-examination, redirect and recross of each witness begins, and an index of exhibits of the type specified in § 1.672(b). At this point in time, the opponent will have been served with all of the testimony that will appear in the party's record (with the same page numbers) as well as all of the documentary exhibits that will accompany the record (with the same exhibit numbers).

Since the proposed amendments to § 1.672 would require a party, during its testimony period, to file all affidavits on which it intends to rely at final hearing, it is proposed to delete as unnecessary paragraph (e) of § 1.671, which requires a party to give notice of intent to rely on an affidavit filed by that party during *ex parte* prosecution of an application or an affidavit under § 1.608 or 1.639(b).

**V. Withdrawal of Previous Notices**

Some of the clarifying and housekeeping amendments proposed in part VI below originally appeared in the same or similar form in two previous notices of proposed rulemaking, which are hereby withdrawn:

(a) RIN: 0651–AA53—"Patent Interference Practice—Notice of Proposed Rulemaking," 57 Fed. Reg. 2698 (Jan. 23, 1992), reprinted in 1135 Off. Gaz. Pat. Office 37 (Feb. 11, 1992); and

(b) RIN:0651–AA66—"Patent Interference Practice—Separate Patentability of Claims," 58 FR 39704 (July 26, 1993), reprinted in 1153 Off. Gaz. Pat. Office 59 (Aug. 17, 1993).

**VI. Miscellaneous Amendments**

Throughout the rules, the term "examiner-in-chief" has been replaced by "administrative patent judge" to reflect the change in the title of the members of the Board. See Commissioner's Notice of October 13, 1993, published as "New Title for Examiners-in-Chief," 1156 Off. Gaz. Pat. Office 332 (Nov. 9, 1993).

In § 1.11, it is proposed to amend paragraph (e) to allow access to the file on an interference involving a reissue application once the interference has terminated or an award of priority or judgment has been entered as to all counts. Although it was intended that the public have access to any interference that involves a case which is open to the public and § 1.11(b) provides that a reissue application is open to the public, interferences involving reissue applications were inadvertently not included in current § 1.11(e).

In § 1.192, which specifies the contents of the brief of an appellant for final hearing in an *ex parte* appeal, it is proposed to amend paragraph (a) in three respects. The first proposal is to simplify the language used to refer to a brief filed by an applicant who is not represented by a registered practitioner. The second is to delete the requirement that such a brief be in substantial compliance with the requirements of paragraphs (c) (1), (2), (6) and (7), because experience has shown that it is better to evaluate such briefs on a case-by-case basis. The third is to codify the "good cause" standard that is currently used to determine whether the Board will consider any arguments or authorities not included in the brief. It is proposed to make clarifying amendments to paragraphs (c), (c)(5) and (c)(5)(ii), to redesignate current paragraphs (c)(1) through (c)(7) as paragraphs (c)(3) through (c)(9), and to add new paragraphs (c)(1) and (c)(2) that would require an appellant who has filed an appeal to the Board to identify the real party in interest and any related appeals and interferences. The proposed requirement to identify the real party in interest is derived from Federal Circuit Rule 47.4 and Federal Circuit Form 7. For some time, it has been necessary to know the identity of the real party in interest. This information would permit members of the Board to comply with ethics regulations associated with working on matters in which the member has an interest. The proposed requirement to identify related appeals and interferences is derived in part from Federal Circuit Rule 47.5 and, if adopted, would prevent the Board from entering inconsistent decisions in related cases.

Section 1.601 is proposed to be amended in several ways. Paragraph (f) as proposed to be amended would specify that a count should be sufficiently broad as to encompass the broadest corresponding patentable claim of each of the parties without being so broad as to be unpatentable over the prior art and also to indicate that a phantom count is unpatentable to all parties under the written description requirement of the first paragraph of 35 U.S.C. 112. Paragraph (g) as proposed to be amended would broaden the definition of "effective filing date" to mean the actual filing date when the involved application or patent is not entitled to the benefit of the filing date of an earlier application. Specifically, paragraph (g) would provide that the effective filing date of an application is the filing date of an earlier application accorded to the application under 35 U.S.C. 119, 120, 121 or 365, or, if no benefit is accorded, the filing date of the application. The effective filing date of a patent would be defined as the filing date of an earlier application accorded to the patent under 35 U.S.C. 120, 121, or 365(c) or, if no benefit is accorded, the filing date of the application which matured into the patent. The reference to 35 U.S.C. 121 is included to eliminate any doubt that a divisional application may be entitled to an earlier filing date in accordance with 35 U.S.C. 121.

Paragraph (j) is proposed to be amended by changing "which" to "that." Paragraph (1) is proposed to be amended by changing "assignee" to "assignee of record in the Patent and Trademark Office." Paragraph (q) is proposed to be amended by deleting "a panel of" as superfluous.

Section 1.602 is proposed to be clarified by changing "within 20 days of" to "within 20 days after."

Sections 1.603 and 1.606 are proposed to be amended by deleting the third sentence ("Each count shall define a separate patentable invention.") as redundant in view of the identical sentence in § 1.601(f). In addition, it is proposed to clarify §§ 1.603 and 1.606 by amending them to require each application to contain, or be amended to contain, at least one patentable claim which corresponds to each count.

In section 1.604, it is proposed to amend paragraph (a)(1) by changing "his or her" to "its."

In § 1.605, it is proposed to amend paragraph (a) for clarification.

Section 1.606 is also proposed to be amended to note that the claim in the application need not be, and most often will not be, identical to a claim in the patent.

In § 1.607, it is proposed to amend paragraph (a)(4) by changing "his or her" to "its" and to add a new paragraph (a)(6) requiring an applicant seeking an interference with a patent to demonstrate compliance with 35 U.S.C. 135(b) which provides:

> A claim which is the same as, or for the same or substantially the same subject matter as, a claim of an issued patent may not be made in any application unless such a claim is made prior to one year from the date on which the patent was granted.

Requiring an applicant to show compliance with § 135(b) before an interference is declared will prevent an interference from being declared where the applicant cannot satisfy § 135(b) with respect to any claim alleged to correspond to the proposed count.

In § 1.608, it is proposed to amend paragraphs (a) and (b) in several respects. First, both paragraphs are proposed to be amended to delete the information about effective filing dates, which would appear instead in § 1.601(g) as proposed to be amended. Second, it is proposed to relax the current requirement of paragraph (a) for an affidavit filed by the applicant. Paragraph (a) as proposed to be amended would permit a statement to be filed by the applicant or a practitioner of record. Third, it is proposed to change "sufficient cause" in paragraph (b) and in other interference rules to "good cause" in order to make it clear that only one "cause" standard is intended. Fourth, it is proposed to change "8½ x 11 inches (21.8 by 27.9 cm.)" to "21.8 by 27.9 cm. (8½ x 11 inches)."

In § 1.609, it is proposed to amend paragraphs (b)(2) and (b)(3) to require the examiner's statement (i.e., the form PTO–850, also known as the initial interference memorandum) to explain why each claim designated as corresponding to a count is directed to the same patentable invention as the count and why each claim designated as not corresponding to a count is not directed to the same patentable invention as the count. The proposed amendment, if adopted, would provide the Board and the parties with the benefit of the examiner's reasoning and would provide a better foundation for considering preliminary motions to designate claims as corresponding or as not corresponding to a count.

In § 1.610, it is proposed to amend paragraph (a) by deleting the language "a panel consisting of at least three members of" as superfluous and by deleting the reference to § 1.640(e), which is proposed to be amended to allow a request for reconsideration under § 1.640(c) to be decided by an individual administrative patent judge rather than by the Board. It is further proposed to amend paragraph (b) by deleting "Unless otherwise provided in this section," as unnecessary in light of the proposed amendment to paragraph (a).

Section 1.611 is proposed to be amended by redesignating paragraph (a)(8) as paragraph (a)(9) and adding a new paragraph (a)(8) requiring that a notice of declaration of interference indicate why each claim designated as corresponding to a count is directed to the same patentable invention as the count and why each claim designated as not corresponding to a count is not directed to the same patentable invention as the count. This information should assist the parties in deciding whether to move to have claims designated as corresponding or not corresponding to the count. An administrative patent judge can satisfy this requirement by enclosing a copy of the examiner's statement with the parties' copies of the declaration notice. It is also proposed to capitalize the first word in each of paragraphs (d)(2) and (d)(3).

In § 1.612, it is proposed to amend paragraph (a) to change "opposing party's" to "opponent's" and to add a sentence referring to § 1.11(e) concerning public access to interference files.

In § 1.614, it is proposed to clarify the meaning of paragraph (a) by changing "the Board shall assume jurisdiction" to "the Board acquires jurisdiction."

In § 1.616, in addition to authorizing an award of compensatory attorney fees and expenses in appropriate circumstances, as discussed above, it is proposed to amend current paragraph (b) (which is proposed to be redesignated as paragraph (a)(2)) to permit a party to be sanctioned for failing to comply with the rules or an order by entering an order precluding the party from filing any type of paper. Paragraph (b) currently permits entry of an order precluding the filing of a motion or a preliminary statement.

Section 1.617 is proposed to be amended to authorize a party against whom a § 1.617(a) order to show cause has been issued to respond with an appropriate preliminary motion under § 1.633(c), (f) or (g). A preliminary motion under § 1.633(c) to redefine the interference, under § 1.633(f) for benefit of the filing date of an earlier application or under § 1.633(g) attacking the benefit accorded a patentee may be appropriate where the count set forth in the notice declaring the interference is not the same as the count proposed in the applicant's showing under § 1.608(b). A preliminary motion under § 1.633(f) or (g) may also be appropriate where the count set forth in the notice delcaring the interference is the same as the count proposed in the applicant's showing under § 1.608(b), but the notice either fails to accord the applicant the benefit of the filing date of an earlier application whose benefit was requested in the § 1608(b) showing or accords the parentee the benefit of the filing date of an earlier application whose benefit the § 1.608(b) showing argued should not be accorded the patentee.

In § 1.618, it is proposed to amend paragraph (a) for clarification and to state that a paper that has been returned as unauthorized will not thereafter be considered in the interference. Paragraph (a) currently states that a paper that has been returned as unauthorized will not thereafter be considered by the Patent and Trademark Office.

In § 1.625, it is proposed to simplify paragraph (a) by deleting "the invention was made in the United States or abroad and" as surplusage.

Section 1.626 is proposed to be simplified by changing "earlier application filed in the United States or aboard" to "earlier filed application." The same change is proposed for §§ 1.630, 1.633(f), 1.633(g), 1.637(c)(1)(vi), 1.637(e)(1)(viii), 1.637(e)(2)(vii) and 1.637(h)(4).

In § 1.628, it is proposed to amend paragraph (a) by changing "ends of justice" to "interest of justice" to be consistent with the language used in §§ 1.628(a) and 1.687(c), since a single standard is intended. Paragraph (a) of § 1.628 is also proposed to be amended to apply the "interest of justice" requirement only to corrected preliminary statements that are filed on or after the due date for serving preliminary statements. Where the moving party has not yet seen the opponent's statement, an opponent will not normally be prejudiced by the filing of a corrected statement.

In § 1.629, it is proposed to amend paragraphs (a), (c)(1) and (d) to make them consistent with the proposed amendment of the definition of "effective filing date" in § 1.601(g).

In § 1.631, it is proposed to amend paragraph (a) to delete "by the examiner-in-chief" (second occurrence) as superfluous.

Section 1.632 is proposed to be amended to more precisely state that a notice of intent to argue abandonment, suppression or concealment must be filed "within ten days after," rather than "within ten days of," the close of the testimony-in-chief of the opponent.

In § 1.633, it is proposed to amend paragraph (a) to specify that a claim shall be construed in light of the specification of the application or patent in which it appears. This amendment would administratively set aside the judicially created rule of *In re Spina*, 975 F.2d 854, 856, 24 USPQ2d 1142, 1144 (Fed. Cir. 1992), to the extent it held that the interference rules require that an ambiguous claim copied from a patent for interference purposes be construed in light of the disclosure of the patent. A claim that has been added to a pending application for any purpose, including to provoke an interference, would be given the broadest reasonable interpretation consistent with the disclosure of the application to which it is added, as are claims which are added during *ex parte*

prosecution. As explained *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

> [D]uring patent examination the pending claims must be interpreted as broadly as their terms reasonably allow. When the applicant states the meaning that the claim terms are intended to have, the claims are examined with that meaning, in order to achieve a complete exploration of the applicant's invention and its relation to the prior art. *See In re Prater*, 415 F.2d 1393, 1404–05, 162 USPQ 541, 550–51 (CCPA 1969) (before the application is granted, there is no reason to read into the claim the limitations of the specification). The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed. *Burlington Industries, Inc. v. Quigg*, 822 F.2d 1581, 1583, 3 USPQ2d 1436, 1438 (Fed. Cir. 1987); *In re Yamamoto*, 740 F.2d 1569, 1571, 222 USPQ 934, 936 (Fed. Cir. 1984).

If a party believes an opponent's claim corresponding to the count is ambiguous when construed in light of the opponent's disclosure, the party should move under § 1.633(a) for judgment against the claim on the ground of unpatentability under the second paragraph of 35 U.S.C. 112. In paragraph (a), it is also proposed to delete "by reference to the prior art of record" as unnecessary.

Paragraphs (a)(1) and (a)(2) of § 1.633 are proposed to be amended by deleting some unnecessary language from each paragraph and by changing "derivation" to "Derivation" in paragraph (a)(2). Paragraph (b), which concerns motions for judgment on the ground of no interference-in-fact, is proposed to be amended by stating that it is possible for claims of opponents presented in "means plus function" format to define separate patentable inventions even though the claims of the opponents contain the same literal wording. The reason is that the sixth paragraph of 35 U.S.C. 112, which is applicable to "means plus function" limitations in application claims and patent claims, provides that such limitations are to be construed as covering the corresponding structure disclosed in the associated application or patent and equivalents thereof. *In re Donaldson Co.*, 16 F.3d 1189, 29 USPQ2d 1845 (Fed. Cir. 1994).

Paragraph (i) of § 1.633 in its current form authorizes a party who opposes a preliminary motion under § 1.633 (a), (b) or (g) to file a preliminary motion under § 1.633 (c) or (d). It is proposed to amend paragraph (i) to additionally authorize a party-patentee to file a preliminary motion under § 1.633(h) to add to the interference an application for reissue of the party's involved patent. Because a reissue application can include an amended or new claim to be designated as corresponding to a count, the proposed amendment would give a patentee an option similar to that afforded in the same situation to a party-applicant, who can file a preliminary motion under § 1.633(c)(2) to amend a claim in, or add a claim to, its involved application to be designated as corresponding to a count.

In § 1.637, it is proposed to amend paragraph (a) to incorporate the substance of the Notice of the Chairman of the Board of Patent Appeals and Interferences of August 10, 1990, published as "Interferences—Preliminary Motions for Judgment," 1118 Off. Gaz. Pat. Office 19 (Sept. 11, 1990). Paragraph (a) as proposed to be amended would state that where a party files a preliminary motion for judgment against an opponent under § 1.633(a) based on unpatentability over prior art having a date that appears to make the prior art equally applicable to the moving party, it will be presumed, without regard to the dates alleged in the preliminary statement of the party, that the cited prior art is also applicable to the party unless there is included with the motion an explanation, and evidence if appropriate, as to why the prior art does not apply to the party. The proposed amendment differs from the notice by providing that if the motion fails to include a sufficient explanation or evidence, the party will not be permitted to rely on any such explanation or evidence in response to or in any subsequent action in the interference. The notice had directed the administrative party, a procedure which results in delaying a decision on the preliminary motion. Paragraph (a) is further proposed to be clarified by changing "Every" in the second sentence to "Each."

Paragraph (c)(1) of § 1.637 sets forth the requirements for a preliminary motion to add or substitute a proposed count. It is proposed to amend paragraph (c)(1)(v) in two respects. The first is to require a moving party to show that the proposed count is patentable over the prior art. The second is to specify that a proposed substitute count need only be shown to be patentably distinct from the other counts proposed to remain in the interference, since a proposed substitute count need not be patentably distinct from the count it is to replace. Paragraph (c)(1)(vi) is proposed to be amended to clarify that a preliminary motion under § 1.633(c)(1) need not be accompanied by a preliminary motion for benefit under § 1.633(f) unless the moving party seeks benefit with respect to the proposed count. It is also proposed to add a new paragraph (c)(1)(vii) specifying that where an opponent is accorded the benefit of the filing date of an earlier filed application in the notice of declaration of the interference, the moving party must show why the opponent is not also entitled to benefit of the filing date of the earlier filed application with respect to the proposed count. Otherwise, the opponent will be presumed to be entitled to the benefit of the earlier filed application with respect to the proposed count. The amendment would eliminate the need for an opponent to respond to a § 1.633(c)(1) motion with a preliminary motion under § 1.633(f) claiming benefit, which has the effect of delaying a decision on the § 1.633(c)(1) motion.

Paragraphs (c)(2) (ii) and (iii) of § 1.637 are proposed to be amended for clarification. Paragraphs (c)(2)(iv) and § 1.637(c)(3)(iii), which relate to § 1.633(f) motions for benefit, are proposed to be deleted and reserved as unnecessary, since motions under § 1.633(c) (2) and (3) do not efect the count. Paragraph (c)(3)(ii), which applies to motions under § 1.633(c)(3) to designate a claim as corresponding to a count, is proposed to be amended to have claims compared to claims, as is the case in § 1.633(c)(4)(ii), which applies to motions filed under § 1.633(c)(4) to designate a claim as not corresponding to a count. The proposed amendment avoids the need to compare claims to counts, which are subject to different rules of construction than are claims.

Paragraph (c)(4)(ii) of § 1.637 is proposed to be amended to require that a party moving to designate a claim as not corresponding to a count must show that the claim could not serve as the basis for a preliminary motion under § 1.633(c)(1) to add a new count. The proposed amendment, if adopted, would preclude a party from moving to designate one of its claims as not corresponding to the count where an opponent's disclosure would support a similar claim, in which case the party could file a § 1.633(c)(1) preliminary motion proposing a claim to be added to the opponent's application and suggesting that the proposed claim and the party's claim in question be designated as corresponding to a proposed new count.

Paragraph (d)(4) of § 1.637, which authorizes a party to file a motion for benefit together with a motion under § 1.633(d), is proposed to be deleted and reserved as unnecessary, because motions filed under § 1.633(d) do not affect the count. Paragraphs (e)(1)(viii) and (e)(2)(vii) are proposed to be amended to make it clear that a

preliminary motion under § 1.633(e) (1) or (2) need not be accompanied by a preliminary motion for benefit under § 1.633(f) unless the moving party seeks benefit with respect to the proposed count. Paragraphs (e)(1)(ix) and (e)(2)(viii) are proposed to be added to specify that where an opponent is accorded the benefit of the filing date of an earlier filed application in the notice of declaration of the interference, the moving party must show why the opponent is not entitled to benefit of the earlier filed application with respect to the proposed count; otherwise, the opponent will be presumed to be entitled to benefit of the earlier filed application with respect to the proposed count. Paragraph (f)(2) of § 1.637 is proposed to be amended to change "abroad" to "in a foreign country" and to delete both occurrences of "filed abroad" as superfluous.

Paragraph (h) of § 1.637 is proposed to be amended to explain that a preliminary motion to add a reissue application that includes a new or amended claim to be designated as not corresponding to a count will be given the same treatment as a preliminary motion proposing to amend a claim in, or add a new claim to, an involved application to be designated as not corresponding to the count, i.e., the preliminary motion will be dismissed. See L'Esperance v. Nishimoto, 18 USPQ2d 1534, 1537 (Bd. Pat. App. & Int. 1991) (interference rules do not authorize a motion by party-applicant to amend or add a claim to be designated as not corresponding to the count).

In § 1.638, it is proposed to amend paragraph (b) for clarification by changing "a reply" to "any reply."

In § 1.639, it is proposed to amend paragraph (a), which requires that a motion, opposition or reply be accompanied by the evidence on which a party intends to rely in support of or in opposition to a motion, to be consistent with paragraphs (c) through (g), which permit some types of evidence to be filed after filing of the motion, opposition or reply. It is also proposed to amend paragraph (d)(1) by changing "call" to "use."

In § 1.640, it is proposed to amend paragraph (b) in several respects. The first is to provide that a decision on a preliminary motion shall be deferred to final hearing unless an administrative patent judge or the Board is of the opinion that a decision on a preliminary motion will materially advance the resolution of the interference. The second is to state that a matter raised by a party in support of or in opposition to a motion that is deferred to final hearing will not be entitled to consideration at final hearing unless the matter is raised in the party's brief at final hearing. It is also proposed to amend paragraph (b) to state that where the administrative patent judge determines that the interference shall proceed to final hearing on the issue of priority or derivation, a time shall be set for each party to file a paper identifying any decisions of the administrative patent judge that the party wishes to have reviewed at final hearing as well as identifying any deferred or belatedly filed motions that the party wishes to have considered at final hearing. Paragraph (b) as proposed to be amended would also require that any evidence a party wishes to have considered with respect to the decisions and motions to be considered or reviewed at final hearing, including any affidavits filed by the party under § 1.608(b) or 1.639(b), would have to be served on the opponent during the testimony-in-chief period of the party.

Paragraph (b)(1) of § 1.640 is proposed to be amended for clarification. Paragraph (b)(2), which currently states that a preliminary motion filed after a decision is entered on preliminary motions under § 1.633 will not be considered except as provided by § 1.655(b), is proposed to be amended to state that a preliminary motion filed after the time expires for filing preliminary motions will not be considered except as provided by § 1.645(b) by changing "1.655(b)" to "1.645(b)," which relates to consideration of belatedly filed papers in general.

Paragraph (c) of § 1.640, which currently requires an administrative patent judge or the Board to specifically authorize an opposition to a request for reconsideration of a decision by an administrative patent judge, is proposed to be amended to authorize an opponent to file an opposition, thereby saving the administrative patent judge or the Board the time it would otherwise take to determine whether an opposition should be authorized. If adopted, the administrative patent judge would continue to have the authority to deny a request for reconsideration without waiting for an opposition. In order to conserve the resources of the Board, it is also proposed to delete the last sentence of § 1.640(c) so as to authorize a single individual administrative patent judge to decide a request for reconsideration. Paragraph (c) is also proposed to be amended to require that a request for reconsideration be filed by hand or Express Mail. Paragraph (d)(1), which currently states that an order to show cause under that section can be based on a decision on a motion which is dispositive of the interference against a party as to any count, is proposed to be amended to include decisions on dispositive matters raised sua sponte by an administrative patent judge.

Paragraph (e) of § 1.640 is proposed to be amended to incorporate the substance of the Deputy Commissioner's Notice of December 8, 1986, published as Interference Practice: Response to Order to Show Cause Under 37 CFR 1.640," 1074 Off. Gaz. Pat. Office 4 (Jan. 6, 1987), reprinted in 1086 Off. Gaz. Pat. Office 282 (Jan. 5, 1988). Specifically, paragraph (e) as proposed to be amended would provide that where the order to show cause was issued under § 1.640(d)(1), the party may respond with a paper (i) requesting that final hearing be set to review the decision which is the basis for the order and identifying every other decision of the administrative patent judge that the party wishes to have reviewed by the Board at a final hearing, or (ii) fully explaining why judgment should not be entered. Any other party would be permitted to file a response to the paper within 20 days of the date of service of the paper. Where the order was issued under § 1.640(d)(1) and the paper includes a request for final hearing, the response must identify every decision of the administrative patent judge that the responding party wishes to have reviewed by the Board at a final hearing. Where the order was issued under § 1.640(d)(1) and the paper does not include a request for final hearing, the response may include a request for final hearing, which must identify every decision of the administrative patent judge that the responding party wishes to have reviewed by the Board at a final hearing. Where only the response includes a request for a final hearing, the party who filed the paper would have 14 days from the date of service of the response in which to file a supplemental paper identifying any other decision of the administrative patent judge that the party wishes to have reviewed by the Board at a final hearing. The paper or the response thereto would have to be accompanied by a motion (§ 1.635) requesting a testimony period if a party wishes to introduce any evidence to be considered at final hearing (§ 1.671), such as affidavits previously filed under § 1.639(b). A request for a testimony period would be construed as including a request for final hearing. Where the paper contains an explanation of why judgment should not be entered in accordance with the order and no party has requested a final hearing, the decision that is the basis for the order

would be reviewed based on the contents of the paper and the response. If the paper fails to show good cause, the Board would enter judgment against the party against whom the order issued.

Section 1.641 currently indicates that an administrative patent judge who, during the pendency of an interference, becomes aware of a reason why a claim designated to correspond to a count may not be patentable should notify the parties of the reason and set a time within which each party may present its views, which the administrative patent judge will consider in determining how the interference shall proceed. It is proposed to amend § 1.641 to indicate that a party's views may include argument or appropriate preliminary motions under § 1.633(c), (d) and (h), including any supporting evidence.

In § 1.643, it is proposed to amend paragraph (b) for clarification and also to change "ends of justice" to "interest of justice" to be consistent with the language used in other interference rules, including §§ 1.628(a) and 1.687(c).

In § 1.644, it is proposed to simplify paragraph (a) by changing "a panel consisting of more than one examiner-in-chief" to "the Board." Paragraphs (a)(1), (b) and (c) are proposed to be amended by changing both occurrences of "panel" to "Board." Paragraphs (a)(2) and (b) are proposed to be changed to provide that a petition seeking to invoke the supervisory authority of the Commissioner shall not be filed prior to the party's brief for final hearing; these paragraphs currently provide that such a petition shall not be filed prior to a decision of the Board awarding judgment.

Paragraph (b) of § 1.644 is proposed to be clarified by amending it to state that a petition under § 1.644(a) shall be considered timely if it is made as part of, or simultaneously with, a proper motion under § 1.633, 1.634, or 1.635 when granting the motion would require waiver of a rule. In other words, a petition under § 1.644(a)(2) must seek waiver of a rule prospectively rather than retroactively.

Paragragh (d) of § 1.644 is proposed to be amended to provide that the statement of facts in a petition preferably should be in numbered paragraphs and also to delete the second sentence as unnecessary. Paragraph (f) is proposed to be amended to change the "15 days" in which to request reconsideration of a decision by the Commissioner to "14 days." In paragraph (g), it is proposed to delete the quotation marks around "Express Mail."

Section 1.645, which in its current form permits consideration of a belatedly filed paper only if accompanied by a motion under § 1.635 which shows sufficient cause (§ 1.645(b)) why the paper was not timely filed, is proposed to be amended in several respects. First, it is proposed to change "sufficient cause" to "good cause" in order to use a single "cause" standard throughout the interference rules. Second, it is proposed to amend paragraph (b) to permit consideration of a belatedly filed paper if an administrative patent judge or the Board, sua sponte, is of the opinion that it would be in the interest of justice to consider the paper. An example would be where the delay is short (e.g., one day) and there is no prejudice to an opponent. For purposes of the sections other than § 1.645, a belatedly filed paper is considered "timely filed" if accompanied by a motion under § 1.635 which is granted.

Paragraph (d) of § 1.645 is proposed to be amended by deleting "In an appropriate circumstance" as superfluous in view of the language "may stay proceedings," which indicates that the administrative patent judge has the discretion to stay an interference.

In § 1.646, it is proposed to amend paragraph (a)(2) by deleting the reference to § 1.684, which is proposed to be deleted. It is proposed to amend paragraph (c)(1) by inserting "or causing a copy of the paper to be handed" after "By handing a copy of the paper" to make it clear that the paper need not be personally delivered by the party, i.e., that delivery by hand can be effected by a commercial courier, for example. In paragraph (c)(4), it is proposed to change "mail" (second occurrence) to "first class mail" to make it clear that the service date specified in that paragraph applies only to first class mail. It is also proposed to redesignate paragraph (c)(5) as paragraph (c)(6) and to add a new paragraph (c)(5) which clarifies that a party may serve by Express Mail and that when service is effected by Express Mail, the date of service is considered to be the date of deposit with the U.S. Postal Service. Paragraph (d) is proposed to be amended to delete the quotation marks around "Express Mail." Paragraph (e) is proposed to be amended to state that the due date for serving a paper is the same as the due date for filing the paper in the Patent and Trademark Office.

In § 1.651, it is proposed to amend paragraph (a)(2) by deleting "(testimony includes testimony to be taken abroad under § 1.684)" in order to be consistent with the proposal to delete § 1.684. Paragraphs (c)(2) and (c)(3) are proposed to be amended to be consistent with the proposed amendment to the definition of "effective filing date" in § 1.601(g). In paragraph (d), it is proposed to change "abroad under § 1.684" to "in a foreign country."

In § 1.653, it is proposed to amend paragraph (a) in several ways. The first is to change the references to paragraphs of § 1.672 to be consistent with the proposed redesignation of certain paragraphs of § 1.672, discussed below. The second is to delete "of fact" in the clause "agreed statements of fact under § 1.672(f)" (proposed to be redesignated as § 1.672(h)), because agreed statements under § 1.672(f) can set forth either (1) how a particular witness would testify if called or (2) the facts in the case of one or more of the parties. The third is to delete "under § 1.684(c)," since § 1.684 is proposed to be deleted. A fourth proposed amendment to § 1.653(a) is to indicate that in addition to the types of testimony already set forth in paragraph (a), testimony includes copies of written interrogatories and answers and written requests for admissions and answers, which might be obtained where a motion for additional discovery under § 1.687(c) is granted.

Paragraph (b) of § 1.653 is proposed to be amended to be consistent with the proposed redesignation of certain paragraphs of § 1.672, to delete the reference to § 1.684(c), which is proposed to be cancelled, and for clarity. Paragraphs (c)(1) and (c)(4) of § 1.653 are proposed to be amended to make it clear that the only testimony to be included in a party's record is testimony submitted on behalf of the party. Having copies of the same testimony appear in both parties' records unnecessarily encumbers the records and is confusing in that a given page of testimony will have different page numbers in the different records, with the result that the briefs of the parties will refer to different record pages for the same testimony.

It is proposed that paragraph (c)(5) of § 1.653 be deleted and reserved. Paragraph (c)(5) currently requires that the record filed by each party include each notice, official record and printed publication relied upon by the party and filed under § 1.682(a). This requirement is considered unnecessary because such notices, official records and printed publications are in the nature of exhibits under § 1.653(i), which are submitted with but not included in the record. The inclusion of exhibits in the record merely increases the size of the record without serving any useful purpose.

Paragraph (g) of § 1.653 is proposed to be amended and paragraphs (f) and (h) deleted and reserved to eliminate the current distinction between typewritten and printed records. Paragraph (g) is also proposed to be amended to change "8½ x 11 inches (21.8 by 27.9 cm.)" to "21.8 by 27.9 cm. (8½ x 11 inches)" and to delete the requirement for justified margins and to require that the records be bound with covers at their left edges in such manner as to lie flat when open to any page and in one or more volumes of convenient size (approximately 100 pages per volume is suggested) and that when there is more than one volume, the numbers of the pages contained in each volume must appear at the top of the cover for each volume. Paragraph (i) is proposed to be amended to state that exhibits include documents and things identified in affidavits or on the record during the taking of oral depositions as well as official records and publications submitted pursuant to § 1.682(a).

In § 1.654, it is proposed to amend paragraph (a) by changing "shall" in the second sentence to "may" for clarity and also to reduce the time for oral argument by a party from 60 minutes to 30 minutes, because most hearings have required no more than 30 minutes per side and a panel has the discretion to grant more time at the hearing, where necessary.

In § 1.655, it is proposed to amend paragraph (a) by changing the standard of review from "erroneous or an abuse of discretion" to "an abuse of discretion." The recitation of a separate "error" standard is unnecessary, because an abuse of discretion may be found when (1) the decision of an administrative patent judge is clearly unreasonable, arbitrary or fanciful, (2) the decision is based on an erroneous conclusion of law, (3) the findings of the administrative patent judge are clearly erroneous, or (4) the record contains no evidence upon which the administrative patent judge rationally could have based the decision. See, *e.g.*, Heat and Control Inc. v. Hester Industries, Inc., 785 F.2d 1017, 228 USPQ 926 (Fed. Cir. 1986); Western Electric Co. v. Piezo Technology, Inc. v. Quigg, 860 F.2d 428, 8 USPQ2d 1853 (Fed. Cir. 1988).

It is proposed to amend paragraph (b) of § 1.655 to clarify which matters a party is not entitled to raise for consideration at final hearing. As proposed to be amended, paragraph (b) would provide that a party shall not be entitled to raise for consideration at final hearing a matter which properly could have been raised by a motion under § 1.633 or 1.634 unless (1) the matter was properly raised in a motion that was timely filed by the party under § 1.633 or 1.634 and the motion was denied or deferred to final hearing, (2) the matter was properly raised by the party in a timely filed opposition to a motion under § 1.633 or 1.634 and the motion was granted over the opposition or deferred to final hearing, or (3) the party shows good cause why the issue was not properly raised by a timely filed motion or opposition. It is also proposed to amend paragraph (b) of § 1.655 to state that a change of attorneys during the interference generally does not constitute good cause for failing to file a timely motion or opposition.

It is further proposed, in response to *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993), to amend paragraph (b) of § 1.655 by adding a sentence explaining that a party who fails to contest, by way of a timely filed preliminary motion under § 1.633(c), the designation of a claim as corresponding to a count may not subsequently argue the separate patentability or the lack of separate patentability of claims designated as corresponding to the count. The Patent and Trademark Office conducts interference proceedings to determine who, as between two or more applicants for patent or one or more applicants for patent and one or more patentees, is the first inventor of a patentable invention. A primary examiner determines in the first instance whether the claims in a pending application interfere with the claims in another pending application or unexpired patent. When the examiner is of the view that an interference exists, the Board is notified (§ 1.609). The interference is assigned to an administrative patent judge (§ 1.610), who issues a notice declaring the interference (§ 1.611). Each separately patentable invention involved in the interference is defined by a count, which is merely a vehicle for contesting priority of invention (i.e, who made the invention defined by the count first) and determining the evidence relevant to the issue of priority. A preliminary determination is made by the Patent and Trademark Office as to which claims should be designated to correspond to the count. The claims that are initially determined to define the same patentable invention are designated as corresponding to the count. All other claims are designated as not corresponding to the count. The designation of claims provides a starting point in an interference. There is a presumption that the designation of a claim as corresponding or as not corresponding to a count is correct.

The interference rules authorize a party to file a preliminary motion to redefine an interference by designating a claim as corresponding (§ 1.633(c)(3)) or not corresponding (§ 1.633(c)(4)) to a count. Prior to Van Geuns, the Patent and Trademark Office interpreted the interference rules as requiring a party to file a preliminary motion under § 1.633(c)(4) to designate a claim as not corresponding to the count as a condition for arguing at final hearing that a claim designated as corresponding to the count is patentably distinct from another claim designated as corresponding to the count. *See* Brooks v. Street, 16 USPQ2d 1374, 1377 (Bd. Pat. App. & Int. 1990); Flehmig v. Geisa, 13 USPQ2d 1052, 1054 (Bd. Pat. App. & Int. 1989); Kwon v. Perkins, 6 USPQ2d 1747, 1750 (Bd. Pat. App. & Int. 1988), aff'd on other grounds, 886 F.2d 325, 12 USPQ2d 1308 (Fed. Cir. 1989); see also Lamont v. Berguer, 7 USPQ2d 1580, 1582 (Bd. Pat. App. & Int. 1988). However, in Van Geuns the Federal Circuit interpreted the rules differently, stating:

> [T]he position of the Commissioner that claims designated as corresponding to a court stand or fall with the patentability of the subject matter of the count is overboard.

988 F.2d at 1185, 26 USPQ2d at 1060. The Court further stated:

> [W]e conclude that a party to an interference, who has failed to timely contest the designation of claims as corresponding to a count, has not conceded that claims corresponding to a count are anticipated or made obvious [i.e., are unpatentable] by the prior art when the subject matter of account is determined to be unpatentable for obviousness. The PTO must determine, based on the actual prior art reference or references, whether claims not [designated as] corresponding exactly to the count are unpatentable.
>
> * * * The interference rules do not specify whether a party may argue the patentability of claims separately to the EIC [examiner-in-chief, now administrative patent judge] and the board.

*Id.* at 1186, 26 USPQ2d at 1060 (bracketed material added by the Commissioner). The proposed amendment to § 655(b) is designed to overcome the Federal Circuit's interpretation of the rules and to create a presumption that all claims designated as corresponding to a count are directed to the same patentable invention.

It is proposed to amend paragraph (c) of § 1.655 by changing "To prevent manifest injustice" to "In the interest of justice" to be consistent with the language used in other interference rules.

In § 1.656, it is proposed to redesignate paragraphs (b)(1) through (b)(6) as paragraphs (b)(3) through (b)(8), respectively, and to add new paragraphs (b)(1) and (b)(2) requiring the brief to

include (1) a statement of interest identifying every party represented by the attorney in the interference and the real party in interest if the party named in the caption is not the real party in interest and (2) a statement or related cases indicating whether the interference was previously before the Board for final hearing and identifying any related appeal or interference which is pending before, or which has been decided by, the Board, or which is pending before, or which has been decided by, the Court of Appeals for the Federal Circuit or a district court in a proceeding under 35 U.S.C. 146. A related appeal or interference is one which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending interference. Appeals are mentioned because related issues may be present before the board simultaneously in an ex parte appeal and an interference. It is also proposed to amend current paragraph (b)(3) (proposed to be redesignated as paragraph (b)(5)) to specify that statements of fact preferably should be presented in numbered paragraphs.

Current paragraph (b)(4) of § 1.656 (proposed to be redesignated as paragraph (b)(6)) requires that the opening brief of the junior party contain the contentions of the party with respect to the "issues to be decided," which has been construed to include the matter of whether some of the senior party's evidence of conception was inadmissible hearsay. Suh v. Hoefle, 23 USPQ2d 1321, 1323 (Bd. Pat. App. & Int. 1991). As support, the Board relied on Fisher v. Bouzard, 3 USPQ2d 1677 (Bd. Pat. App. & Int. 1987), and Moller v. Harding, 214 USPQ 730 (Bd. Pat. Int. 1982). Both of these cases concern interferences declared under the "old" interference rules (i.e., § 1.201 *et seq.*) of which § 1.254 specified that the opening brief of the junior party shall "present a full, fair statement of the questions involved, including his position with respect to the priority evidence on behalf of other parties." Current § 1.656(b)(4) does not expressly require, and was not intended to imply, that the opening brief of the junior party must address the evidence of any other party with respect to the issue of priority or any other issue. In order to clarify that the opening brief of a junior party need not address the evidence of the other parties, it is proposed to amend current paragraph (b)(4) to require that the junior party's opening brief contain the contentions of the party "with respect to the issues it is raising for consideration at final hearing." These issues would include the junior party's case-in-chief for priority with respect to an opponent or derivation by an opponent as well as matters raised in any denied or deferred motions of the junior party that are to be reviewed or considered at final hearing. Where the reply brief of the union party includes a new argument in response the case-in-chief of the senior party as presented in the senior party's opening brief, the senior party may move under § 1.635 for leave to file a reply to the junior party's reply brief, which motion must be accompanied by a copy of the senior party's reply.

Paragraph (d) of § 1.656 is proposed to be amended to state that unless ordered otherwise by an administrative patent judge, briefs shall be double-spaced (except for footnotes, which may be single-spaced) and shall comply with the requirements of § 1.653(g) for records except the requirement for binding. As a result, the current distinction between printed and typewritten briefs would be eliminated.

Paragraphs (e), (g) and (h) of § 1.656 are proposed to be amended to require an original and *four* copies (currently an original and three copies are required) of each brief, any proposed findings of fact and conclusions of law, any motion under 37 CFR 1.635 to suppress evidence and any opposition to a motion to suppress evidence.

Paragraph (g) of § 1.656, which permits a party to file proposed findings of fact and conclusions of law, is further proposed to be amended to require paragraph numbers for the findings of fact and conclusions of law.

Paragraph (h) is further proposed to be amended to state that a party's failure to challenge the admissibility of the evidence of an opponent on a ground that could have been raised in a timely objection under §§ 1.672(c), 1.682(c), 1.683(b) or 1.688(b) constitutes a waiver of the right to move under § 1.656(h) to suppress the evidence on that ground at final hearing.

Paragraph (i) of § 1.656 currently provides that if a junior party fails to file an opening brief for final hearing, an order may be issued by the administrative patent judge requiring the junior party to show cause why the failure to file a brief should not be treated as a concession of priority and further provides that judgment may be rendered against the junior party if the junior party "fails to respond" within a time period set in the order. The expression "fails to respond" has been misinterpreted by some junior parties as meaning that the mere filing of a response of any kind to the order to show cause should be sufficient to avoid the entry of judgment. Such an interpretation was not intended and if adopted would effectively negate § 1.656(i). The term "respond" is proposed to be changed to "show good cause" in order to make it clear that a junior party's failure to file a timely opening brief will not be excused unless good cause is shown to explain or justify the failure to file a brief. The language of the rule will then be consistent with the other interference rules concerning orders to show cause, e.g., §§ 1.640(c) and 1.652.

Section 1.657 is proposed to be amended to be consistent with the proposed changes to the definition of "effective filing date" in § 1.601(g) to state that in an interference involving an application and a patent where the effective filing date of the application is after the date the patent issued, a junior party has the burden of establishing priority by clear and convincing evidence, and that in other interferences the junior party has the burden of establishing priority by a preponderance of the evidence. The proposed amendment would codify the holding of Price v. Symsek, 988 F.2d 1187, 19990–91, 26 USPQ2d 1031, 1033 (Fed. Cir. 1993), as clarified by Bosies v. Benedict, 27 F.3d 539, 541–42, 30 USPQ2d 1862, 1864 (Fed. Cir. 1994).

In § 1.658, it is proposed to amend paragraph (a) to state that when the Board enters a decision awarding judgment as to all counts, the decision shall be regarded as a final decision for the purpose of judicial review (35 U.S.C. 141–144, 146) unless a request for reconsideration under paragraph (b) of this section is timely filed. In paragraph (b), third sentence, it is proposed to delete the phrases "[w]here reasonably possible" and "such that delivery is accomplished" as unnecessary and to add a sentence specifying that a decision on reconsideration is a final decision for the purpose of judicial review (35 U.S.C. 141–144, 146). It is also proposed to amend paragraph (b) by changing "reply to a request for reconsideration" to be consistent with the terminology employed in § 1.640(c) regarding requests for reconsideration of decisions on preliminary motions.

Section 1.660 is proposed to be amended by adding a new paragraph (e) explaining that the failure of a party to comply with the notice provisions of § 1.660 may result in sanctions under § 1.616, that knowledge by, or notice to, an employee of the Office other than an employee of the Board, of the existence of the reexamination, application for reissue, protest, or litigation shall not be sufficient, and that the notice contemplated by this section is notice addressed specifically to an

administrative patent judge or the Board.

In § 1.662, it is proposed to amend paragraph (a) by changing "filing by an applicant or patentee" in the second sentence to "filing by a party" to make it clear that the terminal disclaimer can be signed by the party's attorney or agent of record. For the same reason, it is proposed to change "by an applicant" to "by a party" in the third sentence of paragraph (a), which concerns abandonment of an involved application.

In paragraph (b) of § 1.662, the first sentence is proposed to be amended to change "omits all claims of the patent corresponding to the counts of the interference for the purpose of avoiding the interference" to "does not include a claim that corresponds to a count" in order to make it clear that judgment may not be entered where the reissue application includes a new or amended claim that should be designated as corresponding to a count, even if the patentee argues that it should be designated as not corresponding to a count. Similarly, it is proposed to change "reissue other than for the purpose of avoiding the interference" to "reissue which includes a claim that corresponds to a count."

In § 1.671, it is proposed to amend paragraph (a) by changing "*evidence* from another interference, proceeding, or action filed § 1.683" to "*testimony* from another interference, proceeding, or action filed under § 1.683" in order to be consistent with the terminology of § 1.683. It is proposed to amend paragraphs (c)(6) and (c)(7) of § 1.671 to change "by oral deposition or affidavit" to "by affidavit or oral deposition." Paragraph (f) is proposed to be amended to clarify that the requirement for the significance of documentary and other exhibits to be discussed with particularity by a witness applies only to documentary and other exhibits identified by a witness in an affidavit or during oral deposition. Paragraph (f) does not apply to official records and printed publications submitted into evidence pursuant to § 1.682(a).

In § 1.672, in addition to the proposed amendments discussed above under the heading "Amendments responsive to adoption of Public Law 103–182," it is proposed to amend paragraph (b) by deleting the third sentence, which specifies the type of paper to be used for affidavits, as being superfluous in view of § 1.677(a). In paragraph (d), it is proposed to delete the fifth sentence ("A party electing to present testimony of a witness by deposition shall notice a deposition of the witness under § 1.673(a).") as superfluous in view of the second sentence of § 1.672(d).

In § 1.673, it is proposed to amend paragraph (b) by changing the time for service of evidence to be relied on at an oral deposition from "at least three days" prior to the conference required by § 1.673(g) when service is by hand or by Express Mail to "at least three working days" prior to the conference. It is also proposed to amend paragraph (b) to change the time for service by any other means from 10 days to 14 days prior to the conference.

It is proposed to amend paragraph (d) of § 1.673 by deleting the second sentence as unnecessary, since all depositions for a case-in-chief would have to be approved by an administrative patent judge. It is also proposed to delete the quotation marks around "Express Mail" in paragraph (b).

Also in § 1.673, it is proposed to clarify paragraph (e) by changing "party electing to present testimony by affidavit" to "party who has presented testimony by affidavit."

In paragraph (a) of § 1.674, which specifies before whom depositions may be taken, it is proposed to delete the reference to "United States or a territory or insular possession of the United States" in order to make this paragraph applicable to depositions for testimony compelled in foreign countries.

In § 1.675, it is proposed to amend paragraph (d), which concerns reading and signing of a transcript by the witness, to take into account that the witness might refuse to read and/or sign the transcript of the deposition, in which case the circumstances under which the witness refused to sign must be noted on the certificate by the officer who prepared the certified transcript (§ 1.676(c)).

In § 1.676, it is proposed to amend paragraph (a)(4) by changing "opposing party" to "opponent."

Section 1.677, which in its current form specifies the required form for transcripts of depositions, is proposed to be amended to also apply to affidavits. Furthermore, it is proposed to delete the reference to "typewritten" matter, to change "pica-type" to "11 point type" and to change "8½ × 11 inches (21.8 by 27.9 cm.)" to "21.8 by 27.9 cm. (8½ × 11 inches)."

In § 1.678, it is proposed to change the section heading from "Transcript of deposition must be filed" to "Time for filing transcript of deposition" for clarity and to amend the text by changing the time for filing the certified transcript from 45 days to 30 days.

In § 1.679, it is proposed to change "transcript" to "transcript of a deposition" for clarity and also to delete "for printing (§ 1.653(g))" as unnecessary.

In § 1.682, in addition to the proposed amendments discussed above under the heading "service of a 'developing record,'" it is proposed to amend paragraph (a) by changing "identified during the taking of testimony of a witness" to "identified in an affidavit or on the record during an oral deposition of a witness" for clarity. It is also proposed to delete and reserve paragraph (a)(4) ("where appropriate, be accompanied by a certified copy of the official record or a copy of the printed publication (§ 1.671(d))") as superfluous in view of Rules 901 and 902 of the Federal Rules of Evidence, which apply to interference proceedings (§ 1.671(b)) and require authentication of evidence that is not self-authenticating. Finally, it is proposed to capitalize the first word in each of paragraphs (a)(2), (a)(3) and (a)(4).

In § 1.685, it is proposed to amend paragraph (d) for clarification.

In § 1.687, it is proposed to amend paragraph (c) to refer to § 1.647 concerning translations of documents in a foreign language.

*Other Considerations*

These proposed rules conform with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, Executive Order 12866, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget has determined that these proposed rules are not significant for the purposes of Executive Order 12866.

The Assistant Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule changes will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)), because the changes clarify existing rules setting forth the procedures used in patent appeals and interferences.

The Patent and Trademark Office has determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

These rule changes will not impose any additional burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et.seq.*, since no record keeping or reporting requirements within the coverage of the Act are placed upon the public.

**List of Subjects in 37 CFR Part 1**

Administrative practice and procedure, Courts, Inventions and patents.

For the reasons set out in the preamble, it is proposed to amend 37 CFR Part 1 wherein removals are indicated by brackets ([ ]) and additions by arrows (►◄) as follows:

## PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

**Authority:** 35 U.S.C. 6, unless otherwise noted.

2. Section 1.11 is proposed to be amended by revising paragraph (e) to read as follows:

**§ 1.11 Files open to the public.**

* * * * *

(e) The file of any interference involving a patent, a statutory invention registration, ►a reissue application,◄ or an application on which a patent has been issued or which has been published as a statutory invention registration, is open to inspection by the public, and copies may be obtained upon paying the fee therefor, if: (1) The interference has terminated, or (2) an award of priority or judgment has been entered as to all parties and all counts.

3. In § 1.192, it is proposed to revise paragraphs (a), (c), (c)(5) and (c)(5)(ii), redesignate current paragraphs (c)(1) through (c)(7) as paragraphs (c)(3) through (c)(9) and add new paragraphs (c)(1) and (c)(2) to read as follows:

**§ 1.192 Appellant's brief.**

(a) [The appellant] ►Appellant◄ shall, within 2 months from the date of the notice of appeal under § 1.191 [in an application, reissue application, or patent under reexamination,] or within the time allowed for response to the action appealed from, if such time is later, file a brief in triplicate. The brief must be accompanied by the requisite fee set forth in § 1.17(f) and must set forth the authorities and arguments on which [the] appellant will rely to maintain the appeal. Any arguments or authorities not included in the brief ►will◄ [may] be refused consideration by the Board of Patent Appeals and Interferences ►, unless good cause is shown◄.

* * * * *

(c) The brief shall contain the following items under appropriate headings and in the order [here] indicated ►below◄ unless ►the brief is filed by an applicant who is not represented by a registered practitioner◄ [there is no attorney or agent of record in the application or reexamination proceeding, the brief was not prepared by a registered practitioner, and the brief was not signed by a registered practitioner, wherein the brief will be accepted as complying with this paragraph provided it is at least in substantial compliance with the requirements of paragraphs (c)(1), (2), (6) and (7)]:

►(1) *Real Party in Interest.* A statement identifying the real party in interest, if the party named in the caption of the brief is not the real party in interest, and the parent companies, subsidiaries (except wholly owned subsidiaries) and affiliates that have issued shares to the public of the real party in interest.

(2) *Related Appeals and Interferences.* A statement identifying by number and filing date all other appeals or interferences known to appellant, the appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.◄

[(1)] ►(3)◄ *Status of Claims.* A statment of the status of all the claims, pending or cancelled, and identifying the claims appealed.

[(2)] ►(4)◄ *Status of Amendments.* A statment of the status of any amendment filed subsequent to final rejection.

[(3)] ►(5)◄ *Summary of Invention.* A concise explanation of the invention defined in the claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters.

[(4)] ►(6)◄ *Issues.* A concise statement of the issues presented for review.

[(5)] ►(7)◄ *Grouping of Claims.* For each ground of rejection which appellant contests and which applies to more than one claim, [it will be presumed that] the rejected claims ►shall◄ stand or fall together ►with the broadest claim, and only the broadest claim will be considered by the Board of Patent Appeals and Interferences◄ unless:

►(i)◄ a statement is included that the rejected claims do not stand or fall together, and

►(ii)◄ in [the appropriate part or parts of] the argument under subparagraph ►(c) (8)◄ [(c) (6)] of this section appellant presents reasons as to why appellant considers the rejected claims to be separately patentable ►from the broadest claim. Merely pointing out what a claim covers is not an argument as to why the claim is separately patentable from the broadest claim◄.

[(6)] ►(8)◄ *Argument.* The contentions of [the] appellant with respect to each of the issues presented for review in subparagraph ►(c) (6)◄ [(c) (4)] of this section, and the basis therefor, with citations of the authorities, statutes, and parts of the record relied on. Each issue should be treated under a separate heading.

* * * * *

(v) For any rejection other than those referred to in paragraphs ►(c) (8) (i)◄ [(6) (6) (i)] to (iv) of this section, the argument shall specify the errors in the rejection and the specific limitations in the rejected claims, if appropriate, or other reasons, which cause the rejection to be in error.

[(7)] ►(9)◄ *Appendix.* An appendix containing a copy of the claims involved in the appeal.

(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, [the] appellant will be notified of the reasons for non-compliance and provided with a period of one month within which to file an amended brief. If [the] appellant does not file an amended brief during the one-month period, or files an amended brief which does not overcome all the reasons from non-compliance stated in the notification, the appeal will ►stand◄ [be] dismissed.

4. Section 1.601 is proposed to be amended by revising paragraphs (f), (g), (j), (k), (l), and (q) and adding a new paragraph (r) to read as follows:

**§ 1.601 Scope of rules, definitions.**

* * * * *

(f) A *count* defines the interfering subject matter between (1) two or more applications or (2) one or more applications and one or more patents. ►A count should be broad enough to encompass the broadest corresponding patentable claim of each of the parties. A count may not be so broad as to be unpatentable over the prior art.◄ When there is more than one count, each count shall define a separate patentable invention. Any claim of an application or patent [which] ►that is designated to◄ correspond[s] to a count is a claim involved in the interference within the meaning of 35 U.S.C. 135(a). A claim of a patent or application ►designated to correspond to a count that◄ [which] is identical to a count is said to "correspond exactly" to the count. A claim of a patent or application ►designated to correspond to a count that◄ [which] is not identical to a count [, but which defines the same patentable invention as the count,] is

said to "correspond substantially" to the count. When a count is broader in scope than all claims which correspond to the count, the count is a "phantom count." A phantom count is [not patentable to any party] ►unpatentable to all parties under the written description requirement of the first paragraph of 35 U.S.C. 112◄.

(g) The *effective filing date* of an application [or a patent] is the filing date of an earlier application accorded to the application [or patent] under 35 U.S.C. 119, 120, ►121,◄ or 365 ►or, if no benefit is accorded, the filing date of the application. The *effective filing date* of a patent is the filing date of an earlier application accorded to the patent under 35 U.S.C. 120, 121, or 365(c) or, if no benefit is accorded, the filing date of the application which issued as the patent.◄

* * * * *

(j) An *interference-in-fact* exists when at least one claim of a party [which] ►that◄ corresponds to a count and at least one claim of an opponent [which] ►that◄ corresponds to the count define the same patentable invention.

(k) A *lead* attorney or agent is a registered attorney or agent of record who is primarily responsible for prosecuting an interference on behalf of a party and is the attorney or agent whom an ►administrative patent judge◄ [examiner-in-chief] may contact to set times and take other action in the interference.

(l) A *party* is (1) an applicant or patentee involved in the interference or (2) a legal representative or an assignee ►of record in the Patent and Trademark Office◄ of an applicant or patentee involved in an interference. Where acts of a party are normally performed by an attorney or agent, "party" may be construed to mean the attorney or agent. An "inventor" is the individual named as inventor in an application involved in an interference or the individual named as inventor in a patent involved in an interference.

* * * * *

(q) A *final decision* is a decision awarding judgment as to all counts. An *interlocutory order* is any other action taken by an ►administrative patent judge◄ [examiner-in-chief] or [a panel of] the Board in an interference, including the notice declaring an interference.

►(r) *NAFTA country* means NAFTA country as defined in section 2(4) of the North American Free Trade Agreement Implementation Act. A "non-NAFTA country" is a country other than the United States or a NAFTA country.◄

5. Section 1.602 is proposed to be amended by revising paragraph (c) to read as follows:

**§ 1.602 Interest in applications and patents involved in an interference.**

* * * * *

(c) If a change of any right, title, and interest in any application or patent involved or relied upon in the interference occurs after notice is given declaring the interference and before the time expires for seeking judicial review of a final decision of the Board, the parties shall notify the Board of the change within 20 days ►after◄ [of] the change.

6. Section 1.603 is proposed to be revised to read as follows:

**§ 1.603 Interference between applications; subject matter of the interference.**

Before an interference is declared between two or more applications, the examiner must be of the opinion that there is interfering subject matter claimed in the applications which is patentable to each applicant subject to a judgment in the interference. The interfering subject matter shall be defined by one or more counts. [Each count shall define a separate patentable invention.] Each application must contain, or be amended to contain, at least one ►patentable◄ claim which corresponds to each count. All claims in the applications which define the same patentable invention as a count shall be designated to correspond to the count.

7. Section 1.604 is proposed to be amended by revising paragraph (a)(1) to read as follows:

**§ 1.604 Request for interference between applications by an applicant.**

(a) * * *

(1) Suggesting a proposed count and presenting at least one claim corresponding to the proposed count or identifying at least one claim in [his or her] ►its◄ application that corresponds to the proposed count,

* * * * *

8. Section 1.605 is proposed to be amended by revising paragraph (a) to read as follows:

**§ 1.605 Suggestion of claim to applicant by examiner.**

(a) ►If no claim in an application is drawn to the same patentable invention claimed in another application or patent, the ◄ [The] examiner may suggest that an applicant present a claim [in an application] ►drawn to an invention claimed in another application or patent◄ for the purpose of an interference with another application or a patent. The applicant to whom the claim is suggested shall amend the application by presenting the suggested claim within a time specified by the examiner, not less than one month. Failure or refusal of an applicant to timely present the suggested claim shall be taken without further action as a disclaimer by the applicant of the invention defined by the suggested claim. At the time the suggested claim is presented, the applicant may also (1) call the examiner's attention to other claims already in the application or which are presented with the suggested claim and (2) explain why the other claims [would be more appropriate to] ►should◄ be included in any interference which may be declared.

* * * * *

9. Section 1.606 is proposed to be revised to read as follows:

**§ 1.606 Interference between an application and a patent; subject matter of the interference.**

Before an interference is declared between an application and an unexpired patent, an examiner must determine that there is interfering subject matter claimed in the application and the patent which is patentable to the applicant subject to a judgment in the interference. The interfering subject matter will be defined by one or more counts. [Each count shall define a separate patentable invention.] ►The◄ [Any] application must contain, or be amended to contain, at least one ►patentable◄ claim which corresponds to each count. ►The claim in the application need not be, and most often will not be, identical to a claim in the patent.◄ All claims in the application and patent which define the same patentable invention as a count shall be designated to correspond to the count. At the time an interference is initially declared (§ 1.611), a count shall not be narrower in scope than any patent claim which corresponds to the count and any single patent claim will be presumed. subject to a motion under § 1.633(c), not to contain separate patentable inventions.

10. Section 1.607 is proposed to be amended by revising paragraph (a)(4) and adding a new paragraph (a)(6) to read as follows:

**§ 1.607 Request by applicant for interference with patent.**

(a) * * *

(4) Presenting at least one claim corresponding to the proposed count or identifying at least one claim already pending in [his or her] ►its◄ application that corresponds to the proposed count, and, if any claim of the patent or application identified as corresponding to the proposed count

does not correspond exactly to the proposed count, explaining why each such claim corresponds to the proposed count, and

(5) * * *

►(6) Explaining how the requirements of 35 U.S.C. 135(b) are met, if the claim presented or identified under paragraph (a)(4) of this section was not present in the application until more than one year after the issue date of the patent.◄

* * * * *

11. Section 1.608 is proposed to be amended by revising paragraphs (a) and (b) thereof to read as follows:

**§ 1.608 Interference between an application and a patent; prima facie showing by applicant.**

(a) When the [earlier of the filing date or] effective filing date of an application is three months or less after the [earlier of the filing date or] effective filing date of a patent, [the applicant,] before an interference will be declared, ►either the applicant or the applicant's attorney or agent of record◄ shall file [an affidavit] ►a statement◄ alleging that there is a basis upon which ►the◄ applicant is entitled to a judgment relative to the patentee.

(b) When the [earlier of the filing date or the] effective filing date of an application is more than three months after the [earlier of the filing date or the] effective filing date [under 35 U.S.C. 120] of a patent, the applicant, before an interference will be declared, shall file (1) evidence which may consist of patents or printed publications, other documents, and one or more affidavits which demonstrate that applicant is *prima facie* entitled to a judgment relative to the patentee and (2) an explanation stating with particularity the basis upon which the applicant is *prima facie* entitled to the judgment. Where the basis upon which an applicant is entitled to judgment relative to a patentee is priority of invention, the evidence shall include affidavits by the applicant, if possible, and one or more corroborating witnesses, supported by documentary evidence, if available, each setting out a factual description of acts and circumstances performed or observed by the affiant, which collectively would *prima facie* entitle the applicant to judgment on priority with respect to the [earlier of the filing date or] effective filing date of the patent. To facilitate preparation of a record (§ 1.653 (g) and (h)) for final hearing, an applicant should file affidavits on paper which is ►21.8 by 27.9 cm. (8½ x 11 inches)◄ [8½ x 11 inches (21.8 by 27.9 cm.)]. The significance of any printed publication or other document which is self-authenticating within the meaning of Rule 902 of the Federal Rules of Evidence or § 1.671(d) and any patent shall be discussed in an affidavit or the explanation. Any printed publication or other document which is not self-authenticating shall be authenticated and discussed with particularity in an affidavit. Upon a showing of ►good◄ [sufficient] cause, an affidavit may be based on information and belief. If an examiner finds an application to be in condition for declaration of an interference, the examiner will consider the evidence and explanation only to the extent of determining whether a basis upon which the application would be entitled to a judgment relative to the patentee is alleged and, if a basis is alleged, an interference may be declared.

12. Section 1.609 is proposed to be amended by revising paragraph (b)(2) and (b)(3) to read as follows:

**§ 1.609 Preparation of interference papers by examiner.**

* * * * *

(b) * * *

(2) The claims of any application or patent which correspond to each count, stating whether the claims correspond exactly or substantially to each count ►and an explanation why each claim designated as corresponding to a count is directed to the same patentable invention as the count◄;

(3) The claims in any application ►or patent◄ which [are deemed by the examiner to be patentable over any] ►do not correspond to each◄ count ►and an explanation why each claim designated as not corresponding to a count is not directed to the same patentable invention as the count◄; and

* * * * *

13. Section 1.610 is proposed to be amended by revising the section heading and paragraphs (a) through (e) to read as follows:

**§ 1.610 Assignment of interference to ►administrative patent judge◄ [examiner-in-chief], time period for completing interference.**

(a) Each interference will be declared by an ►administrative patent judge◄ [examiner-in-chief] who may enter all interlocutory orders in the interference, except that only [a panel consisting of at least three members of] the Board shall (1) hear oral argument at final hearing, (2) enter a decision under §§ 1.617, ►1.640(e)◄ [1.640(c) or (e)], 1.652, 1.656(i) or 1.658 or (3) enter any other order which terminates the interference.

(b) As necessary, another ►administrative patent judge◄ [examiner-in-chief] may act in place of the one who declared the interference. [Unless otherwise provided in this section, at] ►At◄ the discretion of the examiner-in-chief assigned to the interference, a panel consisting of two or more members of the Board may enter interlocutory orders.

(c) Unless otherwise provided in this subpart, times for taking action by a party in the interference will be set on a case-by-case basis by the ►administrative patent judge◄ [examiner-in-chief] assigned to the interference. Times for taking action shall be set and the ►administrative patent judge◄ [examiner-in-chief] shall exercise control over the interference such that the pendency of the interference before the Board does not normally exceed two years.

(d) An ►administrative patent judge◄ [examiner-in-chief] may hold a conference with the parties to consider: (1) Simplification of any issues, (2) the necessity or desirability of amendments to counts, (3) the possibility of obtaining admissions of fact and genuineness of documents which will avoid unnecessary proof, (4) any limitations on the number of expert witnesses, (5) the time and place for conducting a deposition (§ 1.673(g)), and (6) any other matter as may aid in the disposition of the interference. After a conference, the ►administrative patent judge◄ [examiner-in-chief] may enter any order which may be appropriate.

(e) The ►administrative patent judge◄ [examiner-in-chief] may determine a proper course of conduct in an interference for any situation not specifically covered by this part.

14. Section 1.611 is proposed to be amended by redesignating paragraph (c)(8) as paragraph (c)(9), adding a new paragraph (c)(8) and revising paragraphs (b), (c)(8) and (d) to read as follows:

**§ 1.611 Declaration of interference.**

* * * * *

(b) When a notice of declaration is returned to the Patent and Trademark Office undelivered, or in any other circumstance where appropriate, an ► administrative patent judge◄ [examiner-in-chief] may (1) send a copy of the notice to a patentee named in a patent involved in an interference or the patentee's assignee of record in the Patent and Trademark Office or (2) order publication of an appropriate notice in the *Official Gazette*.

(c) * * *

(7) The claim or claims of any application or any patent which correspond to each count; [and]

(8) ►Why each claim designated as corresponding to a count is directed to the same patentable invention as the count and why each claim designated as not corresponding to a count is not directed to the same patentable invention as the count; and

(9) ◄ The order of the parties.

(d) The notice of declaration may also specify the time for: (1) Filing a preliminary statement as provided in § 1.621(a); (2) ►Serving◄ [serving] notice that a preliminary statement has been filed as provided in § 1.621(b); and (3) ►Filing◄ [filing] preliminary motions authorized by § 1.633, oppositions to the motions, and replies to the oppositions.

* * * * *

15. Section 1.612 is proposed to be amended by revising paragraph (a) to read as follows:

**§ 1.612 Access to applications.**

(a) After an interference is declared, each party shall have access to and may obtain copies of the files of any application set out in the notice declaring the interference, except for affidavits filed under § 1.131 and any evidence and explanation under § 1.608 filed separate from an amendment. A party seeking access to any abandoned or pending application referred to in the [opposing party's] ►opponent's◄ involved application or access to any pending application referred to in the [opposing party's] ►opponent's◄ patent must file a motion under § 1.635. ►See § 1.11(e) concerning public access to interference files.◄

* * * * *

16. Section 1.613 is proposed to be amended by revising paragraphs (c) and (d) to read as follows:

**§ 1.613 Lead attorney, same attorney representing different parties in an interference, withdrawal of attorney or agent.**

* * * * *

(c) An ►administrative patent judge◄ [examiner-in-chief] may make necessary inquiry to determine whether an attorney or agent should be disqualified from representing a party in an interference. If an ►administrative patent judge◄ [examiner-in-chief] is of the opinion that an attorney or agent should be disqualified, the ►administrative patent judge◄ [examiner-in-chief] shall refer the matter to the Commissioner. The Commissioner will make a final decision as to whether any attorney or agent should be disqualified.

(d) No attorney or agent of record in an interference may withdraw as attorney or agent of record except with the approval of an ►administrative patent judge◄ [examiner-in-chief] and after reasonable notice to the party on whose behalf the attorney or agent has appeared. A request to withdraw as attorney or agent of record in an interference shall be made by motion (§ 1.635).

17. Section 1.614 is proposed to be amended by revising paragraphs (a) and (c) to read as follows:

**§ 1.614 Jurisdiction over interference.**

(a) The Board ►acquires◄ [shall assume] jurisdiction over an interference when the interference is declared under § 1.611.

* * * * *

(c) The examiner shall have jurisdiction over any pending application until the interference is declared. An ►administrative patent judge◄ [examiner-in-chief], where appropriate, may for a limited purpose restore jurisdiction to the examiner over any application involved in the interference.

18. Section 1.615 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

**§ 1.615 Suspension of ex parte prosecution**

(a) When an interference is declared, ex parte prosecution of an application involved in the interference is suspended. Amendments and other papers related to the application received during pendency of the interference will not be entered or considered in the interference without the consent of an ►administrative patent judge◄ [examiner-in-chief].

(b) Ex parte prosecution as to specified matters may be continued concurrently with the interference with consent of the ►administrative patent judge◄ [examiner-in-chief].

19. Section 1.616 is proposed to be amended by revising the section heading, introductory text and paragraphs (a) through (e) to read as follows and by adding new paragraphs (b) and (c) to read as follows:

**§ 1.616 Sanctions for failure to comply with rules or order ►or for taking or maintaining a frivolous position◄.**

►(a)◄ An ►administrative patent judge◄ [examiner-in-chief] or the Board may impose an appropriate sanction against a party who fails to comply with the regulations of this part or any order entered by an ►administrative patent judge◄ [examiner-in-chief] or the Board. An appropriate sanction may include among others entry of an order:

►(1)◄ [(a)] Holding certain facts to have been established in the interference;

►(2)◄ [(b)] Precluding a party from filing a ►paper◄ [motion or a preliminary statement];

►(3)◄ [(c)] Precluding a party from presenting or contesting a particular issue;

►(4)◄ [(d)] Precluding a party from requesting, obtaining, or opposing discovery; [or]

►(5)◄ [(e)] ►Awarding compensatory expenses and/or compensatory attorney fees; or

(6)◄ Granting judgment in the interference.

►(b) An administrative patent judge or the Board may impose a sanction, including a sanction in the form of compensatory expenses and/or compensatory attorney fees, against a party for taking or maintaining a frivolous position.

(c) To the extent that any information under the control of an individual or entity located in a NAFTA country concerning knowledge, use, or other activity relevant to proving or disproving a date of invention has been ordered to be produced by an administrative patent judge or the Board (§ 1.671(h)), but has not been produced for use in the interference to the same extent as such information could be made available in the United States, the administrative patent judge or the Board shall draw such adverse inferences as may be appropriate under the circumstances, or take such other action permitted by statute, rule, or regulation, in favor of the party that requested the information in the interference, including imposition of appropriate sanctions under paragraph (a) of this section.◄

20. Section 1.617 is proposed to be amended by revising paragraphs (a), (b), (d), (e), (g) and (h) to read as follows:

**§ 1.617 Summary judgment against applicant.**

(a) An ►administrative patent judge◄ [examiner-in-chief] shall review any evidence filed by an applicant under § 1.608(b) to determine if the applicant is *prima facie* entitled to a judgment relative to the patentee. If the ►administrative patent judge◄ [examiner-in-chief] determines that the evidence shows the applicant is *prima facie* entitled to a judgment relative to the patentee, the interference shall proceed in the normal manner under the regulations of this part. If in the opinion of the ►administrative patent judge◄ [examiner-in-chief] the evidence fails to show that the applicant is *prima facie* entitled to a judgment relative to the

patentee, the ►administrative patent judge◄ [examiner-in-chief] shall, concurrently with the notice declaring the interference, enter an order stating the reasons for the opinion and directing the applicant, within a time set in the order, to show cause why summary judgment should not be entered against the applicant.

(b) The applicant may file a response to the order ►, which may include an appropriate preliminary motion under § 1.633(c), (f) or (g),◄ and state any reasons why summary judgment should not be entered. Any request by the applicant for a hearing before the Board shall be made in the response. Additional evidence shall not be presented by the applicant or considered by the Board unless the applicant shows good cause why any additional evidence was not initially presented with the evidence filed under § 1.608(b). At the time an applicant files a response, the applicant shall serve a copy of any evidence filed under § 1.608(b) and this paragraph.

* * * * *

(d) If a response is timely filed by the applicant, all opponents may file a statement ►and may oppose any preliminary motion filed under § 1.633(c), (f) or (g) by the applicant◄ within a time set by the ►adminsitrative patent judge◄ [examiner-in-chief]. The statement may set forth views as to why summary judgment should be granted against the applicant, but the statement shall be limited to discussing why all the evidence presented by the applicant does not overcome the reasons given by the ►administrative patent judge◄ [examiner-in-chief] for issuing the order to show cause. ►Except as required to oppose a motion under § 1.633(c), (f) or (g) by the applicant, evidence◄ [Evidence] shall not be filed by any opponent. An opponent may not request a hearing.

(e) Within a time authorized by the ►administrative patent judge◄ [examiner-in-chief], an applicant may file a reply to any statement ►or opposition◄ filed by any opponent.

* * * * *

(g) If a response by the applicant is timely filed, the ►administrative patent judge◄ [examiner-in-chief] or the Board shall decide whether the evidence submitted under § 1.608(b) and any additional evidence properly submitted under ►paragraphs◄ [paragraph] (b) ►and (e)◄ of this section shows that the applicant is *prima facie* entitled to a judgment relative to the patentee. If the applicant is not *prima facie* entitled to a judgment relative to the patentee, the Board shall enter a final decision granting summary judgment against the applicant. Otherwise, an interlocutory order shall be entered authorizing the interference to proceed in the normal manner under the regulations of this subpart.

(h) Only an applicant who filed evidence under § 1.608(b) may requests a hearing. If that applicant requests a hearing, the Board may hold a hearing prior to entry of a decision under paragraph (g) of this section. The ►administrative patent judge◄ [examiner-in-chief] shall set a date and time for the hearing. Unless otherwise ordered by the ►administrative patent judge◄ [examiner-in-chief] or the Board, the applicant and any opponent will each be entitled to no more than 30 minutes of oral argument at the hearing.

21. Section 1.618 is proposed to be amended by revising paragraph (a) to read as follows:

**§ 1.618 Return of unauthorized papers.**

(a) ►An administrative patent judge or the Board shall enter an order directing the◄ [The Patent and Trademark Office shall] return to a party ►of◄ any paper presented by the party when the filing of the paper is not authorized by, or is not in compliance with the requirements, this subpart. Any paper returned will not thereafter be considered [by the Patent and Trademark Office] in the interference. A party may be permitted to file a corrected paper under such conditions as may be deemed appropriate by an ►administrative patent judge◄ [examiner-in-chief].

* * * * *

22. Section 1.621 is proposed to be amended by revising paragraph (b) to read as follows:

**§ 1.621 Preliminary statement, time for filing, notice of filing.**

* * * * *

(b) When a party files a preliminary statement, the party shall also simultaneously file and serve on all opponents in the interference a notice stating that a preliminary statement has been filed. A copy of the preliminary statement need not be served until ordered by the ►administrative patent judge◄ [examiner-in-chief].

23. Section 1.622 is proposed to be amended by revising paragraph (b) to read as follows:

**§ 1.622 Preliminary statement, who made invention, where invention made.**

* * * * *

(b) The preliminary statement shall state whether the invention was made in the United States ►, a NAFTA country (and, if so, which NAFTA country),◄ or [abroad] ►in a non-NAFTA country◄. If made ►in a non-NAFTA country◄ [abroad], the preliminary statement shall state whether the party is entitled to the benefit of the second sentence of 35 U.S.C. 104.

24. Section 1.623 is proposed to be amended by revising the section heading and paragraph (a) to read as follows:

**§ 1.623 Preliminary statement; invention made in United States ►or a NAFTA country◄.**

(a) When the invention was made in the United States ►or a NAFTA country,◄ or a party is entitled to the benefit of the second sentence of 35 U.S.C. 104, the preliminary statement must state the following facts as to the invention defined by each count:

* * * * *

25. Section 1.624 is proposed to be amended by revising the section heading and paragraphs (a), (a)(1) through (a)(6) and (c) to read as follows:

**§ 1.624 Preliminary statement; invention made [abroad] ►in a non-NAFTA country◄.**

(a) When the invention was made ►in a non-NAFTA county◄ [abroad] and a party intends to rely on introduction of the invention into the United States ►or a NAFTA country◄, the preliminary statement must state the following facts as to the invention defined by each count:

(1) The date on which a drawing of the invention was first introduced into the United States ►or a NAFTA country◄.

(2) The date on which a written description of the invention was first introduced into the United States ►or a NAFTA country◄.

(3) The date on which the invention was first disclosed to another person in the United States ►or a NAFTA country◄.

(4) The date on which the inventor's conception of the invention was first introduced into the United States ►or a NAFTA country◄.

(5) The date on which an actual reduction to practice of the invention was first introduced into the United States ►or a NAFTA country◄. If an actual reduction to practice of the invention was not introduced into the United States ►or a NAFTA country◄, the preliminary amendment shall so state.

(6) The date after introduction of the inventor's conception into the United States ►or a NAFTA country◄ when active exercise of reasonable diligence in the United States ►or a NAFTA

country◄ toward reducing the invention to practice began.

* * * * *

(c) When a party alleges under paragraph (a)(1) of this section that a drawing was introduced into the United States ►or a NAFTA country,◄ a copy of that drawing shall be filed with and identified in the preliminary statement. When a party alleges under paragraph (a)(2) of this section that a written description of the invention was introduced into the United States ►or a NAFTA country,◄ a copy of that written description shall be filed with and identified in the preliminary statement. See § 1.628(b) when a copy of the first drawing or first written description introduced in the United States ►or a NAFTA country◄ cannot be filed with the preliminary statement.

26. Section 1.625 is proposed to be amended by revising paragraph (a) introductory test to read as follows:

**§ 1.625 Preliminary statement; derivation by an opponent.**

(a) When [the invention was made in the United States or abroad and] a party intends to prove derivation by an opponent from the party, the preliminary statement must state the following as to the invention defined by each count:

* * * * *

27. Section 1.626 is proposed to be revised to read as follows:

**§ 1.626 Preliminary statement; earlier application.**

When a party does not intend to present evidence to prove a conception or an actual reduction to practice and the party intends to rely solely on the filing date of an earlier ►filed◄ application [filed in the United States or abroad] to prove a constructive reduction to practice, the preliminary statement may so state and identify the earlier ►filed◄ application with particularity.

28. Section 1.627 is proposed to be amended by revising paragraph (b) to read as follows:

**§ 1.627 Preliminary statement; sealing before filing, opening of statement.**

* * * * *

(b) A preliminary statement may be opened only at the direction of an ►administrative patent judge◄ [examiner-in-chief].

29. Section 1.628 is proposed to be amended by revising paragraphs (a) and (b)(2) to read as follows:

**§ 1.628 Preliminary statement; correction of error.**

(a) A material error arising through inadvertence or mistake in connection with (1) a preliminary statement or (2) drawings or a written description submitted therewith or omitted therefrom, may be corrected by a motion (§ 1.635) for leave to file a corrected statement. The motion shall be supported by an affidavit ►stating the date the error was first discovered,◄ [and shall show that the correction is essential to the ends of justice and] shall be accompanied by the corrected statement [. The motion] ►and◄ shall be filed as soon as practical after discovery of the error. ►If filed on or after the date set by the administrative patent judge for service of preliminary statements, the motion shall also show that correction of the error is essential to the interest of justice.◄

(b) * * *

(2) shall attach to the preliminary statement the earliest drawing or written description made in or introduced into the United States ►or a NAFTA country◄ which is available. The party shall file a motion (§ 1.635) to amend its preliminary statement promptly after the first drawing, first written description, or drawing or written description first introduced into the United States ►or a NAFTA country◄ becomes available. A copy of the drawing or written description may be obtained, where appropriate, by a motion (§ 1.635) for additional discovery under § 1.687 or during a testimony period.

30. Section 1.629 is proposed to be amended by revising paragraphs (a), (c)(1) and (d) to read as follows:

**§ 1.629 Effect of preliminary statement.**

(a) A party shall be strictly held to any date alleged in the preliminary statement. Doubts as to (1) definiteness or sufficiency of any allegation in a preliminary statement or (2) compliance with formal requirements will be resolved against the party filing the statement by restricting the party to [the earlier of] its [filing date or] effective filing date or to the latest date of a period alleged in the preliminary statement [,] as may be appropriate. A party may not correct a preliminary statement except as provided by § 1.628.

* * * * *

(c) * * *

(1) Shall be restricted to the [earlier of the] party's [filing date or] effective filing date and

* * * * *

(d) If a party files a preliminary statement which contains an allegation of a date of first drawing or first written description and the party does not file a copy of the first drawing or written description with the preliminary statement as required by § 1.623(c), § 1.624(c), or § 1.625(c), the party will be restricted to the [earlier of the] party's [filing date or] effective filing date as to that allegation unless the party complies with § 1.628(b). The content of any drawing or written description submitted with a preliminary statement will not normally be evaluated or considered by the Board.

* * * * *

31. Section 1.630 is proposed to be revised to read as follows:

**§ 1.630 Reliance on earlier application.**

A party shall not be entitled to rely on the filing date of an earlier ►filed◄ application [filed in the United States or abroad] unless (a) the earlier application is identified (§ 1.611(c)(5)) in the notice declaring the interference or (b) the party files a preliminary motion under § 1.633 seeking the benefit of the filing date of the earlier application.

32. Section 1.631 is proposed to be amended by revising paragraph (a) to read as follows:

**§ 1.631 Access to preliminary statement, service of preliminary statement.**

(a) Unless otherwise ordered by an ►administrative patent judge◄ [examiner-in-chief] on preliminary motions filed under § 1.633, any preliminary statement filed under § 1.621(a) shall be opened to inspection by the senior party and any junior party who filed a preliminary statement. Within a time set by the ►administrative patent judge◄ [examiner-in-chief], a party shall serve a copy of its preliminary statement on each opponent who served a notice under § 1.621(b).

* * * * *

33. Section 1.632 is proposed to be revised to read as follows:

**§ 1.632 Notice of intent to argue abandonment, suppression or concealment by opponent.**

A notice shall be filed by a party who intends to argue that an opponent has abandoned, suppressed ►,◄ or concealed an actual reduction to practice (35 U.S.C. 102(g)). A party will not be permitted to argue abandonment, suppression, or concealment by an opponent unless the notice is timely filed. Unless authorized otherwise by an ►administrative patent judge◄ [examiner-in-chief], a notice is timely when filed within ten (10) days ►after◄ [of] the close of the testimony-in-chief of the opponent.

34. Section 1.633 is proposed to be amended by revising paragraphs (a),

(a)(1), (a)(2), (b)(2), (f), (g) and (i) to read as follows:

**§ 1.633 Preliminary motions.**

* * * * *

(a) A motion for judgment ►against◄ [on the ground that] an opponent's claim corresponding to a count ►on the ground that the claim◄ is not patentable to the opponent. In ►deciding an issue raised in◄ [determining] a motion filed under this paragraph, a claim [may] ►will◄ be construed [by reference to the prior art of record] ►in light of the specification of the application or patent in which it appears◄. A motion under this paragraph shall not be based on:

(1) Priority of invention [of the subject matter of a count] by the moving party as against any opponent or

(2) ►Derivation◄ [derivation] of the ►invention◄ [subject matter of a count] by an opponent from the moving party. See 1.637(a).

(b) * * *

(2) no claim of a party which corresponds to a count is identical to any claim of an opponent which corresponds to that count. See § 1.637(a). ►When claims of opponents are presented in "means plus function" format, it may be possible for the claims of the opponents not to define the same patentable invention even though the claims contain the same literal wording.◄

* * * * *

(f) A motion to be accorded the benefit of the filing date of an earlier ►filed◄ application [filed in the United States or abroad]. See § 1.637 (a) and (f).

(g) A motion to attack the benefit accorded an opponent in the notice declaring the interference of the filing date of an earlier ►filed◄ application [filed in the United States or abroad]. See § 1.637 (a) and (g).

* * * * *

(i) When a motion is filed under paragraph (a), (b), or (g) of this section, an opponent, in addition to opposing the motion, may file a motion to redefine the interfering subject matter under paragraph (c) of this section [or] ►,◄ a motion to substitute a different application under paragraph (d) of this section ►, or a motion to add a reissue application to the interference under paragraph (h) of this section◄.

* * * * *

35. Section 1.636 is proposed to be amended by revising paragraphs (a) through (d) to read as follows:

**§ 1.636 Motions, time for filing.**

(a) A preliminary motion under § 1.633 (a) through (h) shall be filed within a time period set by an ►administrative patent judge◄ [examiner-in-chief].

(b) A preliminary motion under § 1.633 (i) or (j) shall be filed within 20 days of the service of the preliminary motion under § 1.633 (a), (b), (c)(1), or (g) unless otherwise ordered by an ►administrative patent judge◄ [examiner-in-chief].

(c) A motion under § 1.634 shall be diligently filed after an error is discovered in the inventorship of an application or patent involved in an interference unless otherwise ordered buy an ►administrative law judge◄ [examiner-in-chief].

(d) A motion under § 1.635 shall be filed as specified in this subpart or when appropriate unless otherwise ordered by an ►administrative patent judge◄ [examiner-in-chief].

36. Section 1.637 is proposed to be amended by revising paragraphs (a), (b), (c)(1)(v), (c)(1)(vi), (c)(2)(ii), (c)(2)(iii), (c)(3)(ii), (c)(4)(i), (c)(4)(ii), (d) introductory text, (e)(1)(viii), (e)(2)(vii), (f)(2), (h)(3), (h)(4) to read as follows, deleting paragraphs (c)(2)(iv), (c)(3)(iii), (d)(4) and redesignating them as "Reserved." and adding paragraphs (c)(1)(vii), (e)(1)(ix), (e)(2)(viii) to read as follows:

**§ 1.637 Content of motions.**

(a) A party filing a motion has the burden of proof to show that it is entitled to the relief sought in the motion. ►Each◄ [Every] motion shall include (1) a statement of the precise relief requested, (2) a statement of the material facts in support of the motion ►preferably in numbered paragraphs◄, and (3) a full statement of the reasons why the relief requested should be granted. ►If a party files a motion for judgment under § 1.633(a) against an opponent based on the ground of unpatentability over prior art, and the dates of the cited prior art are such that the prior art appears to be applicable to the party, it will be presumed, without regard to the dates alleged in the preliminary statement of the party, that the cited prior art is applicable to the party unless there is included with the motion an explanation, and evidence if appropriate, as to why the prior art does not apply to the party. If the motion fails to include a sufficient explanation or evidence, the party will not be permitted to rely on any such explanation or evidence in response to or in any subsequent action in the interference.◄

(b) A motion under [§] ►§§ 1.633, 1,634 or◄ 1.635 shall contain a certificate by the moving party stating that the moving party has conferred with all [opposing parties] ►opponents◄ in an effort in good faith to resolve by agreement the issues raised by the motion. ►The certificate shall indicate that the reasons and facts in support of the motion were discussed with each opponent and, if an opponent has indicated that it will oppose the motion, identify the issues and/or facts believed to be in dispute.◄ [A moving party shall indicate in the motion whether any other party plans to oppose the motion.] The provisions of this paragraph do not apply to a motion to suppress evidence (§ 1.656(h)).

(c) * * *

(1) * * *

(v) Show that each proposed count ►is patentable over the prior art and◄ defines a separate patentable invention from every other count ►proposed to remain◄ in the interference.

(vi) Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of any earlier ►filed◄ application [filed in the United States or abroad] ►, if benefit of the earlier filed application is desired with respect to a proposed count◄.

►(vii) If an opponent is accorded the benefit of the filing date of an earlier filed application in the notice of declaration of the interference, show why the opponent is not entitled to benefit of the earlier filed application with respect to the proposed count. Otherwise, the opponent will be presumed to be entitled to the benefit of the earlier filed application with respect to the proposed count.◄

(2) * * *

(ii) Show that the ►claim◄ proposed ►to be amended◄ or added [claim] defines the same patentable invention as the count.

(iii) Show the patentability to the applicant of each ►claim proposed to be◄ amended or added [claim] and apply the terms of the ►claim proposed to be◄ amended or added [claim] to the disclosure of the application; when necessary a moving party applicant shall file with the motion [an] ►a proposed◄ amendment [making the amended] ►to the application amending the claim corresponding to the count◄ or [added] ►adding the proposed additional◄ claim to the application.

(iv) ►Reserved.◄ [Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of any earlier application filed in the United States or abroad.]

(3) * * *

(ii) Show the claim defines the same patentable invention as ►another claim whose designation as corresponding

to◄ the count ►the moving party does not dispute◄.

(iii) ►Reserved.◄ [Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of any earlier application filed in the United States or abroad.]

(4) * * *

(ii) Show ►(A) that◄ the claim does not define the same patentable invention as any other claim [designated] ►whose designation◄ in the notice declaring the interference as corresponding to the count ►the party does not dispute and (B) that the claim cannot serve as the basis for a motion under § 1.633(c)(1) to add a new count◄.

* * * * *

(d) A preliminary motion under § 1.633(d) to substitute a different application ►of the moving party◄ shall:

* * * * *

(4) ►Reserved.◄ [Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of an earlier application filed in the United States or abroad].

(e) * * *

(1) * * *

(viii) Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of an earlier ►filed◄ application [filed in the United States or abroad] ►, if benefit is desired with respect to a proposed count◄.

►(ix) If an opponent is accorded the benefit of the filing date of an earlier filed application in the notice of declaration of the interference, show why the opponent is not entitled to benefit of the earlier filed application with respect to the proposed count. Otherwise, the opponent will be presumed to be entitled to the benefit of the earlier filed application with respect to the proposed count.◄

(2) * * *

(vii) Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of an earlier ►filed◄ application [filed in the United States or abroad] ►, if benefit is desired with respect to a proposed count◄.

►(viii) If an opponent is accorded the benefit of the filing date of an earlier filed application in the notice of declaration of the interference, show why the opponent is not entitled to benefit of the earlier filed application with respect to the proposed count. Otherwise, the opponent will be presumed to be entitled to the benefit of the earlier filed application with respect to the proposed count.◄

(f) * * *

(2) When the earlier application is an application filed in the United States, certify that a complete copy of the file of the earlier application, except for documents filed under § 1.131 or § 1.608, has been served on all opponents. When the earlier application is an application filed ►in a foreign country◄ [abroad], certify that a copy of the application [filed abroad] has been served on all opponents. If the earlier ►filed◄ application [filed abroad] is not in English, the requirements of § 1.647 must also be met.

* * * * *

(h) * * *

(3) Show the patentability of all claims in, or proposed to be added to, the application for reissue which correspond to each count and apply the terms of the claims to the disclosure of the application for reissue; when necessary a moving applicant for reissue shall file with the motion an amendment adding any proposed claim to the application for reissue. ►A patentee may not move under § 1.633(h) to add a reissue application that includes new or amended claims to be designated as not corresponding to a count.◄

(4) Be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of any earlier ►filed◄ application [filed in the United States or abroad] ►, if benefit is desired◄.

37. Section 1.638 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

**§ 1.638 Opposition and reply, time for filing opposition and reply.**

(a) Unless otherwise ordered by an ►administrative patent judge◄ [examiner-in-chief], any opposition to any motion shall be filed within 20 days after service of the motion. An opposition shall (1) identify any material fact set forth in the motion which is in dispute and (2) include an argument why the relief requested in the motion should be denied.

(b) Unless otherwise ordered by an ►administrative patent judge◄ [examiner-in-chief], ►any◄ [a] reply shall be filed within 15 days after service of the opposition. A reply shall be directed only to new points raised in the opposition.

38. Section 1.639 is proposed to be amended by revising paragraphs (a), (c), and (d)(1) to read as follows:

**§ 1.639 Evidence in support of motion, opposition, or reply.**

(a) ►Except as provided in paragraphs (c) through (g) of this section, proof◄ [Proof] of any material fact alleged in a motion, opposition, or reply must be filed and served with the motion, opposition, or reply unless the proof relied upon is part of the interference file or the file of any patent or application involved in the interference or any earlier application filed in the United States of which a party has been accorded or seeks to be accorded benefit.

* * * * *

(c) If a party believes that additional evidence in the form of testimony that is unavailable to the party is necessary to support or oppose a preliminary motion under § 1.633 or a motion to correct inventorship under § 1.634, the party shall describe the nature of any proposed testimony as specified in paragraphs (d) through (g) of this section. If the ►administrative patent judge◄ [examiner-in-chief] finds that testimony is needed to decide the motion, the ►administrative patent judge◄ [examiner-in-chief] may grant appropriate interlocutory relief and enter an order authorizing the taking of testimony and deferring a decision on the motion to final hearing.

(d) * * *

(1) Identify the person whom it expects to [call] ►use◄ as an expert;

* * * * *

39. Section 1.640 is proposed to be amended by revising paragraphs (a), (b), (b)(1), (b)(2), (c), (d), (d)(1), (d)(3) and (e) to read as follows:

**§ 1.640 Motions, hearing and decision, redeclaration of interference, order to show cause.**

(a) A hearing on a motion may be held in the discretion of the ►administrative patent judge◄ [examiner-in-chief]. The ►administrative patent judge◄ [examiner-in-chief] shall set the date and time for any hearing. The length of oral argument at a hearing on a motion is a matter within the discretion of the ►administrative patent judge◄ [examiner-in-chief]. An ►administrative patent judge◄ [examiner-in-chief] may direct that a hearing take place by telephone.

(b) ►Unless an administrative patent judge or the Board is of the opinion that a decision on a preliminary motion would materially advance the resolution of the interference, decision on a preliminary motion shall be deferred to final hearing.◄ Motions ►otherwise◄ will be decided by an ►administrative patent judge◄ [examiner-in-chief]. An ►administrative patent judge◄ [examiner-in-chief] may consult with an examiner in deciding motions involving a question of patentability. An ►administrative patent judge◄ [examiner-in-chief] ►may take up motions for decision in any order and◄ may grant or deny any motion or take

such other action which will secure the just, speedy, and inexpensive determination of the interference. ►A matter raised by a party in support of or in opposition to a motion that is deferred to final hearing will not be entitled to consideration at final hearing unless the matter is raised in the party's brief at final hearing. If the administrative patent judge determines that the interference shall proceed to final hearing on the issue of priority or derivation, a time shall be set for each party to file a paper identifying any decisions on motions or on matters raised sua sponte by the administrative patent judge that the party wishes to have reviewed at final hearing as well as identifying any deferred motions that the party wishes to have considered at final hearing. Any evidence that a party wishes to have considered with respect to the decisions and motions identified by the party or by an opponent for consideration or review at final hearing, including any affidavit filed by the party under § 1.608 or 1.639(b), shall be served on the opponent during the testimony-in-chief period of the party.◄

(1) ►When appropriate after the time expires for filing replies to oppositions to preliminary motions◄ [When preliminary motions under § 1.633 are decided], the ►administrative patent judge◄ [examiner-in-chief] will [, when necessary,] set a time for filing any amendment to an application involved in the interference and for filing a supplemental preliminary statement as to any new counts ►which may become◄ involved in the interference ►if a preliminary motion to amend or substitute a count has been filed◄. Failure or refusal of a party to timely present an amendment required by an ►administrative patent judge◄ [examiner-in-chief] shall be taken without further action as a disclaimer by that party of the invention involved. A supplemental preliminary statement shall meet the requirements specified in § 1.623, § 1.624, § 1.625, or § 1.626, but need not be filed if a party states that it intends to rely on a preliminary statement previously filed under § 1.621(a). ►At an appropriate time in the interference, and when necessary◄ [After the time expires for filing any amendment and supplemental preliminary statement], ►an order will be entered redeclaring [the examiner-in-chief will, if necessary, redeclare] the interference.

(2) After ►the time expires for filing preliminary motions◄ [a decision is entered on preliminary motions filed under § 1.633], a further ►preliminary◄ motion under § 1.633 will not be considered except as provided by § [1.655(b)] ►1.645(b)◄.

(c) When a decision on any motion under § 1.633, § 1.634, or § 1.635 ►or on any matter raised sua sponte by an administrative patent judge◄ is entered which does not result in the issuance of an order to show cause under paragraph (d) of this section, a party may file a request for reconsideration within 14 days after the date of the decision. ►The request for reconsideration shall be served by hand or Express Mail.◄ The filing of a request for reconsideration will not stay any time period set by the decision. The request for reconsideration shall specify with particularity the points believed to have been misapprehended or overlooked in rendering the decision. ►An opponent may file an opposition within 14 days after service of the request for reconsideration.◄ [No opposition to a request for reconsideration shall be filed unless requested by an examiner-in-chief or the Board. A decision of a single examiner-in-chief will not ordinarily be modified unless an opposition has been requested by an examiner-in-chief or the Board. The request for reconsideration shall be acted on by a panel of the Board consisting of at least three examiners-in-chief, one of whom will normally be the examiner-in-chief who decided the motion].

(d) An ►administrative patent judge◄ [examiner-in-chief] may issue an order to show cause why judgment should not be entered against a party when:

(1) A decision on a motion ►or on a matter raised sua sponte by an administrative patent judge◄ is entered which is dispositive of the interference against the party as to any count;

* * * * *

(3) The party is a junior party whose preliminary statement fails to overcome the [earlier of the filing date or] effective filing date of another party.

(e) When an order to show cause is issued under paragraph (d) of this section, the Board shall enter judgment in accordance with the order unless, within 20 days after the date of the order, the party against whom the order issued files a paper which shows good cause why judgment should not be entered in accordance with the order.

►(1) If the order was issued under paragraph (d)(1) of this section, the paper may (i) request that final hearing be set to review any decision which is the basis for the order as well as any other decision of the administrative patent judge that the party wishes to have reviewed by the Board at final hearing, or (ii) fully explain why judgment should not be entered.

(2)◄ Any other party may file a response to the paper within 20 days of the date of service of the paper. ►If the order was issued under paragraph (d)(10 of this section and the paper includes a request for final hearing, the response must identify every decision of the administrative patent judge that the responding party wishes to have reviewed by the Board at a final hearing. If the order was issued under paragraph (d)(1) of this section and the paper does not include a request for final hearing, the response may include a request for final hearing, which must identify every decision of the administrative patent judge that the responding party wishes to have reviewed by the Board at a final hearing. Where only the response includes a request for a final hearing, the party that filed the paper has 14 days from the date of service of the response in which to file a supplemental paper identifying any other decision of the administrative patent judge that the party wishes to have reviewed by the Board at a final hearing.

(3) The paper or the response thereto should be accompanied by a motion (§ 1.635) requesting a testimony period if a party wishes to introduce any evidence to be considered at final hearing (§ 1.671). A request for a testimony period shall be construed as including a request for final hearing.

(4) If the paper contains an explanation of why judgment should not be entered in accordance with the order and no party has requested a final hearing, the decision that is the basis for the order shall be reviewed based on the contents of the paper and the response. If the paper fails to show good cause, the Board shall enter judgment against the party against whom the order issued.◄ [If the party against whom the order was issued fails to show good cause, the Board shall enter judgment against the party. If a party wishes to take testimony in response to an order to show cause, the party's response should be accompanied by a motion (§ 1.635) requesting the testimony period. See § 1.651(c)(4).]

40. Section 1.461 and the section heading are proposed to be revised to read as follows:

**§ 1.641 Unpatentability discovered by ►administrative patent judge◄ [examiner-in-chief].**

◄(a)► During the pendency of an interference, if the ◄administrative patent judge► [examiner-in-chief] becomes aware of a reason why a claim ◄designated to correspond► [corresponding] to a count may not be patentable, the ◄administrative patent

judge► [examiner-inc-chief] may ◄enter an order notifying► [notify] the parties of the reason and set a time within which each party may present its views◄, which may include argument and any appropriate preliminary motions under § 1.633(c), (d) or (h), including any supporting evidence►.

►(b) If a party timely files a preliminary motion in response to the order of the administrative patent judge, any opponent may file an opposition pursuant to § 1.638(a). If an opponent files an opposition, the party may reply pursuant to § 1.638(b).

(c)◄ After considering any timely filed views, ►including any timely filed preliminary motions under § 1.633,◄ the ►administrative patent judge◄ [examiner-in-chief] shall decide how the interference shall proceed.

41. Section 1.642 is proposed to be revised to read as follows:

**§ 1.642 Addition of application or patent to interference.**

During the pendency of an interference, if the ►administrative patent judge◄ [examiner-in-chief] becomes aware of an application of a patent not involved in the interference which claims the same patentable invention as a count in the interference, the ►administrative patent judge◄ [examiner-in-chief] may add the application or patent to the interference on such terms as may be fair to all parties.

42. Section 1.643 is proposed to be amended by revising paragraph (b) to read as follows:

**§ 1.643 Prosecution of interference by assignee.**

* * * * *

(b) An assignee of a part interest in an application or patent involved in an interference may file a motion (§ 1.635) for entry of an order authorizing it to prosecute the interference. The motion shall show (1) the inability or refusal of the inventor to prosecute the interference or (2) other cause why ►it is in the interest of◄ [the ends of] justice ►to permit◄ [require that] the assignee of a part interest [be permitted] to prosecute the interference. The ►administrative patent judge◄ [examiner-in-chief] may allow the assignee of a part interest to prosecute the interference upon such terms as may be appropriate.

43. Section 1.644 is proposed to be amended by revising paragraphs (a), (a)(1), (a)(2), (b), (c), (d), (f) and (g) to read as follows:

**§ 1.644 Petitions in interferences.**

(a) There is no appeal to the Commissioner in an interference from a decision of an ►administrative patent judge◄ [examiner-in-chief] or ►the Board◄ [a panel consisting of more than one examiner-in-chief]. The Commissioner will not consider a petition in an interference unless:

(1) The petition is from a decision of an ►administrative patent judge◄ [examiner-in-chief] or [a panel] ►the Board◄ and the ►administrative patent judge◄ [examiner-in-chief] or the [panel] ►Board◄ shall be of the opinion

* * * * *

(2) The petition seeks to invoke the supervisory authority of the Commissioner [and is not filed prior to the decision of the Board awarding judgment] and does not relate to

* * * * *

(3) * * *

(b) A petition under paragraph (a)(1) of this section filed more than 15 days after the date of the decision of the ►administrative patent judge◄ [examiner-in-chief] or the [panel] ►Board◄ may be dismissed as untimely. A petition under paragraph (a)(2) of this section shall not be filed prior to ►the party's brief for final hearing (see § 1.656)◄ [the decision by the Board awarding judgment]. Any petition under paragraph (a)(3) of this section shall be timely if it is made as part of, or simultaneously with, a proper motion under § 1.633, § 1.634, or § 1.635 ►when granting the motion would require waiver of a rule◄. Any opposition to a petition shall be filed within 15 days of the date of service of the petition.

(c) The filing of a petition shall not stay the proceeding unless a stay is granted in the discretion of the ►administrative patent judge◄ [examiner-in-chief, the panel], ►the Board,◄ or the Commissioner.

(d) Any petition must contain a statement of the facts involved ►, preferably in numbered paragraphs,◄ and the point or points to be reviewed and the action requested. [Briefs or memoranda, if any, in support of the petition or opposition shall accompany or be embodied therein.] The petition will be decided on the basis of the record made before the ►administrative patent judge◄ [examiner-in-chief] or the [panel] ►Board◄ and no new evidence will be considered by the Commissioner in deciding the petition. Copies of documents already of record in the interference shall not be submitted with the petition or opposition.

* * * * *

(f) Any request for reconsideration of a decision by the Commissioner shall be filed within ►14◄ [15] days of the decision of the Commissioner and must be accompanied by the fee set forth in § 1.17(h). No opposition to a request for reconsideration shall be filed unless requested by the Commissioner. The decision will not ordinarily be modified unless such an opposition has been requested by the Commissioner.

(g) Where reasonably possible, service of any petition, opposition, or request for reconsideration shall be such that delivery is accomplished within one working day. Service by hand or ["] Express Mail ["] complies with this paragraph.

* * * * *

44. Section 1.645 is proposed to be amended by revising paragraphs (a), (b) and (d) to read as follows:

**§ 1.645 Extension of time, late papers, stay of proceedings.**

(a) Except to extend the time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or for commencing a civil action, a party may file a motion (§ 1.635) seeking an extension of time to take action in an interference. See § 1.304(a) for extensions of time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or for commencing a civil action. The motion shall be filed within sufficient time to actually reach the ►administrative patent judge◄ [examiner-in-chief] before expiration of the time for taking action. A moving party should not assume that the motion will be granted even if there is no objection by any other party. The motion will be denied unless the moving party shows good cause why an extension should be granted. The press of other business arising after an ►administrative patent judge◄ [examiner-in-chief] sets a time for taking action will not normally constitute good cause. A motion seeking additional time to take testimony because a party has not been able to procure the testimony of a witness shall set forth the name of the witness, any steps taken to procure the testimony of the witness, the dates on which the steps were taken, and the facts expected to be proved through the witness.

(b) Any paper belatedly filed [,] will not be considered except upon motion (§ 1.635) which shows ►good◄ [sufficient] cause why the paper was not timely filed [.] ►or an administrative patent judge or the Board, sua sponte, is of the opinion that

it would be in the interest of justice to consider the paper.◄ See § 1.304(a) for exclusive procedures relating to belated filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or belated commencement of a civil action.

* * * * *

(d) [In an appropriate circumstance, an] ►An administrative patent judge◄ [examiner-in-chief] may stay proceedings in an interference.

45. Section 1.646 is proposed to be amended by revising paragraphs (a)(1), (a)(2), (b), (c), (c)(1), (c)(4), (d) and (e), redesignating paragraph (c)(5) as (c)(6) and revising it, and adding a new paragraph (c)(5) to read as follows:

**§ 1.646 Service of papers, proof of service.**

(a) * * *

(1) Preliminary statements when filed under § 1.621; preliminary statements shall be served when service is ordered by an ►administrative patent judge◄ [examiner-in-chief].

(2) Certified transcripts and exhibits which accompany the transcripts filed under § [§ ] 1.676 [or 1.684]; copies of transcripts shall be served as part of a party's record under § 1.653(c).

(b) Service shall be on an attorney or agent for a party. If there is no attorney or agent for the party, service shall be on the party. An ►administrative patent judge◄ [examiner-in-chief] may order additional service or waive service where appropriate.

(c) Unless otherwise ordered by an ►administrative patent judge◄ [examiner-in-chief], or except as otherwise provided by this subpart, service of a paper shall be made as follows:

(1) By handing a copy of the paper ►or causing a copy of the paper to be handed◄ to the person served.

* * * * *

(4) By mailing a copy of the paper by first class mail; when service is by ►first class◄ mail the date of mailing is regarded as the date of service.

(5) ►By mailing a copy of the paper by Express Mail; when service is by Express Mail the date of deposit with the U.S. Postal Service is regarded as the date of service.

(6) ◄ When it is shown to the satisfaction of an ►administrative patent judge◄ [examiner-in-chief] that none of the above methods of obtaining or serving the copy of the paper was successful, the ►administrative patent judge◄ [examiner-in-chief] may order service by publication of an appropriate notice in the *Official Gazette*.

(d) An ►administrative patent judge◄ [examiner-in-chief] may order that a paper be served by hand or ["]Express Mail["].

(e) ►The due date for serving a paper is the same as the due date for filing the paper in the Patent and Trademark Office.◄ Proof of service must be made before a paper will be considered in an interference. Proof of service may appear on or be affixed to the paper. Proof of service shall include the date and manner of service. In the case of personal service under paragraphs (c)(1) through (c)(3) of this section, proof of service shall include the names of any person served and the person who made the service. Proof of service may be made by an acknowledgment of service by or on behalf of the person served or a statement signed by the party or the party's attorney or agent containing the information required by this section. A statement of an attorney or agent attached to, or appearing in, the paper stating the date and manner of service will be accepted as *prima facie* proof of service.

46. Section 1.647 is proposed to be revised to read as follows:

**§ 1.647 Translation of document in foreign language.**

When a party relies on a document ►or is required to produce a document◄ in a language other than English, a translation of the document into English and an affidavit attesting to the accuracy of the translation shall be filed with the document.

47. Section 1.651 is proposed to be amended by revising paragraphs (a), (a)(2), (c)(1), (c)(2), (c)(3) and (d) to read as follows:

**§ 1.651 Setting times for discovery and taking testimony, parties entitled to take testimony.**

(a) At an appropriate stage in an interference, an ►administrative patent judge◄ [examiner-in-chief] shall set

* * * * *

(2) Testimony periods for taking any necessary testimony [(testimony includes testimony to be taken abroad under § 1.684)].

* * * * *

(c) * * *

(1) The ►administrative patent judge◄ [examiner-in-chief] orders the taking of testimony under § 1.639(c);

(2) The party alleges in its preliminary statement a date of invention prior to the [earlier of the filing date or] effective filing date of the senior party;

(3) A testimony period has been set to permit an opponent to prove a date of invention prior to the [earlier of the filing date or] effective filing date of the party and the party has filed a preliminary statement alleging a date of invention prior to that date; or

* * * * *

(d) Testimony, including any testimony to be taken ►in a foreign country◄ [abroad under § 1.684], shall be taken and completed during the testimony periods set under paragraph (a) of this section. A party seeking to extend the period for taking testimony must comply with § 1.635 and § 1.645(a).

48. Section 1.652 is proposed to be revised to read as follows:

**§ 1.652 judgment for failure to take testimony or file record.**

If a junior party fails to timely take testimony authorized under § 1.651, or file a record under § 1.653(c), an ►administrative patent judge◄ [examiner-in-chief]. with or without a motion (§ 1.635) by another party, may issue an order to show cause why judgment should not be entered against the junior party. When an order is issued under this section, the Board shall enter judgment in accordance with the order unless, within 15 days after the date of the order, the junior party files a page which shows good cause why judgment should not be entered in accordance with the order. Any other party may file a response to the paper within 15 days of the date of service of the paper. If the party against whom the order was issued fails to show good cause, the Board shall enter judgment against the party.

49. Section 1.653 is proposed to be amended by deleting paragraphs (c)(5), (f) and (h) and redesignating them as "Reserved" and by revising paragraphs (a), (b), (c), (c)(1), (c)(4), (g) and (i) to read as follows:

**§ 1.653 Record and exhibits.**

(a) Testimony shall consist of affidavits under [§ ] ►§§◄ 1.672(b) ►, (c)◄ and [(e)] ►(g), 1.682(c), 1.683(b) and 1.688(b)◄, transcripts of depositions under §§ [1.672(b) and (c)] ►1.671(g) and 1.672(a) when a deposition is authorized by an administrative patent judge, transcripts of depositions under §§ 1.672(d), 1.682(d), 1.683(c) and 1.688(c)◄, agreed statements [of fact] under § [1.672(f)] ►1.672.(h)◄, [and] transcripts of interrogatories, cross-interrogatories, and recorded answers ►and copies of written interrogatories and answers and written requests for admissions and answers◄ under § [1.684(c)] ►1.688(a)◄.

(b) An affidavit shall be filed as set forth in § [1.672(b)] ►1.677◄. A certified transcript of a deposition ►,◄ including a deposition cross-examining

an affiant, shall be filed as set forth in [§] ►§§◄ 1.676 ►, 1.677 and 1.678◄. An original agreed statement shall be filed as set forth in ►§ 1.672(h)◄ [§ 1.672(f). A transcript of interrogatories, cross-interrogatories, and recorded answers shall be filed as set forth under § 1.684(c)].

(c) In addition to the items specified in paragraph (b) of this section and within a time set by an ►administrative patent judge,◄ [examiner-in-chief] each party shall file three copies and serve one copy of a record consisting of:

(1) An index of the names of [each witness] ►the witnesses for the party,◄ giving the pages of the record where the direct testimony and cross-examination of each witness begins.

* * * * *

(4) Each (i) affidavit ►by a witness for the party◄, (ii) transcript, including transcripts of cross-examination of any affiant ►who testified for the party and transcripts of compelled deposition testimony by a witness for the party◄, (iii) agreed statement relied upon by the party, and (iv) transcript of interrogatories, cross-interrogatories and recorded answers [filed under paragraph (b) of this section].

(5) ►Reserved.◄ [Each notice, official record, and publication relied upon by the party and filed under § 1.682(a).]

* * * * *

(f) ►Reserved.◄ [The record may be typewritten or printed.]

(g) [When the] ►The◄ [is printed, it] may be produced by standard typographical printing or by any ►other◄ process capable of producing a clear black permanent image◄. All printed matter except on covers must appear in at least 11 point type on opaque, unglazed paper. [Margins must be justified.] Footnotes may not be printed in type smaller than 9 point. The ►pages◄ [pages] size shall be ►21.8 by 27.9 cm. (8½ by 11 inches) (letter size)◄ [8½ by 11 inches (21.8 by 27.9 cm.)] with [type] ►printed◄ matter ►16.5 by 24.1 cm. (6½ by 9½ inches)◄ [6½ by 9½ inches (16.5 by 24.1 cm.)]. The record shall be bound ►with covers at their left edges in such manner as◄ to lie flat when open ►to any page and in one or more volumes of convenient size (approximately 100 pages per volume is suggested). When there is more than one volume, the numbers of the pages contained in each volume shall appear at the top of the cover for each volume◄.

(h) ►Reserved.◄ [When the record is type written, it must be clearly legible on opaque, unglazed, durable paper approximately 8½ by 11 inches (21.8 by 27.9 cm.) in size (letter size). Typing shall be double-spaced on one side of the paper in not smaller than pica-type with a margin of 1½ (3.8 cm.) on the left-hand side of the page. The pages of the record shall be bound with covers at their left edges in such manner to lie flat when open in one or more volumes of convenient size (approximately 100 pages per volume is suggested). Multigraph or otherwise reproduced copies conforming to the standards specified in this paragraph may be accepted.]

(i) Each party shall file its exhibits with the record specified in paragraph (c) of this section. ►Exhibits include documents and things identified in affidavits or on the record during the taking of oral depositions and official records and publications filed by the party under § 1.682(a).◄ One copy of each documentary exhibit shall be served. Documentary exhibits shall be filed in an envelope or folder and shall not be bound as part of the record. Physical exhibits, if not filed by an officer under § 1.676(d), shall be filed with the record. Each exhibit shall contain a label which identifies the party submitting the exhibit and an exhibit number, the style of the interference (e.g., Jones v. Smith), and the interference number. Where possible, the label should appear at the bottom right-hand corner of each documentary exhibit. Upon termination of an interference, an ►administrative patent judge◄ [examiner-in-chief] may return an exhibit to the party filing the exhibit. When any exhibit is returned, [the examiner-in-chief] ►an order◄ shall ►be entered◄ [enter an appropriate order] indicating that the exhibit has been returned.

* * * * *

50. Section 1.654 is proposed to be amended by revising paragraphs (a) and (d) to read as follows:

**§ 1.654 Final hearing.**

(a) At an appropriate stage of the interference, the parties will be given an opportunity to appear before the Board to present oral argument at a final hearing. An ►administrative patent judge may◄ [examiner-in-chief shall] set a date and time for final hearing. Unless otherwise ordered by an ►administrative patent judge◄ [examiner-in-chief] or the Board, each party will be entitled to no more than ►30◄ [60] minutes or oral argument at final hearing. ►A party who does not file a brief for final hearing (§ 1.656(a)) shall not be entitled to appear at final hearing.◄

* * * * *

(d) After final hearing, the interference shall be taken under advisement by the Board. No further paper shall be filed except under § 1.658(b) or as authorized by an ►administrative patent judge◄ [examiner-in-chief] or the Board. No additional oral argument shall be had unless ordered by the Board.

51. Section 1.655 is proposed to be amended by revising paragraphs (a), (b) and (c) to read as follows:

**§ 1.655 Matters considered in rendering a final decision.**

(a) In rendering a final decision, the Board may consider any properly raised issue including (1) priority of invention, (2) derivation by an opponent from a party who filed a preliminary statement under § 1.625, (3) patentability of the invention, (4) admissibility of evidence, (5) any interlocutory matter deferred to final hearing, and (6) any other matter necessary to resolve the interference. The Board may also consider whether ►entry of◄ any interlocutory order was [erroneous or] an abuse of discretion. All interlocutory orders shall be presumed to have been correct and the burden of showing [error or] an abuse of discretion shall be on the party attacking the order. When two or more interlocutory orders involve the same issue, the last entered order shall be presumed to have been correct.

(b) A party shall not be entitled to raise for consideration at final hearing a matter which properly could have been raised by a motion under §§ 1.633 or 1.634 unless (1) the ►matter was properly raised in a◄ motion ►that◄ was [properly] ►timely◄ filed ►by the party under §§ 1.633 or 1.634 and the motion was denied or deferred to final hearing◄, (2) the matter was properly raised by [a] ►the◄ party in [an] ►a timely filed◄ opposition to a motion under §§ 1.633 or 1.634 and the motion was granted over the opposition ►or deferred to final hearing◄, or (3) the party shows good cause why the issue was not [timely] ►properly◄ raised by ►a timely filed◄ motion or opposition. ►A change of attorneys during the interference generally does not constitute good cause. A party who fails to contest, by way of a timely filed preliminary motion under § 1.633(c), the designation of a claim as corresponding to a count may not subsequently argue to an administrative patent judge or the Board the separate patentability or lack of separate patentability of claims designated to correspond to the count.◄

(c) ►In the interest of justice◄ [To prevent manifest injustice], the Board may ►exercise its discretion to◄

consider an issue even though it would not otherwise be entitled to consideration under this section.

52. Section 1.656 is proposed to be amended by revising paragraphs (a), (d), (e), (g), (h) and (i), redesignating paragraphs (b)(1) through (b)(6) as (b)(3) through (b)(8), revising newly designated paragraphs (b)(5) and (b)(6), and adding new paragraphs (b)(1) and (b)(2) to read as follows:

**§ 1.656 Briefs for final hearing.**

(a) Each party shall be entitled to file briefs for final hearing. The ►administrative patent judge◄ [examiner-in-chief] shall determine the briefs needed and shall set the time and order for filing briefs.

(b) * * *

(1) ►A statement of interest indicating:

(i) The full name of every party represented by the attorney in the interference.

(ii) The name of the real party in interest if the party named in the caption is not the real party in interest.

(2) A statement of related cases indicating:

(i) Whether the interference was previously before the Board for final hearing.

(ii) The name and number of any related appeal or interference which is pending before, or which has been decided by, the Board, or which is pending before, or which has been decided by, the U.S. Court of Appeals for the Federal Circuit or a district court in a proceeding under 35 U.S.C. 146. A related appeal or interference is one which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending interference.

(3)◄ * * *

►(4)◄ [(2)] A statement of the issues presented for decision in the interference.

►(5)◄ [(3)] A statement of the facts ►, preferably in numbered paragraphs,◄ relevant to the issues presented for decision with appropriate references to the record.

►(6)◄ [(4)] An argument, which may be preceded by a summary, which shall contain the contentions of the party with respect to the issues ►it is raising for consideration at final hearing◄ [to be decided], and the reasons therefor, with citations to the cases, statutes, other authorities, and parts of the record relied on.

►(7)◄ [(5)] A short conclusion stating the precise relief requested.

►(8)◄ [(6)] An appendix containing a copy of the counts.

* * * * *

(d) ►Unless ordered otherwise by an administrative patent judge, briefs shall be double-spaced (except for footnotes, which may be single-spaced) and shall comply with the requirements of § 1.653(g) for records except the requirement for binding.◄ [Briefs may be printed or typwritten. If typewritten, legal-size paper may be used. The opening brief of each party in excess of 50 legal-size double-spaced typewritten pages or any other brief in excess of 25 legal-size double spaced typewritten pages shall be printed unless a satisfactory reason be given why the brief should not be printed. Any printed brief shall comply with the requirements of § 1.653(g). Any typewritten brief shall comply with the requirements of § 1.653(h), except legal-size paper may be used and the binding and covers specified are not required.]

(e) An original and ►four◄ [three] copies of each brief must be filed.

* * * * *

(g) Any party, separate from its opening brief, but filed concurrently therewith, may file an original and ►four◄ [three] copies of concise proposed findings of fact and conclusions of law. Any proposed findings of fact shall be ►in numbered paragraphs and◄ supported by specific references to the record. Any proposed conclusions of law shall be ►in numbered paragraphs and◄ supported by citation of cases, statutes, or other authority. Any [opposing party] ►opponent◄, separate from its opening or reply brief, but filed concurrently therewith, may file a paper accepting or objecting to any proposed findings of fact or conclusions of law; when objecting, a reason must be given. The Board may adopt the proposed findings of fact and conclusions of law in whole or in part.

(h) If a party wants the Board in rendering its final decision to rule on the admissibility of any evidence, the party shall file with its opening brief an original and ►four◄ [three] copies of a motion (§ 1.635) to suppress the evidence. The provisions of § 1.637(b) do not apply to a motion to suppress under this paragraph. Any objection previously made to the admissibility of ►the evidence of an opponent◄ [an opponent's evidence] is waived unless the motion required by this paragraph is filed. ►A party that failed to challenge the admissibility of the evidence of an opponent on a ground that could have been raised in a timely objection under § 1.672(c), 1.682(c), 1.683(b) or 1.688(b) may not move under this paragraph to suppress the evidence on that ground at final hearing.◄ An original and ►four◄ [three] copies of an opposition to the motion may be filed with an opponent's opening brief or reply brief as may be appropriate.

(i) When a junior party fails to timely file an opening brief, an order may issue requiring the junior party to show cause why the Board should not treat failure to file the brief as a concession of priority. If the junior party fails to ►show good cause◄ [respond] within a time period set in the order, judgment may be entered against the junior party.

53. Section 1.657 is proposed to be revised to read as follows:

**§ 1.657 Burden of proof as to date of invention.**

►(a)◄ A rebuttable presumption shall exist that, as to each count, the inventors made their invention in the chronological order of the earlier of their [filing dates or] effective filing dates. The burden of proof shall be upon a party who contends otherwise.

►(b) In an interference involving copending applications or involving a patent and an application having an effective filing date on or before the date the patent issued, a junior party shall have the burden of establishing priority by a preponderance of the evidence.

(c) In an interference involving an application and a patent and where the effective filing date of the application is after the date the patent issued, a junior party shall have the burden of establishing priority by clear and convincing evidence.◄

54. Section 1.658 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

**§ 1.658 Final decision.**

(a) After final hearing, the Board shall enter a decision resolving the issues raised at final hearing. The decision may (1) enter judgment, in whole or in part, (2) remand the interference to an ►administrative patent judge◄ [examiner-in-chief] for further proceedings, or (3) take further action not inconsistent with law. A judgment as to a count shall state whether or not each party is entitled to a patent containing the claims in the party's patent or application which correspond to the count. When the Board enters a decision awarding judgment as to all counts, the decision shall be regarded as a final decision ►for the purpose of judicial review (35 U.S.C. 141–144, 146) unless a request for reconsideration under paragraph (b) of this section is timely filed◄.

(b) Any request for reconsideration of a decision under paragraph (a) of this section shall be filed within one month after the date of the decision. The

request for reconsideration shall specify with particularity the points believed to have been misapprehended or overlooked in rendering the decision. Any [reply] ►opposition◄ to a request for reconsideration shall be filed within 14 days of the date of service of the request for reconsideration. [Where reasonably possible, service] ►Service◄ of the request for reconsideration shall be [such that delivery is accomplished] by hand or ["]Express Mail.["] The Board shall enter a decision on the request for reconsideration. If the Board shall be of the opinion that the decision on the request for reconsideration significantly modifies its original decision under paragraph (a) of this section, the Board may designate the decision on the request for reconsideration as a new decision. ►A decision on reconsideration is a final decision for the purpose of judicial review (35 U.S.C. 141–144, 146).◄

* * * * *

55. Section 1.660 is proposed to be amended by adding paragraph (e) to read as follows:

**§ 1.660 Notice of reexamination, reissue, protest or litigation.**

* * * * *

►(e) The notice required by this section is designed to assist the administrative patent judge and the Board in efficiently handling interference cases. Failure of a party to comply with the provisions of this section may result in sanctions under § 1.616. Knowledge by, or notice to, an employee of the Office other than an employee of the Board, of the existence of the re-examination, application for reissue, protest, or litigation shall not be sufficient. The notice contemplated by this section is noticed addressed specifically to an administrative patent judge or the Board.◄

56. Section 1.662 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

**§ 1.662 Request for entry of adverse judgment; re-issue filed by patentee.**

(a) A party may, at any time during an interference, request and agree to entry of an adverse judgment. The filing by ►a party◄ [an applicant or patentee] of a written disclaimer of the invention defined by a court, concession of priority or unpatentability of the subject matter of a count, abandonment of the invention defined by a count, or abandonment of the contest as to a count will be treated as a request for entry of an adverse judgment against the applicant or patentee as to all claims which correspond to the count. Abandonment of an application [by an applicant], other than an [applicant] ►application◄ for re-issue having a claim of the patent sought to be reissued involved in the interference, will be treated as a request for entry of an adverse judgment against the applicant as to all claims corresponding to all counts. Upon the filing by a party of a request for entry of an adverse judgment, the Board may enter judgment against the party.

(b) If a patentee involved in an interference files an application for reissue during the interference and ►the reissue application does not include a claim that corresponds to a count◄ [omits all claims of the patent corresponding to the counts of the interference for the purpose of avoiding the interference], judgment may be entered against the patentee. A patentee who files an application for re-issue ► which includes a claim that corresponds to a count◄ [other than for the purpose of avoiding the interference] shall ►, in addition to complying with the provisions of § 1.660(b),◄ timely file a preliminary motion under § 1.663(h) or show good cause why the motion could not have been timely filed or would not be appropriate.

* * * * *

57. Section 1.664 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

**§ 1.664 Action after interference.**

(a) After termination of an interference, the examiner will promptly take such action in any application previously involved in the interference as may be necessary. Unless entered by order of an ►administrative patent judge◄ [examiner-in-chief], amendments presented during the interference shall not be entered, but may be subsequently presented by the applicant subject to the provisions of this subpart provided prosecution of the application is not otherwise closed.

(b) After judgment, the application of any party may be held subject to further examination, including an interference with another application.

58. Section 1.671 is proposed to be amended by revising paragraphs (a), (c)(1), (c)(2), (c)(6), (c)(7), (f) and (g) to read as follows, deleting paragraph (e) and redesignating it as "Reserved", redesignating current paragraph (h) as (i), and adding new paragraphs (h) and (j) to read as follows:

**§ 1.671 Evidence must comply with rules.**

(a) Evidence consists of testimony and exhibits, official records and publications filed under § 1.682, [evidence] ►testimony◄ from another interference, proceeding, or action filed under § 1.683, and discovery relied upon under § 1.688, and the specification (including claims) and drawings of any application or patent:

* * * * *

(c) * * *

(1) *Courts of the United States, U.S. Magistrate, court, trial court,* or *trier of fact* means ►administrative patent judge◄ [examiner-in-chief] or Board as may be appropriate.

(2) *Judge* means ►administrative patent judge◄ [examiner-in-chief].

* * * * *

(6) *Before the hearing* in Rule 703 means before giving testimony by ►affidavit or◄ oral deposition [or affidavit].

(7) *The trial or hearing* in Rules 803(24) and 804(5) means the taking of testimony by ►affidavit or◄ oral deposition [or affidavit].

* * * * *

(e) ►Reserved.◄ [A party may not rely on an affidavit filed by that party during *ex parte* prosecution of an application, an affidavit under § 1.608, or an affidavit under § 1.639(b) unless: (1) A copy of the affidavit is or has been served and (2) a written notice is filed prior to the close of the party's relevant testimony period stating that the party intends to rely on the affidavit. When proper notice is given under this paragraph, the affidavit shall be deemed filed under § 1.672(b). A copy of the affidavit shall be included in the record (§ 1.653).]

(f) The significance of documentary and other exhibits ►identified by a witness in an affidavit or during oral deposition◄ shall be discussed with particularity by [a] ►the◄ witness [during oral deposition or in an affidavit].

(g) A party must file a motion (§ 1.635) seeking permission from an ►administrative patent judge◄ [examiner-in-chief] prior to ►compelling◄ [taking] testimony or ►production of◄ [seeking] documents or things under 35 U.S.C. 24 ►or from a party◄. The motion shall describe the general nature and the relevance of the testimony, document, or thing. ►If permission is granted, the party shall notice a deposition under § 1.673 and may proceed to take testimony. The testimony of the witness shall be taken on oral deposition.◄

►(h) A party must file a motion (§ 1.635) seeking permission from an administrative patent judge prior to compelling testimony or production of documents or things in a foreign country.

(1) In the case of testimony, the motion shall:

(i) Describe the general nature and relevance of the testimony;

(ii) Identify the witness by name or title;

(iii) State why the party believes the witness can be compelled to testify in the foreign country; and

(iv) Demonstrate that the witness has been asked to testify in the United States and has refused to do so even though the party has offered to pay the expenses of the witness to travel to the United States.

(2) In the case of production of a document or thing, the motion shall:

(i) Describe the general nature and relevance of the document or thing;

(ii) State why the party believes production of the document or thing can be compelled in the foreign country; and

(iii) Demonstrate that the individual or entity having possession, custody, and control of the document or thing will not produce the document or thing in the United States even though the party has offered to pay the expenses of producing the document or thing in the United States.◄

►(i)◄ [(h)] Evidence which is not taken or sought and filed in accordance with this subpart shall not be admissible.

►(j) The weight to be given testimony taken in a foreign country will be determined on a case-by-case basis. Little, if any, weight may be given to testimony taken in a foreign country unless the party taking the testimony proves by clear and convincing evidence (1) that giving false testimony in an interference proceeding is punishable as perjury under the laws of the foreign country where the testimony is taken and (2) that the punishment in a foreign country for giving such false testimony is similar to the punishment for perjury committed in the United States.◄

59. Section 1.672 is proposed to be amended by revising paragraphs (a), (b), (c) and (d), redesignating paragraphs (c), (d), (e) and (f) as paragraphs (e), (f), (g) and (h), respectively, and by adding new paragraphs (c) and (d) to read as follows:

**§ 1.672 Manner of taking testimony.**

(a) ►Unless testimony must be compelled under 35 U.S.C. 24 or compelled from a party or in a foreign country, testimony◄ [Testimony] of a witness ►shall◄ [may] be taken by [oral deposition or] affidavit in accordance with this subpart. ►Testimony which must be compelled under 35 U.S.C. 24 or compelled from a party or in a foreign country shall be taken by oral deposition.◄

(b) [A party wishing to take the testimony of a witness whose testimony will not be compelled under 35 U.S.C. 24 may elect to present the testimony of the witness by affidavit or deposition.] A party [electing to present] ►presenting◄ testimony of a witness by affidavit shall, prior to the [close of the party's relevant testimony period, file and serve] ►time set by the administrative patent judge for serving affidavits, file a copy of the◄ [an] affidavit [of the witness or, where appropriate, a notice under § 1.671(e). To facilitate preparation of the record (§ 1.653 (g) and (h)), a party should file an affidavit on paper which is 8½ by 11 inches (21.8 by 27.9 cm)]. ►If the affidavit relates to a party's case-in-chief, it shall be filed no later than the date set by an administrative patent judge for the party to file affidavits for its case-in-chief. If the affidavit relates to a party's case-in-rebuttal, it shall be filed no later than the date set by an administrative patent judge for the party to file affidavits for its case-in-rebuttal.◄ A party shall not be entitled to rely on any document referred to in the affidavit unless a copy of the document is filed with the affidavit. A party shall not be entitled to rely on any thing mentioned in the affidavit unless the opponent is given reasonable access to the thing. A thing is something other than a document. ►The pages of affidavits filed under this paragraph and of any other testimony filed therewith under §§ 1.683(a) and 1.688(a) shall be given sequential numbers which shall also serve as the record page numbers for the affidavits and other testimony in the party's record to be filed under § 1.653. Exhibits identified in the affidavits or in any other testimony filed under §§ 1.683(a) and 1.688(a) and any official records and printed publications filed under § 1.682(a) shall be given sequential exhibit numbers which shall also serve as the exhibit numbers when the exhibits are filed with the party's record. The affidavits, testimony filed under §§ 1.683(a) and 1.688(a) exhibits shall be accompanied by an index of the names of the witnesses, giving the number of the page where the testimony of each witness begins, and by an index of the exhibits briefly describing the nature of each exhibit and giving the number of the page where each exhibit is first identified and offered into evidence.

(c) If an opponent objects to the admissibility of any evidence contained, in or submitted with an affidavit filed under paragraph (b) of this section, the opponent must, no later than the date set by the administrative patent judge for filing objections under this paragraph, file objections stating with particularity the nature of each objection. An opponent that fails to challenge the admissibility of the evidence contained in or submitted with an affidavit on a ground that could have been raised in a timely objection under this paragraph will not be entitled to move under § 1.656(h) to suppress the evidence on that ground. If an opponent timely files objections, the party may, within 20 days of the due date for filing objections, file supplemental affidavits and supplemental official records and printed publications to overcome the objections. No objection to the admissibility of the supplemental evidence shall be made, except as provided by § 1.656(h). The pages of supplemental affidavits filed under this paragraph shall be sequentially numbered beginning with the number following the last page number of the party's testimony submitted under paragraph (b) of this section. The page numbers assigned to the supplemental affidavits shall also serve as the record page numbers for the supplemental affidavits in the party's record filed under § 1.653. Additional exhibits identified in supplemental affidavits and any supplemental official records and printed publications shall be given sequential numbers beginning with the number following the last number of the exhibits submitted under paragraph (b) of this section. The exhibit numbers shall also serve as the exhibit numbers when the exhibits are filed with the party's record. The supplemental affidavits shall be accompanied by an index of the names of the witnesses and an index of exhibits of the type specified in paragraph (b) of this section.

(d)◄ After the ►time expires for filing objections and supplemental affidavits, or earlier when appropriate,◄ [affidavit is filed and within a time set by an examiner-in-chief,] ►the administrative patent judge shall set a time within which◄ any opponent may file a request to cross-examine [the witness] ►an affiant◄ on oral deposition. If any opponent requests cross-examination of an affiant, the party shall notice a deposition ►at a reasonable location within the United States◄ under § 1.673(e) for the purpose of cross-examination by any opponent. Any redirect and recross shall take place at the deposition. At any deposition for the purpose of cross-examination of a witness [whose testimony is presented by affidavit], the party shall not be entitled to rely on any document or

thing not mentioned in one or more of the affidavits filed under [this paragraph] ►paragraphs (b) and (c) of this section◄, except to the extent necessary to conduct proper redirect. [A party electing to present testimony of a witness by deposition shall notice a deposition of the witness under § 1.673(a).] The party who gives notice of a deposition shall be responsible ►for providing a translator if the witness does not testify in English,◄ for obtaining a court reported and for filing a certified transcript of the deposition as required by § 1.676. ►Within 45 days of the close of the period for taking cross-examination, the party shall serve (but not file) a copy of each transcript on each opponent together with copies of any additional documentary exhibits identified by the witness during the deposition. The pages of the transcripts served under this paragraph shall be sequentially numbered beginning with the number following the last page number of the party's supplemental affidavits submitted under paragraph (c) of this section. The numbers assigned to the transcript pages shall also serve as the record page numbers for the transcripts in the party's record fled under § 1.653. Additional exhibits identified in the transcripts shall be given sequential numbers beginning with the number following the last number of the exhibits submitted under paragraphs (b) and (c) of this section. The exhibit numbers assigned to the additional exhibits shall also serve as the exhibit numbers when those exhibits are filed with the party's record. The deposition transcripts shall be accompanied by an index of the names of the witnesses, giving the number of the page where cross-examination, redirect and recross of each witness begins, and an index of exhibits of the type specified in paragraph (b) of this section.

(e) Reserved.◄ [(c) A party wishing to take the testimony of a witness whose testimony will be compelled under 35 U.S.C. 24 must first obtain permission from an examiner-in-chief under § 1.671(g). If permission is granted, the party shall notice a deposition of the witness under § 1.673 and may proceed under 35 U.S.C. 24. The testimony of the witness shall be taken on oral deposition.]

►(f)◄ [(d)] ►When a deposition is authorized under◄ [Notwithstanding the provisions of] this subpart, if the parties agree in writing, ►the◄ [a] deposition may be taken before any person authorized to administer oaths, at any place, upon any notice, and in any manner, and when so taken may be used like other depositions.

►(g)◄ [(e)] If the parties agree in writing, the testimony of any witness may be submitted in the form of an affidavit without opportunity for cross-examination. The affidavit of the witness shall be filed in the Patent and Trademark Office.

►(h)◄ [(f)] If the parties agree in writing, testimony may be submitted in the form of an agreed statement setting forth: (1) How a particular witness would testify if called or (2) the facts in the case of one or more of the parties. The agreed statement shall be filed in the Patent and Trademark Office. See § 1.653(a).

60. Section 1.673 is proposed to be amended by revising paragraphs (a), (b), (c), (c)(2), (d), (e) and (g) to read as follows:

**§ 1.673 Notice of examination of witness ►when deposition testimony is authorized◄.**

(a) A party [electing] ►authorized◄ to take testimony of a witness by deposition shall, after complying with paragraphs (b) and (g) of this section, file and serve a single notice of deposition stating the time and place of each deposition to be taken. Depositions ►to be taken in the United States◄ may be noticed for a reasonable time and place in the United States. [Unless the parties agree in writing, a] ►A◄ deposition may not be noticed for any other place without approval of an ►administrative patent judge◄ [examiner-in-chief (see § 1.684)]. The notice shall specify the name and address of each witness and the general nature of the testimony to be given by the witness. If the name of a witness is not known, a general description sufficient to identify the witness or a particular class or group to which the witness belongs may be given instead.

(b) Unless the parties agree ►or an administrative patent judge or the Board determine◄ otherwise, a party shall serve, but not file, at least three ►working◄ days prior to the conference required by paragraph (g) of this section, if service is made by hand or ["]Express Mail,["] or at least ►14◄ [ten] days prior to the conference if service is made by any other means, the following:

* * * * *

(c) A party shall not be permitted to rely [at any deposition] on any witness not listed in the notice, or any document not served or any thing not listed as required by paragraph (b) of this section:

(1) * * *

(2) except upon a motion (§ 1.635) promptly filed which is accompanied by any proposed notice, additional documents, or lists and which shows [sufficient] ►good◄ cause why the notice, documents, or lists were nit served in accordance with this section.

(d) Each [opposing party] ►opponent◄ shall have a full opportunity to attend a deposition and cross-examine. [If an opposing party attends a deposition of a witness not named in a notice and cross-examines the witness or fails to object to the taking of the deposition, the opposing party shall be deemed to have waived any right to object to the taking of the deposition for lack of proper notice.]

(e) A party ►who has presented◄ [electing to present] testimony by affidavit and [who] is required to notice depositions for the purpose of cross-examination under § 1.672(b), shall, after complying with paragraph (g) of this section, file and serve a single notice of depsotion stating the time and place of each cross-examination deposition to be taken.

* * * * *

(g) Before serving a notice of deposition and after complying with paragraph (b) of this section, a party shall have an oral conference with all opponents to attempt to agree on a mutually acceptable time and place for conducting the deposition. A certificate shall appear in the notice stating that the oral conference took place or explaining why the conference could not be had. If the parties cannot agree to a mutually acceptable place and time for conducting the deposition at the conference, the parties shall contact an ►administrative patent judge◄ [examiner-in-chief] who shall then designate the time and place for conducting the deposition.

* * * * *

61. Section 1.674 is proposed to be amended by revising paragraph (a) to read as follows:

**§ 1.674 Persons before whom depositions may be taken.**

(a) ►A◄ [Within the United States or a territory or insular possession of the United States a] deposition shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

* * * * *

62. Section 1.675 is proposed to be amended by revising paragraph (d) to read as follows:

**§ 1.675 Examination of witness, reading and signing transcript of deposition.**

* * * * *

(d) Unless the parties agree in writing or waive reading and signature by the witness on the record at the depsotion,

when the testimony has been transcribed a transcript of the deposition shall ►, unless the witness refuses to read and/or sign the transcript of the depsotion,◄ be read by the witness and then signed by the witness in the form of: (1) An affidavit in the presence of any notary or (2) a declaration.

63. Section 1.676 is proposed to be amended by revising paragraph (a)(4) to read as follows:

**§ 1.676 Certification and filing by officer, marking exhibits.**

(a) * * *

(4) The presence or absence of any [opposing party] ►opponent◄.

* * * * *

64. Section 1.677 is proposed to be amended by revising the section heading and paragraph (a) to read as follows:

**§ 1.677 Form of ►affidavit or◄ a transcript of deposition.**

(a) ►An affidavit or a◄ [A] transcript of a deposition must be [typewritten] on opaque, unglazed, durable paper approximately ►21.8 by 27.9 cm. (8½ by 11 inches)◄ [8½ by 11 inches (21.8 by 27.9 cm.)] in size (letter size). [Typing] ►The printed matter◄ shall be double-spaced on one side of the paper in not smaller than ►11 point type◄ [pica-type] with a margin of ►3.8 cm. (1½ inches)◄ [1½ inches (3.8 cm.)] on the left-hand side of the page. The pages must be consecutively numbered throughout the entire record of each party (§ 1.653(d)) and the name of the witness [must be typed] ►shall appear◄ at the top of the each page (§ 1.653(e)). ►In transcripts of depositions, the◄ [The] questions propounded to each witness must be consecutively numbered unless paper with numbered lines is used and each question must be followed by its answer.

* * * * *

65. Section 1.678 and the section heading are proposed to be revised to read as follows:

**§ 1.678 ►Time for filing transcript◄ βTranscriptα of deposition βmust be filedα.**

Unless otherwise ordered by an ►administrative patent judge◄ [examiner-in-chief], a certified transcript of a deposition must be filed in the Patent and Trademark Office within [45] ►30◄ days from the date of deposition. If a party refuses to file a certified transcript, the ►administrative patent judge◄ [examiner-in-chief] or the Board may take appropriate action must § 1.616. If a party refuses to file a certified transcript, any opponent may move for leave to file the certified transcript and include a copy of the transcript as part of the opponent's record.

66. Section 1.679 is proposed to be revised to read as follows:

**§ 1.679 Inspection of transcript.**

A certified transcript ►of a desposition◄ filed in the Patent and Trademark Office may be inspected by any party. The certified transcript may not be removed from the Patent and Trademark Office [for printing (§ 1.653(g)(1)] unless authorized by an ►administrative patent judge◄ [examiner-in-chief] upon such terms as may be appropriate.

67. Section 1.682 is proposed to be amended by deleting paragraphs (a)(4) and (b) and redesignating them as "Reserved," revising paragraphs (a), (a)(2), (a)(3), and (c) and adding a new paragraph (d) to read as follows:

**§ 1.682 Official records and printed publications.**

(a) A party may introduce into evidence, if otherwise admissible, [any] ►an◄ official record or printed publication not identified ►in an affidavit or◄ on the record during ►an oral deposition◄ [the taking of testimony] of a witness, by filing [a notice offering] ►a copy of◄ the official record or ►printed◄ publication [into evidence]. If the ►official record or printed publication◄ [evidence] relates to the party's case-in-chief, ►it shall be filed together with any affidavits filed by the party under § 1.672(b) for its case-in-chief or, if the party does not serve any affidavits under § 1.672(b) for its case-in-chief, no later than the date set by an administrative patent judge for the party to file affidavits under § 1.672(b) for its◄ [the notice shall be filed prior to close of testimony of the party's] case-in-chief. If the ►official record or printed publication◄ [evidence] relates to rebuttal, ►it shall be filed together with any affidavits filed by the party under § 1.672(b) for its case-in-rebuttal or, if the party does not file any affidavits under § 1.672(b) for its case-in-rebuttal, no later than the date set by an administrative patent judge for the party to file affidavits under § 1.672(b) for its◄ [the notice shall be filed prior to close of testimony of the party's] case-in-rebuttal. [The notice] ►Official records and printed publications filed under this paragraph shall be assigned sequential exhibits numbers by the party in the manner set forth in § 1.672(b). The official record and printed publications shall be accompanied by a paper which◄ shall:

(1) * * *

(2) ►Identify◄ [identify] the portion thereof to be introduced in evidence, ►and◄

(3) ►Indicate◄ [indicate] generally the relevance of the portion sought to be introduced in evidence ►.◄ [, and]

(4) ►Reserved.◄ [where appropriate, be accompanied by a certified copy of the official record or a copy of the printed publication (§ 1.671(d)).]

(b) ►Reserved.◄ [A copy of the notice, official record, and publication shall be served.]

(c) Unless otherwise ordered by an ►administrative patent judge◄ [examiner-in-chief], any written objection ►by an opponent◄ to the [notice] ►paper◄ or to the admissibility of the official record or printed publication shall be filed [within 15 days of service of the notice] ►no later than the date set by the administrative patent judge for the opponent to file objections under § 1.672(c) to affidavits submitted by the party under § 1.672(b). An opponent who fails to challenge the admissibility of the official record or printed publication on a ground that could have been raised in a timely objection under this paragraph will not be entitled to move under § 1.656(h) to suppress the evidence on that ground. If an opponent timely files an objection, the party may respond by filing supplemental affidavits and supplemental official records and printed publications, which must be filed together with any supplemental evidence filed by the party under § 1.672(c) or, if the party does not file any supplemental evidence under § 1.672(c), no later than the date set by an administrative patent judge for the party to file supplemental affidavits under § 1.672(c). No objection to the admissibility of the supplemental evidence shall be made, except as provided by◄◄ [See also] § 1.656(h). ►The pages of supplemental affidavits and the exhibits filed under this section shall be sequentially numbered by the party in the manner set forth in § 1.672(c). The supplemental affidavits and exhibits shall be accompanied by an index of witnesses and an index of exhibits of the type required by § 1.672(b).

(d) Any request by an opponent to cross-examine on oral deposition the affiant of a supplemental affidavit submitted under paragraph (c) of this section shall be filed no later than the date set by the administrative patent judge for the opponent to file a request to cross-examine an affiant with respect to an affidavit served by the party under § 1.672 (b) or (c). If any opponent

requests cross-examination of an affiant, the party shall file notice of a deposition for a reasonable location within the United States under § 1.673(e) for the purpose of cross-examination by any opponent. Any redirect and recross shall take place at the deposition. At any deposition for the purpose of cross-examination of a witness, the party shall not be entitled to rely on any document or thing not mentioned in one or more of the affidavits filed under this paragraph, except to the extent necessary to conduct proper redirect. The party who gives notice of a deposition shall be responsible for providing a translator if the witness does not testify in English, for obtaining a court reporter and for filing a certified transcript of the deposition as required by § 1.676. Within 45 days of the close of the period for taking cross-examination, the party shall serve (but not file) a copy of each deposition transcript on each opponent together with copies of any additional documentary exhibits identified by the witness during the deposition. The pages of deposition transcripts and exhibits served under this paragraph shall be sequentially numbered by the party in the manner set forth in § 1.672(d). The deposition transcripts shall be accompanied by an index of the names of the witnesses, giving the number of the page where cross-examination, redirect and recross of each witness begins, and an index of exhibits of the type specified in § 1.672(b).◄

68. Section 1.683 is proposed to be amended by revising paragraphs (a) and (b) and adding a new paragraph (c) to read as follows:

**§ 1.683 Testimony in another interference, proceeding, or action.**

(a) ►A party may introduce into evidence, if otherwise admissible,◄ [Prior to close of a party's appropriate testimony period or within such time as may be set by an examiner-in-chief, a party may file a motion (§ 1.635) for leave to use in an interference] testimony ►by affidavit or oral deposition◄ [of a witness] from another interference, proceeding, or action involving the same parties [, subject to such conditions as may be deemed appropriate by an examiner-in-chief.] ►by filing a copy of the affidavit or a copy of the transcript of the oral deposition. If the testimony relates to the party's case-in-chief, it shall be filed together with any affidavits served by the party under § 1.672(b) for its case-in-chief or, if the party does not file any affidavits under § 1.672(b) for its case-in-chief, no later than the date set by an administrative patent judge for the party to file affidavits under § 1.672(b) for its case-in-chief. If the testimony relates to rebuttal, it shall be filed together with any affidavits served by the party under § 1.672(b) for its case-in-rebuttal or, if the party does not file any affidavits under § 1.672(b) for its case-in-rebuttal, no later than the date set by an administrative patent judge for the party to file affidavits under § 1.672(b) for its case-in-rebuttal. Pages of affidavits and deposition transcripts served under this paragraph and any new exhibits served therewith shall be assigned sequential numbers by the party in the manner set forth in § 1.672(b).◄ The [motion] ►testimony shall be accompanied by a paper which specifies◄ [shall specify] with particularity the exact testimony to be used and ►demonstrates◄ [shall demonstrate] its relevance.

(b) [Any objection to the admissibility of the testimony of the witness shall be made in an opposition to the motion. See also] ►Unless otherwise ordered by an administrative patent judge, any written objection by an opponent to the paper or the admissibility of the testimony filed under this section shall be filed no later than the date set by the administrative patent judge for the opponent to file any objections under § 1.672(c) to affidavits submitted by the party under § 1.672(b). An opponent who fails to challenge the admissibility of the testimony on a ground that could have been raised in a timely objection under this paragraph will not be entitled to move under § 1.656(h) to suppress the evidence on that ground. If an opponent timely files an objection, the party may respond with a supplemental affidavit and supplemental official records and printed publications, which must be filed together with any supplemental evidence filed by the party under § 1.672(c) or, if the party does not file any supplemental evidence under § 1.672(c), no later than the date set by an administrative patent judge for the party to file supplemental evidence under § 1.672(c). No objection to the admissibility of the evidence contained in or submitted with a supplemental affidavit shall be made, except as provided by◄ § 1.656(h). ►The pages of supplemental affidavits and the exhibits filed under this section shall be sequentially numbered by the party in the manner set forth in § 1.672(c). The supplemental affidavits and exhibits shall be accompanied by an index of witnesses and an index of exhibits of the type required by § 1.672(b).

(c) Any request by an opponent to cross-examine on oral deposition the affiant of an affidavit or supplemental affidavit submitted under paragraph (a) or (b) of this section shall be filed no later than the date set by the administrative patent judge for the opponent to file a request to cross-examine an affiant with respect to an affidavit filed by the party under § 1.672 (b) or (c). If any opponent requests cross-examination of an affiant, the party shall file a notice of deposition for a reasonable location within the United States under § 1.673(e) for the purpose of cross-examination by any opponent. Any redirect and recross shall take place at the deposition. At any deposition for the purpose of cross-examination of a witness, the party shall not be entitled to rely on any document or thing not mentioned in one or more of the affidavits filed under this paragraph, except to the extent necessary to conduct proper redirect. The party who gives notice of a deposition shall be responsible for providing a translator if the witness does not testify in English, for obtaining a court reporter and for filing a certified transcript of the deposition as required by § 1.676. Within 45 days of the close of the period for taking cross-examination, the party shall serve (but not file) a copy of each deposition transcript on each opponent together with copies of any additional documentary exhibits identified by the witness during the deposition. The pages of deposition transcripts and exhibits served under this paragraph shall be sequentially numbered by the party in the manner set forth in § 1.672(d). The deposition transcripts shall be accompanied by an index of the names of the witnesses, giving the number of the page where cross-examination, redirect and recross of each witness begins, and an index of exhibits of the type specified in § 1.672(b).◄

69. Section 1.684 is proposed to be deleted and redesignated as "Reserved," as follows:

**§ 1.684 ►Reserved.◄ [Testimony in a foreign country]**

(a) An examiner-in-chief may authorize testimony of a witness to be taken in a foreign country. A party seeking to take testimony in a foreign country shall, promptly after the testimony period is set, file a motion (§ 1.635):

(1) Naming the witness.

(2) Describing the particular facts to which it is expected that the witness will testify.

(3) Stating the grounds on which the moving party believes that the witness will testify.

(4) Demonstrating that the expected testimony is relevant.

(5) Demonstrating that the testimony cannot be taken in this country at all or cannot be taken in this country without hardship to the moving party greatly exceeding the hardship to which all opposing parties will be exposed by the taking of the testimony in a foreign country.

(6) Accompanied by an affidavit stating that the motion is made in good faith and not for the purpose of delay or harassing any party.

(7) Accompanied by written interrogatories to be asked of the witness.

(b) Any opposition under § 1.638(a) shall state any objection to the written interrogatories and shall include any cross-interrogatories to be asked of the witness. A reply under § 1.638(b) may be filed and shall be limited to stating any objection to any cross-interrogatories proposed in the opposition.

(c) If the motion is granted, taking of the testimony abroad must be completed within the testimony period set under § 1.651 or within such time as may be set by the Examiner-in-Chief. The moving party shall be responsible for obtaining answers to the interrogatories and cross-interrogatories before an officer qualified to administer oaths in the foreign country under the laws of the United States or the foreign country. The officer shall prepare a transcript of the interrogatories, cross-interrogatories, and recorded answers to the interrogatories and cross-interrogatories and shall transmit the transcript to Box Interference, Commissioner of Patents and Trademarks, Washington, D.C. 20231, with a certificate signed and sealed by the officer and showing:

(1) The witness was duly sworn by the officer before answering the interrogatories and cross-interrogatories.

(2) The recorded answers are a true record of the answers given by the witness to the interrogatories and cross-interrogatories.

(3) The name of the person by whom the answers were recorded and, if not recorded by the officer, whether the answers were recorded in the presence of the officer.

(4) The presence or absence of any party.

(5) The place, day, and hour that the answers were recorded.

(6) A copy of the recorded answers was read by or to the witness before the witness signed the recorded answers and that the witness signed the recorded answers in the presence of the officer. The officer shall state the circumstances under which a witness refuses to read or sign recorded answers.

(7) The officer is not disqualified under § 1.674.

(d) If the parties agree in writing, the testimony may be taken before the officer on oral deposition.

(e) A party taking testimony in a foreign country shall have the burden of proving that false swearing in the giving of testimony is punishable as perjury under the laws of the foreign country. Unless false swearing in the giving of testimony before the officer shall be punishable as perjury under the laws of the foreign country where testimony is taken, the testimony shall not be entitled to the same weight as testimony taken in the United States. The weight of the testimony shall be determined in each case.]

70. Section 1.685 is proposed to be amended by revising paragraphs (d) and (e) to read as follows:

**§ 1.685 Errors and irregularities in depositions.**

* * * * *

(d) An objection to the ►deposition on any grounds, such as the◄ competency of a witness, admissibility of evidence, manner of taking the deposition, the form of questions and answers, any oath or affirmation, or conduct of any party at the deposition ►,◄ is waived unless an objection is made on the record at the deposition stating the specific ground of objection. Any objection which a party wishes considered by the Board at final hearing shall be included in a motion to suppress under § 1.656(h).

(e) Nothing in this section precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of an ►administrative patent judge◄ [examiner-in-chief] or the Board.

71. Section 1.687 is proposed to be amended by revising paragraph (c) to read as follows:

**§ 1.687 Additional discovery.**

* * * * *

(c) Upon a motion (§ 1.635) brought by a party within the time set by an ►administrative patent judge◄ [examiner-in-chief] under § 1.651 or thereafter as authorized by § 1.645 and upon a showing that the interest of justice so requires, an ►administrative patent judge◄ [examiner-in-chief] may order additional discovery, as to matters under the control of a party within the scope of the Federal Rules of Civil Procedure, specifying the terms and conditions of such additional discovery. ►See § 1.647 concerning translations of documents in a foreign language.◄

* * * * *

72. Section 1.688 is proposed to be amended by revising paragraphs (a) and (b) and adding a new paragraph (c) to read as follows:

**§ 1.688 Use of discovery.**

(a) If otherwise admissible a party may introduce into evidence, an answer to a written request for an admission or an answer to a written interrogatory obtained by discovery under § 1.687 by filing a copy of the request for admission or the written interrogatory and the answer. If the answer relates to a party's case-in-chief, the answer shall be [filed prior to the close of testimony of the party's] ►served together with any affidavits served by the party under § 1.672(b) for its case-in-chief or, if the party does not serve any affidavits under § 1.672(b) for its case-in-chief, no later than the date set by an administrative patent judge for the party to serve affidavits under § 1.672(b) for its◄ case-in-chief. If the answer relates to the party's rebuttal, the [admission or] answer shall be [filed prior to the close of testimony of the party's] ►served together with any affidavits served by the party under § 1.672(b) for the its case-in-rebuttal or, if the party does not serve any affidavits under § 1.672(b) for its case-in-rebuttal, no later than the date set by an administrative patent judge for the party to serve affidavits under § 1.672(b) for its◄ case-in-rebuttal.

►(b)◄ Unless otherwise ordered by an ►administrative patent judge◄ [examiner-in-chief], any written objection to the admissibility of an answer shall be filed [within 15 days of service of the answer.] ►no later than the date set by the administrative patent judge for the opponent to file any objections under § 1.672(c) to affidavits submitted by the party under § 1.672(b). An opponent who fails to challenge the admissibility of an answer on a ground that could have been raised in a timely objection under this paragraph will not be entitled to move under § 1.656(h) to suppress the evidence on that ground. If an opponent timely files an objection, the party may respond with supplemental affidavits, which must be filed together with any supplemental evidence filed by the party under § 1.672(c) or, if the party does not file any supplemental evidence under § 1.672(c), no later than the date set by an administrative patent judge for the party to file supplemental affidavits under § 1.672(c). No objection to the admissibility of the evidence contained in or submitted with a supplemental affidavit shall be made, except as provided by◄ § 1.656(h). ►The pages of supplemental affidavits and the

exhibits filed under this section shall be sequentially numbered by the party in the manner set forth in § 1.672(c). The supplemental affidavits and exhibits shall be accompanied by an index of witnesses and an index of exhibits of the type required by § 1.672(b).

(c) Any request by an opponent to cross-examine on oral deposition the affiant of a supplemental affidavit submitted under paragraph (b) of this section shall be filed no later than the date set by the administrative patent judge for the opponent to file a request to cross-examine an affiant with respect to an affidavit filed by the party under § 1.672(b) or (c). If any opponent requests cross-examination of an affiant, the party shall file a notice of deposition for a reasonable location within the United States under § 1.673(e) for the purpose of cross-examination by any opponent. Any redirect and recross shall take place at the deposition. At any deposition for the purpose of cross-examination of a witness, the party shall not be entitled to rely on any document or thing not mentioned in one or more of the affidavits filed under this paragraph, except to the extent necessary to conduct proper redirect. The party who gives notice of a deposition shall be responsible for providing a translator if the witness does not testify in English, for obtaining a court reporter and for filing a certified transcript of the deposition as required by § 1.676. Within 45 days of the close of the period for taking cross-examination, the party shall serve (but not file) a copy of each deposition transcript on each opponent together with copies of any additional documentary exhibits identified by the witness during the deposition. The pages of deposition transcripts and exhibits served under this paragraph shall be sequentially numbered by the party in the manner set forth in § 1.672(d). The deposition transcripts shall be accompanied by an index of the names of the witnesses, giving the number of the page where cross-examination, redirect and recross of each witness begins, and an index of exhibits of the type specified in § 1.672(b).◄

[(b)] ►(d)◄ A party may not rely upon any other matter obtained by discovery unless it is introduced into evidence under this subpart.

73. Section 1.690 is proposed to be amended by revising paragraphs (a), (b) and (c) to read as follows:

**§ 1.690 Arbitration of interferences.**

(a) Parties to a patent interference may determine the interference or any aspect thereof by arbitration. Such arbitration shall be governed by the provisions of Title 9, United States Code. The parties must notify the Board in writing of their intention to arbitrate. An agreement to arbitrate must be in writing, specify the issues to be arbitrated, the name of the arbitrator or a date not more than thirty (30) days after the execution of the agreement for the selection of the arbitrator, and provide that the arbitrator's award shall be binding on the parties and that judgment thereon can be entered by the Board. A copy of the agreement must be filed within twenty (20) days after its execution. The parties shall be solely responsible for the selection of the arbitrator and the rules for conducting proceedings before the arbitrator. Issues not disposed of by the arbitration will be resolved in accordance with the procedures established in 37 CFR, Subpart E of Part 1, as determined by the ►administrative patent judge◄ [examiner-in-chief].

(b) An arbitration proceeding under this section shall be conducted within such time as may be authorized on a case-by-case basis by an ►administrative patent judge◄ [examiner-in-chief].

(c) An arbitration award will be given no consideration unless it is binding on the parties, is in writing and states in a clear and definite manner (1) the issue or issues arbitrated and (2) the disposition of each issue. The award may include a statement of the grounds and reasoning in support thereof. Unless otherwise ordered by an ►administrative patent judge◄ [examiner-in-chief], the parties shall give notice to the Board of an arbitration award by filing within twenty (20) days from the date of the award a copy of the award signed by the arbitrator or arbitrators. When an award is timely filed, the award shall, as to the parties to the arbitration, be dispositive of the issue or issues to which it relates.

* * * * *

Dated: September 23, 1994.

**Bruce A. Lehman,**

*Assistant Secretary of Commerce, and Commissioner of Patents and Trademarks.*

[FR Doc. 94–24203 Filed 9–30–94; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MA–29–01–6537; A–1-FRL–5083–5]

### Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Amendment to Massachusetts' SIP (for Ozone and for Carbon Monoxide) for Establishment of a South Boston Parking Freeze

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) amendment submitted by the Commonwealth of Massachusetts. The intent of the SIP amendment is to effect a decrease in vehicle miles travelled (VMT) and motor vehicle emissions by controlling the growth of parking spaces in the South Boston neighborhood of Boston and holding automobile usage to levels within the practical capacity of the local street network. Vehicular emissions of carbon monoxide, hydrocarbons and nitrogen oxides will be reduced compared with their expected levels if parking is not constrained. These pollutants contribute to the carbon monoxide and ozone air pollution problems in the Boston urbanized area. This SIP revision adds the South Boston Parking Freeze Area to ongoing parking management plans in the Metropolitan Boston Area. The intended effect of this action is to propose approval of the changes to Massachusetts' SIP. This action is being taken under section 110 of the Clean Air Act.

**DATES:** Comments must be received on or before November 2, 1994.

**ADDRESSES:** Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th floor, Boston, MA 02108.

**FOR FURTHER INFORMATION CONTACT:** Donald O. Cooke, (617) 565–3227.

**SUPPLEMENTARY INFORMATION:** On July 30, 1993, the Massachusetts Department

of Environmental Protection (DEP) submitted a revision to its State Implementation Plan (SIP) for the South Boston Parking Freeze. The amendment adds or revises four definitions to 310 CMR 7.00 and adds a new section, 310 CMR 7.33 "MB City of Boston/South Boston Parking Freeze" to manage the overall parking demand in South Boston. Specifically, the measure will constrain future parking supply at 10 percent above 1990 levels, allowing for an increase in the supply to accommodate an expected increase in demand accompanying intensive development in South Boston. A second ten percent increase in parking supply will be permitted in the South Boston Piers area when the Central Artery/ Third Harbor Tunnel Project is completed and open to the public.

**Background**

Parking freezes for part of the City of Boston, the City of Cambridge, and Logan Airport were included as one strategy in the Transportation Control Plan promulgated by the EPA in its plan for the Boston Region in 1975. (See CFR part 52, subpart W; 38 FR 17689 (July 2, 1973); 38 FR 30960 (November 8, 1973); 40 FR 25162 (June 12, 1975); 40 FR 39863 (August 29, 1975).) On September 16, 1979, EPA approved Massachusetts' 1979 SIP, which included these parking freezes. Massachusetts reaffirmed these freezes in its 1982 SIP.

On December 19, 1990, the Massachusetts Executive Office of Transportation and Construction (EOTC), the Massachusetts Department of Public Works ((MDPW), now the Massachusetts Highway Department (MA HWY)) and the Conservation Law Foundation (CLF) signed a Memorandum of Understanding (MOU) committing the parties to pursue implementation, monitoring and enforcement of traffic, and air quality mitigation measures for the Central Artery/Third Harbor Tunnel project. Parking freezes, including the development and implementation of the South Boston Parking Freeze, were among the specific measures committed to in the MOU. The Boston Metropolitan Planning Organization (MPO) voted on December 27, 1990, to adopt the items of the MOU as a State Implementation Plan (SIP) provision, and forwarded the items to the Massachusetts Department of Environmental Protection (MA DEP) as a proposed amendment to the SIP.

The Metropolitan Planning Organization is the current "State Certified Organization" for transportation control measures in the SIP. In response to the MPO submission, MA DEP developed regulations which were proposed in October of 1992. MA DEP held a public hearing on these amendments on November 30, 1992. The comment period ended December 10, 1992, with oral testimony and written comments received from EPA as well as various other parties. The amendments (as formal state regulations) were filed with Massachusetts Secretary of State on March 15, 1993, and became effective on April 9, 1993, upon publication in the Massachusetts Register.

**Summary of SIP Revision**

*(1) Geographic Area.* The South Boston Parking Freeze area is divided into three zones defined as: (i) The South Boston Piers Zone; (ii) the South Boston Industrial/Commercial Zone; and (iii) the South Boston Residential Zone. The boundaries of these zones are defined in the state regulation as well as in EPA's Technical Support Document (TSD) available in the docket for this action.

*(2) Definition of the Parking Freeze.* There is a freeze (limit) on the availability of motor vehicle parking spaces within the South Boston Piers Zone and the Industrial/Commercial Zone, and a freeze on the availability of remote parking spaces within the South Boston Residential Zone.[1] In addition, the South Boston Piers Zone will have ten percent of its off-street spaces set aside and allocated for off-peak period parking. Off-peak spaces would not be used by everyday commuters but reserved for people needing short term parking. Therefore, parking spaces designated for off-peak use may not be used between 7:30 a.m. and 9:30 a.m., but could be used at other times. Once the South Boston Transitway opens, additional spaces in the South Boston Piers Zone will be set aside for off-peak parking, resulting in a total of 20 percent off-peak parking spaces. Finally, a second ten percent will be created and added to the Freeze Bank for the South Boston Piers Zone when the Central Artery/Third Harbor Tunnel opens to the public.

The Massachusetts regulation requires the Boston Air Pollution Control Commission (BAPCC) and Massachusetts Port Authority (Massport) to develop and submit an inventory of all existing motor vehicle parking spaces for each of their respective areas. In addition, all motor vehicle parking spaces that were part of any project submitted for review under the Massachusetts Environmental Policy Act (MEPA) process in 301 CMR 11.00, or the Federal Environmental Review Process in 40 U.S.C. 4321 *et seq.* as of August 1, 1990, as well as remote parking spaces, must be identified in their respective inventories. This inventory will identify parking spaces for commercial, remote, employee, restricted use, off-peak uses and parking spaces eliminated during the Central Artery/Third Harbor Tunnel project construction within the freeze area.

The Massachusetts Regulation authorizes BAPCC to allow "restricted use parking" spaces in the South Boston Piers and Industrial/Commercial zones for up to ten days each year. These spaces are designed to allow the cap to be exceeded on a very short-term basis to accommodate unusual events. Massport is prohibited from providing restricted use parking in South Boston.

A South Boston Parking Freeze Draft Base Inventory was developed by the BAPCC in accordance with the state regulation and was submitted to MA DEP for review, public comment and approval. BAPCC's April 1994 Draft Base Inventory estimated 27,768 motor vehicle parking spaces within the South Boston Parking Freeze Area. This is broken down as: South Boston Piers Zone 15,916 spaces: South Boston Industrial Zone 11,841 spaces; and South Boston Residential Zone 11 spaces. On June 13, 1994, MA DEP found BAPCC's parking inventory inadequate and required BAPCC to resolve those inadequacies.

*(3) Establishment of Parking Freeze Banks.* The number of Motor vehicle parking spaces in the South Boston Parking Freeze Area will be limited to the base inventory, plus an initial parking freeze bank equal to 10% of the base inventory of motor vehicles parking spaces. There will be two parking freeze banks, administered separately by the BAPCC and Massport. Motor vehicle parking spaces eliminated from use in the South Boston Parking Freeze Area can be credited to the appropriate parking freeze bank for reallocation and are not privately transferrable.

**Goals of the Parking Freeze**

MA DEP expects that the parking freeze will ensure that economic growth in South Boston occurs efficiently with respect to land use and transportation infrastructure and in the most environmentally beneficial way. MA DEP stated that the South Boston Parking Freeze has been designed with the following specific objectives: to improve air quality over forecast levels,

[1] "Remote parking spaces" are spaces in which the driver parks and then proceeds to his/her destination outside South Boston, such as Downtown Boston or Logan Airport. See 310 CMR 7.00.

in the metropolitan Boston area and locally, by limiting the growth in traffic congestion so Federal health-related air quality standards can be attained as rapidly as possible; to reduce traffic on South Boston neighborhood streets; to manage the parking supply so that transportation and land resources are used efficiently; to build in flexibility to respond to the changes in traffic capacity resulting from the Central Artery/Third Harbor Tunnel project; and to encourage transit as the preferred transportation access mode for all new development in the South Boston area.

**Air Quality Impacts**

The South Boston Parking Freeze is designed to reduce the growth of VMT and travel-related air emissions by controlling the growth of parking spaces serving South Boston. The freeze will result in air quality improvements beyond those which would occur in the future without this measure.

For the three South Boston zones, MA DEP expects the proposed freeze to reduce total future trips by 15,220 per day or 19 percent of the approximately 80,105 trips forecast with unconstrained parking. This is a 5.3 percent reduction in the future year trips without the freeze in the Central Artery Study area, and a 0.3 percent reduction overall in Eastern Massachusetts.

Without the South Boston freeze, the amount of VMT increases in the South Boston zones are large. On average in the three South Boston zones, MA DEP expects trips to rise by about 35 percent between now and the year 2010. Based on vehicle trip reductions and the related VMT change, a reduction of 8.06 percent in VMT is obtained below the level which would otherwise occur with unconstrained parking within the Central Artery Study area, and 0.3 percent over the entire region.

Using EPA's Mobile Emission Factor Model (MOBILE4.1, the current version at the time of the MA DEP's analysis) and the Central Artery Traffic Model, the South Boston Parking Freeze would reduce emissions of volatile organic compounds (VOCs) by approximately 74.86 kilograms per day by the year 2010 within the Central Artery Study area. Carbon Monoxide emissions would be reduced by 558.50 kilograms per day within the Central Artery Study area. Using the EPA MOBILE4.1 emission Model and the Central Transportation Planning Staff (CTPS) regional transportation model, the South Boston Parking Freeze will reduce emissions of VOCs by 269.79 kilograms per day, and of carbon monoxide (CO) by approximately 1,663.91 kilograms per day within Eastern Massachusetts. The regional model also accounts for the secondary effects of reducing traffic, which will in turn reduce congestion and emissions elsewhere in the region.

EPA supports the South Boston Parking Freeze Plan as a means to reduce VMT and ultimately eliminate motor vehicle emissions associated with reduced VMT. The VMT reduction anticipated with implementing the South Boston Parking Freeze Plan will be accounted for through Highway Performance Monitoring System's (HPMS) statistical sampling of VMT within the Boston Metropolitan area. VMT reductions resulting from the South Boston freeze will be documented by Massachusetts in their emission inventories and regional emission analysis (prepared for transportation conformity) and result in improved ambient air quality. Specific emission credit associated with the South Boston Parking Freeze Plan is not being assigned in the SIP. In addition, because Massachusetts will account for VMT and emission benefits in their base scenario, Massachusetts' Reasonable Further Progress Plan does not identify the South Boston Parking Freeze as an emission reduction element or as a contingency measure.

EPA's review of this material indicates that the proposed SIP amendment will result in improved air quality. EPA is proposing to approve the Massachusetts SIP revision for South Boston Parking Freeze, which was submitted on July 30, 1993. EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action.

**Proposed Action**

EPA is proposing to approve the South Boston Parking Freeze SIP Amendment.

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

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

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

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements ofsections 110(a)(2)(A)-(K) and 110(l) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

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

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and

recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 21, 1994.

Patricia L. Meaney,

*Acting Deputy Regional Administrator, Region I.*

[FR Doc. 94–24371 Filed 9–30–94; 8:45 am]

BILLING CODE 6560–50–F

## 40 CFR Part 70

[MS01; FRL–5082–8]

## Clean Air Act Proposed Full Approval of Operating Permits Program; State of Mississippi

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

**ACTION:** Proposed full approval.

**SUMMARY:** The EPA proposes to grant full approval to the Operating Permits Program submitted by the State of Mississippi for the purpose of complying with Federal requirements which mandate that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

**DATES:** Comments on this proposed action must be received in writing by November 2, 1994.

**ADDRESSES:** Written comments should be addressed to Carla Pierce at the Region IV address.

Copies of the State's submittal and other supporting information used in developing the proposed full approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, GA 30365. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

**FOR FURTHER INFORMATION CONTACT:** Carla E. Pierce, Regional Program Manager, Air Programs Branch, Air Pesticides & Toxics Management Division, Region IV Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, GA 30365, telephone (404) 347–2864.

**SUPPLEMENTARY INFORMATION:**

### I. Background and Purpose

*A. Introduction*

As required under title V of the Clean Air Act Amendments of 1990, (Clean Air Act ("Act") sections 501–507), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal operating permits program.

### II. Proposed Action and Implications

*A. Analysis of State Submission*

1. Support Materials

Pursuant to section 502(d) of the Clean Air Act as amended (1990 Amendments), the Governor of each State must develop and submit to the Administrator an operating permits program under State or local law or under an interstate compact meeting the requirements of title V of the Act. The Mississippi Department of Environmental Quality (MDEQ) requested, under the signature of Governor Kirk Fordice, approval of its operating permits program with full authority to administer the program in all areas of the State of Mississippi, with the exceptions of the Indian reservations and tribal lands.

In the MDEQ operating permits program submittal, Mississippi does not assert jurisdiction over Indian lands or reservations for purposes of 40 CFR part 70 and title V. EPA will, at a future date, conduct a Federal title V operating permits program governing title V sources of air emissions on Indian lands and reservations in Mississippi.

The Mississippi submittal, provided as Section I–"Program Description and Implementation Summary," addresses 40 CFR 70.4(b)(1) by describing how the MDEQ intends to carry out its responsibilities under the part 70 regulations. The program description has been deemed to be sufficient for meeting the requirement of 40 CFR 70.4(b)(1).

Pursuant to 40 CFR 70.4(b)(3), the Governor is required to submit a legal opinion from the Attorney General (or the attorney for the State air pollution control agency that has independent legal counsel) demonstrating adequate authority to carry out all aspects of a title V operating permits program. The State of Mississippi submitted an Attorney General's Opinion and a Supplemental Attorney General's Opinion demonstrating adequate legal authority as required by Federal law and regulation.

Section 70.4(b)(4) requires the submission of relevant permitting program documentation not contained in the regulations, such as permit application forms, permit forms and relevant guidance to assist in the State's implementation of its permit program. Appendix 10 of the MDEQ submittal includes the permit application form, and it has been determined that the application form meets the requirements of 40 CFR 70.5(c).

EPA intends to develop an Implementation Agreement with Mississippi, although this proposed action does not depend on the Implementation Agreement.

2. Regulations and Program Implementation

The State of Mississippi has submitted Regulations APC-S–6, "Mississippi Air Emissions Operating Permit Regulations for the purposes of title V of the Federal Clean Air Act," for implementing the State part 70 program as required by 40 CFR 70.4(b)(2). Sufficient evidence of their procedurally correct adoption was included in Appendices 7 and 12 of the submittal. Copies of all applicable State statutes and regulations which authorize the part 70 program, including those governing State administrative procedures, were submitted with the State's program.

The Mississippi operating permits regulations followed part 70 very closely. The following requirements, set out in EPA's part 70 operating permits program review, are addressed in Section II of the State's submittal: (A) Applicability requirements, (40 CFR 70.3(a)): APC-S–6, Section I.B; (B) Permit applications, (40 CFR 70.5): APC-S–6, Section II; (C) Provisions for permit content, (40 CFR 70.6): standard permit requirements: APC-S–6, Section III.A.1; permit duration: APC-S–6, Section III.A.2; monitoring and related record keeping and reporting requirements: APC-S–6, Section III.A.3; compliance requirements: APC-S–6,

Sections III.B and III.C; (D) Operational flexibility provisions, (40 CFR 70.4(b)(12)): APC-S–6, Section IV.F; (E) Provisions for permit issuance, renewals, reopenings and revisions, including public participation (40 CFR 70.7): APC-S–6, Section IV; and (F) Permit review by EPA and affected States (40 CFR 70.6): APC-S–6, Section V. Mississippi Code Annotated (MSCA) sections 49–17–36 and 49–17–43, satisfy the requirements of 40 CFR 70.11, for enforcement authority.

The MDEQ has included criteria to determine insignificant activities and emissions levels in APC-S–6, Section VII. Section VII.A includes activities/emissions sources which are not required to be included in the permit application. Section VII.B includes activities/emissions sources that must be listed in the permit application, but their emissions do not have to be quantified. Notwithstanding Sections VII.A and B, applicants are required to include all emission sources and quantify emissions if needed to determine major source compliance with an applicable requirement, or to collect any permit fee. Applicants shall also include all emission sources with a potential to emit greater than 1 pound per hour of any regulated air pollutant that is not a hazardous air pollutant, or greater than 0.1 pound per hour of any hazardous air pollutant.

Part 70 of the operating permits regulations requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviation likely to occur and the applicable requirements. Although the permit program regulations should define prompt for purposes of administrative efficiency and clarity, an acceptable alternative is to define prompt in each individual permit. EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given that this is a distinct reporting obligation under 40 CFR 70.6(a)(3)(iii)(A). Where "prompt" is defined in the individual permit but not in the program regulations, EPA may veto permits that do not require sufficiently prompt reporting of deviations. The State of Mississippi has not defined prompt in its program regulations with respect to reporting of deviations. The MDEQ, however, has committed to define "prompt" as discussed above in each individual permit.

The State statute (MSCA 49–2–9) contains a provision that allows the State to adopt, modify, repeal, and promulgate, after due notice and hearing, and where not otherwise prohibited by Federal or State law, to make exceptions to and grant exceptions and variances from, and to enforce rules and regulations implementing or effectuating the powers and duties of the Mississippi Commission on Environmental Quality under any and all statutes within the Commission's jurisdiction, and as the Commission may deem necessary to prevent, control and abate existing or potential pollution. Regulation APC-S–6, Section I.B.8 prohibits exceptions or variances to be granted from any of the regulations regarding title V permits. The program submittal is approvable based on these limitations placed on the state's variance provision.

The complete MDEQ program submittal and the Technical Support Document are available for review for more detailed information.

3. Permit Fee Demonstration

MSCA sections 49–17–14 and 49–17–30 require the establishment of a permit fee sufficient to cover the reasonable direct and indirect costs of the title V operating permit program. The fee amount is set annually by order of the Mississippi Commission on Environmental Quality and is based on either actual or allowable emissions at the request of the source. Under State law, the minimum annual fee assessment is set at $250 and the maximum annual fee assessment is set at $250,000.

The MDEQ has elected to assess a title V operating permit fee below the Federal presumptive minimum permit fee. Mississippi's fee amount was determined through a detailed fee demonstration study that was conducted by the John C. Stennis Institute of Government at Mississippi State University. The basis of the fee demonstration was a comprehensive workload analysis for the title V program.

Based on the results of the fee demonstration study, the Mississippi Commission on Environmental Quality issued an Order setting the title V fee at $23.39 per ton of regulated air pollutants for the first year of the title V program. The fee may be adjusted annually by Order of the Commission to account for inflation factors or changing program costs. EPA has determined that Mississippi's fee demonstration is adequate and meets the requirements of 40 CFR 70.9.

4. Provisions Implementing the Requirements of Other Titles of the Act

*a. Authority and/or Commitments for Section 112 Implementation.* Mississippi has demonstrated in its title V program submittal broad legal authority to incorporate into permits and enforce all applicable requirements. Additionally, the State has adopted APC-S–1, Section 8, "Provisions for Hazardous Air Pollutants," which provides adequate legal authority to implement and enforce applicable section 112 rules, emission standards, and requirements. Mississippi has further supplemented its broad legal authority with a commitment to "take action, following promulgation by EPA of regulations implementing section 112 of title III of the Federal Clean Air Act, and to submit, for EPA approval, MDEQ regulations implementing these provisions." EPA has determined that this commitment, in conjunction with Mississippi's broad statutory and regulatory authority, adequately assures compliance with all section 112 requirements. EPA regards this commitment as an acknowledgement by Mississippi of its obligation to obtain further regulatory authority as needed to issue permits that assure compliance with section 112 applicable requirements. This commitment does not substitute for compliance with part 70 requirements that must be met at the time of program approval.

EPA is interpreting the above legal authority and commitment to mean that Mississippi is able to carry out all section 112 activities. For further rationale on this interpretation, please refer to the Technical Support Document accompanying this proposed full approval and the April 13, 1993 guidance memorandum entitled "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz.

*b. Implementation of 112(g) Upon Program Approval.* As a condition of approval of the part 70 program, Mississippi is required to implement section 112(g) of the Act from the effective date of the part 70 program. Imposition of case-by-case determinations of MACT or offsets under section 112(g) will require the use of a mechanism for establishing federally enforceable restrictions on a source-specific basis. EPA is proposing to approve Mississippi's preconstruction permitting program found in APC-S–2 under the authority of title V and part 70 solely for the

purpose of implementing section 112(g) during the transition period between title V approval and adoption of a State rule implementing EPA's section 112(g) regulations. EPA believes this approval is necessary so that Mississippi has a mechanism in place to establish federally enforceable restrictions for section 112(g) purposes from the date of part 70 approval. Section 112(l) provides the authority for approval for the use of State air programs to implement 112(g), and title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g), and does not confer or imply approval for purposes of any other provision under the Act. If Mississippi does not wish to implement section 112(g) through its preconstruction permit program and can demonstrate that an alternative means of implementing section 112(g) exists, EPA may, in the final action approving Mississippi's part 70 program, approve the alternative instead.

This approval only extends until such time as the State is able to adopt regulations consistent with any regulations promulgated by EPA to implement section 112(g). Accordingly, EPA is proposing to limit the duration of this approval to a reasonable time following promulgation of section 112(g) regulations so that Mississippi, acting expeditiously, will be able to adopt regulations consistent with the section 112(g) regulations. EPA is proposing here to limit the duration of this approval to 18 months following promulgation by EPA of section 112(g) regulations.

*c. Program for Delegation of Section 112 Standards as Promulgated.* Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 General Provisions Subpart A and standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated, and to delegate existing standards under 40 CFR parts 61 and 63 for part 70 sources.[1] Mississippi has informed EPA that it intends to accept delegation of section 112 standards through adoption by reference. This program applies to both existing and future standards.

Additionally, Mississippi has requested delegation of current and future section 112 standards under section 112(l)(5) and 40 CFR 63.91 for sources not subject to part 70 requirements. The State has demonstrated that it has broad legal authority which covers all section 112 sources. MSCA sections 49–2–9 and 49–17–29(a), and APC-S–1 section 8, give the State the authority to implement each applicable section 112 rule, emission standard, or requirement for sources not subject to part 70 requirements. Mississippi has demonstrated that it will expeditiously implement section 112 requirements for these sources pursuant to a schedule after EPA promulgation, and that it has sufficient enforcement authority to adequately enforce section 112 requirements. The State has also demonstrated that it has adequate resources to implement current section 112 standards. With respect to future section 112 requirements, Mississippi has committed to provide EPA with future demonstrations of resource adequacy as necessary when new requirements are promulgated and the resource burdens associated with those requirements become known. Therefore, for sources not subject to part 70 requirements, EPA is proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of future section 112 standards that are unchanged from Federal standards as promulgated, and to delegate existing standards under 40 CFR parts 61 and 63 for non-part 70 sources.

*d. Commitment to implement Title IV of the Act.* The MDEQ has committed to "take action, following promulgation by EPA of regulations implementing sections 407 and 410 of the Act, or revising either part 72 or the regulations implementing sections 407 or 410, to either incorporate such new revised provisions by reference or submit, for EPA approval, MDEQ regulations implementing these provisions." The MDEQ committed to adopt and submit to EPA the above referenced regulations no later than January 1, 1995.

*B. Proposed Actions*

1. Full Approval of the Program

EPA proposes to fully approve the operating permits program submitted to EPA from the State of Mississippi on November 15, 1993. As a condition of full approval, Mississippi has issued a commitment to EPA which confirms that the State's interpretation of a "title I modification" is consistent with EPA's current interpretation of that term. In addition, the State's regulatory definition is on its face consistent with EPA's interpretation. See APC-S–6, Section I.A.31. EPA believes the better interpretation of the phrase "modifications under any provision of title I of the Act" in 40 CFR 70.7(e)(2)(i)(A)(5) to mean literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under title I of the Act. This would include State preconstruction review programs approved into the State Implementation Plan (SIP) under section 110(a)(2)(C) and regulations addressing source changes that trigger National Emission Standards for Hazardous Air Pollutants (NESHAPs) established pursuant to section 112 prior to the 1990 amendments. EPA is soliciting comment in the current proposal to revise part 70 on the proper definition of "title I modification." Unless Mississippi changes its own interpretation from that indicated in its commitment, the program will be fully approvable under either option discussed in that proposal. See 56 FR 44460, 44515 (August 29, 1994). EPA has determined that the program is otherwise adequate to meet the minimum elements of a State operating permits program as specified in 40 CFR part 70.

2. Program for Straight Delegation of Section 112 Standards

As discussed above in section II.A.4.c, EPA is proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations applies to all section 112 sources. Additionally, EPA is proposing to delegate existing standards under 40 CFR parts 61 and 63 for all section 112 sources.

[1] The radionuclide National Emission Standards for Hazardous Air Pollutant (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of "major" for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. The EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

## III. Administrative Requirements

### *A. Request for Public Comments*

EPA is requesting comments on all aspects of this proposed full approval. Copies of the State's submittal and other information relied upon for the proposed full approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full approval. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process; and

(2) To serve as the record in case of judicial review. EPA will consider any comments received by November 2, 1994.

### *B. Executive Order 12866*

The Office of Management and Budget has exempted this regulatory action from executive order 12866 review.

### *C. Regulatory Flexibility Act*

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

### List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: September 21, 1994.

**Patrick M. Tobin,**

*Acting Regional Administrator.*

[FR Doc. 94–24372 Filed 9–30–94; 8:45 am]

BILLING CODE 6560–50–F

# Notices

Federal Register
Vol. 59, No. 190
Monday, October 3, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Housing Guaranty Program; Investment Opportunity

The U.S. Agency for International Development (USAID) has authorized the guaranty of loans to the Republic of Indonesia ("Borrower") as part of USAID's development assistance program. The proceeds of these loans will be used to facilitate the delivery of urban environment infrastructure for the benefit of low-income families in Indonesia. At this time, the Government of Indonesia has authorized USAID to request proposals from eligible lenders for a loan under this program of $25 Million U.S. Dollars (U.S. $25,000,000). The name and address of the Borrower's representatives to be contacted by interested U.S. lenders or investment bankers, and the amount of the loan and project number are indicated below:

**Government of Indonesia**

Project No.: 497–HG–002—$25,000,000
Housing guaranty Loan No.: 49997–HG–006 A01

1. Attention: Mr. Darsjah, Director General of Budget, Ministry of Finance, Jalan Lapangan Banteng Timur No. 2, Jakarta, Indonesia, Telex No.: 45799 DJMLNIA or Telefax No.: 62–21–365859 or 374530 (preferred communication) Telephone No.: 62–21–3458289, 372758 or 3842234 or 3848294
2. Attention: Mr. Paul Sutopo, Bank of Indonesia, Jalan M.H. Thamrin No. 2, Jakarta, Indonesia, Telex No.: 44200 BISIR IA or 46611 BISIR IA, Telefax No.: 62–21–3452892, Telephone No.: 62–21–367972
3. Attention: Mr. Ibrahim Zarkasi, Bank of Indonesia, One World Financial Center, 200 Liberty Street, 6th Floor, New York, N.Y. 10281, Telefax No.: 212/945–1316, Telephone No.: 212/945–1310 or 1311.

Interested lenders should contact the Borrower as soon as possible and indicate their interest in providing financing for the Housing Guaranty Program. Interested lenders should submit their bids to all of the Borrower's representatives by *Monday, October 17, 1994, 12:00 noon Eastern Standard Time.* Bids should be open for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following:

Mr. William Frej, Director, Regional Housing and Urban Development Office/Jakarta, USAID, Box 4, APO AP 96520 (Street address: J1 Medan Merdeka Selatan No. 5, Jakarta, Indonesia) Telex No.: 44218 AMEMB IA, Telefax No.: 62–21–380–6694 (preferred communication), Telephone No.: 62–21–360–360

Mr. David Grossman, Assistant Director/ Mr. Peter Pirnie, Financial Advisor, Address: U.S. Agency for International Development, Office of Environment and Urban Programs, G/ENV/UP, Room 401, SA–2, Washington, DC 20523–0214, Telex No.: 892703 AID WSA, Telefax No.: (202) 663–2552 or (202) 663–2507 (preferred communication), Telephone No.: (202) 663–2530 or (202) 663–2547.

For your information the Borrower is currently considering the following terms:

(1) *Amount:* U.S. $25 million.

(2) *Term:* 30 years.

(3) *Grace Period:* Ten years grace on repayment of principal (during grace period, semi-annual payments of interest only). If *variable* interest rate, repayment of principal to amortize in equal, semi-annual installments over the remaining 20-years life of the loan. If *fixed* interest rate, semi-annual level payments of principal and interest over the remaining 20-year life of the loan.

(4) *Interest Rate:* Alternatives of both fixed and variable rate loans are requested.

(a) *Fixed Interest Rate:* If rates are to be quoted based on a spread over an index, the lender should use as its index a long bond, specifically the 7½ percent U.S. Treasury Bond due November 15, 2024. Such rate is to be set at the time of acceptance.

(b) *Variable Interest Rate:* To be based on the six-month British Bankers Association LIBOR, preferably with terms relating to Borrower's right to convert to fixed. The rate should be adjusted weekly.

(5) *Prepayment:*

(a) Offers should include any options for prepayment and mention prepayment premiums, if any.

(b) Only in an extraordinary event to assure compliance with statutes binding USAID, USAID reserves the right to accelerate the loan (it should be noted that since the inception of the USAID Housing Guaranty Program in 1962, USAID has not exercised its right of acceleration).

(6) *Fees:* Offers should specify the placement fees and other expenses, including USAID fees and Paying and transfer Agent fees. Lenders are requested to include all legal fees and out-of-pocket expenses in their placement fee. Such fees and expenses shall be payable at closing from the proceeds of the loan. *All fees should be clearly specified in the offer.*

(7) *Closing Date:* Not to exceed 60 days from date of selection of lender.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower, and thereafter, subject to certain conditions required of the Borrower by USAID as set forth in agreements between USAID and the Borrower.

The full repayment of the loans will be guaranteed by USAID. The USAID guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive the USAID guaranty are those specified in Section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for the USAID guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by USAID.

Information as to the eligibility of investors and other aspects of the

USAID housing guaranty program can be obtained from: Mr. Peter M. Kimm, Director, Office of Environment and Urban Programs, U.S. Agency for International Development, Room 401, SA–2, Washington, DC 20523–0214, Fax Nos: (202) 663–2552 or 663–2507, Telephone: (202) 663–2530.

Dated: September 28, 1994.

**Michael G. Kitay,**

*Assistant General Counsel, Bureau for Global Programs, Field Support and Research, U.S. Agency for International Development.*

[FR Doc. 94–24389 Filed 9–30–94; 8:45 am]

BILLING CODE 6116–01–M

## Housing Guaranty Program; Investment Opportunity

The U.S. Agency for International Development (USAID) has authorized the guaranty of loans to the Democratic Socialist Republic of Sri Lanka ("Borrower") as part of USAID's development assistance program. At this time, the Government of Sri Lanka has authorized USAID to request proposals from eligible lenders for a loan under this program of $10 Million U.S. Dollars (US$10,000,000). The Government of Sri Lanka ("GOSL") has retained the services of a Financial Advisor for this borrowing. Interested U.S. lenders or investment bankers may submit bids either directly to the Borrower's representative and USAID or through the Financial Advisor retained by GOSL for the borrowing.

The names and addresses of (1) the Borrower's representative, and (2) the Borrower's Financial Advisor for this financing (for those who wish to bid through the Financial Advisor), to be contacted by interested U.S. lenders or investment bankers, as well as the amount of the loan and project number, are indicated below:

**Government of Sri Lanka**

Project No.: 383–HG–004—$10,000,000
Housing Guaranty Loan No.: 383–HG–004 A01

1. Attention: (Mrs.) V.M.Y. Casie Chitty, Director General, Address: Ministry of Finance, Department of Fiscal Policy and Economic Affairs, The Secretariat, Colombo 1, Sir Lanka, Telex No.: 21409 CE, Telefax No.: 011 (94) 1–449–823 (preferred communication), Telephone Nos.: 011 (94) 1–433–357 or 011 (94) 1–434–278.
2. Attention: Mr. Miner H. Warner, President, Address: Public Resources International, 21 West Street (27th Floor), New York, N.Y. 10006, Telefax No.: (212) 363–8399 (preferred communication), Telephone No.: (212) 363–8383.

Interested lenders should contact the Borrower, or its Financial Advisor (if they wish to bid via GOSL's Financial Advisor), as soon as possible and indicate their interest in providing financing for the Housing Guaranty Program. Interested lenders should submit their bids direct to the Borrower's representative with copies to the Borrower's Financial Advisor by *Tuesday, September 20, 1994, 12:00 noon Eastern Daylight Time.* Bids should be open for a period of 48 hours from the bid closing date. Please note that the Borrower reserves the right to accept or reject any bid without being obliged to give any reasons. Copies of all bids should be simultaneously sent to the following:

1. Mr. Earl Kessler, Director/RHUDO/New Delhi, USAID/New Delhi, India (Street address: c/o American Embassy, Chanakyapuri New Delhi—110 021, India), Telefax No.: 011 (91) 11–686–8594 (preferred communication), Telephone No.: 011 (91) 11–686–5301
2. Ms. Kamalini Fernando, Housing Advisor, USAID/Colombo, Sri Lanka (Street address: USAID/Colombo, 356 Galle Road, Colombo, Sri Lanka), Telefax No.: 011 (94) 1–574–333 or 011 (94) 1–574–500 (preferred communication), Telephone No.: 011 (94) 1–574–296
3. Mr. David Grossman, Assistant Director/Mr. Peter Pirnie, Financial Advisor, Address: U.S. Agency for International Development, Office of Environment and Urban Programs, G/ENV/UP, Room 401, SA–2, Washington, D.C. 20523–0214, Telefax No.: 892703 AID WSA, Telefax No.: (202) 663–2552 or (202) 663–2507 (preferred communication), Telephone No.: 202/663–2530 or (202) 663–2547.

For your information the Borrower is currently considering the following terms:

(1) *Amount:* U.S. $10 million.

(2) *Term:* 30 years.

(3) *Grace Period:* Ten years grace on repayment of principal (during grace period, semi-annual payments of interest only). If *variable* interest rate, repayment of principal to amortize in equal, semi-annual installments over the remaining 20-year life of the loan. If *fixed* interest rate, semi-annual level payments of principal and interest over the remaining 20-year life of the loan.

(3) *Interest Rate:* Alternatives of both fixed and variable rate loans are requested.

(a) *Variable Interest Rate:* To be based on the three-month or six-month British Bankers Association LIBOR, preferably with terms relating to Borrower's right to convert to fixed. The rate should be adjusted weekly.

(b) *Fixed Interest Rate:* If rates are to be quoted on a spread over an index, the lender should use as its index a long bond, specifically the 7½% U.S. Treasury bond due November 15, 2024. Such rate is to be set at the time of acceptance.

(5) *Prepayment:*

(a) Offers should include any options for prepayment and mention prepayment premiums, if any.

(b) Federal statutes governing the activities of the USAID Housing Guaranty Program require that the proceeds of USAID-guaranteed loans be used to provide affordable shelter and related infrastructure and services to below median-income families. In the extraordinary event that the Borrower materially breaches its obligation to comply with this, or related, requirements, USAID reserves the right, among its other rights and remedies, to accelerate the loan. (It should be noted that since the inception of the USAID Housing Guaranty Program in 1962, USAID has not exercised its right of acceleration.)

(6) *Fees:* Please note that Lenders' placement fees (if any), legal fees, and out-of-pocket expenses are to be *included* in the rate quoted for this financing (i.e., such fees will not be deductible from the proceeds of the loan). The initial upfront fees of USAID and the Paying and Transfer Agent shall be payable at closing from the proceeds of the loan. In the event of bidding through the Financial Advisor, the Investor is required to arrange with the Financial Advisor regarding the fees to be paid, which are also to be included in the interest rate to be quoted.

(7) *Closing Date:* Not to exceed 60 days from date of selection of lender.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower, and thereafter, subject to certain conditions required of the Borrower by USAID as set forth in agreements between USAID and the Borrower.

The full repayment of the loans will be guaranteed by USAID. The USAID guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive the USAID guaranty are those specified in Section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic U.S. corporations,

partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for the USAID guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by USAID.

Information as to the eligibility of investors and other aspects of the USAID Housing Guaranty Program can be obtained from: Mr. Peter M. Kimm, Director, Office of Environment and Urban Programs, U.S. Agency for International Development, Room 401, SA–2, Washington, D.C. 20523–0214, Fax No.: (202) 663–2552 or 663–2507, Telephone: 202/663–2530.

Dated: September 9, 1994.

**Michael G. Kitay,**

*Assistant General Counsel, Bureau for Global Programs, Field Support and Research, U.S. Agency for International Development.*

[FR Doc. 94–24390 Filed 9–30–94; 8:45 am]

BILLING CODE 6116–01–M

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 94–096–1]**

### Addition of One Genetically Engineered Tomato Line to Determination of Nonregulated Status for Calgene, Inc.

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

**ACTION:** Notice.

**SUMMARY:** The Animal and Plant Health Inspection Service is announcing that it has added one genetically engineered tomato line to those subject to its October 19, 1992, interpretive ruling for FLAVR SAVR™ tomatoes, that the subject FLAVR SAVR™ lines need no longer be regulated. The effect of this action is that one additional delayed-softening tomato line, which has been modified by the addition of genetic material identical to that added to other tomato lines covered by the initial determination and is designated by Calgene as FLAVR SAVR™ line N73 1436–111, will also no longer be subject to regulation under 7 CFR part 340.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael G. Schechtman, Senior Microbiologist, Biotechnology Coordination and Technical Assistance, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7601.

**SUPPLEMENTARY INFORMATION:** On October 19, 1992, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** (57 FR 47608–47616, Docket No. 92–087–2) a notice announcing the issuance of an interpretive ruling that the Calgene, Inc., FLAVR SAVR™ tomato does not present a plant pest risk and is not a regulated article under the regulations contained in 7 CFR part 340. That action was in response to a petition submitted by Calgene seeking a determination from APHIS that its FLAVR SAVR™ tomato no longer be deemed a regulated article based on an absence of plant pest risk. The effect of the action was that previously field-tested lines of the FLAVR SAVR™ tomato and their descendants would no longer be regulated under the regulations in 7 CFR part 340.

FLAVR SAVR™ tomatoes were defined by Calgene in its initial petition to include any tomatoes transformed with one of seven identified plasmid vectors that all carry an antisense copy of the tomato polygalacturonase gene and a bacterial neomycin phosphotransferase gene with associated regulatory sequences. Calgene's initial request to APHIS in 1992 was for a determination pertaining to all FLAVR SAVR™ transformants produced in tomato using any one of the seven plasmid vectors. Calgene indicated in its petition that data provided to APHIS was representative of the data gathered for all lines tested up to that time. The initial determination announced by APHIS on October 19, 1992, only applied to those lines that had already been field tested. However, APHIS indicated that new lines were likely to exhibit properties similar to those of lines already field tested under permit. The determination also allowed for cross-breeding of the identified FLAVR SAVR™ tomato lines with any other lines or cultivars of tomato without permit.

The new line that is the subject of this notice was a new transformant produced using one of the same plasmid vectors that were previously reviewed in our October 19, 1992, determination. Line N73 1436–111 has been field tested in accordance with APHIS regulations in 7 CFR part 340. Data provided to APHIS indicates that the new transformant line, produced in a manner identical to the earlier transformant lines, behaves similarly to those earlier FLAVR SAVR™ tomato lines to which the determination initially applied. Reports from field trials and other data indicate that tomato line N73 1436–111 grows normally, exhibits the expected morphological, reproductive, and physiological properties, and does not have unexpected pest or disease susceptibility or symptoms. Therefore, APHIS' determination of nonregulated status of October 19, 1992, is considered to apply to this new transformant line as well.

Done in Washington, DC, this 27th day of September 1994.

**Terry L. Medley,**

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

[FR Doc. 94–24374 Filed 9–30–94; 8:45 am]

BILLING CODE 3410–34–P

**[Docket No. 94–098–1]**

### Availability of List of U.S. Veterinary Biological Product and Establishment Licenses and U.S. Veterinary Biological Product Permits Issued, Suspended, Revoked, or Terminated

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

**ACTION:** Notice.

**SUMMARY:** This notice pertains to veterinary biological product and establishment licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated by the Animal and Plant Health Inspection Service during the month of August 1994. These actions have been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to inform interested persons of the availability of a list of these actions and advise interested persons that they may request to be placed on a mailing list to receive the list.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lynn Thomas, Program Assistant, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245. For a copy of this month's list, or to be placed on the mailing list, write to Ms. Thomas at the above address.

**SUPPLEMENTARY INFORMATION:** The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 et seq.) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License.

The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 et seq.) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment Licenses, and U.S. Veterinary Biological Product Permits.

Each month, the Veterinary Biologics section of Biotechnology, Biologics, and Environmental Protection prepares a list of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the list for the month of August 1994. The monthly list is also mailed on a regular basis to interested persons. To be placed on the mailing list you may call or write the person designated under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 27th day of September 1994.

**Terry L. Medley,**

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

[FR Doc. 94–24375 Filed 9–30–94; 8:45 am]

BILLING CODE 3410–34–P

## Federal Grain Inspection Service

### Designation of the Little Rock (AR), Los Angeles (CA), and Ohio Valley (IN) Agencies

**AGENCY:** Federal Grain Inspection Service (FGIS).

**ACTION:** Notice.

**SUMMARY:** FGIS announces the designation of Little Rock Grain Exchange Trust (Little Rock), Los Angeles Grain Inspection Service, Inc. (Los Angeles), and Ohio Valley Grain Inspection, Inc. (Ohio Valley), to provide official inspection services under the United States Grain Standards Act, as amended (Act).

**EFFECTIVE DATE:** November 1, 1994.

**ADDRESSES:** Janet M. Hart, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

**FOR FURTHER INFORMATION CONTACT:** Janet M. Hart, telephone 202–720–8525.

**SUPPLEMENTARY INFORMATION:**

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the May 3, 1994, **Federal Register** (59 FR 22816), FGIS announced that the designations of Little Rock, Los Angeles, and Ohio Valley will expire on October 31, 1994, and asked persons interested in providing official services in the geographic areas assigned to Little Rock, Los Angeles, and Ohio Valley to submit an application for designation. Applications were due by May 31, 1994. Little Rock, Los Angeles, and Ohio Valley, the only applicants, each applied for designation in the entire area they are currently assigned.

FGIS requested comments on the applicants in the July 1, 1994, **Federal Register** (59 FR 33950). Comments were due by August 1, 1994. FGIS received no comments by the deadline.

FGIS evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and according to Section 7(f)(1)(B), determined that Little Rock, Los Angeles, and Ohio Valley are able to provide official services in the geographic areas for which they applied.

Effective November 1, 1994, and ending October 31, 1997, Little Rock, Los Angeles, and Ohio Valley are designated to provide official inspection services in the geographic areas specified in the May 3, 1994, **Federal Register**.

Interested persons may obtain official services by contacting Little Rock at 501–372–5302, Los Angeles at 213–721–9216, and Ohio Valley at 812–858–5444.

**AUTHORITY:** Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: September 19, 1994.

**Neil E. Porter,**

*Director, Compliance Division.*

[FR Doc. 94–24232 Filed 9–30–94; 8:45 am]

BILLING CODE 3410–EN–F

### Opportunity for Designation in the Indianapolis (IN) and Quincy (IL) Areas

**AGENCY:** Federal Grain Inspection Service (FGIS).

**ACTION:** Notice.

**SUMMARY:** The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designations of Indianapolis Grain Inspection & Weighing Service, Inc. (Indianapolis), and Quincy Grain Inspection & Weighing Service, Inc. (Quincy), will end March 31, 1995, according to the Act, and FGIS is asking persons interested in providing official services in the specified geographic areas to submit an application for designation.

**DATES:** Applications must be postmarked or sent by telecopier (FAX) on or before November 1, 1994.

**ADDRESSES:** Applications must be submitted to Janet M. Hart, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–720–1015, attention: Janet M. Hart. If an application is submitted by telecopier, FGIS reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Janet M. Hart, telephone 202–720–8525.

**SUPPLEMENTARY INFORMATION:**

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes FGIS' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS designated Indianapolis, main office located in Beech Grove, Indiana, to provide official inspection services under the Act on April 1, 1994, and Quincy, main office located in Quincy, Illinois, to provide official inspection services under the Act on April 1, 1992.

Section 7(g)(1) of the Act provides that designations of official agencies shall end no later than triennially and

may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designations of Indianapolis and Quincy end on March 31, 1995.

The geographic area presently assigned to Indianapolis, pursuant to Section 7(f)(2) of the Act, in the State of Indiana, which will be assigned to the applicant selected for designation is as follows:

Bartholomew; Brown; Hamilton, south of State Route 32; Hancock; Hendricks; Johnson; Madison, west of State Route 13 and south of State Route 132; Marion; Monroe; Morgan; and Shelby Counties.

The geographic area presently assigned to Quincy, pursuant to Section 7(f)(2) of the Act, in the State of Illinois, which will be assigned to the applicant selected for designation is as follows:

Adams, Brown, Greene, Macoupin (southwest of a straight line from the junction of State Route 111 and the northern Macoupin County line southeast to the junction of Interstate 55 and State Route 16), and Pike Counties.

Exceptions to Quincy's assigned geographic area are the following locations inside Quincy's area which have been and will continue to be serviced by the following official agencies:

1. Keokuk Grain Inspection Service, Inc.: Ursa Farmers Coop, Meyer, and Ursa Farmers Coop, Ursa, both in Adams County; and

2. Springfield Grain Inspection, Inc.: Cargill, Inc., and Quincy Soybean Company, Florence, Pike County.

Interested persons, including Indianapolis and Quincy are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning April 1, 1995, and ending no later than March 31, 1998. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

**AUTHORITY:** Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: September 19, 1994.

**Neil E. Porter,**

*Director, Compliance Division.*

[FR Doc. 94–24233 Filed 9–30–94; 8:45 am]

BILLING CODE 3410–EN–F

## Opportunity to Comment on the Applicants for the Grand Forks (ND), Lima (OH), and Virginia Areas

**AGENCY:** Federal Grain Inspection Service (FGIS).

**ACTION:** Notice.

**SUMMARY:** FGIS requests comments on the applicants for designation to provide official services in the geographic areas currently assigned to the Grand Forks Grain Inspection Department, Inc. (Grand Forks), Lima Grain Inspection Service, Inc. (Lima), and the Virginia Department of Agriculture and Consumer Services (Virginia).

**DATES:** Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by November 1, 1994.

**ADDRESSES:** Comments must be submitted in writing to Janet M. Hart, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36JHART]. ATTMAIL and FTS2000MAIL users may respond to !A36JHART. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–720–1015, attention: Janet M. Hart. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Janet M. Hart, telephone 202–720–8525.

**SUPPLEMENTARY INFORMATION:**

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the August 1, 1994, **Federal Register** (59 FR 38954), FGIS asked persons interested in providing official services in the geographic areas assigned to Grand Forks, Lima, and Virginia to submit an application for designation. Grand Forks, Lima, and Virginia, the only applicants, each applied for designation in the entire area currently assigned to them.

FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address. Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the **Federal Register**, and FGIS will send the applicants written notification of the decision.

**AUTHORITY:** Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: September 19, 1994.

**Neil E. Porter,**

*Director, Compliance Division.*

[FR Doc. 94–24234 Filed 9–30–94; 8:45 am]

BILLING CODE 3410–EN–F

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

### Extension of Deadline for Comments on Preliminary Draft of the Report of the Working Group of Intellectual Property Rights

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Extension of deadline for public comments.

**SUMMARY:** The Working Group on Intellectual Property Rights of the White House Information Infrastructure Task Force issued a preliminary draft of its report, "Intellectual Property and the National Information Infrastructure," and solicited public comment. As announced in a previous notice regarding public comment on the preliminary report, published at 59 FR 35912 (July 14, 1994), the deadline for submission of written comments was September 7, 1994. Comments in reply to initial written comments were to be submitted no later than September 28, 1994. The deadline for submission of comments in reply to initial written comments is extended to October 21, 1994, to allow more time for the public to review the large number of initial comments submitted.

**DATES:** Comments in reply to initial written comments may be submitted no later than October 21, 1994.

**ADDRESSES:** An original and four copies of comments should be submitted to the Commissioner of Patents and Trademarks, U.S. Patent and Trademark Office, Box 4, Washington, D.C. 20231, marked to the attention of Terri A. Southwick, Attorney-Advisor, Office of Legislative and International Affairs. Alternatively, comments may be submitted electronically to the following Internet address: nii-ip@uspto.gov. Initial comments that have been submitted are available for public inspection at the Scientific and Technical information Center of the

Patent and Trademark Office, Room 2C01, Crystal Plaza 3/4, 2021 Jefferson Davis Highway, Arlington, Virginia, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except holidays. Reply comments will be available for public inspection at the same location.

**FOR FURTHER INFORMATION CONTACT:** Terri A. Southwick, Attorney-Advisor, Office of Legislative and International Affairs, U.S. Patent and Trademark Office, Box 4, Washington, DC 20231. Telephone: (703) 305–9300/Fax: (703) 305–8885.

**SUPPLEMENTARY INFORMATION:** The Working Group on Intellectual Property Rights, chaired by Assistant Secretary of Commerce and Commissioner of Patents and Trademarks Bruce A. Lehman, was established as part of the White House Information Infrastructure Task Force. The Task Force, chaired by Secretary of Commerce Ronald H. Brown, was created to work with Congress and the private sector to develop comprehensive telecommunications and information policies aimed at articulating and implementing the Administration's vision for the National Information Infrastructure (NII).

The Preliminary Draft of the Report of the Working Group on Intellectual Property Rights represents the Working Group's examination and analysis to date of the intellectual property implications of the NII, and includes the Group's draft findings and recommendations. While it addresses each of the major areas of intellectual property law, including patents, trademarks and trade secrets, the preliminary draft focuses primarily on copyright law and its application and effectiveness in the context of the NII.

Dated: September 28, 1994.

**Bruce A. Lehman,**

*Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.*

[FR Doc. 94–24475 Filed 9–30–94; 8:45 am]

**BILLING CODE 3510–16–M**

## Public Hearing and Request for Comments on Commercial Security on the National Information Infrastructure

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Notice of public hearing and request for public comments.

**SUMMARY:** The Security Issues Forum of the Infrastructure Task Force (IITF) and Mega-Project III of the U.S. National Information Infrastructure Advisory Council (NIIAC) request public input on issues associated with the security of commercial products and services on the National Information Infrastructure (NII). Interested members of the public, especially representatives from the entertainment, computing and software industries, are invited to participate in a public hearing and to submit written comments on any of the topics outlined in the supplementary information section of this notice.

**DATES:** A public hearing will be conducted by the Patent and Trademark Office on Thursday, October 20, 1994, from 9:00 a.m. until 12:30 p.m. Those wishing to participate as a witness in the hearing must request an opportunity to do so no later than October 13, 1994. Individuals who wish to offer general comments or present questions to witnesses may request an opportunity to do so during the hearing. Written comments on the topics in the supplementary information section of this notice will be accepted until December 2, 1994.

**ADDRESSES:** The public hearing will be held at the Sunnyvale Community Center, 550 East Remington Drive, Sunnyvale, California. Those interested in presenting written comments on the topics identified in the supplementary information, or any other related topics, should address their comments to the Commissioner of Patents and Trademarks, marked to the attention of Jeff Kushan. Comments submitted by mail should be sent to Commissioner of Patents and Trademarks, Box 4, Patent and Trademark Office, Washington, DC 20231. Comments may also be submitted by fax to (703) 305–8885 and by electronic mail to "Comments-security@uspto.gov." Written comments should include the following information:

—Name and affiliation, if any, of the individual responding;

—An indication of whether comments offered represent views of the respondent's organization or are the respondent's personal views; and

—If applicable, information on the respondent's organization, including the type of organization (e.g., business, trade group, university, non-profit organization) and general areas of interest.

Parties offering testimony or written comments are asked to provide them on paper and, where possible, in machine-readable format. Machine-readable submissions may be provided either as electronic mail messages sent over the Internet, or on a 3.5" floppy disk formatted for use in either a Macintosh or MS–DOS based computer, Machine-readable submissions should be provided as unencoded, unformatted ASCII text.

Requests to participate as a witness in the hearing should be submitted to Jeff Kushan by mail, phone or fax (see information regarding addresses above). No requests for participation as a witness will be accepted through electronic mail.

Written comments and transcripts of the hearings will be available for public inspection by December 10, 1994, at the Patent and Trademark Office, in Room 902 of Crystal Park Two, 2121 Crystal Drive, Arlington, Virginia. In addition, transcripts of the hearings and comments provided in machine-readable format will be available by December 10, 1994, through anonymous file transfer protocol (ftp) via the Internet (address: comments.uspto.gov and www.uspto.gov).

**FOR FURTHER INFORMATION CONTACT:** Jeff Kushan by telephone at (703) 305–9300, by fax at (703) 305–8885, by electronic mail at kushan@uspto.gov, or by mail marked to his attention addressed to the Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:**

### I. Issues for Public Comment

*A. Background*

The National Information Infrastructure is a system of high-speed telecommunications networks, databases, and advanced computer systems that will make electronic information and entertainment products more widely available and accessible to the public than ever before. This increased availability and accessibility will dramatically affect the way information and entertainment products are created, marketed and delivered throughout the world. Consequently, the commercial viability of the NII hinges not only upon effectively promoting and encouraging use of the NII by types of users, but also upon implementing standards, policies and practices that ensure that the owners of products can effectively control access to and the integrity of their electronically disseminated products and services. In this regard, it is essential that the public and private sectors collaborate to ensure that the interests of owners and users of intellectual property are adequately considered in any discussion of proposed standards and policies that may be established.

To address the issues raised by the NII, the President formed the Information Infrastructure Task Force (IITF). The mission of the IITF is to

articulate and implement the Administration's vision for the NII. The IITF is working with the private sector, public interest groups, Congress and State and local governments, to develop comprehensive telecommunications and information policies and programs that best meet the country's needs. The IITF is chaired by the Secretary of Commerce and is comprised of senior Administration officials having expertise in the technical and legal areas of particular importance to the NII. The NII Security Issues Forum was established within the IITF to address the cross-cutting issue of security on the NII. The Forum is chaired by Sally Katzen, Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget.

In addition to the IITF, the President has established the U.S. National Information Infrastructure Advisory Council (NIIAC). The NIIAC represents industry, labor, and public interest groups, and advises the Secretary of Commerce on issues relating to the NII. The Council has established three Mega-Projects which will form the backbone for initial programmatic work of the NIIAC. Mega-Project III, co-chaired by John Cooke of the Disney Channel and Esther Dyson of EDVenture, is responsible for addressing security, intellectual property and privacy issues as they relate to the NII.

*B. Structure and Content of Public Hearing*

Security is linked inextricably to the commercial success of the NII. The policies and procedures used to ensure the confidentiality, availability, and integrity of digitally produced and transmitted products and services on the NII will determine whether, how, and at what cost such products and services will be made available. Without the existence of appropriate legal, technical and policy mechanisms, the potential of the NII to be a commercially viable means for delivering digital products and services cannot be realized.

Development of policies and procedures that will ensure commercial security of intellectual property on the NII requires study from different perspectives. One such perspective is the legal protection of intellectual property. This topic is presently being addressed by the IITF Working Group on Intellectual Property Rights, chaired by Bruce A. Lehman, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks. The Working Group on Intellectual Property has recently released a preliminary report on intellectual property issues on the NII and has conducted a series of public hearings to receive views on the preliminary report and any other concerns about intellectual property raised by the NII.

A second perspective concerns a more functional approach to protecting intellectual property; namely, what legal measures, policy mechanisms, and technological solutions, or combinations thereof, aside from intellectual property laws, can be used to effectively protect commercial products and services delivered or made accessible using the NII. This latter topic is the subject that the Forum and Mega-Project III wish to develop through this public hearing.

The Forum and Mega-Project III seek input from parties who will produce and make accessible commercial products and services via the NII, as well as users of such products and services. A panel of witnesses drawn from the public will be assembled to discuss the following topics with a panel comprising the Commissioner of Patents and Trademarks, members of the Security Information Forum and members of Mega-Project III of the NIIAC, and to field questions and comments from other members of the public:

1. What types of projects and services are you contemplating delivering or making available, or would you like to see delivered or made available on the National Information Infrastructure?

2. What capacity do you want to provide to users of the NII to view, hear, retrieve, reproduce, modify or further distribute your products and services? As a user of such products and services, what capabilities in this regard would you like to see made available by content producers?

3. What commercial threats do you foresee in making products and services available via the NII, in terms of:

(a) Unauthorized access to or theft of products or services; and

(b) Integrity or confidentiality of information delivered or retrieved via the NII?

4. What kinds of technical solutions are you aware of, or would you like to see developed, to address security concerns?

**Note:** Parties who wish to offer comments or suggestions regarding the adequacy of existing intellectual property laws to address questions of commercial security on the NII should utilize the public comment process established by the Working Group on Intellectual Property rights of the IITF. Copies of the draft report of this working group can be obtained by contacting the Patent and Trademark Office by phone, fax or mail using the information provided in the addresses section of this notice. Copies of the report may also be obtained via the Internet at the addresses listed in the addresses section of this notice.

**II. Guidelines for Participation in the Public Hearing**

Participants in the public hearing will testify before a panel consisting of members of Mega-Project III of the NIIAC, the Security Issues Forum and the Working Group on Intellectual Property Rights of the IITF. The public hearings will be chaired by Bruce A. Lehman, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

Individuals who would like to participate as a witness must request an opportunity to do so no later than October 13, 1994. Each approved participant will be permitted to present brief opening remarks. Once each witness has presented their opening remarks, a general discussion on the topics listed above will be conducted.

Individuals may offer comments or ask questions of the witnesses by requesting an opportunity to do so and being recognized during the hearing by the chair of the meeting. Oral remarks offered in this fashion may not exceed three minutes. No advance approval is required to attend, offer comments, or present questions during the hearing.

Dated: September 28, 1994.

[FR Doc. 94–24458 Filed 9–30–94; 8:45 am]
BILLING CODE 3510–16–M

## Performance Review Board Membership

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Announcement of membership of the Patent and Trademark Office Performance Review Board.

**SUMMARY:** In conformance with the Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4), the Patent and Trademark Office is modifying the composition of its Performance Review Board to achieve the maximum possible degree of fairness and equity in the process of appraising, rating and rewarding the performance of senior executives and employees in the Senior-Level and Administratively-Determined pay categories.

This notice (1) announces the appointments of three new members of the Performance Review Board; and (2) establishes rotational term limits for each member to assure consistency, stability and objectivity in the performance appraisal process.

**ADDRESSES:** Comments should be addressed to Director, Office of Human Resources, Patent and Trademark Office, One Crystal Park, Suite 700, Washington, DC 20231.

**FOR FURTHER INFORMATION CONTACT:** Colleen Woodard at the above address or telephone (703) 305–8062.

**SUPPLEMENTARY INFORMATION:** The Patent and Trademark Office Performance Review Board is comprised of the following individuals:

Bradford R. Huther, Chairperson, Associate Commissioner and Chief Financial Officer, Patent and Trademark Office, Washington, DC 20231, Term—expires September 30, 1996

Theodore Morris (New Member), Director, Patent Examining Group 1500, Patent and Trademark Office, Washington, DC 20231, Term—expires September 30, 1996

Carol C. Darr, Associate Administrator, Office of International Affairs, National Telecommunications and Information Administration, Department of Commerce, Washington, DC 20230, Term—expires September 30, 1995

Nicholas P. Godici (New Member), Director, Patent Examining Group 3200, Patent and Trademark Office, Washington, DC 20231, Term—expires September 30, 1996

Paula J. Schneider (New Member), Principal Associate Director for Programs, Office of the Director, Bureau of the Census, Washington, DC 20233, Term—expires September 30, 1996

J.O. Thomas, Deputy Assistant Commissioner for Patent Process Services, Patent and Trademark Office, Washington, DC 20231, Term—expires September 30, 1995

Karl E. Bell, Deputy Director of Administration, National Institute of Standards and Technology, Gaithersburg, MD 20899, Term—expires September 30, 1995

Belkis Leong-Hong, Director, Center for Information Management, Defense Information Systems Agency, Falls Church, VA 22041, Term—expires September 30, 1996

Gerald R. Lucas, Director, Eastern Administrative Support Center, Department of Commerce, Norfolk, VA 23510, Term—expires September 30, 1996.

**Bradford R. Huther,**

*Acting Assistant Secretary of Commerce and Acting Commissioner of Patents and Trademarks.*

[FR Doc. 94–24351 Filed 9–30–94; 8:45 am]

BILLING CODE 3510–16–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Establishment of an Import Restraint Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

September 28, 1994.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing a limit.

**EFFECTIVE DATE:** October 3, 1994.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated September 26, 1994, the Governments of the United States and El Salvador agreed, among other things, to estabish a bilateral agreement for cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in El Salvador and exported during the periods October 1, 1994 through December 31, 1994 and January 1, 1995 through December 31, 1995.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish, pursuant to the MOU, a limit for the period beginning on October 1, 1994 and extending through December 31, 1994.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

September 28, 1994.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1993; pursuant to the Memorandum of Understanding dated September 26, 1994 between the Governments of the United States and El Salvador; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 3, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in El Salvador and exported during the period beginning on October 1, 1994 and extending through December 31, 1994, in excess of 450,000 dozen[1].

Textile products in Categories 340/640, which have been exported to the United States prior to October 1, 1994 shall not be subject to this directive.

Textile products in Categories 340/640 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 94–24408 Filed 9–30–94; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after September 30, 1994.

## DEPARTMENT OF DEFENSE

### Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title: Applicable Form, and OMB Control Number:* Third Party Collection Program; DD Form 2569; OMB Control Number 0704–0323.

*Type of Request:* Reinstatement.

*Number of Respondents:* 1,224,311.

*Responses per Respondent:* 1.

*Annual Responses:* 1,224,311.

*Average Burden per Response:* 2.5 minutes.

*Annual Burden Hours:* 50,197.

*Needs and Uses:* This information will be collected by military treatment facilities (MTF) admissions clerks from beneficiaries (dependents of retirees having (private health insurance) at the time of admission, or by clinic personnel from this same category of beneficiaries receiving outpatient care. It will assist the local MTF commander in determining the proper third party payers to bill for medical care provided to these beneficiaries, as well as facilitate the collection of reasonable hospital costs from third party payers.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Shannah Koss.

Written Comments and recommendations on the proposed information collection should be sent to Ms. Koss at the Office of Management and Budget, Desk Officer for DoD, Room 10235, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: September 27, 1994.

**Patricia L. Toppings,**

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

[FR Doc. 94–24290 Filed 9–30–94; 8:45 am]

BILLING CODE 5000–04–M

## Office of the Secretary

### Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Fiscal Year 1995 Updates

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

**ACTION:** Notice of updated mental health per diem rates.

**SUMMARY:** This notice provides for the updating of hospital-specific per diem rates for high volume providers and regional per diem rates for low volume providers; the updated cap per diem for high volume providers; the beneficiary per diem cost-share amount for low volume providers to be used for FY 1995 under the CHAMPUS Mental Health Per Diem Payment System; and the updated per diem rates for both full-day and half-day CHAMPUS Partial Hospitalization Programs for fiscal year 1995.

**EFFECTIVE DATE:** The rates contained in this notice are effective for services occurring on or after October 1, 1994.

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

For copies of the **Federal Register** containing this notice,contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

The charge for the **Federal Register** is $1.50 for each issue payable by check or money order to the Superintendent of Documents.

**FOR FURTHER INFORMATION CONTACT:** Stan Regensberg, Program Development Branch, OCHAMPUS, telephone (303) 361–1342. To obtain copies of this document, see the **ADDRESSES** section above. Questions regarding payment of specific claims under the CHAMPUS Mental Health Per Diem Payment System should be addressed to the appropriate CHAMPUS contractor.

**SUPPLEMENTARY INFORMATION:** The final rule published in the **Federal Register** on September 6, 1988, (52 FR 34285) set forth reimbursement changes that were effective for all inpatient hospital admissions in psychiatric hospitals and exempt psychiatric units occurring on or after January 1, 1989. The final rule published in the **Federal Register** on July 1, 1993, (58 FR 35–400) set forth maximum per diem rates for all partial hospitalization admissions on or after September 29, 1993. Included in these final rules were provisions for updating reimbursement rates for each federal fiscal year. As stated in the final rules, each per diem shall be updated by the Medicare update factor for hospitals and units exempt from the Medicare Prospective Payment System. Medicare has recommended an update factor of 3.7 percent for federal fiscal year 1995 for hospitals and units excluded from the prospective payment system. CHAMPUS will adopt this update factor for FY 1995 as the final update factor. Hospitals and units with hospital-specific rates (hospitals and units with high CHAMPUS volume) will have their FY 1994 CHAMPUS per diem rates updated by 3.7 percent for FY 1995.

The following reflect an update of 3.7 percent.

REGIONAL SPECIFIC RATES FOR PSYCHIATRIC HOSPITALS AND UNITS WITH LOW CHAMPUS VOLUME

| United States census region | Rate[2] |
|---|---|
| Northeast: | |
| New England | $515 |
| Mid-Atlantic | 492 |
| Midwest: | |
| East North Central | 426 |
| West North Central | 402 |
| South: | |
| South Atlantic | 509 |
| East South Central | 550 |
| West South Central | 463 |
| West: | |
| Mountain | 462 |
| Pacific | 545 |

[2] The wage portion of the rate, subject to the area wage adjustment, is 71.40 percent.

Beneficiary Cost-Share: Beneficiary cost-share (other than dependents of active duty members) for care paid on the basis of a regional per diem rate is the lower of $137 per day or 25 percent of the hospital billed charges effective for services rendered on or after October 1, 1994.

Cap Amount: Cap amount for hospitals and units with high CHAMPUS volume is $760 per day.

CHAMPUS Partial Hospitalization Programs will have their FY 1994 CHAMPUS per diem rates updated by 3.7 percent for FY 1995.

The following reflect an update of 3.7 percent.

PARTIAL HOSPITALIZATION RATES FOR FULL-DAY AND HALF-DAY PROGRAMS

| United States census regions | Full-day rate (6 hrs or more) | Half-day rate (3–5 hours) |
|---|---|---|
| Northeast: | | |
| New England (ME, NH, VT, MA, RI, CT) | $211 | $159 |
| Mid-Atlantic (NY, NJ, PA) | 230 | 173 |
| Midwest: | | |
| East North Central (OH, IN, IL, MI, WI) | 205 | 154 |
| West North Central (MN, IA, MO, ND, SD, NE, KS) | 202 | 152 |
| South: | | |
| South Atlantic (DE, MD, DC, VA, WV, NC, SC, GA, FL) | 218 | 164 |
| East South Central (KY, TN, AL, MS) | 237 | 178 |

PARTIAL HOSPITALIZATION RATES FOR FULL-DAY AND HALF-DAY PROGRAMS—Continued

| United States census regions | Full-day rate (6 hrs or more) | Half-day rate (3–5 hours) |
|---|---|---|
| West South Central (AR, LA, TX, OK) ... | 234 | 176 |
| West: | | |
| Mountain (MT, ID, WY, CO, NM, AZ, UT, NV) ..... | 243 | 183 |
| Pacific (WA, OR, CA, AK, HI) ..... | 239 | 180 |

Dated: September 26, 1994.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Office, Department of Defense.*

[FR Doc. 94–24388 Filed 9–30–94; 8:45 am]

BILLING CODE 5000–04–M

## Office of the Secretary of Defense

**AGENCY:** Defense Intelligence Agency Scientific Advisory Board.

**ACTION:** Notice of closed meeting.

**SUMMARY:** Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Board has been scheduled as follows:

**DATES:** Monday and Tuesday 17 and 18 October 1994 (0900 to 1600).

**ADDRESSES:** The Defense Intelligence Agency (DIAC), Bolling AFB, Washington, D.C., 20340–5100.

**FOR FURTHER INFORMATION CONTACT:**

Dr. W.S. Williamson, Executive Secretary, DIA Scientific Advisory Board, Washington, D.C. 20340–5100 (202) 373–4930.

**SUPPLEMENTARY INFORMATION:** The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: September 27, 1994.

**L.M. Bynum,**

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

[FR Doc. 94–24291 Filed 9–30–94; 8:45 am]

BILLING CODE 3810–01–M

## Defense Advisory Committee on Women in the Services (DACOWITS) Meeting

**ACTION:** Notice of conference.

**SUMMARY:** Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Defense Advisory Committee on Women in the Services (DACOWITS).The purpose of DACOWITS is to advise the Secretary of Defense on matters relating to women in the Services. The Committee meets semiannually.

**DATES:** October 19–23, 1994 (Summarized agenda follows).

**ADDRESSES:** The Cavalier Hotel, Oceanfront at 42nd Street, Virginia Beach, VA 23451 (804) 425–8555 or 1–800–446–8199.

**AGENDA:** Sessions will be conducted daily and will be open to the public. The agenda will include the following:

*Wednesday, October 19, 1994*

Conference Registration (Conference Participants)
Planning Workshops (current DACOWITS members only)

*Thursday, October 20, 1994 7:30 a.m.–10:00 p.m.*

Conference Registration (Former Members and Conference Participants)
No host Working Breakfast (current DACOWITS members only)
Offical Opening Ceremony/General Business Session
Official OSD Luncheon (By Invitation Only)
Field Trip/Installation Visit (current DACOWITS members and Senior Military Representatives Only)

*Friday, October 21, 1994, 8:00 a.m.–9:30 p.m.*

Subcommitee sessions
No host working luncheon
Administrative Time
OSD Reception & Dinner (By Invitation Only)

*Saturday, October 22, 1994, 8:00 a.m.–6:30 p.m.*

Subcommittee Session
No-host Brunch (Conference Participants)
DEOMI/Diversity Workshop (DACOWITS members only)
Executive Committee Mark-Up
Closing Session
No Host sit down dinner

*Sunday, October 23, 1994, 8:30 a.m. to 10:00 p.m.*

No-Host Farewell Breakfast Buffet.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Martha C. Gillette, USN or CPT Alissa B. Deuel, Plans and Communications Officer, DACOWITS and Military Women Matters, OUSD (Personnel and Readiness) 4000 Defense Pentagon, Room 3D769, Washington, DC 20301–4000; Telephone (703) 697–2122.

**SUPPLEMENTARY INFORMATION:** The following rules and regulations will govern the participation by members of the public at the conference:

(1) Members of the public will not be permitted to attend the official OSD Luncheon; Field Trip; and the OSD Reception and Dinner.

(2) The Opening Session/business session, all subcommittee sessions and the closing session will be open to the public.

(3) Interested persons may submit a written statement for consideration by the Committee and/or make an oral presentation of such during the conference.

(4) Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed above no later than October 10.

(5) Length and number of oral presentations to be made will depend on the number of requests received from members of the public.

(6) Oral Presentations by members of the public will be permitted only on Saturday, October 22, 1994 before the full Committee.

(7) Each person desiring to make an oral presentation must provide the DACOWITS office 1 copy of the presentation by October 10 and make available 175 copies of any material that is intended for distribution at the conference.

(8) Persons submitting a written statement for inclusion in the minutes of the conference must submit to the DACOWITS staff one copy by the close of the conference.

(9) Other new items from members of the public may be presented in writing to any DACOWITS members for transmittal to the DACOWITS Chair or Director, DACOWITS and Military Women Matters to consider.

(10) Members of the public will not be permitted to enter into oral discussion by the Committee members at any of the sessions; however, they will be permitted to reply to questions directed to them by the members of the Committee.

(11) Members of the public will be permitted to ask questions to the scheduled speakers if recognized by the Chair and if time allows after the official participants have asked questions and/or made comments.

Dated: September 27, 1994.

**Patricial L. Toppings,**

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

[FR Doc. 94–24292 Filed 9–30–94; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Acting Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** Interested persons are invited to submit comments on or before November 2, 1994.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Request for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202-4651.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Sherrill (202) 708-9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: September 27, 1994.

**Ingrid Kolb,**

*Acting Director, Information Resources Management Service.*

*Office of Postsecondary Education*

*Type of Review:* Reinstatement

*Title:* Application for New Awards under the Law School Clinical Experience Program

*Frequency:* Annually

*Affected Public:* Non-profit institutions

*Reporting Burden:*

Responses: 90

Burden Hours: 3,720

*Recordkeeping Burden:*

Recordkeepers: 0

Burden Hours: 0

*Abstract:* This form will be used by State Educational agencies to apply for funding under the Law School Clinical Experience Program. The Department will use the information to make grant awards.

*Office of the Under Secretary*

*Type of Review:* New

*Title:* Application for Federal Educational Assistance

*Frequency:* Annually

*Affected Public:* Individuals or households; state or local governments

*Reporting Burden:*

Responses: 23,000

Burden Hours: 5,750

*Recordkeeping Burden:*

Recordkeepers: 0

Burden Hours: 0

*Abstract:* This form will be used by State educational agencies to apply for funding under the Federal Educational Assistance Program. The Department will use the information to make grant awards.

[FR Doc. 94–24294 Filed 9–30–94; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 11402–000]**

### City of Crystal Falls, MI; Notice of Intent to Prepare an Environmental Assessment and Conduct Public Scoping Meetings

September 27, 1994.

The Federal Energy Regulatory Commission (FERC) has received an application for license of the existing Crystal Falls Project No. 11402. The Crystal Falls Project is located on the Paint River in Iron County, Michigan.

The FERC staff intends to prepare an Environmental Assessment (EA) on the hydroelectric project in accordance with the National Environmental Policy Act.

The staff's EA will objectively consider both site specific and cumulative environmental impacts of the project and reasonable alternatives, and will include an economic, financial and engineering analysis.

A draft EA will be issued and circulated for review by all the interested parties. All comments filed on the draft EA will be analyzed by the staff and considered in a final EA. The staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision.

#### Scoping Meetings

The FERC will conduct two scoping meetings. An evening scoping meeting is primarily for public input while the morning meeting will focus on resource agency concerns. All interested individuals, organizations, and agencies are invited to attend and assist the staff in identifying the scope of environmental issues that should be analyzed in the EA. Staff will also visit the project site on November 2, 1994, at 9 a.m.

Both scoping meetings will be held at the City Hall Auditorium, 401 Superior Avenue, Crystal Falls, Michigan. The first meeting will be held on November 1, 1994, from 7 p.m. to 10 p.m. and will focus primarily on issues of concern to the general public. The second meeting will be held on November 2, 1994, from 11 a.m. to 2 p.m. and will focus primarily on issues of concern to the resource agencies.

Prior to the meetings, a scoping document will be mailed to the list of interested parties. The scoping document identifies resource issues to be addressed in the EA. Copies of the scoping document will also be available

at the scoping meetings or can be obtained by writing: FERC-Crystal Falls Project, c/o Elaine Bazarian, Stone and Webster, 245 Summer Street, Boston, MA 02110.

**Objectives**

At the scoping meetings the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) determine the relative depth of analysis for issues to be addressed in the EA; (3) identify resource issues that are not important and do not require detailed analysis; (4) solicit from the meeting participants all available information, especially quantified data, on the resources at issue; and (5) encourage statements from experts and the public on issues that should be analyzed in the EA, including points of view in opposition to, or in support of, the staff's preliminary views.

**Procedures**

The meetings will be recorded by a stenographer and all statements (oral and written) thereby become a part of the formal record of the Commission proceedings. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and assist the staff in defining and clarifying the issues to be addressed in the EA.

Participants at the public meeting are asked to keep oral comments brief and concise to allow everyone the opportunity to speak.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, until December 2, 1994.

All written correspondence should clearly show the following caption on the first page: Crystal Falls Project No. 11402.

All those that are formally recognized by the Commission as intervenors in the licensing proceeding are asked to refrain from engaging staff or its contractor in discussions of the merits of the project outside of any announced meeting.

Further, parties are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name appears on the official service list.

For further information, please contact Thomas Dean at (202) 219–2778.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–24317 Filed 9–30–94; 8:45 am]

BILLING CODE 6717–01–M

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**[Project No. 2687–014]**

## Pacific Gas & Electric Company; Intent to Conduct Environmental Scoping Meetings and Site Visit

September 27, 1994.

The Federal Energy Regulatory Commission (FERC) has received an application for relicensing for the proposed Pit 1 Hydroelectric Project No. 2687–014. The project is located on the Fall and Pit Rivers, near the towns of Fall River Mills, McArthur, and Burney, in Shasta County, California.

The FERC staff intends to prepare an Environmental Assessment (EA) for this hydroelectric project in accordance with the National Environmental Policy Act.

In the EA, we will consider both site-specific and cumulative environmental effects of the project and reasonable alternatives, and will include economic, financial, and engineering analyses.

The draft EA will be issued and circulated for review by all interested parties. All comments filed on the draft EA will be analyzed by the staff and considered in a final EA. The staff's conclusions and recommendations will then be presented for the consideration by the Commission in reaching its final licensing decision.

**Scoping Meetings**

Staff will hold two scoping meetings. A scoping meeting oriented towards the agencies will be held on Thursday, October 27, 1994, at 9:00 AM, at the McArthur Fairgrounds, in McArthur, California. A scoping meeting oriented towards the public will be held the same day at 6:00 PM, at the same location.

Interested individuals, organizations, and agencies are invited to attend either or both meetings and assist the staff in identifying the scope of environmental issues that should be analyzed in the EA.

To help focus discussions at the meetings, a scoping document outlining subject areas to be addressed in the EA will be mailed to agencies and interested individuals on the FERC mailing list. Copies of the scoping document will also be available at the scoping meetings.

**Objectives**

At the scoping meetings, the FERC staff will: (1) Identify preliminary environmental issues related to the proposed project, (2) identify preliminary resource issues that are not important and do not require detailed analysis; (3) identify reasonable alternatives to the proposal; (4) solicit from meeting participants all available information, especially quantified data, on the resource issues; and (5) encourage statements from experts and the public on issues that should be analyzed in the EA, including points of view in opposition to, or in support of, the staff's preliminary views.

**Procedures**

The scoping meetings will be recorded by a court reporter and all statements, both oral and written, will become part of the record of the Commission proceedings on the Pit 1 Project. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and assist the staff in defining and clarifying the issues to be addressed in the EA.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record at the meetings. In addition, written scoping comments (an original and eight copies) may be filed with Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, until [COMMENT DATE].

All written correspondence should clearly show the following caption on the first page: Pit 1 Hydroelectric Project, FERC Project No. 2687–014.

Intervenors—those on the Commission's service list for this proceeding (parties)—are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name appears on the official service list. Further, if a party files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

**Site Visit**

A site visit to the Pit 1 Hydroelectric Project is planned for Wednesday,

October 26, 1994. Those who wish to attend should plan to meet at 10:00 AM at the McArthur, Fairgrounds, in McArthur, California. The site is located near the fairgrounds. For more details, contact Mr. Steve Christ, Pacific Gas and Electric Company, at (415) 973–2629.

Any questions regarding this notice may be directed to Mike Strzelecki, FERC Environmental Coordinator, at (202) 219–2827.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–24358 Filed 9–30–94; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. CP94–766–000, et al.]**

## Northern Natural Gas Company, et al.; Natural Gas Certificate Filings

September 23, 1994.

Take notice that the following filings have been made with the Commission:

### 1. Northern Natural Gas Company

[Docket No. CP94–766–000]

Take notice that on September 9, 1994, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP94–766–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install five delivery points and upgrade one delivery point to accommodate increased natural gas deliveries to Peoples Natural Gas Company (Peoples) under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to install and operate one Town Border Station (TBS), four small volume customer taps, and upgrade one TBS and appurtenant facilities as delivery points to accommodate increased natural gas deliveries to Peoples under Northern's currently effective throughput rate schedules. The upgraded and new delivery points will be used for commercial and residential end-use by Peoples for redelivery to: 1) Bruce Pals (Pals) in Chicago City, Minnesota, Section 2, T37N, R21W; 2) Eileen Beninga (Beninga) in Black Hawk City, Iowa, Section 6, T88N, R14W; 3) Justin Deutsch (Deutsch) in LeSueur City, Minnesota, Section 21, T112N, R23W; 4) Arnie Kubes (Kubes) in LeSueur City, Minnesota, Section 4, T112N, R23W; 5) Buccaneer Bay TBS (Buccaneer) in Cass City, Nebraska, Section 34, T13N, R13E, and 6) Northrup #1 TBS upgrade (Northrup) in Martin City, Minnesota, Section 12, T103N, R31W. Northern states that the estimated cost and the proposed peak day and annual volumes to be delivered are: 1) Pals $700, 1.5/d and 200/a; 2) Beninga $0, 1/d and 140/a; 3) Deutsch $700, .8/d and 280/a; 4) Kubes $700, .8/d and 120/a; 5) Buccaneer $48,770, 570/d and 50,455/a, and 6) Northrup $31,000, 1376/d and 94,178/a.

Northern states that deliveries of the estimated total volumes to Peoples at these delivery points will be made pursuant to Northern's existing transportation service agreements. Northern advises that the total volumes to be delivered to the customer after the request do not exceed the total volumes authorized prior to the request. Northern states it has sufficient capacity for the proposed changes without detriment or disadvantage to its other customers.

*Comment date:* November 7, 1994, in accordance with Standard Paragraph G at the end of this notice.

### 2. Northwest Pipeline Corporation

[Docket No. CP94–784–000]

Take notice that on September 16, 1994, Northwest Pipeline Corporation (Northwest), P.O. Box 58900, Salt Lake City, Utah 84108–0900, filed in Docket No. CP94–784–000 a request pursuant to Sections 157.205, 157.216 and 157.211 of the Commission's Regulations under the Natural Gas Act for authorization to abandon certain facilities at the Twin Falls Meter Station in Twin Falls County, Idaho,[1] and to construct and operate upgraded replacement facilities at this station, under its blanket certificate issued in Docket No. CP82–433–000,[2] all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

Northwest states that upgraded facilities are needed to better accommodate its existing firm maximum daily delivery obligations at this delivery point to Intermountain Gas Company (Intermountain). Northwest proposes to replace four existing 3-inch regulators with four new 4-inch regulators, relief valve, new upstream headers, relocate filter, replace station by-pass and appurtenances. Northwest states that the upgrade will increase the design capacity of the station from 14,670 Dth per day to approximately 24,600 Dth per day. Northwest further states that the total cost of the project is estimated to be approximately $289,191. Since this expenditure is necessary to increase the design capacity to serve existing maximum daily delivery obligation, Northwest will not require any cost reimbursement from Intermountain.

Northwest states that the total volumes to be delivered to the customer after the request do not exceed the total volumes authorized prior to the request. Northwest holds a blanket transportation certificate pursuant to Part 284 of the Commission's Regulations issued in Docket No. CP86–578–000.[3] Northwest states that construction of the proposed delivery point is not prohibited by its existing tariff and that it has sufficient capacity to deliver the requested gas volumes without detriment or disadvantage to it's other customers.

*Comment date:* November 7, 1994, in accordance with Standard Paragraph G at the end of this notice.

### 3. Koch Gateway Pipeline Company

[No. CP94–790–000]

Take notice that on September 21, 1994, Koch Gateway Pipeline Company (Koch), 600 Travis Street, P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP94–790–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to install a two-inch delivery tap to serve Willmut Gas and Oil Company, a local distribution company, which will in turn serve Hattiesburg-Laurel Regional Airport in Jones County, Mississippi. Koch will install the delivery tap for an estimated cost of $4,900 under its blanket certificate issued in Docket No. CP82–430–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Willmut will reimburse Koch for the actual cost of the construction. Willmut will construct and own the meter station associated with the tap. Koch proposes to deliver up to 50 MMBtu/d under its No-Notice Service Rate Schedule. Koch states that it has sufficient capacity to render the proposed service without detriment to its other existing customers.

*Comment date:* November 7, 1994, in accordance with Standard Paragraph G at the end of this notice.

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[1] *See*, Docket No. G–8934 (14 FPC 157).

[2] *See*, 20 FERC ¶ 62,412 (1982).

[3] *See*, 42 FERC ¶ 61,019 (1988).

**Standard Paragraphs**

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–24359 Filed 9–30–94; 8:45 am]

BILLING CODE 6717–01–P

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[Docket No. IS94–22–000]

## Chevron Pipe Line Company; Notice of Informal Settlement Conference

September 27, 1994.

Take notice that Commission Staff will convene an informal settlement conference in this proceeding on October 5, 1994, at 8:30 a.m. The conference will be held in a hearing room at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, DC.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), may 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, contact Donald A. Heydt at (202) 208–0740 or Kathleen M. Dias at (202) 208–0524.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–24318 Filed 9–30–94; 8:45 am]

BILLING CODE 6717–01–M

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[RP94–164–000]

## Trunkline Gas Company; Notice of Informal Settlement Conference

September 27, 1994.

Take notice that an informal settlement conference will be convened in these proceedings on October 4, 1994 at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

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, contact Marc G. Denkinger (202) 208–2215 or Edith A. Gilmore (202) 208–2158.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–24319 Filed 9–30–94; 8:45 am]

BILLING CODE 6717–01–M

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–5085–2]

## Clean Air Act Advisory Committee

## Emergency Notice of Public Meeting

Under Section (10)(a)(2) of Title 5 U.S.C. App 2, "The Federal Advisory Committee Act," notice is hereby given that the Subcommittee on Mobile Source Emissions and Air Quality in the Northeastern States of the Clean Air Act Advisory Committee will meet on Wednesday, October 12, 1994 beginning at 8:30 A.M. to 3:00 P.M. at the Hotel Washington, located at Pennsylvania Avenue and Fifteenth Streets, N.W., Washington, D.C. 202/638–5900. Because the Subcommittee met in late September, 1994 and set October 12, 1994 as the next meeting date this emergency notice is hereby given. These meetings are open to the public. For further information concerning the meeting, please contact the individuals listed below.

**Mobile Source Emissions and Air Quality in the Northern States Subcommittee**

The Mobile Source Emissions and Air Quality in the Northeastern States Subcommittee of the Clean Air Act Advisory Committee will conduct a meeting to discuss the pending petition offered by the Ozone Transport Commission regarding the adoption of Low Emission Vehicle Emission Standards in the northeastern states and related issues. In addition, the meeting agenda will include progress reports from various work groups established at previously by the Subcommittee.

**Further Information and Providing Comments**

For additional information concerning these meetings, please contact Mike Shields, Designated Federal Official, Office of Mobile Sources, U.S. Environmental Protection Agency, 401 M Street, SW. Washington, D.C. 20460 (202) 260–7645.

Dated: September 28, 1994.

**Rob Brenner,**

*Director, Office of Policy Analysis and Review, Office of Air and Radiation, U.S. Environmental Protection Agency.*

[FR Doc. 94–24490 Filed 9–30–94; 8:45 am]

BILLING CODE 6560–50–P

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[FRL–5083–2]

## Notice and Open Meeting for the Permits Improvement Team

**AGENCY:** Environmental Protection Agency.

**ACTION:** National meetings of the permits improvement team.

**SUMMARY:** In July of 1994, Administrator Browner established the Permits Improvement Team (Team) to implement specific actions to reform the permits process. These actions will: (1) improve the quality, certainty and timeliness of the permit decision process; (2) provide for earlier and better public participation in the permitting process; and (3) enhance the use of innovative technologies and pollution prevention through the permitting process. From October 20, 1994 through November 21, 1994 the Team will be holding national stakeholder meetings to receive individual input on the specific activities the Team should focus on. The objective of these meetings is to obtain individual ideas and comments, but not to obtain a group opinion from the meeting participants.

**DATES:** The Team will be holding national stakeholder meetings to solicit input on the priorities of the team. Meetings will be held on October 20th in Denver CO., October 26th in Philadelphia PA., November 7th in Seattle WA., November 14th in Dallas TX., and on November 21st in Boston, MA. Meetings are open to the public and will be held from 9:00 am to 5:00 pm on these scheduled dates. Participants are requested to notify in writing which meeting they will be attending. Notification should be sent to USEPA Permits Improvement Team, Mail Stop 100, 2890 Woodbridge Ave., Edison, New Jersey 08837.

**ADDRESSES:** The location of the October 20, 1994 meeting is EPA's Region 8

Office (Conference Center), 999 15th Street, Denver, Colorado. The October 26, 1994 meeting will be held in the Barclay Hotel, 237 S. 18th Street, Philadelphia, Pennsylvania. The November 7, 1994 meeting will be held in the Claremont Hotel, 2004 4th Avenue at Virginia Street, Seattle. The November 21, 1994 meeting location is EPA's Region 1 Office (11th floor Conference Center), 1 Congress Street, Boston, Massachusetts. The location of the Dallas meeting will be provided in a future notice.

**FOR FURTHER INFORMATION CONTACT:** Persons requiring further information on the substantive matters of the Team should contact, in writing, Mr. Lance Miller, USEPA Permits Improvement Team, Mail Stop 100, 2890 Woodbridge Ave., Edison New Jersey 08837.

Dated: September 27, 1994.

**Elliot P. Laws,**

*Designated Federal Official.*

[FR Doc. 94–24373 Filed 9–30–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5084–3]

## Proposed De Minimis Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act; in the Matter of American Chemical Services

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Request for public comment.

**SUMMARY:** Notice of *De Minimis* Settlement: in accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), notice is hereby given of a *de minimis* settlement concerning past and estimated future response actions at the American Chemical Services (ACS) Site in Griffith, Indiana. U.S. EPA Region 5 has submitted the proposed agreement to the U.S. Department of Justice for review concurrent with this request for public comment. This settlement will not be finalized until the approval process set forth in Section 122(g)(4) of CERCLA has been completed.

**DATES:** Comments must be provided on or before November 2, 1994.

**ADDRESSES:** Comments should be addressed to the Docket Clerk, Mail Code MFA–10J, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and should refer to: In the Matter of American Chemical Services.

**FOR FURTHER INFORMATION CONTACT:** Steven Siegel, Mail Code CS–29A, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**SUPPLEMENTARY INFORMATION:** 959 Respondents and the State of Indiana executed binding certifications of their consent to participate in the settlement. The settlement may be amended to add additional parties.

The Respondents will pay approximately $23,649,894.84 in settlement payments for response costs related to the American Chemical Services Site, including past response costs incurred by the State of Indiana, if the United States Environmental Protection Agency determines that it will not withdraw or withhold its consent to the proposed settlement after consideration of comments submitted pursuant to this office.

U.S. EPA may enter into this settlement under the authority of Section 122(g) of CERCLA. Section 122(g) authorizes *de minimis* settlements with potentially responsible parties ("PRPs") that contributed hazardous substances to a site where those contributions were small and where the toxicity of the substances contributed is not significantly different from the other substances brought to the site. Pursuant to this authority, the agreement proposes to settle with generator parties whose individual volume of hazardous substances sent to site does not exceed .08% of the total amount of hazardous substances sent to the site. Settling *de minimis* PRPs will be required to pay their fair share of the past and estimated future response costs at the site based on a payment of $3.76 per pound of hazardous substances that the party contributed to the Site. Certain reduction factors were applied in determining the pounds sent by each company based upon the operations of the ACS facility at different time periods. Some participants in the settlement also have presented ability to pay issues and have settled on that basis. The estimated future response costs account for potential cost overruns, the potential for failure of the remedies selected to clean up the site, and other risks.

A copy of the proposed administrative order on consent and additional background information relating to the settlement, including a list of parties to the settlement, are available for review and may be obtained in person or by mail from Steven Siegel, Mail Code CS–29A, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

The U.S. Environmental Protection Agency will receive written comments relating to the settlement for thirty days from the date of publication of this notice.

**Authority:** The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 *et seq.*

Identification of Documents: Proposed *De Minimis* Settlement: American Chemical Services Site.

**William E. Muno,**

*Director, Waste Management Division.*

[FR Doc. 94–24413 Filed 9–30–94; 8:45 am]

BILLING CODE 6560–50–M

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### Agency Report Forms Under OMB Review

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Request for comments.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. The proposed report form under review is listed below.

**DATES:** Comments must be received on or before November 17, 1994. If you anticipate commenting on a report form, but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

**ADDRESSES:** Copies of the proposed report form, the request for clearance (Standard Form 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the item listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

**FOR FURTHER INFORMATION CONTACT:** EEOC Agency Clearance Officer: Margaret P. Ulmer, Financial and Resource Management Services, Room 2204, 1801 L Street, NW., Washington, DC 20507; Telephone (202) 663–4279.

*OMB Reviewer:* Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503; Telephone (202) 395–7316.

*Type of Request:* Extension (No Change).

*Title:* State and Local Government Information EEO–4.

*Form Number:* EEOC Form 164.

*Frequency of Report:* Biennially for respondents with 100 or more employees, a statistical sample of respondents with 15–99 employees.

*Type of Respondent:* State and local governments with 15 or more employees.

*Standard Industrial Classification (SIC) Codes:* 911–965.

*Description of Affected Public:* State and local governments.

*Responses:* 12,050.

*Reporting Hours:* 74,150

*Federal Cost:* $47,000.

*Applicable under Section 3504(h) of Public Law 96–511:* Not applicable.

*Number of Forms:* 1.

*Abstract-Needs/Users:* EEO–4 data are used by EEOC to investigate charges of discrimination against State and local governments and in EEOC systemic program decisions. Data are shared with several Federal government agencies. Under Section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–4 data are also shared with approximately 83 State and local Fair Employment Practices Agencies (FEPAs). Aggregate data are used by researchers and the general public.

For the Commission,

**R. Edison Elkins,**

*Management Director, Equal Employment Opportunity Commission.*

[FR Doc. 94–24320 Filed 9–30–94; 8:45 am]

BILLING CODE 6570–06–M

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Determination of Insufficiency of Assets to Satisfy all Claims of Certain Financial Institutions in Receivership

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice.

**SUMMARY:** In accordance with the authorities contained in 12 U.S.C. 1821(c), the Federal Deposit Insurance Corporation (FDIC) was duly appointed receiver for the financial institutions specified in **SUPPLEMENTARY INFORMATION.** The FDIC has determined that the proceeds which can be realized from the liquidation of the assets of the below listed receivership estates are insufficient to wholly satisfy the priority claims of depositors against the receivership estates. Therefore, upon satisfaction of secured claims, depositor claims and claims which have priority over depositors under applicable law, no amount will remain or will be recovered sufficient to allow a dividend, distribution or payment to any creditor of lessor priority, including but not limited to, claims of general creditors. Any such claims are hereby determined to be worthless.

**FOR FURTHER INFORMATION CONTACT:** Tina A. Lamoreaux, Counsel, Legal Division, FDIC, 550 17th Street NW., Room H–11027, Washington, DC 20429. Telephone (202) 736–3134.

**SUPPLEMENTARY INFORMATION:** Financial Institutions in Receivership Determined to Have Insufficient Assets to Satisfy All Claims.

Bank of Commerce and Trust Company, #2556, Tulsa, Oklahoma
Western Bank, #2596, Midland, Texas.

Dated: September 27, 1994.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Acting Executive Secretary.*

[FR Doc. 94–24285 Filed 9–30–94; 8:45 am]

BILLING CODE 6714–01–M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 202–009648A–066.

*Title:* Inter-American Freight Conference.

*Parties:*

A.P. Moller-Maersk Line
Empresa de Navegacao Alianca S.A.
Frota Amazonica S.A.
Columbus Line
Transroll/Sea-Land Joint Service
Crowley American Transport, Inc.
A/S Ivarans Rederi d/b/a Ivaran Lines
Companhia Maritime Nacional
Companhia de Navegacao Lloyd Brasileiro
Empresa Lineas Maritimas Argentinas

*Synopsis:* The proposed amendment adds a new sub-paragraph 10.16 which provides that the members of the Agreement may elect to be policed under a separate self-policing agreement covering the Agreement's trade should such an agreement be filed and become effective. In addition, Article 14.01 is amended by adding sub-paragraphs (e), (f), (g), and (h) which set forth the rights, duties, obligations and responsibilities of any member that withdraws from the Conference, or any section of the Conference, with respect to that member's participation in service contracts.

*Agreement No.:* 232–011471.

*Title:* Crowley American Transport, Inc./A/S Ivarans Rederi Space Charter and Sailing Agreement.

*Parties:*

Crowley American Transport, Inc.
A/S Ivarans Rederi

*Synopsis:* The proposed Agreement authorizes the parties to consult and agree upon deployment and utilization of vessels, charter space to and from one another, and rationalize sailings in the trade between U.S. Atlantic and Gulf Coast ports and points and ports in Puerto Rico and points and ports on the East Coast of South America (including but not limited to Venezuela, Brazil, Argentina, Paraguay, Uruguay) and ports in Mexico.

By Order of the Federal Maritime Commission.

Dated: September 28, 1994.

**Ronald D. Murphy,**

*Assistant Secretary.*

[FR Doc. 94–24385 Filed 9–30–94; 8:45 am]

BILLING CODE 6730–01–M

**[Fact Finding Investigation No. 21]**

### Activities of the Trans-Atlantic Agreement and Its Members; Notice of Second Hearing in Washington DC

Pursuant to Commission Order issued July 27, 1994, instituting Fact Finding Investigation No. 21 ("the Fact Finding Order"), notice is hereby given that the Investigative Officers will conduct a hearing concerning various activities and practices by the Trans-Atlantic Agreement ("TAA") and its members which are alleged to be anticompetitive or otherwise violative of the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.* The Investigative Officers will take testimony under oath, and receive documents in evidence, as appropriate. In the discretion of the Investigative Officers, portions of this hearing may be conducted in non-public session, as authorized by the Fact Finding Order.

Hearings in Fact Finding Investigation No. 21 will be conducted in Washington D.C., at the following location: Federal Maritime Commission, Hearing Room No. 1, 800 North Capitol St., NW., Washington, D.C. 20573.

The hearings will commence in public session at 10:00 A.M. on November 14, 1994, and may be conducted on subsequent days at the same location, as appropriate.

**Martha C. Smith,**

*Investigative Officer, Federal Maritime Commission, Bureau of Hearing Counsel, 800 North Capitol Street NW., Washington, D.C. 20573, Tele: (202) 523–5783, Fax: (202) 523–5785.*

[FR Doc. 94–24341 Filed 9–30–94; 8:45 am]

BILLING CODE 6730–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Office of the General Counsel and Public Health Service

### Food and Drug Administration

### Statement of Organization, Functions, and Delegations of Authority

Part A, Chapter AG (Office of the General Counsel) (38 FR 17032, June 28, 1973, as amended most recently at 57 FR 10765, March 30, 1992) and Part H, Chapter HF (Food and Drug Administration) 35 FR 3685, February 25, 1970, as amended most recently at 59 FR 38482, July 28, 1994) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services is amended to reflect an organizational change in the Office of the General Counsel (OGC) and in the Food and Drug Administration (FDA).

The OGC in the Office of the Secretary, HHS, and FDA find it in their common interest and interest of the Department to test the efficacy of decentralizing the provision of legal services to FDA by establishing an organizational component within FDA comprised of lawyers and support staff who will provide certain legal services exclusively to that Agency and be funded by that Agency, but be subject to the supervision of the General Counsel with respect to legal policy and direction. OGC will continue to provide legal services to FDA in the areas of ethics, business and administrative law, legislation, personnel, and procurement on the same basis as OGC provides such services to other HHS operating divisions generally. A new Office of the Chief Counsel will be established in FDAs Office of the Commissioner and simultaneously the Food and Drug Division will be removed from OGC.

The following changes are made to reflect the organizational change:

**Under Chapter AG, Section AG–B, Organization**

1. Under Section AG.22 Divisions in the Office of the General Counsel delete subparagraph 4 Food and Drug Division in its entirety.

**Under Chapter HF, Section HF–B, Organization**

2. Insert a new subparagraph under the Office of the Commissioner (HF), the Office of Chief Counsel (HFA–J) reading as follows:

*(a–6) Office of Chief Counsel (HFA–J).* Subject to the professional supervision and control of the General Counsel, represents the FDA in court proceedings and administrative hearings with respect to programs administered by the FDA.

Provides legal advice and policy guidance for programs administered by the FDA.

Acts as liaison to the Department of Justice and other Federal Departments for programs administered by FDA.

Drafts or reviews all proposed and final regulations and Federal Register notices prepared by FDA.

Performs legal research and gives legal opinions on regulatory issues, actions, and petitions submitted to FDA.

Reviews proposed legislation affecting FDA that originates in the Department or on which Congress requests the views of the Department.

Provides legal advice and assistance to the Office of the Secretary on matters within the expertise of the Chief Counsel.

Dated: September 17, 1994.

Effective Date: October 1, 1994.

**Donna E. Shalala,**

*Secretary.*

[FR Doc. 94–24216 Filed 9–30–94; 8:45 am]

BILLING CODE 4160–1–M

## Food and Drug Administration

### Advisory Committee; Notice of Meeting

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

**ACTION:** Notice.

**SUMMARY:** This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

**MEETING:** The following advisory committee meeting is announced:

### Subcommittee Meeting of the National Task Force on AIDS Drug Development on Public/Private Issues

*Date, time, and place.* October 28, 1994, 12:30 p.m., The Hyatt Regency Crystal City, Lincoln Room, 2799 Jefferson Davis Hwy., Arlington, VA.

*Type of meeting and contact person.* Open subcommittee discussion, 12:30 p.m. to 1:30 p.m.; open public hearing, 1:30 p.m. to 2:30 p.m., unless public participation does not last that long; Jean H. McKay, Office of AIDS and Special Health Issues (HF–12), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0104.

*General function of the task force.* The National Task Force on AIDS Drug Development shall identify any barriers and provide creative options for the rapid development and evaluation of treatments for human immunodeficiency virus (HIV) infection and its sequelae. It also advises on issues related to such barriers, and provides options for the elimination of these barriers.

*Open task force discussion.* The subcommittee will present, hear, and discuss issues on the barriers to collaboration on acquired immunodeficiency syndrome (AIDS) drug development from the perspective of the subcommittee members, members of the Federal Government, and the public.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the task force. Those desiring to make formal presentations should notify the contact person before October 19, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions

for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: September 26, 1994.

**David A. Kessler,**

*Commissioner of Food and Drugs.*

[FR Doc. 94–24355 Filed 9–30–94; 8:45 am]

BILLING CODE 4160–01–F

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## Health Care Financing Administration

**[MB–84–NC]**

**RIN 0938–AG77**

## Medicaid Program; Charges for Vaccine Administration Under the Vaccines for Children (VFC) Program

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice with comment period.

**SUMMARY:** This notice with comment period lists, by State, the interim regional maximum charges that providers may impose for the administration of pediatric vaccines to Federally vaccine-eligible children under the Pediatric Immunization Distribution Program, more commonly known as the Vaccines for Children (VFC) program. This notice also specifies the methodology that HCFA used to establish the maximum administration charges.

In addition, the notice provides States that purchase vaccines for all children the option to use these maximum charges or devise their own, and clarifies that State Medicaid agencies may establish lower fees than these maximums if they can provide assurances of access to immunizations for Medicaid eligible children to the same extent as the general population.

The publication of these administration charges is essential to implementation of the VFC program, which is mandated by law to become operational on October 1, 1994. We intend that this list be used on an interim basis until we issue a separate **Federal Register** document that will finalize these maximum regional charges and respond to any relevant public comments.

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

**FOR FURTHER INFORMATION CONTACT:** Marge Sciulli, (410) 966–0691.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Omnibus Budget Reconciliation Act of 1993 (OBRA '93), Public Law 103–66, created the Pediatric Vaccine Distribution Program (more commonly known and hereafter referred to as the Vaccines for Children (VFC) Program), which takes effect on October 1, 1994. Section 13631 of OBRA '93 added section 1902(a)(62) to the Social Security Act (the Act) to require that States provide for a program for the purchase and distribution of pediatric vaccines to program-registered providers for the immunization of vaccine eligible children in accordance with section 1928 of the Act. Section 13631 redesignated the existing section 1928 as section 1931 and inserted a new section 1928. The new section 1928 requires each State to establish a VFC Program (which may be administered by the State department of health) under which certain specified groups of children are entitled to receive qualified pediatric immunizations without charge for the cost of the vaccine.

Federally purchased vaccines under the VFC Program will be made available to children who are 18 years of age or younger and—

- Who are eligible for Medicaid;
- Who are not insured under any form of health insurance;
- Who are not insured with respect to the vaccine and who are administered pediatric vaccines by a federally qualified health center (FQHC) or in a rural health clinic; or
- Who are Indians, as defined in section 4 of the Indian Health Care Improvement Act.

Under the VFC program, vaccines must be administered by program-registered providers. Section 1928(c) defines a program-registered provider as any health care provider that—

- Is licensed or authorized to administer pediatric vaccines under the law of the State in which the administration occurs without regard to whether or not the provider is a Medicaid-participating provider;
- Submits to the State an executed provider agreement in the form and manner specified by the Secretary; and
- Has not been found by the Secretary or the State to have violated a provider agreement or other requirements that may apply that are established by the Secretary or the State.

Providers may participate in the VFC program without participating in Medicaid if they are qualified to administer vaccines under applicable State law. However, such providers will

not be reimbursed by Medicaid for their services in administering the vaccine.

Under the VFC Program, a provider may impose a fee for the administration of a qualified pediatric vaccine as long as the fee, in the case of a Federally vaccine-eligible child, does not exceed the cost of such administration (as determined by the Secretary based on actual regional costs for such administration). However, a provider may not deny administration of a qualified pediatric vaccine to a vaccine-eligible child due to the inability of the child's parents or legal guardian to pay the administration fee.

## II. Provisions of This Notice With Comment Period

### *A. General Statement*

This notice announces interim regional maximum charges. These represent the maximum amount that a provider in a State may charge for the administration of qualified pediatric vaccines to Federally vaccine-eligible children under the VFC Program. It also specifies the methodology that HCFA used to establish these regional maximum charges. We are interpreting "regional" as specified in the statute to be the "State", as discussed in section II.B.2. of this notice. In addition, this notice gives Universal Purchase States (that is, where the vaccines are purchased by the State for all children in the State) the right to develop administration charges that differ from those established by HCFA, provided they are reasonable. Therefore, Universal Purchase States are provided the flexibility to accept the maximum charges established by the Secretary or to develop their own maximum charges. In either case, the statute gives State Medicaid agencies the option to establish and apply vaccine administration fees that are lower than the specified maximum charges if they provide assurances that Medicaid children have access to immunizations to the same extent as the general population. Section 1902(a)(30)(A) of the Act, as amplified by section 1926, requires States to pay enough for obstetrical and pediatric services (which include immunization services) so that those services are available to the "Medicaid population" to the same extent that are available to the general population in the geographic area. These assurances must be submitted to HCFA as part of the appropriate State plan amendment to impose the fees. This notice specifies guidelines for States to use in setting lower administration fees.

The administration charge cap applies to all VFC Program-registered providers that administer the vaccine to a Federally vaccine-eligible child. It does not apply to children receiving free vaccines under State purchase programs or any other arrangement.

In accordance with the statute, physicians participating in the VFC Program can charge non-Medicaid eligible children the maximum administration charge (if that charge reflects the provider's cost of administration) regardless of whether the State has established a lower administration fee under the Medicaid program. However, there would be no Federal Medicaid matching funds available for such administration. Although the cost of the vaccines for the VFC Program is funded under Title XIX of the Act, Medicaid will not pay for the administration of vaccines provided to children under the VFC Program who are not eligible for Medicaid. A provider may only bill Medicaid for the administration of a vaccine if the child is Medicaid eligible.

Because the VFC program is mandated by law to become operational on October 1, 1994, we are announcing these regional maximum administration charges and guidelines for documenting access on an interim basis, subject to comment and revision. We will issue a final **Federal Register** document setting forth the applicable requirements and responding to public comments on the provisions of this notice that we receive on a timely basis.

### *B. Methodology Used to Establish Administration Charges*

We used the following methodology to establish the regional maximum charges for administration of qualified pediatric vaccines set forth under section II.C. of this notice.

#### 1. Basis for Using Charge Data versus Cost Data

As noted above, the statute provides that these maximum charges are to be based in the actual costs of vaccine administration, as determined by the Secretary. This provision posed a serious implementation problem for HCFA because of the unavailability of usable actual cost data on a nationwide basis and the urgency of promulgating maximum fees before the VFC program begins operation. We searched thoroughly for appropriate data on the costs of vaccine administration. We also consulted with several organizations and with individuals with knowledge and expertise in issues regarding physician payment, including the Physician Payment Review Commission (PPRC). We were informed that there are no data readily available on physicians' actual costs that would provide a valid basis for setting these maximum charges on a nationwide scale. It also was apparent to us that it would not be possible to generate such data via field research within the time available to implement the VFC program on October 1, 1994. A proper analysis would require detailed, expensive, and time-consuming collection and evaluation of data on each element of both direct and indirect costs, including equipment, supplies and labor, as well as an appropriate verification and allocation of "overhead" costs.

On the basis of this information, we concluded that we should explore setting the maximum charges based on data regarding actual charges for the administration of vaccines in physicians' offices. This, too, posed a problem. We consulted with insurance companies, physicians' groups, trade associations, the PPRC, and other knowledgeable experts. Again, we concluded that accurate, consistent data on charges were not readily available. There are a number of concerns about the data that are available, including inconsistencies in the coding of procedures and the fact that most payers do not differentiate, or pay separately for, the cost of the vaccine and its administration. In light of these problems, we were unable to construct a reliable data base by integrating data from existing information sources.

We concluded that it would be necessary to generate a data base specifically for this purpose. For the reasons stated above, it was not feasible to generate a data base using actual costs, but it was feasible to do one based on charges. In the absence of valid studies to the contrary, we think that, for this particular service, charge data is a reasonable proxy for setting these maximum fees until we are able to obtain cost data. Our conclusion is reinforced by the provision of the statute requiring physicians to agree not to refuse to vaccinate a child because of the family's inability to pay the administration fee and by the knowledge that many physicians currently either do not bill indigent patients their full charge or accept less than full payment from them.

Given the statutory requirements that the administration fees not exceed the costs of administration, we recognize the importance of utilizing cost data in developing the regional maximum charges. We also realize that the use of charge data in developing the maximum charges may result in maximum charges that are too high. While it appears that

there are no useable cost data readily available, our goal is to obtain information that can be used in setting maximum charges in the future. We will be conducting a study to accumulate accurate cost data, and will revise the maximum charges based on cost as soon as possible.

The fiscal year 1995 Department of Health and Human Services appropriations bill specifically addresses the use of charge versus cost data. (140 Cong. Rec. H9306, Sept. 20, 1994) The Secretary is directed to compute the actual cost of administering vaccines and to revise the fees in accordance with the requirements of the law. Because the appropriations bill also states that this directive is not intended to delay the start-up of the VFC program, we will utilize the interim maximum charges. However, as stated above, we will conduct a study with the goal of obtaining accurate cost data and will issue revised maximum charge amounts as soon as possible.

2. Charge Data Methodology

To obtain a data base of physician charges, we contracted with the American Academy of Pediatrics (AAP) to purchase data on the normal fee charged by its members for administering the vaccines to be covered by this program. (We note that AAP did not believe it could obtain cost data by directly surveying its membership.) The AAP had gathered these data from a national, sample survey of its members. The sample was large enough (approximately 1,114 responses) to give us confidence in the national average, but not large enough in each State to allow us to set state-by-state maximum charges without further adjustment. The preliminary results of the survey indicated that the overall average administration charge was $14.48. The final national average administration charge we obtained from the AAP was $15.09.

In order to adjust this national average for regional variations, we concluded that the most reliable means available was the Geographic Practice Cost Indices (GPCIs) established for the Medicare physician fee schedule.

The GPCI is an index developed by a joint effort of the Urban Institute (UI) and the Center for Health Economics Research (CHER) to measure the differences in resource cost among localities compared to the national average in the three components of the relative value units—physician work, practice expenses, excluding malpractice, and malpractice. These three components are weighted 54.2 percent, 40.2 percent, and 5.6 percent, respectively. The resource inputs and their weights were obtained from the American Medical Association's (AMA) Socioeconomic Characteristics of Medical Practice. The weights for the current GPCIs are from the AMA's 1989 Socioeconomic Monitoring System (SMS) Survey.

If there is more than one GPCI for a State, we used the GPCI with the highest values to derive the maximum charge in order to assure that the administration charge for providers in high cost areas would fall within our established maximum.

The GPCIs are grouped by State and substate areas. For purposes of developing the regional maximum charges, we interpreted the term "regional" used in the statute to mean "State" because of the specific grouping of the data using the GPCIs. While the GPCI is grouped by State and substate areas, we decided to use the State grouping only. The geographic area of a State is clearly identifiable by boundary lines recognized nationwide, as opposed to a substate area. In other words, substate areas do not necessarily represent counties, which would be an easily identifiable geographic area. Therefore, we believe using substate geographic areas would be confusing to both States and providers.

We derived the amounts specified in the chart under section II.C. of this notice as the maximum charges that may be charged for the administration of qualified pediatric vaccines for each State on the basis of the following formula: National charge data × total weighted GPCI = maximum charge.

Following is an example of application of the formula for Hawaii:

Average national administration charge = $15.09
Work expense = 1.003
Practice expense = 1.094
Malpractice expense = 1.025

Using Medicare weights to weigh components of—

Work expense = 54.2 percent
Practice expense = 40.2 percent
Malpractice expense = 5.6 percent

| Calculation: | | |
|---|---|---|
| Work expense | 1.003 × 54.2 percent = | .5436 |
| Practice expense | 1.094 × 40.2 percent = | .4398 |
| Malpractice expense | 1.025 × 5.6 percent = | .0574 |
| | | 1.0408 |

Hawaii's maximum charge for administration of the vaccine is:

$15.09 × 1.0408 = $15.71

Given the circumstances discussed in the beginning of section II.B. of this notice, the maximum charge will be based on charge data and will be applicable until we are able to obtain cost data. Our goal is to obtain information that can be used in setting maximum charges in the future. We will revise the regional maximum charges as we determine it is necessary, or in response to public comments.

*C. Maximum Regional Charges for Vaccine Administration by State*

Based on the methodology described, the maximum administration charges are as follows:

| State | Regional maximum charge |
|---|---|
| Alabama | $14.26 |
| Alaska [1] | 17.54 |
| Arizona | 15.43 |
| Arkansas | 13.30 |
| California | 17.55 |
| Colorado | 14.74 |
| Connecticut [1] | 16.56 |
| Delaware | 15.13 |
| District of Columbia | 16.55 |
| Florida | 16.06 |
| Georgia | 14.81 |
| Hawaii | 15.71 |
| Idaho [1] | 14.34 |
| Illinois | 16.79 |
| Indiana | 14.47 |
| Iowa | 14.58 |
| Kansas | 14.80 |
| Kentucky | 14.17 |
| Louisiana | 15.22 |
| Maine [1] | 14.37 |
| Maryland | 15.49 |
| Massachusetts [1] | 15.78 |
| Michigan | 16.75 |
| Minnesota | 14.69 |
| Mississippi | 13.92 |
| Missouri | 15.07 |
| Montana | 14.13 |

| State | Regional maximum charge |
|---|---|
| Nebraska | 13.58 |
| Nevada | 16.13 |
| New Hampshire[1] | 14.51 |
| New Jersey | 16.34 |
| New Mexico | 14.28 |
| New York | 17.85 |
| North Carolina[1] | 13.71 |
| North Dakota | 13.90 |
| Ohio | 14.67 |
| Oklahoma | 13.89 |
| Oregon | 15.19 |
| Pennsylvania | 15.76 |
| Puerto Rico | 12.24 |
| Rhode Island[1] | 14.93 |
| South Carolina | 13.62 |
| South Dakota[1] | 13.56 |
| Tennessee | 13.70 |
| Texas | 14.85 |
| Utah | 14.52 |
| Vermont[1] | 13.86 |
| Virginia | 14.71 |
| Virgin Islands | 15.09 |
| Washington[1] | 15.60 |
| West Virginia | 14.49 |
| Wisconsin | 15.02 |
| Wyoming[1] | 14.31 |

[1] According to available information, these are Universal Purchase States. The Universal Purchase States may accept the maximum charges listed or develop their own maximum fees, as indicated under section II.D. of this notice.

*D. Maximum Charges for Administration of Vaccines in Universal Purchase States*

States that have programs under which the State purchases vaccines for all children in the State (Universal Purchase States) have the flexibility to accept the maximum charges developed by HCFA or to develop their own maximum charges. We believe it is necessary that Universal Purchase States are provided sufficient flexibility in developing charges in order to ensure that there is equal access to immunizations for all children. In these States, we believe the State may wish to set one overall charge cap in order to encourage adequate provider participation. Furthermore, it is our understanding that providers should experience no cost differences between VFC program eligible children and all other children inasmuch as the provider never incurs the cost of the vaccine.

While Universal Purchase States have the flexibility to develop their own caps, they must develop these by utilizing a reasonable methodology based upon the requirements of section 1928(c)(2)(C)(ii) of the Act. The amount of the cap is not required to be set in State law. However, the authority to set an amount must be based in State law.

*E. Optional Lower Medicaid Administration Fees*

State Medicaid agencies are not obligated to set the Medicaid payment for vaccine administration at the level of the maximum charges set forth in this notice. Section 1928(c)(2)(C)(ii) of the Act allows them to set their payment at a lower level, according to their own judgment. State Medicaid agencies typically set payment rates taking into consideration a variety of factors, including the need to assure adequate participation by providers. Since the maximum charges in this notice are based on the normal charges billed by physicians, rather than on the amounts actually collected by physicians from insurers or patients, State Medicaid agencies may determine that a lower payment level is appropriate.

If the State Medicaid agency elects to pay a lower fee, it must provide assurances to HCFA, as described below, that Medicaid-eligible children will have access to vaccines. In addition, a State Medicaid agency may elect to apply the regional maximum charges in selected areas of the State and a lower fee in other areas. Any lower fees that a State Medicaid agency elects to apply must be justified using the guidelines specified in section II.F. of this notice.

In the case of Universal Purchase States that elect to develop their own maximum charges, State Medicaid agencies have the flexibility to pay the maximum charge or to pay a lower fee subject to the same provisions discussed above.

*F. Documentation Guidelines for Optional Lower Medicaid Administration Fees*

1. Pediatric Services Defined

As defined in section 1926(a)(4)(B) of the Act, the term "pediatric services" means "services covered under the State plan provided by a pediatrician, family practitioner, or certified pediatric nurse practitioner to children under 18 years of age and does not include inpatient or outpatient hospital services or other institutional services."

2. Immunization Rate

In applying any of the guidelines under section II.F.3. of this notice, we believe it is necessary to identify what children would be considered immunized. In order to be counted toward the immunization rate goals discussed, a child must have received, within the year period of measure for access, all immunizations required for his or her particular age, including those immunizations under a revised schedule because of those missed from a previous year.

3. Data Requirements

If the State elects to pay an administration fee lower than the maximum charge set forth in section II.C. of this notice, it must provide, via the obstetrical/pediatric State plan amendment submittal, data that document that the lower or varying fees meet the statutory requirements of sections 1902(a)(30)(A) and 1926 of the Act and the implementing regulatory requirements of 42 CFR 447.204. Section 447.204 of the regulations specify that a Medicaid agency's payments must be sufficient to enlist enough providers so that services under the plan are available to recipients at least to the extent that those services are available to the general population.

The State may use one or more of the following guidelines to document that the statutory and regulatory requirements are met:

a. Comparison of Ratios

Under this guideline, the State would submit a comparison between the following ratios:

(i) The ratio of the number of children in the general population immunized to the number of children in the general population; and

(ii) The ratio of the number of Medicaid children immunized to the number of Medicaid children.

In order for a State to use this guideline as an equal access assurance, the ratio of Medicaid children immunized to the number of Medicaid children would have to be equal to or greater than the ratio of the general population immunized to the number of children in the general population.

b. Comparison to Private Insurance

Another alternative is for the State to do a comparison of the Medicaid fees for administration of pediatric vaccines to the administration fees paid by a major insurance company.

In order for the State to use this guideline as an equal access assurance, the Medicaid rates for the administration of pediatric vaccines would have to be set at a rate equal to or greater than the private insurance company's rates up to the established State maximum fee.

c. Practitioner Participation

The State also may compare:

(i) The number of Medicaid pediatric practitioners (which includes practitioners listed in section 1926(a)(4)(B) of the Act) who are Medicaid program- registered providers

and who have submitted pediatric immunization claims; and

(ii) The total number of pediatric practitioners providing immunizations to children.

The program registered providers must have at least one Medicaid pediatric immunization claim per month or an average of 12 such claims during the year. The State would need 50 percent participation to show equal access through use of this guideline.

**d. Other**

States have the flexibility to devise alternative measures of equal access to immunizations. HCFA will evaluate these other methods by which States can choose to demonstrate equal access.

*G. Submittal of State Plan Amendments*

A State Medicaid agency must specify the reimbursement for the administration of pediatric vaccines (and, if applicable, submit documentation of equal access) as part of its obstetrical/pediatric payment rate State Medicaid plan amendment submittal that are due by April 1 of each year, beginning April 1, 1995 (and which are effective July 1, 1995). If the State Medicaid agency elects to pay the maximum regional amount statewide (including that established by the State in Universal Purchase States), it need only specify this in its State plan amendment submittal (no additional documentation will be needed). However, if the State Medicaid agency elects to vary the vaccine administration fee by geographic areas within the State, the State must list the administration fee for each area, and specify the methodology, and provide the data and methodology it used to demonstrate equal access to the vaccines for each geographic area where the maximum charges are not applied. This documentation requirement is consistent with the requirements currently imposed for submittal of State Medicaid plan amendments for obstetrical and pediatric payment rates under sections 1902(a)(30)(A) and 1926 of the Act. We also believe that documenting access to immunizations by each geographic area provides a more accurate picture of access and areas where access is problematic.

The State plan amendment must be submitted by December 31, 1994 and be effective on October 1, 1994. For the interim period of October 1, 1994 through March 31, 1995, States may claim Federal matching funds for the costs of administration of vaccines to Medicaid-eligible children using the maximum charges or the lower fees established on the basis of the guidance provided in this notice. For this interim State plan amendment, the State will not be required to submit the data to document access to immunizations but will be required to list the methodology by which Medicaid beneficiary access to immunizations is assured. Beginning April 1, 1995, documentation of equal access to immunizations will be required to be included as part of the yearly Obstetrical/Pediatric State plan amendment submittal in accordance with section 1926 of the Act.

**III. Impact Statement**

For notices such as this, we generally prepare a flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a notice will not have a significant economic impact on a substantial number of small entities. For purposes of a RFA, States and individuals are not considered small entities. However, providers are considered small entities.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice of proposed rulemaking that may have a significant impact on the operation of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This notice with comment period implements a provision of section 1928 of the Act. Specifically, this notice with comment period announces interim regional maximum charges that providers may impose for administering pediatric vaccines to Federally vaccine-eligible children under the VFC Program. Section 1928 of the Act directs the Secretary to establish regional maximum fees. As discussed in section II. B of this notice, HCFA contracted with the American Academy of Pediatrics to conduct a survey to obtain national charge data for the administration of pediatric vaccines. HCFA used this data to develop a national charge amount and then adjusted this amount to take into account regional variations to establish a charge for each State. The GPCIs established for the Medicare physician fee schedule were used to make this adjustment. Universal Purchase States have the flexibility to accept the maximum charges developed by HCFA or to develop their own maximum charges. HCFA is also permitting State Medicaid agencies to develop a lower administration fee than the maximum charge if they can demonstrate equal access for children to the vaccines.

The impact of implementing the provision of section 1928(c)(2)(C)(ii) of the Act is discussed further below. We do not believe that this provision will have a significant effect on a substantial number of small entities.

To the extent that a legislative provision being implemented by a notice such as this may have a significant effect on recipients or providers or may be viewed as controversial, we believe that we should address any potential concerns. In this instance, it is difficult to predict what the fiscal impact of this notice will be. There are several unknown factors. Among them are the number of program-eligible providers who will elect to administer the vaccines. In addition, State Medicaid agencies are not required to pay the maximum charges. State Medicaid agencies may establish and apply lower vaccine administration fees if they document that Medicaid children have access to immunizations to the same extent as the general population. Given the availability of free vaccines and the fact that State payments for all pediatric and obstetrical services, including, presumably, vaccine administration, have for some time been subject to access demonstration requirements under 42 CFR 447.204 and sections 1902(a)(30)(A) and 1926 of the Act, we believe that a large proportion of States will be able to demonstrate equal access for Medicaid-eligible children at rates lower than the maximum charges. In addition, should a State Medicaid agency not be able to demonstrate equal access at its current rates, the State Medicaid agency would only have to increase its rates to where there would be equal access. The publication of the maximum charge schedule will certainly create pressure in States with vaccine administration fees for Medicaid-eligible children lower than the maximums to raise those fees. However, to the extent that these States can provide the required assurances, they will not need to raise their fees. (Currently, it appears that most States pay for vaccine administration under Medicaid at rates well below the proposed maximum. This is allowable under the statute.)

Hence, the magnitude of any increase in Medicaid outlays is difficult to ascertain. Because of the pre-existing equal access demonstration requirements, we find it hard to estimate how much of any increase in charges would be attributable to the

specific guidelines of this notice and how much would occur without publication of the notice. We invite public comment on the impact of both the equal access assurances and anticipated fee increases.

We are providing a voluntary regulatory flexibility analysis because of the large number of children and providers who may be affected. Normally, a regulatory flexibility analysis requires the agency to discuss various alternatives to the provisions in a notice. As discussed above, however, HCFA is implementing the provisions of section 1928(c)(2)(C)(ii) of the Act. The focus of this legislation is upon expanding the number of children who are eligible to receive free pediatric vaccines. We have provided State Medicaid agencies with an option of using a lower fee than the maximum charges set forth in this notice or using a charge established by a Universal Purchase State at their option if they can demonstrate equal access of children to the pediatric vaccines. Because indicated Congressional intent was to expand the coverage for vaccines, we believe that permitting State Medicaid agencies to use a lower fee where they can demonstrate equal access of children to the pediatric vaccines is consistent with the statute. In addition, we note that this option, if utilized by State Medicaid agencies, will cost Federal and State governments less money than if the State Medicaid agencies were using the maximum regional charges as set forth in this notice, while simultaneously achieving Congress' goal.

A brief summary of the impact of the provisions of this notice with comment period upon various groups is provided below.

*1. Providers*

Each program-registered provider who administers a qualified pediatric vaccine is entitled to receive the vaccine without charge either for the vaccine or its delivery to the provider. This notice specifically establishes maximum regional charges for providers to administer the vaccines. As a result of these maximum regional charges, we believe that the number of providers who may be willing to administer the vaccines would be maintained or increased. In addition to a potential increase in the number of providers who may be willing to administer these vaccines, there may be an increase in the number of patients that they treat since section 1928 of the Act expands the number of children who are eligible to receive the vaccine without charge.

*2. Children*

The greatest benefit of this provision is that it expands the number of children who are eligible to receive pediatric vaccines without charge for the vaccines. We believe that there will be an increase in the number of children receiving pediatric vaccines. As the number of children who are vaccinated increases, we believe that savings will accrue as a result of a decline in the number of children who will require treatment for vaccine-preventable illnesses.

*3. States*

States may also benefit under various provisions of the VFC Program. Specifically, this program will provide free vaccines and free delivery to States thus saving States monies that would otherwise be spent on purchase and delivery of vaccines. Where they can demonstrate equal access, State Medicaid agencies are given the option of using the regional charge as specified in this notice or a lower fee. States could experience an increase in the number of children who are receiving the vaccines, thus achieving Congress' goal though increasing their pediatric immunization costs. As discussed above, fewer children may be treated for vaccine-preventable illnesses which may provide a savings to the States.

We are not preparing a rural impact statement since we have determined, and the Secretary has certified, that this notice with comment period will not have a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: September 2, 1994.

**Bruce C. Vladeck,**

*Administrator, Health Care Financing Administration.*

Dated: September 23, 1994

**Donna E. Shalala,**

*Secretary.*

[FR Doc. 94–24433 Filed 9–30–94; 8:45 am]

BILLING CODE 4120–01–P

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## Health Resources and Services Administration

### Funding Notice for Grants for Family Medicine Training for Fiscal Year 1995

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for fiscal year (FY) 1995 Grants for Family Medicine Training funded under the authority of section 747 (a) and (b), title VII of the Public Health Service Act (the Act), as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992. These grant programs include:

Grants for Predoctoral Training in Family Medicine
Grants for Graduate Training in Family Medicine
Grants for Faculty Development in Family Medicine
Grants for Establishment of Departments of Family Medicine

This program announcement is subject to the appropriation of funds. The Administration's budget request for FY 1995 includes funding for each of these programs. Applicants are advised that this program announcement is a contingency action being taken to assure that should authority and funds become available for these purposes, awards can be made in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year. Please see Table 1 for specific budget estimates for each of the grant programs.

**Grants for Predoctoral Training in Family Medicine**

*Purpose:* Section 747(a) of the Public Health Service Act authorizes the award of grants to assist in meeting the cost of planning, developing and operating or participating in approved predoctoral training programs in the field of family medicine. Grants may include support for the program only or support for both the program and the trainees.

*Eligibility:* Eligible applicants are accredited public or nonprofit private schools of medicine or osteopathic medicine.

To receive support, programs must meet the requirements of regulations as set forth in 42 CFR part 57, subpart Q and section 791(b) of the PHS Act.

**Grants for Graduate Training in Family Medicine**

*Purpose:* Section 747(a) of the Public Health Service Act authorizes the Secretary to award grants to assist in meeting the costs of planning, developing and operating or participating in approved graduate training programs in the field of family medicine. In addition, section 747(a) authorizes assistance in meeting the cost of supporting trainees, who are in need thereof, in such programs who plan to specialize or work in the practice of family medicine.

*Eligibility:* Eligible applicants are accredited schools of medicine or osteopathic medicine, public or nonprofit private hospitals, and other public or private nonprofit entities.

To receive support, programs must meet the requirements of regulations as set forth in 42 CFR part 57, subpart Q and section 791(b) of the PHS Act.

**Grants for Faculty Development in Family Medicine**

*Purpose:* Section 747(a)(3) of the PHS Act authorizes the award of grants to assist in meeting the cost of planning, developing and operating programs for the training of physicians who plan to teach in family medicine training programs. In addition, section 747(a)(4) authorizes assistance in meeting the cost of supporting physicians who are trainees in such programs and who plan to teach in a family medicine training program.

*Eligibility:* Eligible applicants are public or nonprofit private hospitals, schools of medicine or osteopathic medicine, or other public or private nonprofit entities.

To receive support, applicants must meet the requirements of regulations as specified in 42 CFR part 57, subpart Q and section 791(b) of the PHS Act.

**Grants for Establishment of Departments of Family Medicine**

*Purpose:* Section 747(b) of the PHS Act authorizes support to meet the costs of projects to establish, maintain, or improve family medicine academic administrative units (which may be departments, divisions, or other units) to provide clinical instruction in family medicine. Funds awarded will be used to: (1) Plan and develop model educational predoctoral, faculty development and graduate medical education programs in family medicine which will meet the requirements of section 747(a), by the end of the project period of section 747(b) support; and (2) support academic and clinical activities relevant to the field of family medicine.

The program may also assist schools to strengthen the administrative base and structure that is responsible for the planning, direction, organization, coordination, and evaluation of all undergraduate and graduate family medicine activities. Funds are to complement rather than duplicate programmatic activities for actual operation of family medicine training programs under section 747(a).

*Eligibility:* To be eligible to receive support for this grant program, the applicant must be a public, or nonprofit private, accredited school of medicine or osteopathic medicine.

To receive support, programs must meet the requirements of regulations as set forth in 42 CFR part 57, subpart R, and section 791(b) of the PHS Act.

**National Health Objectives for the Year 2000**

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone 202–783–3238).

**Education and Service Linkage**

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

**Smoke-Free Workplace**

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

**Other Considerations**

In addition, funding factors may be applied in determining funding of approved applications.

A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications in a discretionary program, or favorable adjustment of the formula which determines the grant award in a formula grant program.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

**Statutory General Preference**

All of the Family Medicine Training grant programs are subject to the statutory general preference. As provided in section 791(a) of the PHS Act, statutory preference will be given to any qualified applicant that—

(A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or

(B) During the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings.

This statutory preference will only be applied to applications that rank above the 20th percentile of proposals recommended for approval by the peer review group.

For Grants for Predoctoral Training in Family Medicine, the following definitions apply: *High rate* is defined as a minimum of 20 percent of graduates of the medical school in academic year 1989–90 or 1990–91.

*Significant increase in the rate* means that the rate of placing academic year 1990–91 graduates in the specified settings is at least 50 percent higher than the rate of placing academic year 1989–90 graduates in such settings and that not less than 15 percent of academic year 1990–91 graduates are working in these areas. Academic years 1989–90 and 1990–91 are used because they are the two most recent years that medical school graduates would have entered practice following the completion of residency training.

For Grants for Graduate Training in Family Medicine, the following definitions apply: *High rate* is defined as a minimum of 25 percent of combined graduates of the residency training program in academic years 1991–92 through 1993–94.

*Significant increase in the rate* means that, between academic years 1992–93 and 1993–94, the rate of placing graduates in the specified settings has increased by a minimum of 50 percent and not less than 15 percent of graduates from the most recent year are working in these areas.

For Grants for Family Medicine Faculty Development, the following definitions apply: *High rate* is defined as a minimum of 20 percent of faculty development/fellowship program graduates in academic year 1992–93 or academic year 1993–94, whichever is greater, who spend at least 50 percent of their worktime in the specified settings.

*Significant increase in the rate* means that, between academic years 1992–93 and 1993–94, the rate of placing faculty development/fellowship program graduates in the specified settings has increased by a minimum of 50 percent and that not less than 15 percent of the academic year 1993–1994 graduates are working in these areas.

For Grants for the Establishment of Departments of Family Medicine, the following definitions apply: *High rate* means that 20 percent of all graduates of the medical school in 1990 or 1991, whichever is greater, are spending at

least 50 percent of their work time in clinical practice in the specified settings.

*Significant increase in the rate* means that, between academic years 1992–93 and 1993–94, the rate of placing 1990 or 1991 graduates in the specified settings has increased by at least 50 percent and that not less than 15 percent of graduates from the most recent year (1991) are working in these settings.

Additional general information regarding the implementation of the statutory general preference has been published in the **Federal Register** at 59 FR 15741, dated 4/4/94.

**Additional Statutory Funding Preference for Grants for the Establishment of Departments of Family Medicine**

An additional statutory funding preference applies only to Grants for the Establishment of Departments of Family Medicine. Under section 747(b), a funding preference is provided for qualified applicants that agree to expend the award for the purpose of: (1) Establishing an academic administrative unit defined as a department, division, or other unit, for programs in family medicine; or (2) substantially expanding the programs of such a unit.

**Information Requirements Provision**

All of the Family Medicine Training grant programs are subject to the information requirements provision. Under section 791(b) of the Act, the Secretary may make an award under certain title VII grant programs only if the applicant for the award submits to the Secretary the following required information:

1. A description of rotations or preceptorships for students, or clinical training programs for residents, that have the principal focus of providing health care to medically underserved communities.

2. The number of faculty on admissions committees who have a clinical practice in community-based ambulatory settings in medically underserved communities.

3. With respect to individuals who are from disadvantaged backgrounds or from medically underserved communities, the number of such individuals who are recruited for academic programs of the applicant, the number of such individuals who are admitted to such programs, and the number of such individuals who graduate from such programs.

4. If applicable, the number of recent graduates who have chosen careers in primary health care.

5. The number of recent graduates whose practices are serving medically underserved communities.

6. A description of whether and to what extent the applicant is able to operate without Federal assistance under this title.

Additional details concerning the implementation of this information requirement have been published in the **Federal Register** at 58 FR 43642, dated August 17, 1993, and will be provided in the application materials.

**Application Requests**

Requests for application materials and questions regarding grants policy and business management issues should be directed to Grants Management Branch, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857. Completed applications should be returned to the Grants Management Branch at the above address. Please see Table 1 for specific names and phone numbers for each grant program.

If additional programmatic information is needed, please contact the Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 9A–20, 5600 Fishers Lane, Rockville, Maryland 20857. Please see Table 1 for specific names and phone numbers for each grant program.

**Paperwork Reduction Act**

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for these grant programs have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance Number is 0915–0060.

**Deadline Dates**

The deadline date for receipt of applications for each of these grant programs is shown in Table 1. Applications will be considered to be "on time" if they are either:

(1) *Received on or before* the established deadline date, or

(2) *Sent on or before* the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

TABLE 1

| PHS title VII section No./program title/CFDA No./program regulations | Anticipated budget (in thousands) | | | Number of new awards anticipated | Grants management contact/phone No. (FAX: 443–6343) | Programmatic contact/phone No. (FAX 443–8890) | Deadline date for competing applications |
|---|---|---|---|---|---|---|---|
| | Total in President's budget [1] | Estimate for continuations | Estimate for competing projects | | | | |
| 747—Graduate Training in FM—93.379—42 CFR part 57, subpart Q. | ..... | $9,979 | $4,900 | 38 [2] | Mrs. Mary Allen, (301) 443–6002. | Ms. Martha Evans, (301) 443–1467. | 12/2/94 |
| 747—Predoctoral Training in FM—93.896—42 CFR part 57, subpart Q. | ..... | 7,691 | 3,780 | 29 | Mrs. Judy Bowen, (301) 443–6960. | Mrs. Betty Ball, (301) 443–1467. | 12/28/94 |
| 747—Faculty Development in FM—93.985—42 CFR part 57, subpart Q. | ..... | 5,210 | 1,960 | 15 | Mrs. Judy Bowen, (301) 443–6960. | Mrs. Joan Harrison, (301) 443–1467. | 11/28/94 |

TABLE 1—Continued

| PHS title VII section No./program title/CFDA No./program regulations | Anticipated budget (in thousands) | | | Number of new awards anticipated | Grants management contact/phone No. (FAX: 443–6343) | Programmatic contact/phone No. (FAX 443–8890) | Deadline date for competing applications |
|---|---|---|---|---|---|---|---|
| | Total in President's budget [1] | Estimate for continuations | Estimate for competing projects | | | | |
| 747—Departments of FM—93.984—42 CFR part 57, subpart R. | ..... | 7,079 | 3,360 | 26 | Mrs. Judy Bowen, (301) 443–6960. | Mrs. Shelby Bieden-. kapp, (301) 443–1467 .. | 12/19/94 |

[1] $43,992.
[2] Approximately $130,000 each.

These Grants for Family Medicine Training are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). Also, these grant programs are not subject to the Public Health System Reporting Requirements.

Dated: August 31, 1994.

**Ciro V. Sumaya,**

*Administrator.*

[FR Doc. 94–24339 Filed 9–30–94; 8:45 am]

BILLING CODE 4160–15–P

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RIN 0905–ZA45

## Proposed Review Criterion and Indicators for Grants for Family Medicine Training and Grants for General Internal Medicine and General Pediatrics Training

Grants for Family Medicine Training and Grants for General Internal Medicine and General Pediatrics Training are authorized by sections 747 (a) and (b) and 748, title VII of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Pub. L. 102–408, dated October 13, 1992. These grant programs include:

Grants for Predoctoral Training in Family Medicine
Grants for Graduate Training in Family Medicine
Grants for Faculty Development in Family Medicine
Grants for Establishment of Departments of Family Medicine
Grants for Residency Training in General Internal Medicine and General Pediatrics
Grants for Faculty Development in General Internal Medicine and General Pediatrics

Competing applications for grants authorized under sections 747 and 748 are reviewed by chartered review committees. It is proposed that the following review criteria and weighted indicators be used by the chartered review committees for the FY 1995 grant cycles. Public comments are invited on the one proposed review criterion and the weighted indicators associated with all four review criteria.

This review criterion and weighted indicators are proposed in this combined notice, rather than in individual program announcements, to provide consistent review of all primary care medical education grant applications. A funding notice for Grants for Family Medicine Training for FY 1995 has been published elsewhere in today's **Federal Register.** A funding notice for Grants for General Internal Medicine and General Pediatrics will be published should funds become available for competitive cycles in FY 1995. Deadline dates and other specific information regarding these grant programs are included in funding notices.

### General Purposes

Grants provided in support of primary care medical education are intended to produce, over time, a training infrastructure capable of meeting the nation's needs for generalist health care practitioners by the year 2000 and beyond.

The Division of Medicine (DM), Bureau of Health Professions (BHPr), has developed the following Strategic Directions for fiscal year 1995:

- Generalism—increasing the number of generalist physicians, including the coordination and integration of training opportunities designed to produce generalists;
- Workforce diversity, particularly the training of minorities;
- Strategies to improve health care for the underserved;
- Improve primary care quality;
- Increase primary care faculty and researchers; and
- Emphasize public health and interdisciplinary training.

Applicants are encouraged to consider each application as part of an integrated institutional plan that considers these strategic directions in providing education and training that encourages the selection and future practice of generalist physicians in the disciplines of family medicine, general internal medicine and general pediatrics.

### Review Criteria

Considering charter review committee recommendations, the Secretary will approve projects which best promote the purposes of sections 747 and 748 of the PHS Act, taking into consideration the following review criteria established in 42 CFR part 57, subparts Q, R, and FF.

1. The administrative and management ability of the applicant to carry out the proposed project in a cost-effective manner.

2. The potential of the project to continue on a self-sustaining basis after the period of grant support.

3. The degree to which the proposed project adequately provides for the project requirements.

In addition, the following review criterion is proposed for FY 1995:

4. Potential effectiveness of the proposed project in carrying out the training purposes of sections 747 or 748 of the PHS Act.

For the above review criteria, weighted indicators have been identified. These indicators, which are listed below, will measure, among other things, the qualifications of the proposed staff and faculty, the institution's commitment to preparing generalist physicians, and the recruitment and retention of underrepresented minority and disadvantaged faculty, students, trainees and/or residents. These issues have been addressed in previous grant cycles as review criteria or funding factors. The review criteria and indicators were developed for the FY 1995 grant cycle with input from potential applicants for these grant programs.

MERIT SCORE POINT POTENTIAL

| Type of project | Potential effectiveness (points) | Administrative and management ability (points) | Economic viability (points) | Project requirements (points) |
|---|---|---|---|---|
| Department of Family Medicine | 130 | 145 | 20 | 75 |
| Family Medicine Residencies | 100 | 145 | 20 | 40 |
| Family Medicine Faculty Development | 110 | 145 | 20 | 65 |
| Family Medicine Predoctoral Training | 130 | 145 | 20 | 80 |
| General Internal Medicine/General Pediatrics Residencies | 130 | 145 | 20 | 120 |
| General Internal Medicine/General Pediatrics Faculty Development | 110 | 145 | 20 | 65 |

The points available for the various grant programs in the "Potential Effectiveness" criterion vary slightly. This is a result of a small number of indicators that are specific to individual grant programs. In general, this category relates to the overall institutional environment in which the program is located and the manner of support for establishing or enhancing the training of generalist physicians at the institution.

The "Administrative and Management Ability" review criterion has the highest number of points and is consistent across all grant programs because this area of the application will describe the proposed project for which the grant funds are being requested. The proposal needs to clearly detail the proposed project as well as relate the proposed project to the institution's overall goal of establishing or enhancing its training infrastructure in order to produce more generalist physicians to meet the needs of the Nation.

The "Economic Viability" points are consistent across all grant programs.

The "Project Requirements" points vary considerably for some programs. This is related to the differing number of project requirements specific to each grant program as well as the significance of some of the indicators. For example, for Family Medicine Residencies, the points are lower to reflect the fact that residency programs that are accredited or approved by the appropriate accrediting body, have already met the project requirements.

**Weighted Indicators**

*Criterion 1: Potential Effectiveness of the Proposed Project in Carrying Out the Training Purposes of Sections 747 and 748 of the PHS Act*

Indicator 1—Institutional Environment—20 points

Proposal describes the actions taken by the institution (i.e., department, medical school, or other sponsoring health care delivery institution) that demonstrate a high level of support for and promotion of generalist training and practice in community-based settings within underserved urban and rural communities and populations. Examples include organizational mission statements describing support for training and graduating generalists in the primary care disciplines, institutional financial support for such programs, institutional support for rural practices such as locum tenens, 1–800 numbers for consultations, visiting faculty status for rural practitioners, complementary institutional and other resources to support such programs, and adequate representation of generalist faculty on key academic committees such as Admissions, Selection, Tenure, and Faculty Recruitment.

Indicator 2—Strategic Outcomes—20 Points

Proposal describes a strategy for the institution's training program that will lead to or sustain a high level of graduates entering generalist residencies and/or practice.

Indicator 3—Generalist Faculty—10 points

Proposal includes strong, clinically-oriented generalist faculty who practice in community-based settings that include underserved populations.

Indicator 4—Promotion of Workforce Diversity—20 Points

Proposal includes a strategy and plan for recruiting and retaining underrepresented minority and disadvantaged faculty, students, trainees and/or residents. Proposal describes the current and projected levels of participation of these underrepresented groups in the program. Applicants are expected to reflect the diversity of the populations within their states.

Indicator 5—Critical Training Emphasis—10 Points

Proposal includes reference to a curriculum that incorporates Healthy People 2000 objectives in one or more of the following content areas: HIV/AIDS epidemiology, prevention, diagnosis and treatment; substance abuse; or clinical preventive services. Wherever necessary, curriculum is appropriate to the needs of the patient population (culturally competent regarding ethnicity, gender, and sexual orientation) whether that population is urban, rural or underserved.

Indicator 6—Interdisciplinary Training—10 Points

*Except for Faculty Development projects,* proposal provides for interdisciplinary clinical training opportunities, i.e., a training environment in which students, interns and/or residents learn to work in teams including varied health care professionals and/or primary care disciplines. The environment is such that the important contributions by each member of the health care team are recognized and utilized in the primary care setting.

Indicator 7—Clinical Training Settings—10 Points

*Except for Faculty Development projects,* proposal provides for clinical training in community-based settings within underserved areas or populations.

Indicator 8—Primary Care Preceptorship—10 Points

*For Departments of Family Medicine and Predoctoral Training Programs Only:* Training includes a primary care preceptorship that: 1) occurs in the first or second year and is at least four weeks in duration; or 2) is a longitudinal experience of at least five days per semester in both the first and second years.

Indicator 9—Third-Year Clerkship—20 Points

*For Departments of Family Medicine and Predoctoral Training Programs Only:* Training includes a required third-year clerkship in family medicine of at least four-weeks duration.

Indicator 10—Faculty Expertise—30 Points

*For Faculty Development Programs Only:* Proposal includes adequate

balance in faculty expertise to teach the proposed curriculum, e.g., teaching skills, administrative and management skills, or primary care research.

Indicator 11—Generalism Outcomes/ Continuity of Care—30 Points

*For General Internal Medicine and/or General Pediatrics Residency Training Program Only:* Competing continuation General Internal Medicine and/or General Pediatrics program demonstrates a consecutive 3-year track record of 80% or more graduates entering primary care careers. *IN ADDITION,* by the beginning of the second year of grant support the competing continuation *OR* NEW General Internal Medicine and/or General Pediatrics program will provide *ALL* PGY–1 residents (primary care and traditional) entering the Internal Medicine and/or Pediatrics residency with continuity of care training experience comprising a total of 20% (average) over the 3-year training period, scheduled in at least 9 months of each year of training.

*Criterion 2: Administration & Management Ability of the Applicant to Carry Out the Proposed Project in a Cost-Effective Manner*

Indicator 1—Project Rationale—30 Points

Project plan includes a background statement, a statement of need for the project, and a specific rationale justifying the proposed project. Project plan also describes the links between this proposed project and an effective larger institutional program, i.e., the department, division, residency, etc. This section of the project plan will define the larger purposes of the project, i.e., in what way the project will cause an improvement or expansion in the capability of the larger educational institution or program to deliver quality primary care training.

For competing continuation proposals, a progress report is provided. At a minimum, the report includes a summary of the funded objectives and the accomplishments made during the project period. Progress report includes evaluation data related to each of the project objectives. For applicants who are not currently funded, but who have received funding within the last four years, a discussion is included in the application describing the previously funded objectives, accomplishments and evaluation data relative to those objectives.

Indicator 2—Project Objectives—40 Points

Project plan contains a detailed description of the project's objectives with measurement indicators for each objective. The plan also includes a description of the methods that will be used to implement the project, e.g., educational strategy, timetable and a resource plan that outlines the faculty, staff, facilities and equipment that will be used, including identification of those resources that already exist or that will be made available by the institution.

Indicator 3—Budget Justification—30 Points

Project plan indicates the degree to which the proposed objectives relate to the budget narrative and justifies the budget items requested.

Indicator 4—Evaluation Plan—10 Points

Project plan includes an evaluation strategy for the proposed project to determine achievements in relation to project objectives.

Indicator 5—Anticipated Problems—10 Points

Project plan defines the problems anticipated in implementing the project and the proposed approaches to resolving such problems as may arise.

Indicator 6—Institutional Collaboration—15 Points

Project plan includes documentation of the support of individuals or organizations who will collaborate in implementation of this proposed project. Letters of support for the project from the institution, department, faculty, etc., are included. *For Faculty Development projects,* letters from potential/actual trainees are included.

Indicator 7—Trainee Grid—10 Points

*Except for Departments of Family Medicine,* project plan includes a "trainee grid" that defines the type of individuals being trained, how many will be trained, and when they will be trained.

*For General Internal Medicine and General Pediatrics Residencies,* the grid should also reflect actual and projected numbers of primary care and traditional residents.

*Criterion 3: Economic Viability—The Potential of the Project to Continue on a Self-Sustaining Basis After the Period of the Project Grant*

Indicator 1—Continuation Support—10 Points

Proposed projects demonstrate how their support will be continued after cessation of Federal funding. If other projects have been funded under this grant program within the past five years, a financial report discusses how terminated Federal funds have been replaced.

Indicator 2—Non-Federal Support—10 Points

Financial and in-kind support is or will be provided by state or local government, institution, medical school, department, patient fees, or other private funding sources to supplement the Federal grant.

*Criterion 4: Degree to Which the Proposed Project Adequately Provides for the Project Requirements*

These indicators (project requirements) have been established in 42 CFR part 57, subparts Q, R, and FF and are summarized below.

**Establishing Departments of Family Medicine**

Indicator 1—Project Director—10 points
Indicator 2—Administrative Autonomy—15 points
Indicator 3—Control Over Residency Program—10 points
Indicator 4—Evaluation Plans—10 points
Indicator 5—Family Medicine Instruction—10 points
Indicator 6—Full-Time Faculty—10 points
Indicator 7—Academic Status—10 points

**Family Medicine Residencies**

Indicator 1—Accreditation Status—40 points

Proposal includes a letter of accreditation from the ACGME/RRC or a letter of approval from the AOA verifying that the residency meets all requirements. All such projects are considered to have satisfied the Project Requirements. To the extent that problems are noted by the accrediting body, the project plan addresses the problems and has a plausible plan for their correction.

**Family Medicine Faculty Development**

Indicator 1—Project Director—10 points
Indicator 2—Administrative & Organizational Plan—10 points
Indicator 3—Evaluation Plans—10 points
Indicator 4—Curriculum—25 points
Indicator 5—Eligible Trainees—10 points
Indicator 6—Number of Trainees—0 points
Indicator 7—Length of Training—0 points
Indicator 8—Trainee Support—0 points

**Family Medicine Predoctoral Training**

Indicator 1—Project Director—10 points
Indicator 2—Administrative & Organizational Plan—10 points
Indicator 3—Evaluation Plans—10 points
Indicator 4—Ambulatory Care Training Settings—20 points
Indicator 5—Curriculum—10 points
Indicator 6—Sponsoring Unit—10 points
Indicator 7—Institutional Strategy—10 points

**General Internal Medicine & General Pediatrics Residencies**

Indicator 1—Project Director—10 points
Indicator 2—Administrative & Organizational Plan—10 points

Indicator 3—Curriculum Development and Evaluation Coordinator—10 points
Indicator 4—Faculty and Training Personnel—10 points
Indicator 5—Behavioral Science Faculty—10 points
Indicator 6—Resident Recruitment and Selection—10 points
Indicator 7—Requirement for Stipend Support—0 points
Indicator 8—Number and Distribution of Residents—10 points
Indicator 9—Ambulatory Care Training Setting—10 points
Indicator 10—Continuity of Care Experience—0 points
Indicator 11—Other Ambulatory Patient Care Experiences—10 points
Indicator 12—Curriculum Content and Evaluation of Educational Offerings—20 points
Indicator 13—Evaluation of Residents—10 points

**General Internal Medicine & General Pediatrics Faculty Development**

Indicator 1—Project Director—10 points
Indicator 2—Administrative & Organizational Plan—10 points
Indicator 3—Curriculum—25 points
Indicator 4—Evaluation Plans—10 points
Indicator 5—Eligible Trainees—10 points
Indicator 6—Eligibility for Trainee Stipend Support—0 points
Indicator 7—Length of Training for Stipend Support—0 points

**Additional Information**

Interested persons are invited to comment on the one proposed review criterion and the weighted indicators associated with all four review criteria. The comment period is 30 days. All comments received on or before November 2, 1994 will be considered before the final review criterion and weighted indicators are established. Written comments should be addressed to: Marc Rivo, M.D., M.P.H., Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 9A–27, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

If additional information is needed, please contact: Enrique Fernandez, M.D., Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 9A–20, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone : (301) 443–1467, FAX: (301) 443–8890.

Dated: August 29, 1994.

**Ciro V. Sumaya,**

*Administrator.*

[FR Doc. 94–24340 Filed 9–30–94; 8:45 am]

BILLING CODE 4160–15–P

## Health Care Financing Administration

**[ORD–68–N]**

## Medicare and Medicaid Programs; Small Business Innovation Research Grants for Fiscal Year 1995

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of HCFA funding, through grants, for small businesses under the Small Business Innovation Research (SBIR) Program. This notice contains information about the subject areas for grants that will be given priority, application requirements, review procedures, and other relevant information.

**DATES:** Grant applications must be submitted by December 9, 1994, in order to be considered under the fiscal year (FY) 1995 annual funding cycle. For an explanation of a timely submission, see section IV. of this notice entitled "Submission of Grant Applications."

**ADDRESSES:** Standard application forms and related instructions are available from and must be formally submitted to: JuDee Caquelin, HCFA Grants Officer, Division of Contracts and Grants, Office of Acquisition and Grants, Health Care Financing Administration, 389 East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187, (410) 966–5157.

*Copies:* To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 783–3238 or by faxing to (202) 512–2250. The cost for each copy is $6.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Questions on the HCFA SBIR Program may be addressed to Carl Hackerman, SBIR Coordinator, Office of Research and Demonstrations, Health Care Financing Administration, Room 2–C–9 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187, (410) 966–5181. Questions regarding completion of the application forms may be addressed to JuDee Caquelin, HCFA Grants Officer, (410) 966–5157.

**SUPPLEMENTARY INFORMATION:**

### I. Small Business Innovation Research Program

The Small Business Innovation Development Act of 1982 (Public Law 97–219, enacted on July 22, 1982), as amended by the Small Business Innovation Research Program Extension (Public Law 99–443, enacted on October 6, 1986), the Small Business Administration Reauthorization and Amendment Act of 1988 (Public Law 100–590, enacted on November 3, 1988), and the Small Business Research and Development Enhancement Act of 1992 (Public Law 102–564, enacted on October 28, 1992) (15 U.S.C. 638(e) through (m)), requires Federal agencies to reserve a specific amount of their extramural research and development (R&D) budgets for a Small Business Innovation Research (SBIR) Program. This SBIR Program is intended to—

- Stimulate technological innovation;
- Use small business to meet Federal R&D needs;
- Increase private sector commercialization of innovations derived from Federal R&D; and
- Foster and encourage participation by minority and disadvantaged persons in technological innovation.

The principal purpose of HCFA's SBIR Program is to provide assistance to creative applicants so that innovation can be encouraged that will result in better health care.

*A. SBIR Program Phases, Award Amounts, and Period of Support*

The SBIR Program consists of the following three phases:

*Phase I*

The objective of this phase is to establish the technical merit and feasibility of proposed research or R&D efforts and to determine the quality of performance of the small business awardee organization before furnishing further Federal support in Phase II. Phase I awards will be approximately $35,000 to $50,000 (for both direct and indirect costs) for a period not to exceed 12 months.

*Phase II*

The objective of this phase is to continue the research or R&D efforts initiated in Phase I and to actually create the proposed product and test it before marketing. Funding is based on the results of Phase I and the scientific and technical merit of the Phase II application, including its potential for commercialization. (Only Phase I awardees are eligible to apply for Phase II funding.) Phase I awardees are eligible to apply for Phase II funding only from the Federal agency that supported their Phase I project. Phase II awards will be approximately $100,000 (for both direct and indirect costs) for a period normally not to exceed 12 months.

*Phase III*

The objective of this phase, if appropriate, is for the small business concern to pursue with non-Federal funds the commercialization of the results of the research or R&D in Phases I and II.

The purpose of this notice is to invite Phase I and II grant applications from for-profit domestic small business concerns that have the expertise to develop or further develop innovative technology. This technology should be compatible with the general mission of HCFA and contribute to the health care field. HCFA is responsible for the Medicare program, Federal participation in the Medicaid program, and related health care quality assurance programs. HCFA's mission is to promote the timely delivery of appropriate quality health care to its Medicare beneficiaries and Medicaid recipients; over 50 million of the nation's aged, disabled, and poor. HCFA must also ensure that Medicare beneficiaries and Medicaid recipients are aware of the services for which they are eligible. In addition, HCFA must ensure that those services are accessible and of high quality.

In carrying out its mission, HCFA conducts studies and projects that examine and demonstrate payment, coverage, eligibility, and management alternatives to the present programs. HCFA also studies the impact of HCFA programs on health care costs, program expenditures, beneficiary and recipient access to services, health care providers, and the health care segment of the American economy.

In addition, HCFA monitors national health care expenditures and prices and provides analyses of the costs of current programs, as well as the impact of possible legislative or administrative changes in the programs. HCFA's Office of Research and Demonstrations (ORD) is responsible for the technical aspects of the SBIR Program described in this section.

This notice outlines the eligibility requirements for organizations wishing to participate in the HCFA SBIR Program and the research grant application and review processes. It also provides both general program information as well as specific research topics and subtopics that may be of interest to small business concerns.

Although areas of special programmatic interest or priority are described in section VII. of this notice, we will consider grant applications in any area within the field of health care R&D unless otherwise specifically excluded. However, we are not generally interested in funding the biomedical or clinical projects that more appropriately fit the mission of the National Institutes of Health.

*B. Eligibility*

Each organization submitting a grant application under our SBIR Program must qualify as a small business concern. "Small business concern" is defined in section II.F. of this notice. In determining whether an applicant is a small business concern, an assessment will be made of several factors, including whether it is organized for profit, whether it is independently owned and operated, and whether it meets the size requirement of 500 or fewer employees. Whether the size requirement is met may depend on whether the applicant organization is affiliated with another organization whose employees, when added to those of the applicant organization, exceed 500. In conducting this assessment, all appropriate factors will be considered, including common ownership, common management, and contractual relationships.

Affiliation exists when one concern controls or has the power to control the other, or there is third party control, or an identity of interest between or among parties exists so that affiliation may be found. Control may be affirmative or negative, and it is immaterial whether it is exercised so long as the power to control exists. Indeed, control can arise from a variety of circumstances. One example of a circumstance that could lead to a finding that an organization is controlling, or has the power to control, another organization is the sharing of common office space, employees, or other facilities (for example, laboratory space). Although access to special facilities or equipment in another organization is permitted (as in cases in which the SBIR applicant has entered into a subcontractual agreement with another institution for a specific, limited portion of the research project), research space occupied by an SBIR applicant must be space that is not generally shared with another organization and over which the applicant has exclusive control. When there is an indication of sharing of common employees, a determination will be made on a case-by-case basis of whether the sharing constitutes control or the power to control.

Additionally, control or the power to control is generally considered to exist when "key employees of one concern organize a new concern and serve as its officers, directors, principal stockholders, and/or key employees, and the one concern is furnishing or will furnish the other concern with subcontracting financial or technical assistance, bid or performance bond indemnification, and/or other facilities, whether for a fee or otherwise." Affiliation can also arise between or among two or more persons when an identity of interest exists, such as members of the same family or persons with common investments in more than one concern.

All SBIR grant applications will be reviewed with the above considerations in mind. Organizations considering submitting an application are referred to the SBIR Program Policy Directive published in the **Federal Register** on January 26, 1993 (58 FR 6144) and to the regulations set forth at 13 CFR part 121 for further guidance regarding eligibility. In particular, to determine whether affiliation exists, the applicant should also refer to 13 CFR 121.401 for the definition of affiliation, which will be used as HCFA's guide on this matter. If it appears that an applicant organization does not meet eligibility requirements with respect to size, HCFA will request a size determination of the organization from the applicable Small Business Administration (SBA) regional office. The review of the application for scientific merit may be deferred until a definitive response is furnished by SBA.

Of particular concern in considering grant awards is the position of principal investigator. We wish to ensure that support is furnished to a carefully directed working group led by an individual personally committed to the development of the innovation. Accordingly, we are adopting the "principal investigator" concept from 42 CFR part 52. These regulations define the term "principal investigator" to mean "a single individual designated by the grantee in the grant application . . . who is responsible for the scientific and technical direction of the project." (42 CFR 52.2.) In order to meet this standard, the principal investigator's

primary employment must be with the grantee at the time of the award and remain so for the duration of the project. Primary employment means that more than one-half of the principal investigator's time is spent in the employment of the small business concern. Primary employment with a small business concern precludes full-time employment at another organization.

In accordance with SBA's SBIR Program Policy Directive published in the **Federal Register** on January 26, 1993 (58 FR 6144), we have further restricted the definition of primary employment of the principal investigator to accurately reflect HCFA's needs. The applicant must declare the principal investigator's employment, whether paid or unpaid, at the time of application, and must declare all employment relationships, whether paid or unpaid, that the principal investigator is expected to have at the time the SBIR grant awards are expected to be made and for the duration of the proposed project. In the event that, at the time of application, the principal investigator—(1) is, or expects to be, a less-than-full-time employee of the small business concern, (2) is, or expects to be, concurrently employed by another organization, or (3) gives, or expects that he or she may give, the appearance of being concurrently employed by another organization, whether for a paid or unpaid position, it is essential that documentation be submitted with the application to verify the applicant's eligibility at the time of the award. Thus, if the principal investigator is also employed or appears to be employed by an institution other than the applicant organization (for example, a university, nonprofit research institute, or a company other than the applicant organization), a letter must be furnished by the nonapplicant organization confirming that the principal investigator, if awarded an SBIR grant, is, or will become, a less-than-half-time employee of the organization and will remain so for the duration of the SBIR project. If the principal investigator is employed by a university, the letter must be furnished by the dean of the school or the departmental chairperson. If the principal investigator is employed by another for-profit organization, the letter must be signed by a corporate official. This documentation of the primary employment of the principal investigator is required for every application that is submitted, even one that is a revision of a previously submitted application. In the event that solicitation of this documentation would place the principal investigator's current employment in jeopardy should the grant award not be made, the applicant may delay submission of the documentation, provided the documentation is submitted no later than 30 days after receiving notice of a grant award, and provided that the applicant includes a statement with the grant application to the effect that solicitation of the documentation at this time would place the principal investigator's current employment in jeopardy, that the applicant will forward the documentation within 30 days of receiving notice of a grant award, and that the applicant understands that should it fail to provide the documentation, we may, at our discretion, immediately suspend or terminate the grant. If the principal investigator fails to furnish adequate documentation, the application may be returned without review. In the event a grantee is required to submit documentation of the principal investigator's employment, but fails to do so within 30 days of the date of the notice of grant award, we may immediately suspend or terminate the grant.

For both Phase I and Phase II, the research or R&D must be performed in its entirety in the United States (U.S.), that is, the States, territories, and possessions of the U.S.; the Commonwealths of Puerto Rico and the Northern Mariana Islands; and the District of Columbia.

## II. Definitions

The words and phrases that appear on the SBIR application form, or are needed in the application narrative, are not readily defined. Therefore, for convenience and clarity, we have furnished the following definitions, which, except as noted, are taken from SBA's SBIR Program Policy Directive that implements this program and was published on January 26, 1993, in the **Federal Register** (58 FR 6144). This policy directive requires an agency to define in a separate section whatever terms it uses that are unique to either the SBIR Program, a specific SBIR solicitation, or a portion of the solicitation. The section must also include, at a minimum, specific terms as defined in the policy directive. Accordingly, in addition to the terms required by the policy directive, we are also defining the terms "Contract" and "Grant" and including the policy directive's definition of the term "Research and Development."

### *A. Contract*

A "contract" is an award instrument establishing a binding legal procurement relationship between a funding agency and the recipient, obligating the latter to furnish an end product or service and binding the agency to furnish payment for the product or service.

### *B. Grant*

A "grant" is a financial assistance mechanism whereby either money or direct assistance, or both, is furnished to carry out approved activities.

### *C. Socially and Economically Disadvantaged Individual*

A "socially and economically disadvantaged individual" is defined as a member of any of the following groups:

- Asian-Pacific Americans.
- Black Americans.
- Hispanic Americans.
- Native Americans.
- Subcontinent Asian Americans.

### *D. Socially and Economically Disadvantaged Small Business Concern*

A "socially and economically disadvantaged" small business concern is one—

- In which at least 51 percent is owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly owned business, at least 51 percent of the voting stock is owned by one or more socially and economically disadvantaged individuals; and
- Whose management and daily business operations are controlled by one or more of the individuals.

### *E. Research and Development*

"Research and Development" or R&D is defined as any activity that is—

- A systematic, intensive study directed toward greater knowledge or understanding of the subject studies;
- A systematic study directed specifically toward applying new knowledge to meet a recognized need; or
- A systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

### *F. Small Business Concern*

At the time of award of Phase I and of Phase II, a "small business concern is one that—

- Is organized for profit, independently owned and operated, not

dominant in the field of operation in which it is proposing, and has its principal place of business located in the U.S.;

• Is at least 51 percent owned or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by U.S. citizens or lawfully admitted permanent resident aliens; and

• Has, including its affiliates ("affiliation" is defined in 13 CFR 121.401), a number of employees (as defined in 13 CFR 121.407) not exceeding 500, and meets the other small business concern size regulation requirements found in 13 CFR 121. Business concerns, other than investment companies licensed, or State development companies qualifying, under the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.), are affiliates of one another when either directly or indirectly (1) one concern controls or has the power to control the other, (2) a third party or parties controls or has the power to control both, or (3) an identity of interest between or among parties exists so that affiliation may be found. Control can be exercised through common ownership, common management, and contractual relationships. Business concerns include, but are not limited to, any individual, partnership, corporation, joint venture, association, or cooperative.

*G. Subcontract*

A "subcontract" is any agreement, other than one involving an employer-employee relationship, entered into by a Federal government funding agreement awardee calling for supplies or services required solely for the performance of the original funding agreement.

*H. Women-Owned Small Business Concern*

A "women-owned small business concern" is a business that is at least 51 percent owned, controlled, and operated by a woman or women. "Control" is defined as exercising the power to make policy decisions; "operate" is defined as being actively involved in the day-to-day management.

## III. Preparation of Grant Applications

The forms and instructions will be supplied to the applicant by the HCFA Grants Officer (see the ADDRESSES section of this notice) and are designed for use in applying for SBIR Phase I or Phase II research grants. The instructions contain the SBA policy directive's guidelines on proposal content and limitations.

Potential applicants are encouraged to contact the SBIR Coordinator (see the FOR FURTHER INFORMATION CONTACT section of this notice) for preapplication technical assistance and for more specific information on the research topics described in section VII. of this notice.

Health science research literature is available at academic and health science libraries and Regional Medical Libraries through a network supported by the National Library of Medicine. A list of Regional Medical Libraries and information about network services may be requested from the Public Information Office, National Library of Medicine, Bethesda, Maryland 20894, telephone (301) 496–6308.

Other sources that provide technology search and document services include the organizations listed below. They should be contacted directly for service and cost information.

National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487–4600

NASA Industrial Applications Center, University of Pittsburgh, 701 LIS Building, Pittsburgh, Pennsylvania 15280, (412) 624–5211

North Carolina Science and Technology Research Center, Post Office Box 12235, Research Triangle Park, North Carolina 27709, (919) 549–0671

NASA/Florida State Technology Applications Center, State University, System of Florida, 500 Well Hall, Gainesville, Florida 32611, (904) 392–6626

NASA/UK Technology, University of Kentucky, 109 Kinkead Hall, Lexington, Kentucky 40506, (606) 257–6322

Aerospace Research Applications Center, 611 N. Capitol Avenue, Indianapolis, Indiana 46204, (317) 262–5003

Kerr Industrial Applications Center, Southeastern Oklahoma State, University Durant, Oklahoma 74701, (405) 924–6822

## IV. Submission of Grant Applications

Grant applications must be submitted to the HCFA Grants Officer (see the ADDRESSES section of this notice).

The following schedule applies to the receipt, review, and award of SBIR applications:

Receipt date—December 9, 1994
Technical review—January 17, 1995
Award decisions—February 10, 1995
Approximate award date—February 17, 1995

Applications must be received by December 9, 1994. Applications mailed through the U.S. Postal Service or a commercial delivery service will be "on time" if they are received or postmarked on or before December 9, 1994. Submissions by facsimile (fax) transmission will not be accepted. Applications that do not meet the above criteria will be considered late applications. Respondents are cautioned that if their application is late, it will be returned without review.

## V. Method of Selection and Evaluation Criteria

All Phase I and Phase II grant applications will be evaluated and judged on a competitive basis. Applications will be screened, and those found to be inadequate for review or programmatically unrelated to HCFA's mission will be returned to the applicant. Those passing the screening will be reviewed for technical and scientific merit. Each application will be judged individually, as described in this section. HCFA is under no obligation to fund any application or make any specific number of awards in a given topic area. It may also elect to fund no projects within a given topic area.

*A. Review Process*

Grant applications are subject to a review process involving two sequential steps. The first step is performed by a technical review panel composed primarily of Federal and non-Federal professionals selected for their competence in particular fields. The task of the panel is to evaluate applications for scientific and technical merit. The reviewers furnish a number rating, make an overall recommendation, and, on occasion, make highly specific recommendations related to the scope, direction, and conduct of the proposed research. The second level of review is made by the senior management of HCFA's ORD. ORD management decisions are based on judgments about not only the technical merit of the proposed research, but also its relevance to our mission. Generally, HCFA may award a grant only if the corresponding application has been recommended for approval by the panel. However, applications recommended for approval are not automatically funded.

*B. Review Criteria*

In considering the scientific and technical merit of each application, the following criteria and weights will be used:

• The soundness and technical merit of the proposed approach—35 percent.

• The potential of the research for technological innovation including the potential for commercial application—30 percent.

• The qualifications of the proposed principal investigator, support staff, and consultant—20 percent.

• The appropriateness of the budget—10 percent.

• The adequacy and suitability of the facilities and research environment—5 percent.

*C. Funding Decisions*

When making funding decisions, ORD takes into consideration the following: (1) ratings resulting from the technical evaluation process, (2) program relevance, and (3) applications.

*D. Release of Grant Application Review Information*

Following decisions on grant applications, summary statements are mailed with a disapproval letter to principal investigators whose proposals have not been accepted.

*E. Submission of Similar Grant Applications by the Applicant Organization*

HCFA discourages the submission of more than one grant application submitted by the same applicant organization with essentially the same research focus: That is, a product or technology that, with nonsubstantive modifications, can be applied to a variety of purposes. In evaluating groupings of applications with a common scientific focus or objective, technical review groups are in a position to easily identify multiple grant applications from the same organization for essentially the same project. In these cases, HCFA will give funding consideration to only one application.

**VI. Considerations**

SBA's SBIR Program Policy Directive (58 FR 6144) specifies that we furnish the following information:

*A. Awards*

• There will be approximately 10 to 15 Phase I and/or Phase II awards in FY '95.

• The SBA Program Policy Directive permits the payment of a reasonable fee or profit under the SBIR program.

*B. Reports*

The grantee organization will be required to submit short quarterly progress reports, a complete draft final report, and a final report. Additionally, a financial status report (SF–269A) must be submitted to the HCFA Grants Officer annually. The award will specify the schedule for these reports and place of delivery.

*C. Payment Schedule*

Once an SBIR grant is awarded, the grantee organization will receive information and forms regarding requests for cash, manner of payment, and associated reporting requirements. Payment may be made on a cost-reimbursement or advance basis. Cost reimbursements may be requested monthly, quarterly, or at other periodic intervals. Advance payments may be requested on a monthly basis only.

*D. Limited Rights Information and Data*

1. Proprietary Information

Information contained in an unfunded grant application will remain the property of the applicant. HCFA may, however, retain copies of all applications.

If proprietary information is provided by a proposer in a proposal that constitutes a trade secret, proprietary, commercial or financial information, confidential personal information or data affecting the national security, it will be treated in confidence, to the extent permitted by law, provided this information is clearly marked by the proposer with the term "confidential proprietary information" and provided the following legend appears on the title page of the proposal:

For any purpose other than to evaluate the proposal, this data shall not be disclosed outside the government and shall not be duplicated, used, or disclosed in whole or in part, provided that if a funding agreement is awarded to this proposer as a result of or in connection with the submission of this data, the government shall have the right to duplicate, use, or disclose the data to the extent provided in the funding agreement. This restriction does not limit the government's right to use information contained in the data if it is obtained from another source without restriction. The data subject to this restriction are contained in pages _____ of this proposal.

Any other legend may be unacceptable to the Federal government and may constitute grounds for removing the proposal from further consideration and without assuming any liability for inadvertent disclosure. The government will limit dissemination of the information to official channels only.

2. Title to Property

Title to real property, equipment, and supplies acquired by a for-profit recipient under a financial assistance award or subaward will vest, upon acquisition, in the Federal government. However, the title may be transferred to the awardee upon termination of the project if the transfer would be more cost-effective than our recovery of the property. It is recommended that applicants consider leasing arrangements whenever possible. HCFA will generally not fund projects that require the acquisition of real property, equipment, or supplies.

3. Rights in Data Developed Under the SBIR Grant

Rights in data, including software developed under the terms of any grant resulting from an application submitted in response to this notice will remain with the grantee, except that the Federal government will have the limited right to use the data for internal Federal government purposes. These data will not be released outside the Federal government without permission of the grantee for a period of 4 years from completion of the project from which the data were generated. However, at the end of this 4-year period a royalty-free license will exist for HCFA to use, and to authorize others to use on its behalf, these data for Federal government purposes. At this time, HCFA is also relieved of all disclosure prohibitions and assumes no liability for unauthorized use of these data by third parties. This notice will be affixed to any reproductions of these data, in whole or in part.

4. Copyrights

With prior written permission of the Grants Officer, the awardee may normally copyright and publish (consistent with appropriate national security considerations, if any) material developed with HCFA's support. HCFA receives a royalty-free license for the Federal government and requires that each publication contain an appropriate acknowledgment of agency support and a disclaimer statement.

5. Patents

Small business concerns may normally retain the principal worldwide patent rights to any invention developed with HCFA support. The Federal government receives a royalty-free license for Federal government use, reserves the right to require the patentholder to license others in certain circumstances, and requires that anyone exclusively licensed to sell the invention in the U.S. must normally manufacture it substantially in the U.S. To the extent authorized by 35 U.S.C. 205, the government will not make public any information disclosing a government-supported invention for a 4-year period to allow the awardee a reasonable time to pursue a patent.

*E. Profit or Fee*

Absent a statutory prohibition, payment of a reasonable fee or profit will be made under the SBIR program (58 FR 6144). Because the regulations set forth at 45 CFR 74.705, which provide that no profit or fee will be furnished to for-profit organizations through grants, do not invoke a statutory prohibition on paying a fee or profit, the SBA's policy directive applies to these SBIR grants.

*F. Joint Ventures and Limited Partnerships*

Joint ventures and limited partnerships are eligible provided the entity created qualifies as a small business concern in accordance with the definition included in this notice.

*G. Performance of Research and Analytical Work by the Applicant Organization*

In Phase I, a minimum of two-thirds or 67 percent of the research or analytical effort must be carried out by the small business concern; that is, consultant fees and contracts to a third party for portions of the scientific or technical effort may not exceed 33 percent of the total proposed budget.

In Phase II, a minimum of one-half or 50 percent of the research or analytical effort must be carried out by the small business concern; that is, consultant fees and contracts to a third party for portions of the scientific or technical effort may not exceed 50 percent of the total proposed budget.

*H. Terms and Conditions of Awards*

Upon acceptance of a grant, the awardee must comply with the terms and conditions contained or referenced in the Notice of Grant Award document. These terms and conditions, constituting legal requirements imposed on a grantee by statute, regulations, administrative policy, or the award document itself, comprise the following "standard" and "special" provisions:

• Standard Provisions—Terms and conditions required as part of each Notice of Grant Award.

1. SBIR Grant program legislation: the Small Business Innovation Development Act of 1982 (Public Law 97–219); SBIR Program Extension (Public Law 99–443); the SBA Reauthorization and Amendment Act of 1988 (Public Law 100–590); and the Small Business Research and Development Enhancement Act of 1992 (Public Law 102–564).

2. The SBA's Small Business Innovation Research Program Policy Directive published in the **Federal Register** on January 26, 1993 (58 FR 6144).

3. Regulations set forth at 13 CFR part 121.

4. The inclusion of special terms and conditions, if any (see below).

5. Regulations set forth at 45 CFR part 74 (Administration of Grants).

• Special Provisions—Additional terms and conditions judged necessary to attain the objectives for which the grant is being made, to facilitate post-award administration of the grant, to conserve grant funds, or to otherwise protect the interests of the Federal government.

1. Requirement for written progress reports and due dates.

2. Requirement for a draft final report and due date.

3. The availability of the HCFA Project Officer.

4. Grantees' responsibilities with respect to information contained in technical documents.

5. HCFA's rights to suspend or terminate the grant.

6. Protection of individually identifiable data.

7. Grantees' responsibilities with respect to presentation of information.

8. Key personnel.

9. Submission of data to the Federal government.

10. Submission of items developed to the Federal government.

11. Other special terms and conditions that are appropriate to the circumstances of the individual award.

The grant must be administered in accordance with the following regulations:

13 CFR Part 121—Small Business Size Regulations

42 CFR Part 52—Grants for Research Projects

45 CFR Part 46—Protection of Human Subjects

45 CFR Part 74—Administration of Grants

45 CFR Part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the DHHS Effectuation of Title VI of the Civil Rights Act of 1964

45 CFR Part 84—Nondiscrimination of the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance

45 CFR Part 91—Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance.

*I. Cost Sharing*

Cost sharing is not required nor will it be an evaluation factor in consideration of the proposal. However, due to the special nature of the SBIR Program, the applicant may choose to share the costs of a project. This may be done through cash or in-kind contributions. Most frequently, we expect that the applicant will contribute more labor or use unreimbursed equipment as the applicant's share.

*J. Additional Information*

This **Federal Register** notice is intended for informational purposes and reflects current planning. If there is any inconsistency between the information contained in this notice and the terms of any resulting SBIR grant, the terms of the grant are controlling.

Before award of an SBIR grant, HCFA may request the applicant to submit certain organization, management, personnel, and financial information in order to ensure responsibility of the applicant.

The Federal government is not responsible for any monies expended by the applicant before the award of any grant.

This notice is not an offer by HCFA and does not obligate HCFA to make any specific number of awards.

The SBIR Program is not a substitute for HCFA's existing unsolicited proposal mechanisms, and unsolicited proposals will not be accepted under either Phase I or Phase II of the SBIR Program.

The applicant may be required to certify that he or she has not previously been paid, nor is currently being paid, for essentially equivalent work by an agency of the Federal government. If a grant is made under this notice for a project, some of whose elements are being supported, or will be supported, by another Federal agency, HCFA and the applicant will negotiate a budget that reflects the elimination of any overlapping support.

This program is not covered by Executive Order 12372, "Intergovernment Review of Federal Programs." Executive Order 12372 provides for a State clearinghouse in each State to review Federal programs. Research grants are exempt from this review.

**VII. Research Topic Areas**

This notice invites SBIR Phase I applications in the following areas. The topics are defined in general terms. They are intended to indicate where we believe we can properly offer assistance in the development of innovative technology. ORD will consider any idea that is within the general subject of a topic. In addition, ORD will review any idea that is within the general purview of HCFA, as described in section I. of this notice. Applicants are reminded

that the overall intent of the HCFA SBIR Program is to provide assistance to the development of products and processes that have commercial potential and not to the acquisition of products for HCFA's own use.

*A. High Quality and Effective Care*

HCFA invites ideas that would develop products to assist all participants in health care in assessing and monitoring the quality of care and level of care being furnished to patients. Projects should aim to develop tools for health care professionals, providers, and managers that permit them to examine patterns of services being delivered, and the health and social outcome of those services. Projects that would assist private organizations in developing patient guidelines and in conducting technology assessments are of interest. These tools should provide a way to monitor and measure the delivery of health services and the outcomes of those services. They should also make possible a judgment about the quality of the care, the effectiveness of the care, or both. The technical efficiency with which care is delivered and the appropriateness of the overall outcome for the patient should be addressed.

*B. Management of Ambulatory Services*

HCFA invites ideas that would develop tools to monitor, assess, and control overutilization and underutilization of ambulatory services and products at all levels of the health care system. Apart from the inflation in the cost of each service, a significant cause of the rising cost of health care services is excessive utilization. Traditionally, utilization review techniques have been applied to high cost, acute services, such as surgery and hospitalizations. We wish to focus on physician services and other ambulatory services and products, for example, drugs, medical equipment, and testing. HCFA invites applications related to services or products commonly associated with Medicare beneficiaries and Medicaid recipients, who are primarily the aged, the poor, the disabled, and persons with end-stage renal disease. Techniques to be explored involve systems both for retrospective utilization pattern review and for managing prospective interventions in individual physician or beneficiary and recipient service or product use. This area also includes broader management tools, based on information derived from utilization review, that promote or ensure more efficient and effective service delivery.

*C. Beneficiary Information and Assistance*

HCFA invites ideas that may make the Medicare and Medicaid programs understandable to beneficiaries and recipients and that provide assistance to these individuals in their attempts to deal with the programs. Potential program users (Medicare beneficiaries and Medicaid recipients) need to understand when they are eligible, what services or products are covered, and what their rights and responsibilities are within each program. An example would be an information project that would assist health care consumers, including Medicare beneficiaries and Medicaid recipients, by providing aggregate data on provider performance and utilization trends, discrete price information, and information on related copayments, etc.; in a sense, a "Blue Book for Consumers." Another example is obtaining payment for claims, one of the most frequent problems encountered by Medicare beneficiaries. The process of dealing with Medicare's fiscal intermediaries and carriers is difficult for many. Tools that would ease this process would be welcome. Beneficiaries also need to be able to decide whether they should join, or exit from, a health maintenance organization, and the advantages and disadvantages of the decision. Beneficiaries need to understand what considerations to take into account when long term care is a possibility. Similarly, beneficiaries need to be assisted in the decision about the purchase of health insurance in addition to Medicare. HCFA invites ideas in beneficiary communication and assistance approaches that are tailored to special populations (such as significant demographic, sociocultural, or disease-related groups of beneficiaries), as well as approaches that could be used by supplemental health benefit program sponsors (for example, employers and unions) in assisting Medicare-eligible retirees. Applicants who are considering this topic should understand that the SBIR Program generally seeks to support the development of commercially viable products and that there is already a fair amount of existing commercial activity in this area.

*D. Program Efficiencies and Improvement*

The existing systems for health care delivery and financing have undergone, and are continuing to undergo, changes due to new technology, legislation, regulation, and market forces. Major payers for health care are continually studying the feasibility of new approaches to improving the management of care, the delivery of care, and financing. Therefore, HCFA invites applications that focus on tools to assist in the goal of improved management of the Medicare and Medicaid programs. The term management is used in a broad sense. These could be tools that are directed toward providers who furnish services or products to Medicare beneficiaries or Medicaid recipients, organizations that handle the financing of care, organizations that oversee the quality of services and products, or the beneficiaries and recipients themselves, and State and local organizations that deal primarily with Medicare and Medicaid populations.

HCFA will consider any innovative idea that appears to have the potential for improving the programs for any of the several parties involved, and that has a potential for sale in the normal or commercial market. An example of an innovative idea is the development of improved computer- based case management systems for community care services. Case management programs are commonly being used to coordinate community-based care for frail elderly and other populations under Medicaid and other programs. Automated systems use client eligibility and assessment information to assist case management agencies in preparing appropriate plans of care based on the client's condition and select service providers. These systems would also interface with service approval or financial or billing systems to improve the cost-efficiency of case management programs. Proposed systems should complement or integrate existing mandated HCFA instruments (particularly functional assessment tools, minimum data sets, discharge planning, etc.). Redundant instruments will not be considered for funding.

*E. Other Health Care R&D*

We encourage small business concerns to submit applications for proposed research in any area within the field of health care R&D.

**VIII. Other Required Information**

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

**Authority:** Public Law 97–219, 96 Stat. 217–221; Public Law 99–443, 100 Stat. 1120; Sec. 108, Public Law 100–590, 102 Stat. 2989, 2994; Public Law 102–564, 106 Stat. 4249 (15 U.S.C. 638 (e) through (m)).

(Catalog of Federal Domestic Assistance Program No. 93.779, Health Care Financing Research, Demonstration and Experiments)

Dated: June 21, 1994.

**Bruce C. Vladeck,**

*Administrator, Health Care Financing Administration.*

[FR Doc. 94–24349 Filed 9–30–94; 8:45 am]

BILLING CODE 4120–01–P

## National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), November 2–4, 1994, National Institutes of Health, Building 5, Room 127, Bethesda, Maryland 20892. This meeting will be open to the public on November 2 from 7 p.m. to 9:30 p.m. and November 3 from 9 a.m. to 12 noon and 2 p.m. to 5 p.m. The open portion of the meeting will be devoted to scientific presentations by various laboratories of the NIDDK Intramural Research Program. 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 November 2 from 6:30 p.m. to 7 p.m. and from 9:30 p.m. to 10:30 p.m.; November 3 from 12 noon to 2 p.m. and 5 p.m. to 6 p.m. and on November 4 from 9 a.m. to adjournment for the review, discussion and evaluation of individual intramural programs and projects conducted by the NIDDK, including consideration of personnel qualifications and performance, the competence of individual investigations, and similar items, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meeting and rosters of the members will be provided by the Committee Management Office, National Institute of Diabetes and Digestive and Kidney Diseases, Building 31, Room 9A19, Bethesda, Maryland 20892. For any further information, and for individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, please contact Dr. Allen Spiegel, Scientific Review Administrator, Board of Scientific Counselors, Nationa Institutes of Health, Building 10, Room 9N–222, Bethesda, Maryland 20892, (301) 496–4128, two weeks prior to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: September 26, 1994.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR. Doc. 94–24326 Filed 9–30–94; 8:45 am]

BILLING CODE 4140–01–M

## Public Health Service

### Availability and Request for Comment on the Healthy People 2000 Midcourse Revisions

**SUMMARY:** The U.S. Public Health Service of the Department of Health and Human Services has developed and is requesting public comment on the Draft for Public Review and Comment: *Healthy People 2000 Midcourse Revisions.* This set of national health objectives was first published in 1990. As the midpoint of the decade approaches, new science, new data, and new information are available to be incorporated into the nation's prevention agenda. The revisions take the form of proposed new objectives, new special population subobjectives, changes in language, and target revisions. The proposals reflect the availability of new information or scientific findings on prevention and new data indicating disparities in health status among special populations. The proposed revisions are printed within the context of the Healthy People 2000 objectives published in 1990.

**DATES:** Written comments must be postmarked or submitted by close of business November 30, 1994.

**ADDRESSES:** Requests for copies of the Draft for Public Review and Comment: *Healthy People 2000 Midcourse Revisions* can be faxed to (202) 205–9478, or mailed to: Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion), U.S. Public Health Service, Department of Health and Human Services, 330 C Street, S.W., Room 2132, Washington, D.C. 20201. Comments should be sent to the same address. Comments should be submitted as follows: An original of the comments and 3 copies should be submitted, typewritten if possible. Submissions on low-density 5¼" computer disks, using WordPerfect 5.1 are also encouraged. Comments should clearly identify the objective(s) to which they are directed and, if possible, comments for different priority areas (chapters) should be provided on separate pages to facilitate their distribution to the appropriate lead agencies.

**FOR FURTHER INFORMATION CONTACT:** Lisa Kane or Debbie Maiese, Office of Disease Prevention and Health Promotion, U.S. Public Health Service, 330 C Street, S.W., 2132 Switzer, Washington, D.C. 20201, Telephone (202) 205–8583.

**SUPPLEMENTARY INFORMATION**

**Background of Health People 2000**

The Public Health Service (PHS), Department of Health and Human Services, has led a nationwide process to formulate and monitor national disease prevention and health promotion objectives since 1980. The year 2000 objectives build upon the 1990 objectives effort, which was initiated in 1979 with the publication of *Health People: The Surgeon General's Report on Health Promotion and Disease Prevention,* which led to the 1980 publication, *Promoting Health/ Preventing Disease: Objectives for the Nation.*

The Public Health Service lead agencies for the 22 Healthy People 2000 priority areas have developed the revision proposals that are now made available for public review and comment. Public comment will be considered by the appropriate lead agency. The Office of Disease Prevention and Health Promotion, in the Office of the Assistant Secretary of Health, serves as the overall coordinator for the dissemination and processing of the public comments.

A new PHS report, *Healthy People 2000 Midcourse Review and Revisions,* featuring the final revisions and a status report on progress in achieving targets for the year 2000, will be published in 1995.

Dated: September 26, 1994.

**Jo Ivey Boufford,**

*Principal Deputy Assistant Secretary for Health.*

[FR Doc. 94–24365 Filed 9–30–94; 8:45 am]

BILLING CODE 4160–17–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Administration

**[Docket No. R–94–1529; FR–2810–N–05]**

### Submission of Proposed Information Collection to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received by November 2, 1994. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 7, 1994.

**David S. Cristy,**

*Acting Director, Information Resources Management Policy and Management Division.*

### Submission of Proposed Information Collection to OMB

*Proposal:* Section 5(h) Homeownership Program for Public and Indian Housing (FR–2810).

*Office:* Public and Indian Housing.

*Description of the Need for the Information and its Proposed Use:* Housing Authorities (HAs), after consulting with residents, prepare and submit a homeownership plan to HUD. The plan has to meet certain HUD criteria. The information provided by HAs will be used by HUD to ensure that they are complying with the requirements imposed by Section 5(h) of the Housing Act of 1937.

*Form Number:* None.

*Respondents:* Individuals or Households, State or Local Governments and Non-Profit Institutions.

*Frequency of Submission:* Recordkeeping and Annually.

*Reporting Burden:*

| | Number of respondents | x | Frequency of response | x | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Information Collection | 50 | | 1 | | Varies | | 3,800 |
| Recordkeeping | 50 | | 1 | | 100 | | 5,000 |

*Total Estimated Burden Hours:* 8,800.

*Status:* New.

*Contact:* Wayne Hunter, HUD, (202) 708–4233, Joseph F. Lackey, Jr., OMB, (202) 295–7316.

Dated: September 7, 1994.

[FR Doc. 94–24329 Filed 9–30–94; 8:45 am]

BILLING CODE 4210–01–M

**[Docket No. R–94–1734; FR 3118–N–03]**

### Submission of Proposed Information Collection to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 8, 1994.

**David S. Cristy,**

*Acting Director, Information Resources Management Policy and Management Division.*

### Submission of Proposed Information Collection to OMB

*Proposal:* Requirement for Affirmatively Furthering Fair Housing

in the Community Development Block Grant Program (FR–3118).

*Office:* Fair Housing and Equal Opportunity.

*Description of the Need for the Information and its Proposed Use:* This information collection is needed so that State and entitlement grantees can fulfill their certifications to affirmatively further fair housing under the Community Development Block Grant (CDBG) program and the Comprehensive Housing Affordability Strategy (CHAS) program.

*Form Number:* None.

*Respondents:* State or Local Governments.

*Frequency of Submission:* Recordkeeping and Annually.

*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Information Collection | 850 | | 1 | | 18.76 | | 15,950 |
| Recordkeeping | 850 | | 1 | | 52 | | 44,000 |

*Total Estimated Burden Hours:* 59,950.

*Status:* New.

*Contact:* Leon M. Garrett, HUD, (202) 708–2740, Joesph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: September 8, 1994.

[FR Doc. 94–24330 Filed 9–30–94; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. R–94–1747; FR 3730–N–02]

## Notice of Submission of Proposed Information Collection to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 7, 1994.

**David S. Cristy,**

*Acting Director, Information Resources Management Policy and Management Division.*

*Proposal:* Electronic Transmission of Required Family Data for Public Housing, Indian Housing, and Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation Programs (FR–3730).

*Office:* Public and Indian Housing.

*Description of the Need for the Information and its Proposed Use:* The purpose of this information collection is to have projects administered under the public housing, Indian housing, and Section 8 Certificate, Rental Voucher, and Moderate Rehabilitation programs submit certain data electronically to HUD in a HUD prescribed format. For housing agencies (HAs) that are not already automated or who determine that automation is not cost-effective, transmission of the data through the use of a service bureau is permitted. Electronic transmission is necessary because the manual submission of HUD forms has become a burden to HAs and to HUD.

*Form Number:* HUD–50058

*Respondents:* State or Local Governments.

*Frequency of Submission:* Monthly.

*Reporting Burden:*

| Form HUD–50058 | Number of Respondents | x | Frequency of response | x | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Form HUD–50058 | 4,500 | | 916.5 | | .5 | | 2,062,125 |

*Total Estimated Burden Hours:* 2,062,125.

*Status:* Revision.

*Contact:* Earl Simons, HUD, (202) 708–0744, Joseph F Lackey, Jr., OMB (202) 395–7416.

Dated: September 7, 1994.

[FR Doc. 94–24331 Filed 9–30–94; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–94–3820]

## Notice of Submission of Proposed Information Collection to OMB

**AGENCY:** Office of Administration, HUD

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 13, 1994.

**David S. Cristy,**

*Acting Director, Information Resources Management Policy and Management Division.*

*Proposal:* Single Family Housing Mortgage Assignment Program.

*Office:* Housing.

*Description of the Need for the Information and Its Proposed Use:* The information provided on these forms will be used to make decisions regarding assignment of troubled HUD-insured mortgages from the current mortgagee to HUD. Acceptance into this assignment process provides the homeowner the opportunity to avoid foreclosures on their mortgage.

*Form Number:* HUD–92068F, 92203, 92207, 92208, and 92212.

*Respondents:* Individuals or Households and Businesses or Other For-Profit.

*Frequency of Submission:* On Occasion.

*Reporting Burden:*

| | Number of respondents | x | Frequency of response | x | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Information Collection | 57,000 | | 3.38 | | .31 | | 59,593 |

*Total Estimated Burden Hours:* 59,593.

*Status:* Revision.

*Contact:* Joseph C. Bates, HUD, (202) 708–3680, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: September 13, 1994.

[FR Doc. 94–24332 Filed 9–30–94; 8:45 am]

BILLING CODE 4210–01–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Garrison Diversion Unit Federal Advisory Council Meeting

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Garrison Diversion Unit Federal Advisory Council established under the authority of the Garrison Diversion Unit Reformulation Act of 1986 (Public Law 99–0294, May 12, 1986). The meeting is open to the public. Interested persons may make oral statements to the council or may file written statements for consideration.

**DATES:** The Garrison Diversion Unit Federal Advisory Council will meet from 8 a.m. to 5 p.m. on Thursday, October 13, 1994.

**ADDRESSES:** The meeting will be held at the North Dakota Game and Fish Department Office, Lonetree Headquarters, Rural Route 2, Box 32, Harvey, North Dakota. The office is located 5 miles south, 8 miles west, and ½ mile north of Harvey.

**FOR FURTHER INFORMATION CONTACT:** Dr. Grady Towns, Ecological Services, at (303) 236–8186.

**SUPPLEMENTARY INFORMATION:** The Garrison Diversion Unit Federal Advisory Council will consider and discuss subjects such as the Garrison Diversion Unit project update and wildlife budget and approaches to Lonetree land acquisition and Kraft Slough acquisition and development status.

Dated: September 27, 1994.

**Joseph J. Webster,**

*Acting Regional Director.*

[FR Doc. 94–24448 Filed 9–30–94; 8:45 am]

BILLING CODE 4310–55–M

### Bureau of Land Management

**[NV–930–4210–05; N–59206; 4–00154]**

### Realty Action: Non-Competitive Sale of Public Lands

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Non-Competitive Sale of Public Lands in Clark County, Nevada.

**SUMMARY:** The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is Section 203 and Section 209 of P.L. 94–579, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 43 U.S.C. 1719.

**Mount Diablo Meridian, Nevada**

T. 20 S., R. 60 E.,
Section 33, Lots 69 and 70,
containing 5 acres, more or less.

This parcel of land, situated in Las Vegas, NV., is being offered as a non competitive sale to Unicom Broadcasting, Inc. This land is not required for any federal purposes. The sale is consistent with current Bureau

planning for this area and would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50,00 nonreturnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Oil, gas, sodium, potassium and saleable minerals, and will be subject to:

1. An easement for roads, public utilities and flood control purposes in accordance with the transportation plan for Clark County/the city of Las Vegas.

2. Those rights for road, sewer and drain purposes which have been granted to the City of Las Vegas by Permit No. N–47298 under the Act of October 21, 1976.

3. Those rights for road, sewer and drain purposes which have been granted to the City of Las Vegas by Permit No. N–54509 under the Act of October 21, 1976.

4. Those rights for an underground power and telephone line purposes which have been granted to Nevada Power Company/Sprint Central Telephone by Permit No. N–56873 under the Act of October 21, 1976.

5. Those rights for a 138KV transmission line and electrical substation purposes which have been granted to Nevada Power Company by Permit No. NEV–061618 under the Act of October 21, 1976.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for sales and disposals under the mineral disposal laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with Public Law 94–579, or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Dated: September 21, 1994.

**Gary Ryan,**

*Acting District Manager, Las Vegas, NV.*

[FR Doc. 94–24316 Filed 9–30–94; 8:45 am]

BILLING CODE 4310–HC–M

## National Park Service

### Gettysburg National Military Park Advisory Commission

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of Meeting.

**SUMMARY:** This notice sets forth the date of the twelfth meeting of the Gettysburg National Military Park Advisory Commission.

Meeting Date and Time: November 3, 1994; 2:00 p.m. until 5:00 p.m.

Address: Holiday Inn, 516 Baltimore Street, Gettysburg, Pennsylvania 17325.

The Agenda for the meeting will focus on Sub-Committee Reports, briefing on the Environmental Impact Statement—deer management, briefing on Gettysburg College land exchange alternatives study, briefing on park roads rehabilitation project, recent lands activities and land acquisition issues, and an operational update on park activities.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Advisory Commission, Gettysburg National Military Park, P.O. Box 1080, Gettysburg, Pennsylvania 17325. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Gettysburg National Military Park located at 95 Taneytown Road, Gettysburg, Pennsylvania 17325.

**FOR FURTHER INFORMATION, CONTACT:** John A. Latschar, Superintendent, Gettysburg National Military Park, P.O. Box 1080, Gettysburg, Pennsylvania 17325–1080, (717) 334–1124.

Dated: September 16, 1994.

**B. J. Griffin,**

*Regional Director, Mid-Atlantic Region.*

[FR Doc. 94–24333 Filed 9–30–94; 8:45 am]

BILLING CODE 4310–70–M

## INFORMATION SECURITY OVERSIGHT OFFICE

### National Industrial Security Program Policy Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2) and implementing regulation 41 CFR 101–6, announcement is made of the following committee meeting:

*Name of Committee:* National Industrial Security Program Policy, Advisory Committee (NISPPAC).

*Date of Meeting:* October 20, 1994.

*Time of Meeting:* 10:00 a.m.

*Place:* Information Security Oversight Office, 750 17th Street, NW., Suite 530, Washington, DC.

*Purpose:* To discuss National Industrial Security Program (NISP) policy matters. The agenda will include a discussion on the status of the NISP and the NISP Operating Manual.

This meeting will be open to the public. However, due to access procedures, the names and telephone numbers of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than October 12, 1994. Written statements from the public will be accepted in lieu of an opportunity for comment.

**FOR FURTHER INFORMATION AND DIRECTIONS CONTACT:** Steven Garfinkel, Director, ISOO, 750 17th Street, NW., Suite 530, Washington, DC 20006, telephone (202) 634–6150.

Dated: September 27, 1994.

**Steven Garfinkel,**

*Director, Information Security Oversight Office.*

[FR Doc. 94–24378 Filed 9–30–94; 8:45 am]

BILLING CODE 6820–AF–M

## NATIONAL SCIENCE FOUNDATION

### Advisory Panel for Neuroscience; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting;

NAME: Advisory Panel for Neuroscience (1158).

DATE AND TIME: October 20–21, 1994; 9:00 a.m. to 5:00 p.m.

PLACE: Room 370, 4201 Wilson Boulevard, Arlington, VA.

TYPE OF MEETING: Part-Open.

CONTACT PERSON: Dr. Christopher Platt, Program Director, Sensory Systems, Division

of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Telephone: (703) 306–1424.

PURPOSE OF MEETING: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

MINUTES: May be obtained from the contact person listed above.

AGENDA: Open Session: October 21; 10:00 a.m. to 11:00 a.m., to discuss goals and assessment procedures. Closed Session: October 20; 9:00 a.m. to 5:00 p.m., and October 21, 9:00 a.m. to 10:00 a.m. and 11:00 a.m. to 5:00 p.m. To review and evaluate Sensory Systems proposals as part of the selection process for awards.

REASON FOR CLOSING: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: September 27, 1994.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 94–24293 Filed 9–30–94; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

### Duke Power Company; Environmental Assessment and Finding of No Significant Impact

**[Docket Nos. 50–369 and 50–370]**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. NPF–9 and NPF–17, issued to the Duke Power Company, licensee for the McGuire Nuclear Station Units 1 and 2. The plants are located at the licensee's site in Mecklenburg, County, North Carolina. The exemption was requested by the licensee by letter dated June 28, 1994, and supplemented by letters dated August 18, 1994 and September 7, 1994.

**Environmental Assessment**

*Indentification of Proposed Action*

The proposed action requests an exemption from certain requirements of 10 CFR 50.60, "Acceptance Criteria for Fracture Prevention Measures for Light-Water Nuclear Power Reactors for Normal Operation," to allow application of an alternate methodology to determine the low temperature overpressure protection (LTOP) setpoint for the McGuire Nuclear Station Units 1 and 2. The proposed alternate methodology is consistent with guidelines developed by the American Society of Mechanical Engineers (ASME) Working Group on Operating Plant Criteria (WGOPC) to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices used for LTOP. These guidelines have been incorporated into Code Case N–514, "Low Temperature Overpressure Protection," which has been approved by the ASME Code Committee. The content of this code case has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI. The NRC staff is revising 10 CFR 50.55a, which will endorse the 1993 Addenda and Appendix G of Section XI into the regulations.

The philosophy used to develop Code Case N–514 guidelines is to ensure that the LTOP limits are still below the pressure/temperature (P/T) limits for normal operation, but allow the pressure that may occur with activation of pressure-relieving devices to exceed the P/T limits, provided acceptable margins are maintained during these events. This philosophy protects the pressure vessel from LTOP events, and still maintains the Technical Specification P/T limits applicable for normal heatup and cooldown in accordance with Appendix G to 10 CFR Part 50 and Section III and XI of the ASME Code.

*The Need for the Proposed Action*

10 CFR 50.60 states that all light-water nuclear power reactors must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary as set forth in Appendices G and H to 10 CFR Part 50. Appendix G to 10 CFR 50 defines P/T limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime. 10 CFR 50.60(b) specifies that alternatives to the described requirements in Appendices G and H to 10 CFR Part 50 may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent transients that would produce pressure excursions exceeding the Appendix G P/T limits while the reactor is operating at low temperatures, the licensee installed an LTOP system. The LTOP system includes pressure relieving devices in the form of Power-Operated Relief Valves (PORVs) that are set at a pressure low enough that if a transient occurred while the coolant temperature is below the LTOP enabling temperature, they would prevent the pressure on the reactor vessel from exceeding the Appendix G P/T limits. To prevent these valves from lifting as a result of normal operating pressure surges (e.g., reactor coolant pump starting, and shifting operating charging pumps) with the reactor coolant system in a water solid condition, the operating pressure must be maintained below the PORV setpoint.

In addition, in order to prevent cavitation of a reactor coolant pump, the operator must maintain a differential pressure across the reactor coolant pump seals. Hence, the licensee must operate the plant in a pressure window that is defined as the difference between the minimum required pressure to start a reactor coolant pump and the operating margin to prevent lifting of the PORVs due to normal operating pressure surges. The licensee LTOP analysis indicates that using the Appendix G safety margins to determine the PORV setpoint would result in a pressure setpoint within its operating window, but there would be no margin for normal operating pressure surges. Therefore, operating with these limits could result in the lifting of the PORVs and cavitation of the reactor coolant pumps during normal operation. Therefore, the licensee proposed that in determining the PORV setpoint for LTOP events for McGuire, the allowable pressure be determined using the safety margins developed in an alternate methodology in lieu of the safety margins required by Appendix G to 10 CFR Part 50. The alternate methodology is consistent with ASME Code Case N–514. The content of this code case has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI.

An exemption from 10 CFR 50.60 is required to use the alternate methodology for calculating the maximum allowable pressure for LTOP considerations. By application dated June 28, as supplemented August 18, 1994 (and further clarified by letter dated September 7, 1994), the licensee requested an exemption from 10 CFR 50.60.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the licensee's application.

Appendix G of the ASME Code requires that the P/T limits be calculated: (a) Using a safety factor of 2 on the principal membrane (pressure)

stresses, (b) assuming a flaw at the surface with a depth of one-quarter (¼) of the vessel wall thickness and a length of six (6) times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the McGuire reactor vessel material.

In determining the PORV setpoint for LTOP events, the licensee proposed to use safety margins based on an alternate methodology consistent with the proposed ASME Code Case N–514 guidelines. The ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110 percent of the P/T limits of the existing ASME Appendix G. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stresses, use of the proposed criteria will provide adequate margins of safety to the reactor vessel during LTOP transients.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change involves use of more realistic safety margins for determining the PORV setpoint during LTOP events. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

*Alternative to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources*

This action did not involve the use of any resources not previously considered in the Final Environmental Statements related to operation of the McGuire Nuclear Station, dated April 1976, and its addendum dated January 1981.

*Agencies and Persons Consulted*

The NRC staff consulted with the state of Tennessee regarding the environmental impact of the proposed action. The state official had no comments.

**Finding of no Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated June 28, as supplemented August 18, 1994 (and further clarified by letter dated September 7, 1994), which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the local public document room located at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Dated at Rockville, Maryland, this 28th day of September, 1994.

For the Nuclear Regulatory Commission.

**Victor Nerses,**

*Acting Project Director, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 94–24382 Filed 9–30–94; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket No. 50–443]**

## North Atlantic Energy Service Corporation, et al.; Seabrook Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering amending Facility Operating License No. NPF–86 issued to North Atlantic Energy Service Corporation (North Atlantic) for the Seabrook Station, Unit No. 1 (Seabrook). The facility is located in Rockingham County, New Hampshire.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed action would amend the Seabrook Technical Specifications (TS) to permit operation of the Seabrook core with an expanded axial flux difference (AFD) band from that currently permitted. Operation with the expanded AFD band would be supported by continuous monitoring of core power distribution using the fixed incore detector system. Other TS changes would allow for fuel design enhancements. The changes to the TS include modification to a number of safety analysis input parameters and assumptions as follows:

- Incorporation of Westinghouse WRB–1 departure from nucleate boiling correlation and revised thermal design procedure.
- Increased core power distribution peaking factors.
- Allowance for positive moderator temperature coefficient.
- Allowance for thimble plug deletion.
- Allowance for increased steam generator tube plugging limit.
- Allowance for new fuel design features.
- Modification of analytical assumptions related to certain surveillance parameters.
- Expansion of AFD band Limiting Condition for Operation.

*The Need for the Proposed Action*

The proposed changes will allow operation of Seabrook with improved fuel cycle management and will permit North Atlantic to implement certain new fuel design features in the future.

*Environmental Impacts of the Proposed Action*

The proposed action will allow for a significant improvement in fuel utilization. The number of fuel assemblies required for an equilibrium core reload will decrease from 80 to 72. Thus, the major environmental effects of the proposed action are:

a. Less nuclear fuel will be required for the reactor core thereby reducing the environmental impacts associated with mining, converting, enriching, and transporting uranium,

b. Fewer fuel assemblies will be required for the reactor core reloads thereby reducing the environmental impacts associated with fabricating and transporting fuel assemblies,

c. Fewer spent fuel assemblies will be produced reducing the amount of spent fuel storage space required, and

d. Fewer spent fuel assemblies will need to be managed in long-term storage or disposed of in licensed repositories.

The Commission has evaluated the environmental impact of the proposed action and has determined that neither the probability of accidents nor the post-accident radiological releases would be great than previously determined. Further, the Commission has determined that the proposed approval would not affect routine radiological plant effluents and would not increase occupational radiological exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed approval does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

*Alternatives to the Proposed Action*

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternatives with equal or greater environmental impact need not be evaluated.

The principal alternative would be to deny the requested approval. This would not reduce the environmental impact attributable to the facility.

*Alternative Use of Resources*

This action does not involve the use of resources not previously considered in the Final Environmental Statement Related to Operation of the Seabrook Station, Units 1 and 2, dated December 1974.

*Agencies and Persons Consulted*

The Commission's staff reviewed the licensee's request and discussed the proposed issuance with the New Hampshire and Massachusetts State officials. The State officials had no comments. The Commission did not consult other agencies or persons.

**Finding of No Significant Impact**

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the request for approval dated November 23, 1993, as clarified and supplemented by letter dated August 15, 1994, which are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW, Washington, DC 20555, and at the Local Public Document Room located at the Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Dated at Rockville, Maryland, this 27th day of September 1994.

For the Nuclear Regulatory Commission.

**John F. Stolz,**

*Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 94–24342 Filed 9–30–94; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket No. 50–440]**

## The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, and, Toledo Edison Company; Exemption

**I**

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, and, Toledo Edison Company (the licensees) hold Facility Operating License No. NPF–58, which authorizes operation of the Perry Nuclear Power Plant (PNPP), Unit No. 1. The license provides, among other things, that the facility is subject to all rules, regulations and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect. This facility is a boiling water reactor located on the shore of Lake Erie in Lake County, Ohio, approximately 35 miles northeast of Cleveland, Ohio, and approximately 23 miles southwest of Ashtabula, Ohio.

**II**

Subsection (a) of 10 CFR 70.24, "Criticality Accident Requirements," requires that each licensee authorized to possess special nuclear material shall maintain in each area where such material is handled, used, or stored, an appropriate criticality monitoring system. In accordance with Subsection (a)(1) of 10 CFR 70.24, coverage of all such areas at PNPP, Unit No. 1, shall be provided by two criticality detectors. However, exemptions may be requested pursuant to 10 CFR 70.24(d), provided that the licensee believes that good cause exists for the exemption. In particular, Regulatory Guide 8.12, Revision 2, "Criticality Accident Alarm System," states that it is appropriate to request an exemption from 10 CFR 70.24 if an evaluation determines that a potential for criticality does not exist, as for example where geometric spacing is used to preclude criticality.

By letter dated February 28, 1992, the license requested an exemption from the requirements of 10 CFR 70.24. A previous exemption from the provisions of 10 CFR 70.24 for the storage of special nuclear material, including reactor fuel assemblies (maximum amount of 2,602 kg of U–235 in uranium enriched to no more than 3.00 weight percent (w/o)), was granted to PNPP in NRC Material License No. SNM–1928. The materials license was issued on March 7, 1985, and expired upon conversion of the construction permit to an operating license on November 13, 1986. The bases for the current exemption request is the same as for the original 1985 request. Specifically, the licensees proposed to handle and store unirradiated fuel in the fuel handling building in the new fuel pool without having a criticality monitoring system with two separate criticality detectors as required by 10 CFR 70.24.

The bases for the exemption is that the potential for accident critically is precluded because of the geometric spacing of fuel in the storage pool and administrative controls imposed in fuel handling procedures from the time the fuel is removed from approved shipping containers, until it is placed in specially designed storage racks. Administrative control encompass placing the assemblies in the fuel inspection stand, receipt inspection activities, and lifting and placement of the assemblies into specified locations into the new fuel storage vaults. Design of the new fuel racks precludes criticality, i.e., an effective multiplication factor of 0.95 or less in the normal dry condition or abnormal completely water flooded condition. Criticality during optimal moderation (foam, small droplets, spray, or fogging) is precluded by storing new fuel assemblies in the new fuel vaults in alternate rows and columns. Administrative controls will prevent placement of each fuel assembly in adjacent storage cells. Restrictions on this exemption ensure that personnel are trained, equipment is operable, an assembly storage plan is developed, reviewed, and approved, and verification is undertaken by the Reactor Engineer or licensed Senior Reactor Operator at the completion of each fuel assembly transfer to ensure criticality is precluded. These restrictions are listed in the enclosure as items 1, 2, 3, and 4. Restriction 5 requires performing and maintaining criticality analyses documenting that the maximum effective multiplication factor for each fuel assembly does not exceed 0.95 when optimally moderated and fully reflected by water. Restriction 6 limits maximum fuel enrichment to 5 w/o of U–235 independent of the results of analyses performed in accordance with Restriction 5. Fuel assemblies, when stored in their shipping containers, shall be stacked no more than three

containers high (Restriction 7). No more than three fuel assemblies shall be outside their shipping containers or storage racks at any one time (Restriction 8). The minimum edge-to-edge distance between the group of three fuel assemblies and all other fuel assemblies shall be 12 inches (Restriction 9).

Based upon the information provided, there is reasonable assurance that unirradiated fuel will remain subcritical because of the new fuel pool design and administrative controls. The special circumstances for granting an exemption to 10 CFR 70.24 are met because criticality is precluded with the present design configuration, Technical Specification requirements, and the restrictions placed upon the exemption. Therefore, the staff concludes that the licensee's request for an exemption from the requirements of 10 CFR 70.24 for unirradiated fuel in the fuel handling building is acceptable and should be granted. This exemption is subject to the restrictions listed in the enclosure.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 70.24, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest.

Accordingly, the Commission hereby grants an exemption as described in Section II above from 10 CFR 70.24, "Criticality Accident Requirements," such that the licensee is exempt from providing two criticality detectors. This exemption is subjection to the restrictions in the enclosure.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (59 FR 47363).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, the 26th day of September 1994.

For the Nuclear Regulatory Commission.

**Jack W. Roe,**

*Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 94–24343 Filed 9–30–94; 8:45 am]

BILLING CODE 7590–01–M

## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** This gives a consolidated notice of all positions excepted under Schedules A, B, and C as of June 30, 1994, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

**SUPPLEMENTARY INFORMATION:** Civil Service Rule VI (5 CFR 6.1) requires the Office of Personnel Management (OPM) to publish notice of all exceptions granted under Schedules A, B, and C. Title 5, Code of Federal Regulations, § 213.103(c), further requires that a consolidated listing, current as of June 30 of each year, be published annually as a notice in the **Federal Register**. That notice follows. OPM maintains continuing information on the status of all Schedule A, B, and C excepted appointing authorities. Interested parties needing information about specific authorities during the year may obtain information by contacting the Staffing Management Services Division, room 6A12, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, or by calling (202) 606–0950.

The following exceptions were current on June 30, 1994.

**Schedule A**

*Section 213.3102 Entire Executive Civil Service*

(a) Positions of Chaplain and Chaplain's Assistant.

(b) (Reserved).

(c) Positions to which appointments are made by the President without confirmation by the Senate.

(d) Attorneys.

(e) Law clerk trainee positions. Appointments under this paragraph shall be confined to graduates of recognized law schools or persons having equivalent experience and shall be for periods not to exceed 14 months pending admission to the bar. No person shall be given more than one appointment under this paragraph. However, an appointment that was initially made for less than 14 months may be extended for not to exceed 14 months in total duration.

(f) Chinese, Japanese, and Hindu interpreters.

(g) Any nontemporary position the duties of which are part-time or intermittent in which the appointee will receive compensation during his or her service year that aggregates not more than 40 percent of the annual salary rate for the first step of grade GS–3. This limited compensation includes any premium pay such as for overtime, night, Sunday, or holiday work. It does not, however, include any mandatory within-grade salary increases to which the employee becomes entitled subsequent to appointment under this authority. Appointments under this authority may not be for temporary project employment.

(h) Positions in Federal mental institutions when filled by persons who have been patients of such institutions and have been discharged and are certified by an appropriate medical authority thereof as recovered sufficiently to be regularly employed but it is believed desirable and in the interest of the persons and the institution that they be employed at the institution.

(i) Subject to prior approval of OPM, positions requiring temporary, part-time, or intermittent employment in wage board type occupations (i.e., positions excluded from Classification Act coverage by section 202(7) of the Act) on construction or repair work, where the activity is carried on in localities where examination coverage for the positions has not been provided and where because of employment conditions there is a shortage of available candidates for the positions. Appointments under this paragraph shall not extend beyond 1 year and the employment thereunder shall not exceed 180 working days a year. Seasonal employments of a recurring nature are not authorized under this paragraph.

(j) Positions filled by: (1) Appointment of persons previously employed as National Guard Technicians under 32 U.S.C. 709(a) in positions at the same or equivalent level, or below, who are applying for or receiving an annuity under the provisions of 5 U.S.C. 8337(h) or 5 U.S.C. 8456 by reason of a disability that disqualifies them from membership in the National Guard or from holding the military grade required as a condition of their National Guard employment; or (2) reassignment, promotion, or demotion within the same agency of former National Guard Technicians originally appointed under this authority.

(k) Positions without compensation provided appointments thereto meet the requirements of applicable laws relating to compensation.

(l) Positions requiring the temporary or intermittent employment of professional, scientific, and technical experts for consultation purposes.

(m) Nonsupervisory positions of custodial laborer (levels 1, 2, and 3) and general laborer (levels 2 and 3) in field establishments outside central office and regional office cities of OPM where

examination coverage has not been provided for the positions, as follows:

(1) For temporary, intermittent, or seasonal employment (exclusive of positions covered by paragraph (i) of this section) not to exceed 180 working days a year in the Departments of Agriculture, Commerce, Interior, and Energy, in the Federal Aviation Administration, and in the International Boundary and Water Commission; or

(2) When it is specifically held by OPM that this authority is applicable for employment in localities that are isolated with respect to labor supply and where there is a shortage of available candidates for the positions.

(n) Any local physician, surgeon, or dentist employed under contract or on a part-time or fee basis.

(o) Positions of a scientific, professional or analytical nature when filled by bona fide members of the faculty of an accredited college or university who have special qualifications for the positions to which appointed. Employment under this provision shall not exceed 130 working days a year.

(p) Positions of a scientific, professional or analytical nature when filled by bona fide graduate students at accredited colleges or universities provided that the work performed for the agency is to be used by the student as a basis for completing certain academic requirements toward a graduate degree. Appointments under this authority may not exceed 1 year, but may be extended for additional period(s) not to exceed 1 year as long as the conditions for appointment continue to be met. The appointment of any individual under this authority shall terminate upon the individual's completion of requirements for the graduate degree.

(q) Positions at grade GS–9, or equivalent, and below when appointees are to assist scientific, professional, or technical employees. Persons employed under this provision shall be (1) bona fide high school science or mathematics teachers; or (2) bona fide students at high schools or accredited colleges or universities who are pursuing courses related to the field in which employed. The appointment of any individual under this authority shall terminate upon the individual's ceasing to be enrolled in a qualifying educational program or to be employed as a teacher. No one shall be employed under this provision in routine clerical positions, routine trades and labor positions—unless such employment clearly related to a scientific, professional, or technical curriculum—or in excess of 1,040 working hours a year. Appointments under this authority may be made only to positions for which qualification standards established under 5 CFR Part 302 are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(r)–(s) (Reserved).

(t) Positions when filled by mentally retarded persons in accordance with the guidance in Federal Personnel Manual chapter 306. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by OPM.

(u) Positions when filled by severely physically handicapped persons who: (1) Under a temporary appointment have demonstrated their ability to perform the duties satisfactorily; or (2) have been certified by counselors of State vocational rehabilitation agencies or the Veterans Administration as likely to succeed in the performance of the duties. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by OPM.

(v) Between May 13 and September 30 only, temporary Summer Aid positions the duties of which involve work of a routine nature not regularly covered under the General Schedule and requiring no specific knowledge or skills, when filled by youths, either (1) appointed under economic needs standards prescribed by OPM; or (2) who are mentally retarded or severely physically handicapped. Youths may not be appointed unless they have reached their 16th birthday. This paragraph shall apply only to positions for which pay is fixed at the highest Federal minimum wage rate established by the Fair Labor Standards Act of 1938, as amended.

(w) Part-time or intermittent positions, the duties of which involve routine work up to and including the GS–4 level of difficulty or equivalent under the Federal Wage System, when filled by bona fide students appointed under the Stay-in-School Program. Students may be appointed if they need the earnings from this employment to continue in school or if they are mentally retarded or severely physically handicapped, provided that the following conditions are met:

(1) Appointees are enrolled in or accepted for enrollment as a resident student in a secondary school (or other appropriate school for mentally retarded students) or an institution of higher learning not above the baccalaureate level, accredited by a recognized accrediting body;

(2) Employment does not exceed 20 hours in any calendar week except that students may work full time during any period in which their school is officially closed and during any school vacation period;

(3) While employed, appointees continue to maintain an acceptable school standing, although they need not attend school during the summer;

(4) Appointees meet the economic criteria prescribed by the Office of Personnel Management, except that this requirement does not apply to mentally retarded or severely physically handicapped students appointed under the authority; and

(5) Salaries are fixed by the agency head at a level commensurate with the duties assigned and the expected level of performance.

Appointments under this authority may not extend beyond 1 year. *However*, such appointments may be made for additional periods of not to exceed 1 year, each, if the conditions for initial appointment are still met. Students may not be appointed under this authority unless they have reached their 16th birthday. No new appointments may be made between May 13 and August 31, inclusive.

(x) Positions for which a local recruiting shortage exists when filled by inmates of Federal, District of Columbia, and State (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands) penal and correctional institutions under work-release programs authorized by the Prisoner Rehabilitation Act of 1965, the District of Columbia Work Release Act, or under work-release programs authorized by the States. Initial appointments under this authority may not exceed 1 year. An initial appointment may be extended for one or more periods not to exceed 1 additional year each upon a finding that the inmate is still in a work-release status and that a local recruiting shortage still exists. No person may serve under this authority longer than 1 year beyond the date of that person's release from custody.

(y) Positions at grade GS–2 and below for summer employment, as defined in § 213.3101(d), of assistants to scientific, professional, and technical employees,

when filled by finalists in national science contests.

(z) Not to exceed 30 positions of assistants to top-level Federal officials when filled by persons designated by the President as White House Fellows.

(aa) Scientific and professional research associate positions at GS–11 and above when filled on a temporary basis by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and their agencies. Appointments are limited to persons referred by the National Research Council under its post-doctoral research associate program, may not exceed 2 years, and are subject to satisfactory outcome of evaluation of the associate's research during the first year.

(bb) Positions when filled by aliens in the absence of qualified citizens. Appointments under this authority are subject to prior approval of OPM except when the authority is specifically included in a delegated examining agreement with OPM.

(cc) Positions at GS–15 and below when filled by persons identified as Interchange Executives by the President's Commission on Executive Exchange. Appointments made under this authority may not extend beyond 2 years.

(dd)–(ee) (Reserved).

(ff) Not to exceed 25 positions when filled in accordance with an agreement between OPM and the Department of Justice by persons in programs administered by the Attorney General of the United States under Public Law 91–452 and related statutes. A person appointed under this authority may continue to be employed under it after he/she ceases to be in a qualifying program only as long as he/she remains in the same agency without a break in service.

(gg)–(hh) (Reserved).

(ii) Positions of Presidential Intern, GS–9 and 11, in the Presidential Management Intern Program. Initial appointments must be made at the GS–9 level. No one may serve under this authority for more than 2 years, unless extended with OPM approval for up to 1 additional year. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive appointment under the provisions of Executive order 12364, in accordance with requirements published in the Federal Personnel Manual.

(jj) Legal intern positions. Appointments under this paragraph shall be confined to bona fide students at recognized law schools who are candidates for J.D. or LL.B. degrees. Appointments under this authority may not exceed 1 year, but may be extended for additional period(s) not to exceed 1 year as long as the conditions for appointment continue to be met. The appointment of any individual under this authority shall terminate upon the individual's graduation from law school.

(kk) (Reserved).

(ll) Positions as needed of readers for blind employees, interpreters for deaf employees and personal assistants for handicapped employees, filled on a full time, part-time, or intermittent basis.

*Section 213.3103 Executive Office of the President*

(a) *Office of Administration.* (1) Not to exceed 75 positions to provide administrative services and support to the White House office.

(b) *Office of Management and Budget.* (1) Not to exceed 10 positions at grades GS–9/15.

(c) *Council on Environmental Quality.* (1) Professional and technical positions in grades GS–9 through 15 on the staff of the Council.

(d)–(f) (Reserved).

(g) *National Security Council.* (1) All positions on the staff of the Council.

(h) *Office of Science and Technology Policy.* (1) Thirty positions of Senior Policy Analyst, GS–14, Policy Analyst, GS–11/14; and Policy Research Assistant, GS–9, for employment of anyone not to exceed 5 years on projects of a high priority nature.

(i) *Office of National Drug Control Policy.* (1) Not to exceed 15 positions, GS–15 and below, of senior policy analysts and other personnel with expertise in drug-related issues and/or technical knowledge to aid in anti-drug abuse efforts.

*Section 213.3104 Department of State*

(a) *Office of the Secretary.* (1) All positions, GS–15 and below, on the staff of the Family Liaison Office, Office of the Under Secretary for Management.

(2) One position of Curator (Arts), GM–1015–15, in the Office of the Under Secretary for Management.

(b) *American Embassy, Paris, France.* (1) Chief, Travel and Visitor Unit. No new appointments may be made under this authority after August 10, 1981.

(c) (Reserved).

(d) *International Boundary Commission, United States and Canada.* (1) Temporary and intermittent field employees such as instrumentmen, foremen, recorders, packers, cooks, and axemen, for not to exceed 180 working days within any 1 calendar year.

(e) *Bureau of Oceans and International Environmental and Scientific Affairs.* (1) Two Physical Science Administration Officer positions at GS–16.

(f) (Reserved).

(g) *Office of Refugee and Migration Affairs.* (1) Not to exceed 10 positions at grades GS–5 through 11 on the staff of the Office.

(h) *Bureau of Administration.* (1) One Presidential Trip Specialist. No new appointments may be made under this authority after June 11, 1981.

(2) One position of the Director, Art in Embassies Program, GM–1001–15.

*Section 213.3105 Department of the Treasury*

(a) *Office of the Secretary.* (1) Not to exceed 20 positions at the equivalent of GS–13 through GS–17 to supplement permanent staff in the study of complex problems relating to international financial, economic, trade, and energy policies and programs of the Government, when filled by individuals with special qualifications for the particular study being undertaken. Employment under this authority may not exceed 4 years.

(2) Not to exceed 20 positions, which will supplement permanent staff involved in the study and analysis of complex problems in the area of domestic economic and financial policy. Employment under this authority may not exceed 4 years.

(b) *U.S. Customs Service.* (1) Positions in foreign countries designated as "interpreter-translator" and "special employees," when filled by appointment of persons who are not citizens of the United States; and positions in foreign countries of messenger and janitor.

(2) Positions of part-time, intermittent, mixed tour, or seasonal Customs Inspectors, Port Directors, Inspectional Aides, Clerks and Cashiers at remote/isolated locations where examination is impracticable. A remote/isolated location is outside the local commuting area of a population center from which an employee can reasonably be expected to travel on short notice under adverse weather and/or road conditions which are normal for the area. For this purpose, a population center is a town with housing, schools, health care, stores and other businesses in which the servicing OPM office can schedule tests and/or reasonably expect to attract applicants. An individual appointed under this authority may not be employed in the Customs Service under a combination of this and any other appointment for more than 1,040 working hours in a service year.

(3) Until October 1, 1994, positions of part-time, intermittent, or temporary

Customs Inspectors, and Port Directors in Alaska paid at a rate not above GS–9 and for not more than 130 working days in a service year. No new appointments may be made under this authority after February 28, 1994.

(4) (Reserved).

(5) Until October 1, 1994, positions at GS–9 and below of Customs Enforcement Officer, Customs Inspector, Customs Marine Clerk/Officer, Customs Aid (Sampling), Customs Warehouse Officer, Port Director, Interpreter, and Laborer, with duties of a continuing nature that require the part-time or intermittent service of an employee for not more than 700 hours in his/her service year. An individual appointed under this exception may not be employed in the Customs Service under a combination of this and any other exception for more than 700 hours in his/her service year. No new appointments may be made under this authority after February 28, 1994.

(6) Two hundred positions of Criminal Investigator for special assignments.

(7)-(8) (Reserved).

(9) Not to exceed 25 positions of Customs Patrol Officers in the Papago Indian Agency in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(c) *Office of the Comptroller of the Currency.* (1) Not to exceed six positions filled under the Professional Accounting Fellow Program. Appointments under this authority may not exceed 2 years, but may be extended for not to exceed an additional 90 days to complete critical projects.

(d) *Office of Thrift Supervision.* (1) All positions in the supervision policy and supervision operations functions of OTS. No new appointments may be made under this authority after December 31, 1993.

(e) *Internal Revenue Service.* (1) Twenty positions of investigator for special assignments.

(2) Two positions of Senior Visiting Pension Actuary, GS–1510–14/15. Appointments to these positions must be for periods not to exceed 24 months.

(f) (Reserved).

(g) *Bureau of Alcohol, Tobacco, and Firearms.* (1) One hundred positions of criminal investigator for special assignments.

(h) (Reserved).

(i) *Bureau of Government Financial Operations.* (1) Clerical positions at grades GS–5 and below established in Emergency Disbursing Offices to process emergency payments to victims of catastrophes or natural disasters requiring emergency disbursing services. Employment under this authority may not exceed 1 year.

*Section 213.3106 Department of Defense*

(a) *Office of the Secretary.* (1)–(5) (Reserved).

(6) One Executive Secretary, US-USSR Standing Consultative Commission and Staff Analyst (SALT), Office of the Assistant Secretary of Defense (International Security Affairs).

(b) *Entire Department (including the Office of the Secretary of Defense and the Departments of the Army, Navy, and Air Force).* (1) Professional positions in Military Dependent School Systems overseas.

(2) Positions in attache 1 systems overseas, including all professional and scientific positions in the Naval Research Branch Office in London.

(3) Positions of clerk-translator, translator, and interpreter overseas.

(4) Positions of Educational Specialist the incumbents of which will serve as Director of Religious Education on the staffs of the Chaplains in the military services.

(5) Positions under the program for utilization of alien scientists, approved under pertinent directives administered by the Director of Defense Research and Engineering of the Department of Defense, when occupied by alien scientists initially employed under the program including those who have acquired United States citizenship during such employment.

(6) Positions in overseas installations of the Department of Defense when filled by dependents of military or civilian employees of the U.S. Government residing in the area. Employment under this authority may not extend longer than 2 months following the transfer from the area or separation of a dependent's sponsor: *Provided,* that (i) a school employee may be permitted to complete the school year; and (ii) an employee other than a school employee may be permitted to serve up to 1 additional year when the military department concerned finds that the additional employment is in the interest of management.

(7) Fifteen secretarial and staff support positions at GS–12 or below on the White House Support Group.

(8) Positions in DOD research and development activities occupied by participants in the DOD Science and Engineering Apprenticeship Program for High School Students. Persons employed under this authority shall be bona fide high school students, at least 14 years old, pursuing courses related to the position occupied and limited to 1,040 working hours a year. Children of DOD employees may be appointed to these positions, notwithstanding the sons and daughters restriction, if the positions are in field activities at remote locations. Appointments under this authority may be made only to positions for which qualification standards established under 5 CFR Part 302 are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(c) *Defense Contract Audit Agency.* (1) Not to exceed two positions of Accounting Fellow, Auditor, GM–511–14, filled under the Accounting Fellowship Program. Appointments under this authority may not exceed 2 years.

(d) *General.* (1) Positions concerned with advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information, including scientific and technical positions in the intelligence function; and positions involved in the planning, programming, and management of intelligence resources when, in the opinion of OPM, it is impracticable to examine. This authority does not apply to positions assigned to cryptologic and communications intelligence activities/functions.

(2) Positions involved in intelligence-related work of the cryptologic intelligence activities of the military departments. This includes all positions of intelligence research specialist, and similar positions in the intelligence classification series; all scientific and technical positions involving the applications of engineering, physical or technical sciences to intelligence work; and professional as well as intelligence technician positions in which a majority of the incumbent's time is spent in advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information or in the planning, programming, and management of intelligence resources.

(e) *Uniformed Services University of the Health Sciences.* (1) Positions of President, Vice Presidents, Assistant Vice Presidents, Deans, Deputy Deans, Associate Deans, Assistant Deans, Assistants to the President, Assistants to the Vice Presidents, Assistants to the Deans, Professors, Associate Professors,

Assistant Professors, Instructors, Visiting Scientists, Research Associates, Senior Research Associates, and Postdoctoral Fellows.

(2) Positions established to perform work on projects funded from grants.

(f) *National Defense University.* (1) Not to exceed 16 positions of senior policy analyst, GS–15, at the Strategic Concepts Development Center. Initial appointments to these positions may not exceed 6 years, but may be extended thereafter in 1-, 2-, or 3-year increments, indefinitely.

(g) *Defense Communications Agency.* (1) Not to exceed 10 positions at grades GS–10/15 to staff and support the Crisis Management Center at the White House.

(h) *Defense Systems Management College, Fort Belvoir, Va.* (1) The Provost and professors in grades GS–13 through 15.

(i) *George C. Marshall European Center for Security Studies, Garmisch, Germany.* (1) The Director, Deputy Director, and positions of professor, instructor, and lecturer at the George C. Marshall European Center for Security Studies, Garmisch, Germany, for initial employment not to exceed 3 years, which may be renewed in increments from 1 to 2 years thereafter.

*Section 213.3107 Department of the Army*

(a) *General.* (1) Not to exceed 30 positions on the faculty and staff which are classified in the GS–1700 occupational group and the GS–1410 Librarian series, located at the U.S. Army Russian Institute, Garmisch, Germany, and the U.S. Army Foreign Language Training Center Europe, Munich, Germany.

(2) (Reserved).

(3) Not to exceed 500 Medical and Dental Intern, Resident and Fellow positions, whose incumbents are training under graduate medical/dental education programs in Army Medical Department facilities worldwide, and whose compensation is fixed under 5 U.S.C. 5351–5356. Employment under this authority may not exceed 4 years, unless extended with prior approval of OPM.

(b) *Aviation Systems Command.* (1) One scientific and professional research position in the U.S. Army Research and Technology Laboratories, the duties of which require specific knowledge of aviation technology in non-allied nations.

(c) *Corps of Engineers.* (1) (Reserved).

(2) Nonsupervisory trades, crafts, and manual labor positions at grades WG–6 and below on survey, construction, short-term maintenance, or floating-plant operations, where because of turnover, lack of housing facilities, mobility of work site, or remoteness of personnel servicing facilities, an adequate labor force can be recruited only by immediate gate hiring on a local basis. This authority can be used only when OPM has determined that it is specifically applicable to a given situation; ordinarily, it will not be used for employment in OPM central office, regional, and branch office cities or in cities where there is a local OPM area office to service the employing establishment.

(d) *U.S. Military Academy, West Point, New York.* (1) Civilian professors, instructors, teachers (except teachers at the Children's School), Cadet Social Activities Coordinator, chapel organist and choir-master, Director of Intercollegiate Athletics, Associate Director of Intercollegiate Athletics, Facility Manager, Building Manager, three Physical Therapists (Athletic Trainers), Associate Director of Admissions for Plans and Programs, Deputy Director of Alumni Affairs; and librarian when filled by an officer of the Regular Army retired from active service, and the military secretary to the Superintendent when filled by a U.S. Military Academy graduate retired as a regular commissioned officer for disability.

(e) *U.S. Army School of the Americas, Fort Benning, Georgia.* (1) Positions of Translator (Typing), GS–1040–5/9, and Supervisory Translator, GS–1040–11. No new appointments may be made under this authority after December 31, 1985.

(f) *Central Identification Laboratory.* (1) One position of Scientific Director, GM–190–15, and four positions of Forensic Scientist, GM–190–14. Initial appointment to these positions is NTE 3–5 years, with provision for indefinite numbers of renewals in 1-, 2-, or 3-year increments.

(g) *Defense Language Institute.* (1) All positions on the faculty and staff which are classified in the GS–1700 occupational group, the GS–1040 Language Specialist series, and the GS–303 Bilingual Clerk series, that require either a proficiency in a foreign language or a knowledge of foreign language teaching methods.

(h) *Army War College, Carlisle Barracks, PA.* (1) Positions of professor, instructor, or lecturer associated with courses of instruction of at least 10 months duration for employment not to exceed 5 years, which may be renewed in 1-, 2-, 3-, 4-, or 5-year increments indefinitely thereafter.

(2) Nine senior policy analyst positions, GS–14/15, at the Strategic Studies Institute, Army War College, with appointments to be made initially for up to 3 years and thereafter extended annually if needed.

(i) (Reserved).

(j) *U.S. Military Academy Preparatory School, Fort Monmouth, New Jersey.* (1) Positions of Academic Director, Department Head, and Instructor.

(k) *U.S. Army Command and General Staff College, Fort Leavenworth, Kansas.* (1) Positions of professor, associate professor, assistant professor, and instructor associated with courses of instruction of at least 10 months duration, for employment not to exceed up to 5 years, which may be renewed in 1, 2, 3, 4, or 5-year increments indefinitely thereafter.

*Section 213.3108 Department of the Navy*

(a) *General.* (1) (Reserved).

(2) Positions of Student Pharmacist for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals, clinics and departments when filled by students who are enrolled in an approved pharmacy program in a participating nonfederal institution, and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(3) (Reserved).

(4) Not to exceed 50 positions of resident-in-training at U.S. naval regional medical centers, hospitals, and dispensaries which have residency training programs, when filled by residents assigned as affiliates for part of their training from nonfederal hospitals. Assignments shall be on a temporary (full-time or part-time) or intermittent basis, shall not amount to more than 6 months for any person, and shall be applied only to persons whose compensation is fixed under 5 U.S.C. 5351–54.

(5) (Reserved).

(6) Positions of Student Operating Room Technician for temporary, part-time, or intermittent employment in U.S. naval regional medical centers and hospitals, when filled by students who are enrolled in an approved operating room technician program in a participating nonfederal institution, whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(7) Positions of student social worker for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by bona fide students enrolled in academic institutions: *Provided,* that the work performed in the agency is to be used by the student as a basis for completing

certain academic requirements by such educational institution to qualify for a graduate degree in social work. This authority shall be applied only to students whose compensation is fixed under 5 U.S.C. 5351–54.

(8) Positions of student practical nurse for temporary, part-time, or intermittent employment in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by trainees enrolled in a nonfederal institution in an approved program of educational and clinical training which meets the requirements for licensing as a practical nurse. This authority shall be applied only to trainees whose compensation is fixed under 5 U.S.C. 5351–54.

(9) (Reserved).

(10) Positions of medical technology intern in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by students enrolled in approved programs of training in nonfederal institutions. Employment under this authority may be on a full-time, part-time, or intermittent basis but may not exceed 1 year. This authority shall be applied only to students whose compensation is fixed under 5 U.S.C. 5351–54.

(11) Positions of medical intern in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by persons who are serving medical internships at participating nonfederal hospitals and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(12) Positions of student speech pathologist at U.S. naval regional medical centers, hospitals, and dispensaries, when filled by persons who are enrolled in participating nonfederal institutions and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(13) Positions of student dental assistant in U.S. naval regional medical centers, hospitals, and dispensaries, when filled by persons who are enrolled in participating nonfederal institutions and whose compensation is fixed under 5 U.S.C. 5351–54. Employment under this authority may not exceed 1 year.

(14) (Reserved).

(15) Marine positions assigned to a coastal or seagoing vessel operated by a naval activity for research or training purposes.

(16) All positions necessary for the administration and maintenance of the official residence of the Vice President.

(b) *Naval Academy, Naval Postgraduate School, and Naval War College.* (1) Professors, instructors, and teachers; the Director of Academic Planning, Naval Postgraduate School; and the librarian, organist-choirmaster, registrar, the dean of admissions, and social counselors at the Naval Academy.

(c) *Chief of Naval Operations.* (1) One position at grade GS–12 or above that will provide technical, managerial, or administrative support on highly classified functions to the Deputy Chief of Naval Operations (Plans, Policy, and Operations).

(d) *Military Sealift Command.* (1) All positions on vessels operated by the Military Sealift Command.

(e) *Pacific Missile Range Facility, Barking Sands, Hawaii.* (1) All positions. This authority applies only to positions that must be filled pending final decision on contracting of Facility operations. No new appointments may be made under this authority after July 29, 1988.

(f) (Reserved).

(g) *Office of Naval Research.* (1) Not to exceed five positions of Liaison Scientists, GS–13/15, in the Naval Research Branch Office in Japan, when filled by research scientists who have specialized experience in scientific disciplines of current interest to the Department and who have a demonstrated ability to deal with the Japanese scientific community in their disciplines. An appointment under this authority may be made initially for a period of not to exceed 2 years. With the prior approval of OPM, total employment under this authority may be for as long as 3 years.

*Section 213.3109 Department of the Air Force*

(a) *Office of the Secretary.* (1) One Special Assistant in the Office of the Secretary of the Air Force. This position has advisory rather than operating duties except as operating or administrative responsibilities may be exercised in connection with the pilot studies.

(b) *General.* (1) Professional, technical, managerial and administrative positions supporting space activities, when approved by the Secretary of the Air Force.

(2) Seventy positions engaged in interdepartmental defense projects involving scientific and technical evaluations.

(c) Not to exceed 20 professional positions, GS–11 through GS–15, in Detachments 6 and 51, SM–ALC, Norton and McClellan Air Force Bases, California, which will provide logistic support management to specialized research and development projects.

(d) *U.S. Air Force Academy, Colorado.* (1) Positions of Cadet Hostesses, Instructors in Physical Education, Instructors in Music (choirmasters), one Training Instructor (Parachuting), one Training Instructor (Code of Conduct and Evasion), and two Physical Therapists (Athletic Trainers).

(2) Positions of professor, associate professor, assistant professor, and instructor, in the Dean of Faculty, Commandant of Cadets, and Director of Athletics organizations of the United States Air Force Academy.

(e) Not to exceed five positions, GS–12 through GS–15, in the Specialized Management Office (WR–ALC/QL) at Robins Air Force Base, Georgia, which will provide logistic support management staff guidance for highly sensitive and high priority programs and projects. Employment under this authority is not to exceed May 30, 1988.

(f) *Air Force Office of Special Investigations.* (1) Not to exceed 250 positions of Criminal Investigators/Intelligence Research Specialists, GS–5 through GS–15.

(g) Not to exceed eight positions, GS–12 through 15, in Headquarters Air Force Logistics Command, DCS Material Management, Office of Special Activities, Wright-Patterson Air Force Base, Ohio, which will provide logistic support management staff guidance to classified research and development projects.

(h) *Air University, Maxwell Air Force Base, Alabama.* (1) Positions of professor, instructor, or lecturer.

(i) *Air Force Institute of Technology, Wright-Patterson Air Force Base, Ohio.* (1) Civilian deans and professors.

(j) *Air Force Logistics Command.* (1) One Supervisory Logistics Management Specialist, GM–346–14, in Detachment 2, 2762 Logistics Management Squadron (Special), Greenville, Texas.

(k) One position of Supervisory Logistics Management Specialist, GS–346–15, in the 2762nd Logistics Squadron (Special), at Wright-Patterson Air Force Base, Ohio.

(l) One position of Commander, Air National Guard Readiness Center, Andrews Air Force Base, Maryland.

*Section 213.3110 Department of Justice*

(a) *General.* (1) Deputy U.S. Marshals employed on an hourly basis for intermittent service.

(2) (Reserved).

(3) U.S. Marshal in the Virgin Islands.

(4) Positions at GS–15 and below on the staff of an office of an independent counsel, that is established under 28 CFR Part 600. No office may use this authority for more than 4 years to make appointments and position changes unless prior approval of OPM is obtained.

(b) *Immigration and Naturalization Service.* (1) Not to exceed 350 positions, at grades GS–15 and below, engaged in planning for and implementing the processing of claims for resident status which may be submitted by aliens already in the United States as authorized by immigration control and reform legislation. New appointments under this authority may not be made after April 15, 1994.

(2) Not to exceed 500 positions of interpreters and language specialists, GS–1040–5/9.

(3) Not to exceed 25 positions, GS–15 and below, with proficiency in speaking, reading, and writing the Russian language and serving in the Soviet Refugee Processing Program with permanent duty location in Moscow, Russia.

(c) *Drug Enforcement Administration.* (1) (Reserved).

(2) One hundred and fifty positions of Intelligence Research Agent and/or Intelligence Operation Specialist in the GS–132 series, grades GS–9 through GS–15.

(3) Not to exceed 200 positions of Criminal Investigator (Special Agent). New appointments may be made under this authority only at grades GS–7/11.

*Section 213.3112 Department of the Interior*

(a) *General.* (1) Technical, maintenance, and clerical positions at or below grades GS–7, WG–10, or equivalent, in the field service of the Department of the Interior, when filled by the appointment of persons who are certified as maintaining a permanent and exclusive residence within, or contiguous to, a field activity or district, and as being dependent for livelihood primarily upon employment available within the field activity of the Department.

(2) All positions on Government-owned ships or vessels operated by the Department of the Interior.

(3) Temporary or seasonal caretakers at temporarily closed camps or improved areas to maintain grounds, buildings, or other structures and prevent damages or theft of Government property. Such appointments shall not extend beyond 130 working days a year without the prior approval of OPM.

(4) Temporary, intermittent, or seasonal field assistants at GS–7, or its equivalent, and below in such areas as forestry, 8 range management, soils, engineering, fishery and wildlife management, and with surveying parties. Employment under this authority may not exceed 180 working days a year.

(5) Temporary positions established in the field service of the Department for emergency forest and range fire prevention or suppression and blister rust control for not to exceed 180 working days a year: *Provided*, that an employee may work as many as 220 working days a year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property.

(6) Persons employed in field positions, the work of which is financed jointly by the Department of the Interior and cooperating persons or organizations outside the Federal service.

(7) All positions in the Bureau of Indian Affairs and other positions in the Department of the Interior directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of the Interior is responsible for defining the term "Indian."

(8) Temporary, intermittent, or seasonal positions at GS–7 or below in Alaska, as follows: Positions in nonprofessional mining activities, such as those of drillers, miners, caterpillar operators, and samplers. Employment under this authority shall not exceed 180 working days a year and shall be appropriate only when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(9) Temporary, part-time, or intermittent employment of mechanics, skilled laborers, equipment operators and tradesmen on construction, repair, or maintenance work not to exceed 180 working days a year in Alaska, when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(10) Seasonal airplane pilots and airplane mechanics in Alaska, not to exceed 180 working days a year.

(11) Temporary staff positions in the Youth Conservation Corps Centers operated by the Department of the Interior. Employment under this authority shall not exceed 11 weeks a year except with prior approval of OPM.

(12) Positions in the Youth Conservation Corps for which pay is fixed at the Federal minimum wage rate. Employment under this authority may not exceed 10 weeks.

(b) (Reserved).

(c) *Indian Arts and Crafts Board.* (1) The Executive Director.

(d) (Reserved).

(e) *Office of the Assistant Secretary, Territorial and International Affairs.* (1) (Reserved).

(2) Not to exceed four positions of Territorial Management Interns, grades GS–5, GS–7, or GS–9, when filled by territorial residents who are U.S. citizens from the Virgin Islands or Guam; U.S. nationals from American Samoa; or in the case of the Northern Marianas, will become U.S. citizens upon termination of the U.S. trusteeship. Employment under this authority may not exceed 6 months.

(3) (Reserved).

(4) Special Assistants to the Governor of American Samoa who perform specialized administrative, professional, technical, and scientific duties as members of his or her immediate staff.

(f) *National Park Service.* (1) Park Ranger positions (appropriate specializations) at salaries equivalent to GS–2 through GS–5 to perform practical and technical work supporting the management of Park Service areas and resources in the functional areas of interpretation, resources management, visitor protection, and visitor services; and positions at salaries equivalent to grades GS–6 and GS–7 in which the duties are supervisory or consist of highly specialized technical work in support of National Park Service operations in the functional areas delineated above. The total number of Park Ranger and Park Technician positions at salaries equivalent to GS–6 and GS–7 excepted under this paragraph shall not exceed 200. Employment under this paragraph is limited to persons who meet the qualification standards for each salary level which have been agreed upon by OPM and the Department. These standards include as a minimum the following number of previous seasons' experience at a salary equivalent to the next lower grade or equivalent experience in a Federal, State, or local park:

(i) For IGS–7: Two seasons at IGS–6 level in the National Park Service.

(ii) For IGS–6: Two seasons at IGS–5 level in the National Park Service.

(iii) For IGS–5: One season at IGS–4 level or its equivalent in experience.

(iv) For IGS–4: One season at IGS–3 level or its equivalent in experience.

(v) For IGS–3: One season at IGS–2 level or its equivalent in experience. Employment under this paragraph shall be only for duty that is temporary, intermittent, or seasonal, and no person shall be employed by the same appointing office in the National Park Service under this paragraph or a combination of this and any other excepting authorities in excess of 180 working days a year.

(2) (Reserved).

(3) Seven full-time permanent and 31 temporary, part-time, or intermittent positions in the Redwood National Park, California, which are needed for rehabilitation of the park, as provided by Public Law 95–250.

(4) One Special Representative of the Director.

(g) *Bureau of Reclamation.* (1) Appraisers and examiners employed on a temporary, intermittent, or part-time basis on special valuation or prospective-entrymen-review projects where knowledge of local values on conditions or other specialized qualifications not possessed by regular Bureau employees are required for successful results. Employment under this provision shall not exceed 130 working days a year in any individual case: *Provided*, that such employment, may with prior approval of OPM, be extended for not to exceed an additional 50 working days in any single year.

(h) *Office of the Deputy Assistant Secretary for Territorial Affairs.* (1) Positions of Territorial Management Interns, GS–5, when filled by persons selected by the Government of the Trust Territory of the Pacific Islands. No appointment may extend beyond 1 year.

*Section 213.3113 Department of Agriculture*

(a) *General.* (1) Agents employed in field positions the work of which is financed jointly by the Department and cooperating persons, organizations, or governmental agencies outside the Federal service. Except for positions for which selection is jointly made by the Department and the cooperating organization, this authority is not applicable to positions in the Agricultural Research Service or the Statistical Reporting Service. This authority is not applicable to the following positions in the Agricultural Marketing Service: Agricultural commodity grader (grain) and (meat), (poultry), and (dairy), agricultural commodity aid (grain), and tobacco inspection positions.

(2)–(4) (Reserved).

(5) Temporary, intermittent, or seasonal employment in the field service of the Department in positions at and below GS–7 and WG–10 in the following types of positions: Field assistants for subprofessional services; caretakers at temporarily closed camps or improved areas; forest workers engaged primarily for fire prevention or suppression activities and other forest workers employed at headquarters other than forest supervisor and regional offices; State performance assistants in the Agricultural Stabilization and Conservation Service; agricultural helpers, helper-leaders, and workers in the Agricultural Research Service and the Animal and Plant Health Inspection Service; and subject to prior OPM approval granted in the calendar year in which the appointment is to be made, other clerical, trades, crafts, and manual labor positions. Total employment under this subparagraph may not exceed 180 working days in a service year: *Provided*, that an employee may work as many as 220 working days in a service year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property. This paragraph does not cover trades, crafts, and manual labor positions covered by paragraphs (i) and (m) of § 213.3102.

(6) (Reserved).

(7) Not to exceed 34 Program Assistants, whose experience acquired in positions excepted from the competitive civil service in the administration of agricultural programs at the State level is needed by the Department for the more efficient administration of its programs. No new appointment may be made under this authority after December 31, 1985.

(b) (Reserved).

(c) *Forest Service.* (1) (Reserved).

(2) Positions in Alaska of Laborers, Boat Operators, Mechanics, Equipment Operators, and Carpenters whose duties require the operation of boats in coastal waters and/or the establishment and maintenance of work camps in remote areas.

(d) *Agricultural Stabilization and Conservation Service.* (1) (Reserved).

(2) Members of State Committees: *Provided*, that employment under this authority shall be limited to temporary intermittent (WAE) positions whose principal duties involve administering farm programs within the State consistent with legislative and Departmental requirements and reviewing national procedures and policies for adaptation at State and local levels within established parameters. Individual appointments under this authority are for 1 year and may be extended only by the Secretary of Agriculture or his designee. Members of State Committees serve at the pleasure of the Secretary.

(e) *Farmers Home Administration.* (1) (Reserved).

(2) County committeemen to consider, recommend, and advise with respect to the Farmers Home Administration program. (3) Temporary positions whose principal duties involve the making and servicing of natural disaster emergency loans pursuant to current statutes authorizing natural disaster emergency loans. Appointments under this provision shall not exceed 1 year unless extended for one additional period not to exceed 1 year, but may, with prior approval of OPM be further extended for additional periods not to exceed 1 year each.

(4)–(5) (Reserved).

(6) Professional and clerical positions in the Trust Territory of the Pacific Islands when occupied by indigenous residents of the Territory to provide financial assistance pursuant to current authorizing statutes.

(f) *Agricultural Marketing Service.* (1) Positions of: Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–9 and below in the tobacco, dairy, and poultry commodities; Meat Acceptance Specialists, GS–11 and below; Clerks, Office Automation Clerks, and Computer Clerks at GS–5 and below; Clerk-Typists at grades GS–4 and below; and Laborers under the Wage System. Employment under this authority is limited to either 1,280 hours or 180 days in a service year.

(2) Positions of: Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–11 and below in the cotton, raisin, and processed fruit and vegetable commodities and the following positions in support of these commodities: Clerks, Office Automation Clerks, and Computer Clerks and Operators at GS–5 and below; Clerk-Typists at grades GS–4 and below; and, under the Federal Wage System, High Volume Instrumentation (HVI) Operators and HVI Operator Leaders at WG/WL–2 and below, respectively, Instrument Mechanics/Workers/Helpers at WG–10 and below, and Laborers. Employment under this authority may not exceed 180 days in a service year. In unforeseen situations such as bad weather or crop conditions, unanticipated plant demands, or increased imports, employees may work up to 240 days in a service year. Cotton Agricultural Commodity Graders, GS–5, may be employed as trainees for the first appointment for an initial period of 6 months for training without regard to the service year limitation.

(3) Milk Market Administrators.

(4) All positions on the staffs of the Milk Market Administrators.

(g)–(i) (Reserved).

(j) *Food and Nutrition Service.* (1)-(2) (Reserved).

(3) Positions of meat and poultry inspectors (veterinarians at GS–11 and below and nonveterinarians at

appropriate grades below GS–11) for employment on a temporary, intermittent, or seasonal basis, not to exceed 1,280 hours a year.

(k)–(l) (Reserved).

(m) *Federal Grain Inspection Service.* (1) One hundred and fifty positions of Agricultural Commodity Aid (Grain), GS–2/4; 100 positions of Agricultural Commodity Technician (Grain), GS–4/7; and 60 positions of Agricultural Commodity Grader (Grain), GS–5/9, for temporary employment on a part-time, intermittent, or seasonal basis not to exceed 1,280 hours in a service year.

*Section 213.3114 Department of Commerce*

(a) *General.* (1)-(2) (Reserved).

(3) Not to exceed 50 scientific and technical positions whose duties are performed primarily in the Antarctic. Incumbents of these positions may be stationed in the continental United States for periods of orientation, training, analysis of data, and report writing.

(b) *Office of the Secretary.* (1) One position of Administrative Assistant, GS–301–8, in the Office of Economic Affairs. New appointments may not be made after March 30, 1979.

(c) (Reserved).

(d) *Bureau of the Census.* (1) Managers, supervisors, technicians, clerks, interviewers, and enumerators in the field service, for (1) temporary, part-time, or intermittent employment in connection with major economic and demographic censuses or with surveys of a nonrecurring or noncyclical nature; and (2) indefinite employment for the duration of each decennial census for key employees located at the Master District Offices (MDO) and Processing Offices (PO): *Provided*, that temporary, part-time employment of the nature described in (1) above will be for periods not to exceed 1 year; and that such appointments may be extended for additional periods of not to exceed 1 year each; but that prior Office approval is required for extension of total service beyond 2 years.

(2) Current Program Interviewers employed on an intermittent or part-time basis in the field service.

(3) Not to exceed 20 professional and scientific positions at grades GS–9 through GS–12 filled by participants in the ASA research trainee program. Employment of any individual under this authority may not exceed 2 years.

(e)–(h) (Reserved).

(i) *Office of the Under Secretary for International Trade.* (1) Thirty positions at GS–12 and above in specialized fields relating to international trade or commerce in units under the jurisdiction of the Under Secretary for International Trade. Incumbents will be assigned to advisory rather than to operating duties, except as operating and administrative responsibility may be required for the conduct of pilot studies or special projects. Employment under this authority will not exceed 2 years for an individual appointee.

(2) Not to exceed 40 positions of Managers and Deputy Managers of International Trade Fairs and Exhibit Programs in foreign countries when the duties require a considerable portion of the employee's time to be spent in foreign countries.

(3) Not to exceed 30 positions in grades GS–12 through GS–15, to be filled by persons qualified as industrial or marketing specialists; who possess specialized knowledge and experience in industrial production, industrial operations and related problems, market structure and trends, retail and wholesale trade practices, distribution channels and costs, or business financing and credit procedures applicable to one or more of the current segments of U.S. industry served by the Under Secretary for International Trade, and the subordinate components of his organization which are involved in Domestic Business matters. Appointments under this authority may be made for a period of not to exceed 2 years and may, with prior approval of OPM, be extended for an additional period of 2 years.

(j) *National Oceanic and Atmospheric Administration.* (1) Subject to prior approval of OPM, which shall be contingent upon a showing of inadequate housing facilities, meteorological aid positions at the following stations in Alaska: Barrow, Bethal, Kotzebue, McGrath, Northway, and St. Paul Island.

(2) (Reserved).

(3) All civilian positions on vessels operated by the National Ocean Service.

(4) Temporary positions required in connection with the surveying operations of the field service of the National Ocean Service. Appointment to such positions shall not exceed 8 months in any 1 calendar year.

(k) (Reserved).

(l) *National Telecommunication and Information Administration.* (1) Seventeen professional positions in grades GS–13 through GS–15.

*Section 213.3115 Department of Labor*

(a) *Office of the Secretary.* (1) Chairman and five members, Employees' Compensation Appeals Board.

(2) Chairman and eight members, Benefits Review Board.

(b) *Bureau of Labor Statistics.* (1) Not to exceed 500 positions involving part-time and intermittent employment for field survey and enumeration work in the Bureau of Labor Statistics. This authority is applicable to positions where the salary is equivalent to GS–6 and below. Employment under this authority may not exceed 1,600 work hours in a service year. No new appointment may be made under this authority after December 31, 1984.

(c) (Reserved).

(d) *Employment and Training Administration.* (1) Not to exceed 10 positions of Supervisory Manpower Development Specialist and Manpower Development Specialist, GS–7/15, in the Division of Indian and Native American Programs, when filled by the appointment of persons of one-fourth or more Indian blood. These positions require direct contact with Indian tribes and communities for the development and administration of comprehensive employment and training programs.

*Section 213.3116 Department of Health and Human Services*

(a) (Reserved).

(b) *Public Health Service.* (1) Not to exceed five positions a year of Medical Technologist Resident, GS–644–7, in the Blood Bank Department, Clinical Center, of the National Institutes of Health. Appointments under this authority will not exceed 1 year.

(2) Positions at Government sanatoria when filled by patients during treatment or convalescence.

(3) (Reserved).

(4) Positions concerned with problems in preventive medicine financed or participated in by the Department of Health and Human Services and a cooperating State, county, municipality, incorporated organization, or an individual in which at least one-half of the expense is contributed by the participating agency either in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

(5) Medical and dental interns, externs, and residents; and student nurses.

(6) Positions of scientific, professional, or technical nature when filled by bona fide students enrolled in academic institutions: *Provided*, that the work performed in the agency is to be used by the student as a basis for completing certain academic requirements required by an educational institution to qualify for a scientific, professional, or technical field. This authority shall be applied only to positions with compensation fixed under 5 U.S.C. 5351–5356.

(7) Not to exceed 50 positions associated with health screening programs for refugees.

(8) All positions in the Public Health Service and other positions in the Department of Health and Human Services directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of Health and Human Services is responsible for defining the term "Indian."

(9) Twelve positions of Therapeutic Radiologic Technician Trainee in the Radiation Oncology Branch, National Cancer Institute. Employment under this authority shall not exceed 1 year for any individual. This authority shall be applied only to positions with compensation fixed under 5 U.S.C. 5351–5356.

(10) Health care positions of the National Health Service Corps for employment of any one individual not to exceed 4 years of service in health manpower shortage areas.

(11) Pharmacy Resident positions at GS–7 in the National Institutes of Health's Clinical Center, Pharmacy Department. Employment in these positions is confined to graduates of approved schools of pharmacy and is limited to a period not to exceed 12 months pending licensure.

(12) Hospital Administration Resident positions at GS–9 in the National Institutes of Health's Clinical Center, Bethesda, Maryland. Employment in these positions is confined to graduates of approved hospital or health care administration programs and is limited to a period not to exceed 1 year.

(13) Not to exceed 30 positions of Cancer Control Science Associate in the Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, for assignments at a level of difficulty and responsibility at or equivalent to GS–11/13. No one may be employed under this authority for more than 3 years, and no more than 10 appointments will be made under the authority in any 1 year.

(14) Not to exceed 30 positions at grades GS–11/13 associated with the postdoctoral training program for interdisciplinary toxicologists in the National Institute of Environmental Health Sciences, National Institutes of Health, Research Triangle Park, North Carolina.

(15) Not to exceed 200 staff positions, GS–15 and below, in the Office of Refugee Health, for an emergency staff to provide health related services to Haitian entrants.

(c) (Reserved).

(d) *Social Security Administration.* (1) Six positions of social insurance representative in the district offices of the Social Security Administration in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(2) Seven positions of social insurance representative in the district offices of the Social Security Administration in the State of New Mexico when filled by the appointment of persons of one-fourth or more Indian blood.

(3) Two positions of social insurance representative in the district offices of the Social Security Administration in the State of Alaska when filled by the appointment of persons of one-fourth or more Alaskan Native blood (Eskimos, Indians, or Aleuts).

(e) (Reserved).

(f) *The President's Council on Physical Fitness.* (1) Four staff assistants.

(g)–(i) (Reserved).

(j) *Health Care Financing Administration.* (1) Reserved.

(2) Not to exceed 10 professional positions, GS–9 through GS–15, to be filled under the Health Care Financing Administration Professional Exchange Program. Appointments under this authority will not exceed 1 year.

(k) *Office of the Secretary.* (1) (Reserved).

(2) Not to exceed 10 positions at grades GS–9/14 in the Office of the Assistant Secretary for Planning and Evaluation filled under the Policy Research Associate Program. New appointments to these positions may be made only at grades GS–9/12. Employment of any individual under this authority may not exceed 2 years.

*Section 213.3117 Department of Education*

(a) Positions concerned with problems in education financed and participated in by the Department of Education and a cooperating State educational agency, or university or college, in which there is joint responsibility for selection and supervision of employees, and at least one-half of the expense is contributed by the cooperating agency in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

*Section 213.3121 Corporation for National and Community Service*

(a) All positions on the staff of the Corporation for National Community Service. No new appointments may be made under this authority after September 30, 1995.

*Section 213.3124 Board of Governors, Federal Reserve System*

(a) All positions.

*Section 213.3127 Department of Veterans Affairs*

(a) *Construction Division.* (1) Temporary construction workers paid from "purchase and hire" funds and appointed for not to exceed the duration of a construction project.

(b) Not to exceed 400 positions of rehabilitation counselors, GS–3 through GS–11, in Alcoholism Treatment Units and Drug Dependence Treatment Centers, when filled by former patients.

(c) *Board of Veterans' Appeals.* (1) Positions, GS–15, when filled by a member of the Board. Except as provided by section 201(d) of Public Law 100–687, appointments under this authority shall be for a term of 9 years, and may be renewed.

(2) Positions, GS–15, when filled by a non-member of the Board who is awaiting Presidential approval for appointment as a Board member.

(d) Not to exceed 600 positions at grades GS–3 through GS–11, involved in the Department's Vietnam Era Veterans Readjustment Counseling Service.

*Section 213.3128 U.S. Information Agency*

(a) *Office of Congressional and Public Liaison.* (1) Two positions of Liaison Officer (Congressional), GS–14.

(b) Five Positions of Supervisory International Exchange Officer (Reception Center Director), GS–13 and GS–14, located in USIA's field offices of New Orleans, New York, Miami, San Francisco, and Honolulu. Initial appointments will not exceed December 31 of the calendar year in which appointment is made with extensions permitted up to a maximum period of 4 years.

*Section 213.3129 Thrift Depositor Protection Oversight Board*

(a) All positions. No new appointments may be made under this authority after December 31, 1994.

*Section 213.3130 Securities and Exchange Commission*

(a)–(b) (Reserved).

(c) Positions of accountant and auditor, GS–13 through 15, when filled by persons selected under the SEC Accounting Fellow Program, as follows:

(1) Seven positions, for employment of any one individual not to exceed 2 years; and

(2) Two additional identical positions, for employment of any one individual not to exceed 90 days, which may be used to provide a period of transition and orientation between Fellowship appointments. These additional identical positions must be filled by persons who either have completed a 2-

year Fellowship or have been selected as replacement Fellows for a 2-year term. Appointments of outgoing Fellows under this authority must be made without a break in service of 1 workday following completion of their 2-year term; incoming Fellows appointed under this provision must be appointed to 2-year Fellowships without a break in service of 1 workday following their 90-day appointments.

(d) Positions of Economist, GS–13 through 15, when filled by persons selected under the SEC Economic Fellow Program. No more than four positions may be filled under this authority at any one time. An employee may not serve under this authority longer than 2 years unless selected under provisions set forth in the Intergovernmental Personnel Act (IPA), 5 U.S.C. 3372(b)(2).

(e) Not to exceed 10 positions of accountant, GS–12/13, when filled by persons selected as SEC Accounting Fellows for the Full Disclosure Program. Employment under this authority may not exceed 2 years.

(f) Not to exceed four positions of accountant, GS–14/15, when filled by persons selected as SEC Accounting Fellows for the Capital Markets Risk Assessment Program. Employment under this authority may not exceed 2 years.

*Section 213.3131 Department of Energy*

(a) (Reserved).

(b) *Bonneville Power Administrotion.*

(1) Five Area Managers.

*Section 213.3132 Small Business Administration*

(a) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by temporary appointment of employees to make and administer disaster loans in the area under the Small Business Act, as amended. Service under this authority may not exceed 4 years, and no more than 2 years may be spent on a single disaster. Exception to this time limit may only be made with prior Office approval. Appointments under this authority may not be used to extend the 2-year service limit contained in paragraph (b) below. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(b) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by temporary appointment of employees to make and administer disaster loans in that area under the Small Business Act, as amended. No one may serve under this authority for more than an aggregate of 2 years without a break in service of at least 6 months. Persons who have had more than 2 years of service under paragraph (a) of this section must have a break in service of at least 8 months following such service before appointment under this authority. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(c) Positions of Community Economic-Industrial Planner, GS–7 through 12, when filled by local residents who represent the interest of the groups to be served by the Minority Entrepreneurship Teams of which they are members. No new appointments may be made under this authority after May 1, 1977.

*Section 213.3133 Federal Deposit Insurance Corporation*

(a) Until June 1, 1996, all Liquidation Graded, temporary field positions concerned with the work of liquidating the assets of closed banks or savings and loan institutions, of liquidating loans to banks or savings and loan institutions, or of paying the depositors of closed insured banks or savings and loan institutions. New appointments may be made under this authority after December 31, 1993.

(b) Not to exceed 300 positions in field offices of the Resolution Trust Corporation. No new appointments may be made under this authority after September 30, 1992.

(c) Temporary positions located at closed banks or savings and loan institutions that are concerned with liquidating the assets of the institutions, liquidating loans to the institutions, or paying the depositors of closed insured institutions. New appointments may be made under this authority only during the 60 days immediately following the institution's closing date. Such appointments may not exceed 1 year, but may be extended for not to exceed 1 additional year.

*Section 213.3136 U.S. Soldiers' and Airmen's Home*

(a) (Reserved).

(b) Positions when filled by member-residents of the Home.

*Section 213.3137 General Services Administration*

(a) (Reserved).

(b) Not to exceed 25 positions at grades GS–14/15, in order to bring into the agency current industry expertise in various program areas. Appointments under this authority may not exceed 2 years.

(c) All law clerk positions in the Board of Contract Appeals' Law Clerk Fellows Program. Appointments under this authority at GS–11 and GS–12 will be limited to 2 years with provision for a 1-year extension at the GS–13 level only in cases of exceptional circumstances, as determined by the Chief Judge and Chairman.

*Section 213.3138 Federal Communications Commission*

(a) Fifteen positions of Telecommunications Policy Analyst, GS–301–13/14/15. Initial appointment to these positions will be for a period of not to exceed 2 years with provision for two 1-year extensions.

*Section 213.3141 National Labor Relations Board*

(a) Election Examiners for temporary, part-time, or intermittent employment in connection with elections under the Labor-Management Relations Act.

*Section 213.3142 Export-Import Bank of the United States*

(a) One Special Assistant to the Board of Directors, grade GS–14 and above.

*Section 213.3146 Selective Service System*

(a) State Directors.

(b)–(c) (Reserved).

(d) Executive Secretary, National Selective Service Appeal Board.

*Section 213.3148 National Aeronautics and Space Administration*

(a) One hundred and fifty alien scientists having special qualifications in the fields of aeronautical and space research where such employment is deemed by the Administrator of the National Aeronautics and Space Administration to be necessary in the public interest.

(b) Not to exceed 40 positions of fully qualified pilot and mission specialists astronauts.

(c)–(e) (Reserved).

(f) Positions of Program Coordinator/Counselor at grades GS–7/9/11 for part-time and summer employment in connection with the High School Students Summer Research Apprenticeship Program.

*Section 213.3152 U.S. Government Printing Office*

(a) Not to exceed three positions of Research Associate at grades GS–15 and

below, involved in the study and analysis of complex problems relating to the reduction of the Government's printing costs and to provision of more efficient service to customer agencies and the public. Appointments under this authority may not exceed 1 year, but may be extended for not to exceed 1 additional year.

(b) Positions in the printing trades when filled by students majoring in printing technology employed under a cooperative education agreement with the University of the District of Columbia.

*Section 213.3156 Commission on Civil Rights*

(a) Twenty-five positions at grade GS–11 and above of employees who collect, study, and appraise civil rights information to carry out the national clearinghouse responsibilities of the Commission under Public Law 88–352, as amended. No new appointments may be made under this authority after March 31, 1976.

*Section 213.3174 Smithsonian Institution*

(a) Not to exceed 25 positions at grades GS–11 and below which support planning and production of the Annual American Folklife Festival. Employment under this authority may not exceed 6 months in connection with any one Festival.

(b) All positions located in Panama which are part of or which support the Smithsonian Tropical Research Institute.

(c) Positions at GS–15 and below in the National Museum of the American Indian requiring knowledge of, and experience in, tribal customs and culture. Such positions comprise approximately 10 percent of the Museum's positions and, generally, do not include secretarial, clerical, administrative, or program support positions.

*Section 213.3175 Woodrow Wilson International Center for Scholars*

(a) One East Asian Studies Program Administrator, one International Security Studies Program Administrator, one Latin American Program Administrator, one Russian Studies Program Administrator, one West European Program Administrator, and one Social Science Program Administrator.

*Section 213.3182 National Foundation on the Arts and the Humanities*

(a) *National Endowment for the Arts.* (1) One position of Assistant Director, Artists-in-Education Programs, Office of Partnerships.

(2) One position of Assistant Director for State Programs.

(3) One position of Director of Literature Programs.

(4) One position of Assistant Director of Theater Programs.

(5) One position of Director of Folk Arts Programs.

(6) One position of Director, Opera/Musical Theater Programs.

(7) One position of Assistant Director of Opera/Musical Theater Programs.

(8) One position of Assistant Director of Literature Programs.

(9) One position of Director of Locals Test Programs, Office of the Deputy to the Chairman for Public Partnership.

(10) One position of Deputy Chairman for Public Partnership.

(11) Four Project Evaluators.

(12) One position of Director of Museum Programs.

(13) One position of Assistant Director of Folk Arts, Office of the Deputy Chairman for Programs.

(14) One position of Assistant Director of Music Programs.

(15) One position of Director of Expansion Arts Programs.

(16) One position of Director of Media Arts Programs.

(17) One position of Director, Challenge and Advancement Grant Program.

(18) One position of Assistant Director, Challenge and Advancement Grant Program.

(19) One position of Art Specialist, International Programs.

(20) One position of Director of Inter Arts Program.

(21) One position of Assistant Director of Expansion of Arts Programs.

(22) One position of Assistant Director of Media Arts Programs.

(23) One position of Assistant Director of Design Arts Program.

(24) One position of Assistant Director of Dance Programs.

(25) One position of Assistant Director of Visual Arts Programs.

(26) One position of Assistant Director of Museum Programs.

(27)–(29) (Reserved).

(30) One position of Director of Education Programs.

(31) One position of Director of Music Programs.

(32) One position of Director of Theater Programs.

(33) One position of Director of Dance Programs.

(34) One position of Director of Visual Arts Programs.

(35) One position of Director of Design Arts Program.

(36) (Reserved).

(37) One Director for State Programs.

(38) One Director for Artists-in-Education Programs.

(39) One position of Assistant Director of Inter-Arts Program.

(40) One position of Assistant Director of the International Program.

*Section 213.3184 Department of Housing and Urban Development*

(a) One position of Special Advisor to the Regional Administrator, GS–301–14, in San Francisco. Employment under this authority may not exceed 2 years.

(b) *Office of Federal Housing Enterprise Oversight.* (1) All positions on the staff. No new appointments may be made under this authority after July 6, 1995.

*Section 213.3187 Federal Housing Finance Board*

(a) All positions. No new appointments may be made under this authority after December 31, 1993.

*Section 213.3190 African Development Foundation*

(a) Two Financial Analyst positions, GS–501–12, and one Research Specialist position, GS–301–13, requiring indepth professional and cultural knowledge of African grassroots development.

*Section 213.3191 Office of Personnel Management*

(a) Not to exceed 500 positions in Federal Job Information Centers, to be filled under the Community Outreach Information Network program. Appointments under this authority may not exceed 90 days, and no one may receive more than one appointment under the authority.

(b)–(c) (Reserved).

(d) Part-time and intermittent positions of test examiners at grades GS–8 and below.

*Section 213.3194 Department of Transportation*

(a) *U.S. Coast Guard.* (1) Not to exceed 25 positions of Marine Traffic Controller (Pilot), at grade GS–11 and below for temporary, intermittent, or seasonal employment in the State of Louisiana. Temporary appointments may not exceed 1 year, and temporary appointees may be reappointed under this authority only after a break in service of at least 6 months. Intermittent or seasonal employment may not exceed 180 working days in a service year, except that this limitation for an individual employee may be extended to 220 days when necessitated by emergencies caused by unusual flooding conditions or high river stages.

(2) Lamplighters.

(3) Professors, Associate Professors, Assistant Professors, Instructors, one Principal Librarian, one Cadet Hostess, and one Psychologist (Counseling) at the Coast Guard Academy, New London, Conn.

(b) *Federal Aviation Administration.* (1) Positions of entry-level air traffic control specialists filled in connection with the testing of alternative methods of training such specialists. These positions require experience or education related to air traffic control that provided knowledges, skills, and abilities comparable to those gained through initial training in the FAA Academy. Appointees under this authority will not participate in such Academy training. This authority will expire on December 31, 1994.

(c) *Federal Highway Administration.* (1) Temporary, intermittent, or seasonal employment in the field service of the Federal Highway Administration at grades not higher than GS–5 for subprofessional engineering aide work on the highway surveys and construction projects, for not to exceed 180 working days a year, when in the opinion of OPM, appointment through competitive examination is impracticable.

(d) (Reserved).

(e) *Maritime Administration.* (1)–(2) (Reserved).

(3) All positions on Government-owned vessels or those bareboats chartered to the Government and operated by or for the Maritime Administration.

(4)–(5) (Reserved).

(6) U.S. Merchant Marine Academy, positions of: Professors, Instructors, and Teachers: including heads of Departments of Physical Education and Athletics, Humanities, Mathematics and Science, Maritime Law and Economics, Nautical Science, and Engineering; Coordinator of Shipboard Training; the Commandant of Midshipmen, the Assistant Commandant of Midshipmen; Director of Music; three Battalion Officers; three Regimental Affairs Officers; and one Training Administrator.

(7) U.S. Merchant Marine Academy positions of: Associate Dean; Registrar; Director of Admissions; Assistant Director of Admissions; Director, Office of External Affairs; Placement Officer; Administrative Librarian; Shipboard Training Assistant; three Academy Training Representatives; and one Education Program Assistant.

*Section 213.3195 Federal Emergency Management Agency*

(a) Field positions at grades GS–15 and below, or equivalent, which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency. Persons may not be employed under this authority for long-term duties or for work not directly necessitated by the emergency response effort.

(b) Not to exceed 30 positions at grades GS–15 and below in the Offices of Executive Administration, General Counsel, Inspector General, Comptroller, Public Affairs, Personnel, Acquisition Management, and the State and Local Program and Support Directorate which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency, or for long-term duties or work not directly necessitated by the emergency response effort. No one may be reappointed under this authority for service in connection with a different emergency unless at least 6 months have elapsed since the individual's latest appointment under this authority.

(c) Not to exceed 350 professional and technical positions at grades GS–5 through GS–15, or equivalent, in Mobile Emergency Response Support Detachments (MERS).

*Section 213.3199 Temporary Organizations*

(a) Positions at GS–15 and below on the staffs of temporary boards and commissions which are established by law or Executive order for specified periods not to exceed 4 years to perform specific projects. A temporary board or commission originally established for less than 4 years and subsequently extended may continue to fill its staff positions under this authority as long as its total life, including extension(s), does not exceed 4 years. No board or commission may use this authority for more than 4 years to make appointments and position changes unless prior approval of the Office is obtained.

(b) Positions at GS–15 and below on the staffs of temporary organizations established within continuing agencies when all of the following conditions are met: (1) The temporary organization is established by an authority outside the agency, usually by law or Executive order; (2) the temporary organization is established for an initial period of 4 years or less and, if subsequently extended, its total life including extension(s) will not exceed 4 years; (3) the work to be performed by the temporary organization is outside the agency's continuing responsibilities; and (4) the positions filled under this authority are those for which other staffing resources or authorities are not available within the agency. An agency may use this authority to fill positions in organizations which do not meet all of the above conditions or to make appointments and position changes in a single organization during a period longer than 4 years only with prior approval of the Office.

**Schedule B**

*Section 213.3202 Entire Executive Civil Service*

The provisions established under paragraphs (a) through (i) are authorized under provisions of E.O. 12015 and support career-related work-study programs. OPM's requirements relating to appointment under paragraphs (a) through (i) will be published in the Federal Personnel Manual. Further, appointments under paragraphs (a) through (i) are subject to all the requirements and conditions governing career or career-conditional appointments, including investigation by OPM to establish an appointee's qualifications and suitability. Appointments of participants may be converted to career or career-conditional at any time within a 120-day period after satisfactory completion of a career-related work-study program.

(a) Student positions established in connection with a bachelor's degree cooperative education program which provide for a formally arranged schedule of attendance at an institution of higher learning combined with at least 26 weeks, or 1,040 hours, of study-related work in a Federal agency. The periods of work and study together must satisfy requirements for a bachelor's degree and must provide the experience necessary for a career or career-conditional appointment to administrative, professional, or technical positions in the Federal career service upon the student's graduation.

(b) Student positions established in support of cooperative education programs for graduate students which provide for scheduled periods of attendance at a graduate school combined with at least 16 weeks or 640 hours of study-related work in a Federal agency. The periods of work and study must satisfy requirements for the graduate degree and provide experience necessary for career or career-conditional appointment in the Federal

career service upon the student's graduation.

(c) Student positions established in connection with associate degree cooperative education programs which provide for formally arranged schedules of attendance at a recognized 2-year educational institution combined with at least 26 weeks or 1,040 hours of study-related work in a Federal agency. The periods of work and study together must satisfy the requirements for graduation and must provide the experience necessary for career or career-conditional appointment in selected occupations in the Federal career service upon the student's graduation.

(d) Student positions established in connection with the Harry S. Truman Foundation Scholarship Program under the provisions of Public Law 93–642 to permit scheduled periods of attendance at institutions of higher education combined with at least 26 weeks or 1,040 hours of study-related work in a Federal agency. The periods of work and study must satisfy requirements of programs established by agreement between the Harry S. Truman Scholarship Foundation and the employing agency and provide the experience necessary for a career or career-conditional appointment in the Federal career service upon the student's graduation.

(e) Student positions established in support of the Cooperative Education (Vocational Education) Program for high school students which provide for scheduled periods of classroom study combined with at least 16 weeks or 640 hours, of study-related work in a Federal agency. The periods of study and work must satisfy requirements for a high school diploma and provide experience necessary for career or career-conditional appointment into office and administrative support, technician, assistant, helper, and preapprentice occupations in the Federal career service upon the student's graduation.

(f) Positions under the Federal Junior Fellowship Program, a career-related work-study program covered under the provisions of Executive Order 12015.

(g) Student positions established in support of the Cooperative Education Program in which the student is enrolled in an undergraduate certificate or diploma program in an accredited college, technical, trade, vocational, or business school which provides for scheduled periods of classroom study combined with at least 16 weeks or 640 hours of study-related work in a Federal agency. The periods of study and work must satisfy requirements for an undergraduate certificate or diploma and provide experience necessary for a career or career-conditional appointment into office and administrative support, technician, assistant, helper, and preapprentice occupations in the Federal career service upon the student's graduation.

(h)–(i) (Reserved).

(j) Special executive development positions established in connection with Senior Executive Service candidate development programs which have been approved by OPM. A Federal agency may make new appointments under this authority for any period of employment not exceeding 3 years for one individual.

(k) Positions at grades GS–15 and below when filled by individuals who (1) are placed at a severe disadvantage in obtaining employment because of a psychiatric disability evidenced by hospitalization or outpatient treatment and have had a significant period of substantially disrupted employment because of the disability; and (2) are certified to a specific position by a State vocational rehabilitation counselor or a Veterans Administration counseling psychologist (or psychiatrist) who indicates that they meet the severe disadvantage criteria stated above, that they are capable of functioning in the positions to which they will be appointed, and that any residual disability is not job related. Employment of any individual under this authority may not exceed 2 years following each significant period of mental illness.

(l) (Reserved).

(m) Positions when filled under any of the following conditions: (1) Appointment at grades GS–15 and above, or equivalent, in the same or a different agency without a break in service from a career appointment in the Senior Executive Service (SES) of an individual who:

(i) Has completed the SES probationary period;

(ii) Has been removed from the SES because of less than fully successful executive performance or a reduction in force; and

(iii) Is entitled to be placed in another civil service position under 5 U.S.C. 3594(b).

(2) Appointment in a different agency without a break in service of an individual originally appointed under paragraph (m)(1).

(3) Reassignment, promotion, or demotion within the same agency of an individual appointed under this authority.

*Section 213.3203 Executive Office of the President*

(a) (Reserved).

(b) *Office of the Special Representative for Trade Negotiations.* (1) Seventeen positions of economist at grades GS–12 through GS–15.

*Section 213.3204 Department of State*

(a)–(c) (Reserved).

(d) Fourteen positions on the household staff of the President's Guest House (Blair and Blair-Lee Houses).

(e) Four Physical Science Administration Officer positions at GS–11 through and GS–13 under the Bureau of Oceans and International Environmental and Scientific Affairs' Science, Engineering and Diplomacy Fellowship Program. Employment under this authority is not to exceed 2½ years.

(f) Scientific, professional, and technical positions at grades GS–12 to GS–15 when filled by persons having special qualifications in foreign policy matters. Total employment under this authority may not exceed 4 years.

*Section 213.3205 Department of the Treasury*

(a) Positions of Deputy Comptroller of the Currency, Chief National Bank Examiner, Assistant Chief National Bank Examiner, Regional Administrator of National Banks, Deputy Regional Administrator of National Banks, Assistant to the Comptroller of the Currency, National Bank Examiner, Associate National Bank Examiner, and Assistant National Bank Examiner, whose salaries are paid from assessments against national banks and other financial institutions.

(b) Not to exceed 10 positions engaged in functions mandated by Public Law 99–190, the duties of which require expertise and knowledge gained as a present or former employee of the Synthetic Fuels Corporation, as an employee of an organization carrying out projects or contacts for the Corporation, or as an employee of a Government agency involved in the Synthetic Fuels Program. Appointments under this authority may not exceed 4 years.

(c) Not to exceed two positions of Accountant (Tax Specialist) at grades GS–13 and above to serve as specialists on the accounting analysis and treatment of corporation taxes. Employments under this paragraph shall not exceed a period of 18 months in any individual case.

(d) Positions concerned with the protection of the life and safety of the President and members of his

immediate family, or other persons for whom similar protective services are prescribed by law, when filled in accordance with special appointment procedures approved by OPM. Service under this authority may not exceed (1) a total of 4 years; or (2) 120 days following completion of the service required for conversion under Executive Order 11203, whichever comes first.

*Section 213.3206 Department of Defense*

(a) *Office of the Secretary.* (1) (Reserved).

(2) Professional positions at GS–11 through GS–15 involving systems, costs, and economic analysis functions in the Office of the Assistant Secretary (Program Analysis and Evaluation); and in the Office of the Deputy Assistant Secretary (Systems Policy and Information) in the Office of the Assistant Secretary (Comptroller).

(3)–(4) (Reserved).

(5) Four Net Assessment Analysts.

(b) *Interdepartmental activities.* (1) Five positions to provide general administration, general art and information, photography, and/or visual information support to the White House Photographic Service.

(2) Eight positions, GS–15 or below, in the White House Military Office, providing support for airlift operations, special events, security, and/or administrative services to the Office of the President.

(c) *National Defense University.* (1) Sixty-one positions of professor, GS–13/15, for employment of any one individual on an initial appointment not to exceed 3 years, which may be renewed in any increment from 1 to 6 years indefinitely thereafter.

(d) *General.* (1) One position of Law Enforcement Liaison Officer (Drugs), GS–301–15, U.S. European Command.

(2) Acquisition positions at grades GS–5 through GS–11, whose incumbents have successfully completed the required course of education as participants in the Department of Defense scholarship program authorized under 10 U.S.C. 1744.

(e) *Office of the Inspector General.* (1) Positions of Criminal Investigator, GS–1811–5/15.

(f) *Department of Defense Polygraph Institute, Fort McClellan, Alabama.* (1) One Director, GM–15.

*Section 213.3207 Department of the Army*

(a) *U.S. Army Command and General Staff College.* (1) Seven positions of professors, instructors, and education specialists. Total employment of any individual under this authority may not exceed 4 years.

(b) *Brooke Army Medical Center, Fort Sam Houston, Texas.* (1) Two Medical Officer (Surgery) positions, GS–12, in the Clinical Division, U.S. Army Institute of Surgical Research, whose incumbents are enrolled in medical school surgical residency programs. Employment under this authority shall not exceed 12 months.

*Section 213.3208 Department of the Navy*

(a) *Naval Underwater Systems Center, New London, Connecticut.* (1) One position of oceanographer, grade GS–14, to function as project director and manager for research in the weapons systems applications of ocean eddies.

(b) All civilian faculty positions of professors, instructors, and teachers on the staff of the Armed Forces Staff College, Norfolk, Virginia.

(c) One Director and four Research Psychologists at the professor or GS–15 level in the Defense Personnel Security Research and Education Center.

(d) All civilian professor positions at the Marine Corps Command and Staff College.

(e) One position of Staff Assistant, GS–301–13, whose incumbent will manage the Navy's Executive Dining facilities at the Pentagon.

(f) One position of Housing Management Specialist, GM–1173–14, involved with the Bachelor Quarters Management Study. No new appointments may be made under this authority after February 29, 1992.

*Section 213.3209 Department of the Air Force*

(a) Not to exceed four interdisciplinary positions for the Air Research Institute at the Air University, Maxwell Air Force Base, Alabama, for employment to complete studies proposed by candidates and acceptable to the Air Force. Initial appointments are made not to exceed 3 years, with an option to renew or extend the appointments in increments of 1, 2, or 3 years indefinitely thereafter.

(b) (Reserved).

(c) One Director of Instruction and 14 civilian Instructors at the Defense Institute of Security Assistance Management, Wright-Patterson Air Force Base, Dayton, Ohio. Individual appointments under this authority will be for an initial 3-year period, which may be followed by an appointment of indefinite duration.

(d) Six positions of professor, associate professor, or professional academic staff at the Air University, Maxwell Air Force Base, Alabama, associated with courses of instruction of less than 10 months duration, for employment not to exceed 3 years, which may be renewed in 1-, 2-, or 3-year increments indefinitely thereafter.

(e) One position of Director of Development and Alumni Programs, GS–301–13, with the U.S. Air Force Academy, Colorado.

*Section 213.3210 Department of Justice*

(a) Criminal Investigator (Special Agent) positions in the Drug Enforcement Administration. New appointments may be made under this authority only at grades GS–5 through 11. Service under the authority may not exceed 4 years. Appointments made under this authority may be converted to career or career-conditional appointments under the provisions of Executive Order 12230, subject to conditions agreed upon between the Department and OPM.

(b) Positions of Port Receptionist and Supervisory Port Receptionist, Immigration and Naturalization Service.

(c) Not to exceed 400 positions at grades GS–5 through 15 assigned to regional task forces established to conduct special investigations to combat drug trafficking and organized crime.

(d) (Reserved).

(e) Positions, other than secretarial, GS–6 through GS–15, requiring knowledge of the bankruptcy process, on the staff of the offices of United States Trustees or the Executive Office for U.S. Trustees.

*Section 213.3213 Department of Agriculture*

(a) *Office of International Cooperation and Development.* (1) Positions of a project nature involved in international technical assistance activities. Service under this authority may not exceed 5 years on a single project for any individual unless delayed completion of a project justifies an extension up to but not exceeding 2 years.

(b) *General.* (1) Temporary positions of professional Research Scientists, GS–15 or below, in the Agricultural Research Service and the Forest Service, when such positions are established to support the Research Associateship Program and are filled by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and the agency. Appointments are limited to proposals approved by the appropriate Administrator. Appointments may be made for initial periods not to exceed 2 years and may be extended for up to 2 additional years. Extensions beyond 4

years, up to a maximum of 2 additional years, may be granted, but only in very rare and unusual circumstances, as determined by the Personnel Officer, Agricultural Research Service, or the Personnel Officer, Forest Service.

(2) Not to exceed 55 Executive Director positions, GM–301–14/15, with the State Rural Development Councils in support of the Presidential Rural Development Initiative.

*Section 213.3214 Department of Commerce*

(a) *Bureau of the Census.* (1) (Reserved).

(2) Not to exceed 50 Community Services Specialist positions at the equivalent of GS–5 through GS–12.

(3) Not to exceed 300 Community Awareness Specialist positions at the equivalent of GS–7 through GS–12. Employment under this authority may not exceed December 31, 1992.

(b) (Reserved).

(c) (Reserved).

(d) *National Telecommunications and Information Administration.* (1) Not to exceed 10 positions of Telecommunications Policy Analysts, grades GS–11 through 15. Employment under this authority may not exceed 2 years.

*Section 213.3215 Department of Labor*

(a) Positions of Chairman and Member, Wage Appeals Board.

(b) *Office of the Inspector General.* (1) Not to exceed 110 positions of Criminal Investigator (Special Agent), GS–1811–5/15, in the Office of Labor Racketeering.

*Section 213.3216 Department of Health and Human Services*

(a) *Public Health Service.* (1) Not to exceed 68 positions at GS–11 and below on the Health and Nutrition Examination Survey teams of the National Center for Health Statistics.

(2) One Public Health Education Specialist, GS–1725–15, in the Centers for Disease Control, Atlanta, Georgia.

(b)-(c) (Reserved).

(d) *National Library of Medicine.* (1) Ten positions of Librarian, GS–9, the incumbents of which will be trainees in the Library Associate Training Program in Medical Librarianship and Biomedical Communications. Employment under this authority is not to exceed 1 year.

*Section 213.3217 Department of Education*

(a) Seventy-five positions, not in excess of GS–13, of a professional or analytical nature when filled by persons, other than college faculty members or candidates working toward college degrees, who are participating in midcareer development programs authorized by Federal statute or regulation, or sponsored by private nonprofit organizations, when a period of work experience is a requirement for completion of an organized study program. Employment under this authority shall not exceed 1 year.

(b) Fifty positions, GS–7 through GS–11, concerned with advising on education policies, practices, and procedures under unusual and abnormal conditions. Persons employed under this provision must be bona fide elementary school and high school teachers. Appointments under this authority may be made for a period of not to exceed 1 year, and may, with the prior approval of the Office of Personnel Management, be extended for an additional period of 1 year.

*Section 213.3227 Department of Veterans Affairs*

(a) Not to exceed 800 principal investigatory, scientific, professional, and technical positions at grades GS–11 and above in the medical research program.

*Section 213.3228 U.S. Information Agency*

(a) *Voice of America.* (1) Not to exceed 200 positions at grades GS–15 and below in the Cuba Service. Appointments may not be made under this authority to administrative, clerical, and technical support positions.

(b) Positions of English Language Radio Broadcast Intern, GS–1001–5/7/9. Employment is not to exceed 2 years for any intern.

*Section 213.3231 Department of Energy*

(a) Twenty Exceptions and Appeals Analyst positions at grades GS–7 through 11, when filled by persons selected under DOE's fellowship program in its Office of Hearings and Appeals, Washington, DC. Appointments under this authority shall not exceed 3 years.

*Section 213.3233 Federal Deposit Insurance Corporation*

(a) Temporary Positions in the Washington, DC, headquarters offices of the Resolution Trust Corporation when filled by individuals whose specialized experience in field and regional offices performing the work of the Resolution Trust Corporation under Schedule A authorities in 5 CFR section 213.3133(a) or (b) immediately prior to their appointment under this authority is needed by the Resolution Trust Corporation for more efficient administration of its programs.

*Section 213.3234 Federal Trade Commission*

(a) Positions filled under the Economic Fellows Program. No more than five new appointments may be made under this authority in any fiscal year. Service of an individual Fellow may not exceed 4 years.

*Section 213.3236 U.S. Soldiers' and Airmen's Home*

(a) Three GS–11 Medical Officer positions under a fellowship program on geriatrics.

(b) Director, Health Care Services; Director, Member Services; Director, Logistics; and Director, Plans and Programs.

*Section 213.3237 General Services Administration*

(a) One position of Deputy Director of Network Services.

*Section 213.3242 Export-Import Bank of the U.S.*

(a) One position of Food Service Worker WG–7804–3/4/5, in the Office of the President and Chairman.

*Section 213.3248 National Aeronautics and Space Administration*

(a) Not to exceed 40 positions of Command Pilot, Pilot, and Mission Specialist candidates at grades GS–7 through 15 in the Space Shuttle Astronaut program. Employment under this authority may not exceed 3 years.

*Section 213.3257 National Credit Union Administration*

(a) *Central Liquidity Facility.* (1) All managerial and supervisory positions at pay levels greater than the equivalent of GS–13.

*Section 213.3259 ACTION*

(a) Office of Domestic and Anti-Poverty Operations. (1) Not to exceed 25 positions of Program Specialist at grades GS–9 through GS–15.

(b) *Office of Policy and Research.* (1) Three positions of Program Specialist at grades GS–7 through GS–15.

*Section 213.3264 U.S. Arms Control and Disarmament Agency*

(a) Twenty-five scientific, professional, and technical positions at grades GS–12 through GS–15 when filled by persons having special qualifications in the fields of foreign policy, foreign affairs, arms control, and related fields. Total employment under this authority may not exceed 4 years.

*Section 213.3274 Smithsonian Institution*

(a) *National Zoological Park.* (1) Four positions of Veterinary Intern, GS–8/9/11. Employment under this authority is not to exceed 36 months.

(b) *Freer Gallery of Art.* (1) Not to exceed four positions of Oriental Art Restoration Specialist at grades GS–9 through GS–15.

*Section 213.3276 Appalachian Regional Commission*

(a) Two Program Coordinators.

*Section 213.3278 Armed Forces Retirement Home*

(a) *Naval Home, Gulfport, Mississippi.* (1) One Resource Management Officer position and one Public Works Officer position, GS/GM–15 and below.

*Section 213.3282 National Foundation on the Arts and the Humanities*

(a) (Reserved).

(b) *National Endowment for the Humanities.* (1) Humanities Administrator, Reference Materials Programs, Division of Research Programs.

(2) Humanities Administrator (Assistant Director), Humanities Projects in Higher Education Program, Division of Education Programs.

(3) Deputy to the Director, Division of Education Programs.

(4) Director, Division of Research Programs.

(5) Director, Deputy to the Director and seven positions of Humanities Administrators, Division of State Programs.

(6) Director and Deputy to the Director, Division of Fellowships and Seminars.

(7) One Humanities Administrator, Fellowships for College Teachers, Division of Fellowships and Seminars.

(8) Seven Humanities Administrators, Humanities Projects in Media Program, Division of Public Programs.

(9) One Humanities Administrator, Humanities Projects in Higher Education Program, Division of Education Programs.

(10) One Assistant Director for the Elementary and Secondary Education Program, Division of Education Programs.

(11) One Assistant Director for the Museums and Historical Organizations Program, Division of Public Programs.

(12) Four Humanities Administrators, Museums and Historical Organizations Program, Division of Public Programs.

(13) Five Humanities Administrators, Elementary and Secondary Education Program, Division of Education Programs.

(14) Director, Division of Public Programs.

(15) Deputy to the Director, Division of Public Programs.

(16) One Humanities Administrator, Younger Scholars Programs, Division of Fellowships and Seminars.

(17) One Humanities Administrator, Public Humanities Projects, Division of Public Programs.

(18) Director, Division of Education Programs.

(19) One Humanities Administrator (Assistant Director), Texts Programs, Division of Research Programs.

(20) One Humanities Administrator, Centers for Advanced Study, Division of Research Programs.

(21) One Challenge Grants Officer.

(22) One Assistant Director, Humanities Projects in Media Program, Division of Public Programs.

(23) One Humanities Administrator, Publications Program, Division of Research Programs.

(24) Deputy to the Director, Division of Research Programs.

(25) One Humanities Administrator, Summer Seminars for College Teachers, Division of Fellowships and Seminars.

(26) Two Humanities Administrators, Humanities Projects in Libraries and Archives, Division of Public Programs.

(27) One Humanities Projects Assessment Officer and one Humanities Administrator, Office of the Chairman.

(28) One Humanities Administrator, Public Humanities Projects, Division of Public Programs.

(29) One Humanities Administrator, Interpretive Research Programs, Division of Research Programs.

(30) One Humanities Administrator, Office of Challenge Grants.

(31) (Reserved).

(32) One Assistant Director, Fellowships Program, Division of Fellowships and Seminars.

(33) (Reserved).

(34) One Humanities Administrator, Humanities Projects in Higher Education Program, Division of Education Programs.

(35) Two Humanities Administrators, Humanities Projects in Higher Education Program, Division of Education Programs.

(36) Three Humanities Administrators, Humanities Projects in Higher Education Program, Division of Education Programs.

(37) Two Humanities Administrators, Summer Seminars for Secondary School Teachers, Division of Fellowships and Seminars.

(38) One Humanities Administrator, Summer Stipends, Division of Fellowships and Seminars.

(39) One Humanities Administrator, Travel to Collections, Division of Fellowships and Seminars.

(40) One Humanities Administrator, Translation Program, Reference Works Program, Division of Research Programs.

(41) One Humanities Administrator, Editions Program, Reference Work Program, Division of Research Programs.

(42) (Reserved).

(43) One Humanities Administrator, Foundations of American Society Program, Division of Fellowships and Seminars.

(44) One Humanities Administrator, Humanities Projects in Museums and Historical Organizations, Division of Public Programs.

(45) Six Humanities Administrators, Division of Preservation and Access.

(46) Director, Division of Preservation and Access.

(47) One Humanities Administrator, Centers for Advanced Study, International Research, and Selected Areas, Division of Research Programs.

(48) Director, Office of Planning and Budget.

(49) One Humanities Administrator, Tools Program, Reference Materials Program, Division of Research Programs.

(50) One Humanities Administrator, Division of Preservation and Access.

(51) Two Humanities Administrators, Archaeology Program, Interpretive Research Program, Division of Research Programs.

(52) One Humanities Administrator, Humanities, Science, and Technology Program, Interpretive Research Program, Division of Research Programs.

(53) One Humanities Administrator, Office of the Chairman.

(54) Four Humanities Administrators, Office of the Assistant Chairman for Programs and Policy.

(55) One Humanities Administrator, Fellowships Program, Division of Fellowships and Seminars.

(56) One Humanities Administrator, Seminars Program, Division of Fellowships and Seminars.

(57) One Humanities Administrator, Guides Program, Reference Materials Program, Division of Research Programs.

(58) One Humanities Administrator, Public Challenge Grants Program, Division of Public Programs.

(59) One Humanities Administrator, Dissertation Grants/Summer Seminars for College Teachers, Division of Fellowships and Seminars.

*Section 213.3285 Pennsylvania Avenue Development Corporation*

(a) One position of Civil Engineer (Construction Manager).

*Section 213.3291 Office of Personnel Management*

(a) Not to exceed eight positions of Associate Director at the Executive Seminar Centers at grades GS–13 and GS–14. Appointments may be made for any period up to 3 years and may be extended without prior approval for any individual. Not more than half of the authorized faculty positions at any one Executive Seminar Center may be filled under this authority.

(b) Twelve positions of faculty members at grades GS–13 through 15, at the Federal Executive Institute. Initial appointments under this authority may be made for any period up to 3 years and may be extended in 1-, 2-, or 3-year increments indefinitely thereafter.

**Schedule C**

*Section 213.3303 Executive Office of the President*

Council of Economic Advisers
- CEA 1 Secretary to a Chairman
- CEA 4 Secretary to a Chairman
- CEA 5 Secretary to a Council Member
- CEA 6 Secretary to a Council Member

Council on Environmental Quality
- CEQ 4 Confidential Assistant to a Chairman

Office of Management and Budget
- OMB 80 Confidential Assistant to the Executive Assistant to the Director
- OMB 81 Confidential Assistant to the Deputy Director for Management
- OMB 92 Confidential Assistant to the Associate Director for Legislative Reference and Administration
- OMB 94 Confidential Assistant to the Associate Director for Economics and Government
- OMB 95 Legislative Assistant to the Director, Office of Management and Budget
- OMB 96 Confidential Assistant to the Associate Director for Human Resources
- OMB 97 Confidential Assistant to the Administrator, Office of Information and Regulatory Affairs
- OMB 98 Press Agent to the Associate Director for External Affairs
- OMB 99 Confidential Assistant to the Associate Director for National Resources, Energy and Science
- OMB 100 Legislative Assistant to the Director, Office of Management and Budget
- OMB 101 Confidential Assistant to the Associate Director for Health

Office of National Drug Control Policy
- ONDCP 75 Special Assistant to the Director, Office of National Drug Control Policy
- ONDCP 76 Special Assistant to the Director, Office of National Drug Control Policy
- ONDCP 77 Public Affairs Specialist to the Director, Office of National Drug Control Policy
- ONDCP 78 Staff Assistant for Scheduling to the Director
- ONDCP 79 Public Affairs Specialist to the Director of Public and Legislative Affairs
- ONDCP 80 Public Affairs Specialist (Speechwriter) to the Director of Public and Legislative Affairs

Office of Science and Technology Policy
- OSTP 17 General Counsel to the Director, Office of Science and Technology Policy
- OSTP 18 Special Assistant to the Director, Office of Science and Technology Policy
- OSTP 19 Assistant to the Director, Office of Science and Technology Policy, for Intergovernmental Affairs and Policy
- OSTP 21 Confidential Assistant to the Associate Director, Technology Division
- OSTP 22 Confidential Assistant to the Director, Office of Science and Technology Policy
- OSTP 23 Confidential Assistant to the Associate Director for National Security and International Affairs

Office of the United States Trade Representative
- USTR 30 Confidential Assistant to the Deputy U.S. Trade Representative
- USTR 35 Deputy Assistant U.S. Trade Representative for Congressional Affairs to the Assistant U.S. Trade Representative for Congressional Affairs
- USTR 36 Confidential Assistant to the U.S. Trade Representative
- USTR 37 Confidential Assistant to the General Counsel
- USTR 39 Supervisory Public Affairs Specialist to the Assistant U.S. Trade Representative for Public Affairs
- USTR 40 Confidential Assistant to the Deputy U.S. Trade Representative to the Deputy U.S. Trade Representative
- USTR 42 Special Assistant to the Deputy U.S. Trade Representative
- USTR 44 Confidential Assistant to the U.S. Trade Representative
- USTR 45 Congressional Affairs Specialist to the Assistant U.S. Trade Representative for Congressional Affairs
- USTR 46 Public Affairs Specialist to the Assistant U.S. Trade Representative for Public Affairs
- USTR 47 Public Affairs Specialist to the Assistant U.S. Trade Representative for Public Affairs
- USTR 48 Congressional Affairs Specialist to the Assistant U.S. Trade Representative for Congressional Affairs
- USTR 49 Confidential Secretary (Typing) to the Chief of Staff
- USTR 50 Confidential Assistant to the Deputy U.S. Trade Representative, Geneva Switzerland
- USTR 51 Confidential Assistant to the Special Counsel for Financial and Investment Policy

President's Commission on White House Fellowships
- PCWHF 4 Confidential Assistant to the Director
- PCWHF 6 Associate Director to the Director

*213.3304 Department of State*
- ST 81 Secretary (Steno) to the Assistant Secretary, Bureau of Near Eastern and South Asian Affairs
- ST 329 Staff Assistant to the Deputy Secretary of State
- ST 356 Member, Policy Planning Staff to the Director, Policy Planning Staff
- ST 357 Staff Assistant to the Secretary of State
- ST 358 Special Assistant to the Secretary of State
- ST 359 Legislative Officer to the Under Secretary for Management
- ST 364 Special Assistant to the Assistant Secretary for African Affairs, Bureau of African Affairs
- ST 365 Special Assistant to the Legal Advisor
- ST 366 Secretary (Stenography) to the Assistant Secretary for Consular Affairs
- ST 369 Special Assistant to the Assistant Secretary, Bureau of East Asian and Pacific Affairs
- ST 370 Special Assistant to the Assistant Secretary, Bureau of Public Affairs
- ST 371 Secretary (Steno) to the Assistant Secretary, Bureau of European and Canadian Affairs
- ST 372 Secretary (Steno) to the Assistant Secretary, Bureau of International Organization Affairs
- ST 373 Staff Assistant to the Senior Advisor and Counsel to United States Permanent Representative to the United Nations
- ST 374 Special Assistant to the United States Permanent Representative to the Organization of American States, Bureau of Inter-American Affairs
- ST 376 Secretary to the Assistant

Secretary, Bureau of Oceans and International Environmental and Scientific Affairs
ST 379 Special Assistant to the Assistant Secretary
ST 380 Senior Policy Advisor to the Assistant Secretary, Bureau of Legislative Affairs
ST 381 Member Policy Planning Staff to the Director, Policy Planning Staff
ST 382 Management Analyst to the Director, Office of Management Planning
ST 383 Correspondence Officer to the Assistant Secretary
ST 388 Senior Policy Advisor to the Assistant Secretary, Bureau of Legislative Affairs
ST 389 Legislative Management Officer to the Assistant Secretary, Bureau of Legislative Affairs
ST 391 Special Assistant to the Counselor to the Department
ST 392 Special Assistant to the Under Secretary for Economic and Agricultural Affairs
ST 393 Legislative Analyst to the Assistant Secretary
ST 394 Senior Advisor to the Assistant Secretary
ST 395 Special Assistant to the Under Secretary for Political Affairs
ST 396 Staff Assistant to the Assistant Secretary, Bureau of Political-Military Affairs
ST 397 Special Assistant to the Assistant Secretary, Bureau of European and Canadian Affairs
ST 398 Special Adviser to the Ambassador, United States Permanent Representative to the Organization of American States, Bureau of Inter-American Affairs
ST 399 Confidential Assistant to the Secretary of State
ST 400 Special Assistant to the Under Secretary for International Security Affairs
ST 401 Staff Assistant to the Assistant Secretary, Bureau of Political-Military Affairs
ST 402 Special Assistant to the Assistant Secretary, Bureau of Inter-American Affairs
ST 403 Foreign Affairs Officer (Ceremonial) to the Chief of Protocol
ST 405 Supervisory Protocol Officer (Visits) to the Foreign Affairs Officer (Visits)
ST 406 Secretary (Typing) to the Assistant Secretary, Bureau of Economic And Business Affairs
ST 407 Special Assistant to the Director, Policy Planning Staff
ST 408 Staff Assistant to the Assistant Secretary, Bureau of Public Affairs
ST 409 Legislative Analyst to the Director, Legislative Affairs, Office of the Under Secretary for Management
ST 411 Protocol Assistant to the Foreign Affairs Officer, Office of the Chief of Protocol
ST 412 Senior Advisor to the Assistant Secretary, Bureau of Inter-American Affairs
ST 413 Special Assistant to the Assistant Secretary, Bureau of International Organization Affairs
ST 414 Foreign Affairs Officer to the Assistant Secretary, Bureau of Public Affairs
ST 415 Special Assistant to the Deputy Assistant Secretary, for Environment and Development
ST 416 Protocol Officer (Visits) to the Foreign Affairs Officer (Visits)
ST 417 Foreign Affairs Officer to the Chief of Protocol
ST 418 Special Assistant to the Chief of Protocol
ST 420 Staff Assistant to the Assistant Secretary, Bureau of Legislative Affairs
ST 421 Member, Policy Planning Staff to the Director of the Policy Planning Staff
ST 423 Special Assistant to the Under Secretary
ST 424 Secretary (OA) to the Assistant Secretary, Bureau of Intelligence and Research
ST 425 Public Affairs Specialist to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs
ST 426 Secretary (Steno) to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs
ST 427 Special Assistant to the Assistant Secretary, Bureau of Public Affairs
ST 428 Secretary to the Assistant Secretary, Bureau of Legislative Affairs
ST 429 Special Assistant to the Assistant Secretary, Bureau of Consular Affairs
ST 430 Special Assistant to the Deputy Assistant Secretary for Environment and Development, Bureau of Oceans, Environmental and Scientific Affairs
ST 431 Special Assistant to the Assistant Secretary, Bureau of Intelligence and Research
ST 432 Special Assistant to the Assistant Secretary, Bureau of International Organization Affairs
ST 433 Correspondence Officer to the Assistant Secretary, Bureau of Legislative Affairs
ST 434 Staff Assistant to the Director of White House Liaison
ST 435 Public Affairs Specialist to the Assistant Secretary, Bureau of Economics and Business Affairs
ST 438 Staff Assistant to the Deputy Secretary of State
ST 439 Staff Assistant to the Population Coordinator, Bureau of Oceans and International Environment and Scientific Affairs
ST 445 Foreign Affairs Officer to the Deputy Assistant Secretary
ST 446 Foreign Affairs Officer to the Deputy Secretary

*213.3305 Department of the Treasury*

TREA 39 Deputy to the Assistant Secretary (Legislative Affairs)
TREA 44 Deputy to the Assistant Secretary (Legislative Affairs)
TREA 139 Director, Scheduling and Advance to the Chief of Staff
TREA 170 Assistant Director, Travel and Special Events Services to the Director, Administrative Operations Division
TREA 202 Director, Office of Legislative Affairs to the Senior Deputy Assistant Secretary for Legislative Affairs
TREA 213 Special Assistant to the Assistant Secretary for Legislative Affairs
TREA 220 Confidential Assistant to the Commissioner, Internal Revenue Service
TREA 230 Public Affairs Specialist to the Director, Office of Public Affairs
TREA 236 Staff Assistant to the Deputy Executive Secretary (Public Liaison)
TREA 244 Administrative Assistant to the Director, Office of Thrift Supervision
TREA 250 Director, Office of Public Affairs to the Deputy Assistant Secretary (Public Affairs)
TREA 261 Travel Assistant to the Director, Administration Operations Division
TREA 264 Senior Policy Analyst to the Deputy Assistant Secretary, Corporate Finance
TREA 265 Special Assistant to the General Counsel
TREA 277 Public Affairs Specialist to the Assistant Secretary for Public Affairs and Public Liaison
TREA 284 Director, Office of Business Liaison to the Deputy Assistant Secretary (Public Liaison)
TREA 290 Special Assistant to the Deputy Assistant Secretary for Administration
TREA 291 Confidential Assistant to the Assistant Secretary (Management)
TREA 293 Deputy to the Assistant Secretary (Legislative Affairs)

TREA 298 Special Assistant to the Assistant Secretary (Management)
TREA 307 Confidential Assistant to the Treasurer of the United States
TREA 312 Confidential Assistant to the Deputy Secretary of the Treasury
TREA 313 Confidential Assistant to the Secretary of the Treasury
TREA 314 Public Affairs Specialist to the Assistant Secretary (Public Affairs and Public Liaison)
TREA 315 Special Assistant to the Chief of Staff
TREA 316 Public Affairs Specialist to the Director, Office of Public Affairs
TREA 318 Legislative Assistant to the Director, Office of Legislative Affairs
TREA 319 Confidential Assistant to the Commissioner of Customs
TREA 320 Staff Assistant to the Assistant Secretary of Economic Policy
TREA 321 Confidential Staff Assistant to the Under Secretary for International Affairs
TREA 322 Staff Assistant (Correspondence Review) to the Executive Secretary and Senior Adviser
TREA 323 Special Assistant to the Senior Deputy Comptroller for Economic Analysis and Public Affairs
TREA 327 Senior Policy Analyst to the Deputy Assistant Secretary for Government Financial Policy
TREA 328 Special Assistant to the Assistant Secretary for Economic Policy
TREA 330 Special Assistant (External Affairs) to the Director of the United States Mint
TREA 331 Legislative Policy Advisor to the Assistant Secretary (Enforcement)
TREA 334 Staff Assistant to the Assistant Secretary (Enforcement)
TREA 335 Staff Assistant to the Assistant Secretary (Economic Policy)
TREA 336 Director, Administrative Operations Division to the Deputy Assistant Secretary (Administration)
TREA 337 Senior Policy Analyst to the Assistant Secretary (Enforcement)
TREA 338 Staff Assistant to the Director, Scheduling and Advance, Office of the Secretary
TREA 339 Policy Analyst to the Under Secretary for Domestic Finance
TREA 340 Public Affairs Specialist to the Director, Office of Public Affairs
TREA 341 Staff Assistant to the Assistant Secretary (Economic Policy)
TREA 342 Senior Advisor to the Treasurer of the United States
TREA 343 Deputy Executive Director for Special Programs to the Executive Director, United States Bond Division, Bureau of Public Debt
TREA 344 Policy Advisor to the Assistant Secretary (Enforcement)
TREA 345 Policy Advisor to the Assistant Secretary (Enforcement)
TREA 346 Policy Advisor to the Assistant Secretary (Enforcement)
TREA 347 Policy Advisor to the Assistant Secretary (Enforcement)

*213.3306 Department of Defense*

DOD 5 Private Secretary to Deputy Secretary
DOD 19 Personal and Confidential Assistant to the Director, Program Analysis and Evaluation
DOD 22 Personal and Confidential Assistant to the Assistant to the Secretary of Defense for Atomic Energy
DOD 23 Confidential Assistant to the Military Assistant to the Secretary of Defense
DOD 24 Chauffeur to the Secretary of Defense
DOD 33 Personal Secretary to the Deputy Secretary of Defense
DOD 54 Personal and Confidential Assistant to a Judge
DOD 56 Personal and Confidential Assistant to the Chief Judge
DOD 66 Private Secretary to the Physician to the President
DOD 75 Chauffeur to the Deputy Secretary of Defense
DOD 101 Special Assistant to the Director of Net Assessment
DOD 119 Private Secretary to the Principal Deputy Director, Program Analysis and Evaluation
DOD 175 Private Secretary to a Judge
DOD 205 Private Secretary to a Judge
DOD 236 Director for Programs to the Assistant to the Secretary of Defense for Public Affairs
DOD 241 Personal and Confidential Assistant to the Assistant Secretary of Defense
DOD 256 Special Assistant to the Assistant Secretary of Defense (Personnel and Readiness)
DOD 270 Private Secretary to the Director, Strategic Defense Initiative Organization
DOD 271 Private Secretary to the Principal Deputy Assistant Secretary of Defense (Reserve Affairs)
DOD 283 Personal and Confidential Assistant to the Assistant to the Deputy Secretary of Defense
DOD 295 Personal and Confidential Assistant to the Under Secretary of Defense for Personnel and Readiness
DOD 310 Civilian Executive Assistant to the Chairman of the Joint Chiefs of Staff
DOD 317 Personal and Confidential Assistant to the Director, Defense Research and Engineering
DOD 320 Executive Assistant to the Secretary of Defense
DOD 321 Executive Assistant to Vice President to the Assistant Secretary to Vice President for National Security Affairs
DOD 332 Personal and Confidential Assistant to the Assistant Secretary of Defense (Regional Security)
DOD 335 Public Affairs Specialist to the Special Assistant to the Secretary for Public Affairs
DOD 339 Speechwriter to the Special Assistant to the Secretary of Defense for Public Affairs
DOD 355 Special Assistant for Strategic Modernization to the Assistant Secretary of Defense (Legislative Affairs)
DOD 361 Special Assistant for Production and Logistics and Energy to the Assistant Secretary of Defense, Legislative Affairs
DOD 368 Personal and Confidential Assistant to the Assistant Secretary of Defense for Legislative Affairs
DOD 370 Personal and Confidential Assistant to Principal Deputy Under Secretary of Defense
DOD 380 Director of Protocol to the Assistant to the Secretary of Defense for Protocol
DOD 386 Personal and Confidential Assistant to the Assistant Secretary of Defense for Reserve Affairs
DOD 392 Confidential Assistant to the Under Secretary of Defense for Acquisition and Technology
DOD 401 Personal and Confidential Assistant to a Judge
DOD 402 Private Secretary to the Judge
DOD 404 Private Secretary to a Judge, U.S. Court of Military Appeals
DOD 405 Personal and Confidential Assistant to a Judge, U.S. Court of Military Appeals
DOD 409 Personal and Confidential Assistant to a Judge, U.S. Court of Military Appeals

DOD 410 Private Secretary to the Judge, U.S. Court of Military Appeals
DOD 411 Private Secretary to the Principal Deputy General Counsel
DOD 415 Private Secretary to the General Counsel
DOD 421 Special Assistant (Research) to the Assistant to the Secretary of Defense (Public Affairs)
DOD 427 Paralegal Specialist to the Chief Judge, U.S. Court of Military Appeals
DOD 429 Paralegal Specialist to a Judge, U.S. Court of Military Appeals
DOD 430 Confidential Assistant to the Special Assistant to the Secretary
DOD 431 Paralegal Specialist to the Chief Judge
DOD 432 Personal and Confidential Assistant to the Assistant Secretary of Defense (Democracy and Peacekeeping)
DOD 434 Speech Writer to the Assistant to Secretary of Defense for Public Affairs
DOD 435 Public Affairs Specialist to the Assistant to the Secretary of Defense for Public Affairs
DOD 436 Personal and Confidential Assistant to the General Counsel
DOD 437 Program Analyst to the Deputy Under Secretary (Environmental Security)
DOD 438 Staff Specialist to the Under Secretary (Acquisition and Technology)
DOD 439 Staff Specialist to the Under Secretary (Acquisition and Technology)
DOD 440 Personal and Confidential Assistant to the Deputy Under Secretary of Defense for Acquisition Reform
DOD 442 Director, Strategy Development, to the Deputy Assistant Secretary (Strategy)
DOD 443 Special Assistant to the Counselor to the Secretary and Deputy Secretary of Defense
DOD 444 Country Director to the Deputy Assistant Secretary of Defense, Inter-American Affairs Region
DOD 445 Confidential Assistant to the Assistant to the Secretary of Defense for Public Affairs
DOD 446 Policy Assistant to the Deputy Assistant Secretary of Defense (Russian, Ukrainian, and Eurasian Affairs)
DOD 447 Personal and Confidential Assistant to the Deputy Under Secretary of Defense for Environmental Security
DOD 448 Personal and Confidential Assistant to the Principal Deputy Assistant Secretary of Defense for Dual Use Technology and International Programs
DOD 449 Staff Specialist to the Assistant to the Secretary of Defense for Public Affairs
DOD 451 Assistant for Strategy Development to the Deputy Assistant Secretary of Defense (Strategy)
DOD 452 Special Assistant to the Assistant Secretary of Defense (Nuclear Security and Counterproliferation)
DOD 453 Staff Assistant to the Deputy Assistant Secretary of Defense (Humanitarian and Refugee Affairs)
DOD 455 Assistant for Strategy Development to the Deputy Assistant Secretary Defense (Strategy)
DOD 456 Special Assistant for Family Advocacy and External Affairs to the Deputy Assistant Secretary of Defense, (Prisoner of War/Missing in Action Affairs)
DOD 457 Staff Assistant to the Deputy Assistant Secretary of Defense (Democracy and Human Rights)
DOD 458 Defense Fellow to the Director of Protocol, Office of the Secretary of Defense
DOD 459 Public Affairs Specialist to the Assistant to the Secretary of Defense for Public Affairs
DOD 460 International Counterdrug Specialist to the Deputy Assistant Secretary of Defense (Drug Enforcement Policy and Support)
DOD 461 Defense Fellow to the Deputy Assistant Secretary of Defense (Drug Enforcement Policy and Support)
DOD 462 Defense Fellow to the Director, Civil-Military Cooperation (RA)
DOD 464 Defense Fellow to the Deputy Under Secretary for Logistics
DOD 465 Defense Fellow to the Assistant Secretary of Defense (Personnel and Readiness)
DOD 466 Defense Fellow to the Deputy Under Secretary for Environmental Security
DOD 467 Special Assistant to the Deputy Assistant Secretary of Defense for Drug Enforcement Policy and Support
DOD 468 Staff Assistant to the Director, Defense Information Systems Agency
DOD 469 Defense Fellow to the Under Secretary of Defense for Personal and Readiness
DOD 472 Defense Fellow to the Assistant Secretary of Defense (Special Operations and Low Intensity Conflict)
DOD 473 Personal and Confidential Assistant to the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict
DOD 474 Program Analyst to the Deputy Under Secretary (Environmental Security)
DOD 475 Personal and Confidential Assistant to the Assistant Secretary of Defense (Nuclear Security and Counterproliferation)
DOD 476 Defense Fellow to the Deputy Assistant Secretary of Defense (Humanitarian and Refugee Affairs)
DOD 479 Special Assistant to the Assistant to the Secretary of Defense (Legislative Affairs)
DOD 480 Executive Assistant to the Assistant Secretary of Defense (Strategy Requirements and Resources)
DOD 481 Personal and Confidential Assistant to the Principal Deputy Assistant Secretary of Defense for Special Operations and Low Intensity Conflict
DOD 483 Defense Fellow to the Principal Deputy Under Secretary of Defense (Policy)
DOD 484 Special Assistant for Health Care Policy to the Assistant Secretary of Defense for Legislative Affairs
DOD 485 Defense Fellow to the Deputy Assistant Secretary of Defense (Peacekeeping and Peace Enforcement Policy)
DOD 486 Defense Fellow to the Deputy Assistant Secretary of Defense (Peacekeeping and Peace Enforcement Policy)
DOD 487 Personal and Confidential Assistant to the Counsellor to the Secretary of Defense and Deputy Secretary of Defense
DOD 488 Personal and Confidential Assistant to the Comptroller
DOD 489 Media Analyst to the Assistant to the Secretary of Defense for Public Affairs
DOD 490 Principal Director, Threat Reduction Policy to the Deputy Assistant Secretary of Defense (Threat Reduction Policy)
DOD 491 Special Assistant to the Counsellor to the Secretary and Deputy Secretary of Defense
DOD 493 Special Assistant to the

Assistant Secretary of Defense (Policy and Plans)
DOD 494 Special Assistant to the Assistant to the Secretary of Defense (Legislative Affairs)
DOD 495 Special Assistant for Humanitarian and Refugee Affairs Policy to the Deputy Assistant Secretary of Defense (Humanitarian and Refugee Affairs)
DOD 496 Secretary to the Assistant Secretary of Defense (Strategy, Requirements and Resources)
DOD 499 Personal and Confidential Assistant to the Deputy Under Secretary of Defense for Logistics
DOD 500 Staff Specialist to the Project Director for National Performance Review
DOD 501 Special and Confidential Assistant to the Special Assistant to the Secretary of Defense for White House Liaison
DOD 502 Special Assistant to the Deputy Under Secretary of Defense for Policy Planning
DOD 503 Counselor and Senior Assistant for Counterproliferation Policy to the Deputy Assistant Secretary of Defense (Counterproliferation Policy)
DOD 504 Special Assistant to the Assistant Secretary of Defense (Special Operations and Low Intensity Conflict)
DOD 505 Staff Specialist to the Assistant Secretary of Defense (Legislative Affairs)
DOD 506 Staff Specialist to the Assistant Secretary of Defense (Legislative Affairs)
DOD 508 Defense Fellow to the Assistant Secretary of Defense (Legislative Affairs)
DOD 509 Special Assistant to the Assistant to the Secretary of Defense for Protocol
DOD 510 Staff Specialist to the Assistant Secretary of Defense (Legislative Affairs)
DOD 512 Staff Specialist to the Deputy Assistant Secretary for Economic Reinvestment and Base Realignment and Closure
DOD 513 Special Assistant to the Deputy Assistant Secretary of Defense (Peacekeeping and Peace Enforcement Policy)
DOD 515 Defense Fellow to the Deputy Assistant Secretary of Defense (Drug Enforcement Policy and Support)
DOD 516 Staff Specialist to the Deputy Under Secretary for Environmental Security
DOD 517 Special Assistant to the Deputy to the Under Secretary of Defense (Policy) for Policy Planning
DOD 518 Defense Fellows to the Principal Deputy Assistant Secretary of Defense (Health Affairs)
DOD 519 Private Secretary to the Assistant Secretary of Defense (Regional Security Affairs)
DOD 520 Personal and Confidential Assistant to the Secretary of Defense
DOD 521 Staff Specialist to the Assistant Secretary of Defense (Legislative Affairs)
DOD 522 Deputy Director of Administration and Policy to the Deputy Assistant Secretary of Defense (Humanitarian and Refugee Affairs)
DOD 523 Special Assistant to the Assistant Secretary of Defense for Health Affairs
DOD 524 Confidential Assistant to the Deputy Assistant Secretary of Defense
DOD 525 Paralegal Specialist to a Judge, U.S. Court of Military Appeals
DOD 526 Paralegal Specialist to a Judge, U.S. Court of Military Appeals
DOD 527 Special Assistant for Demand Reduction to the Deputy Assistant Secretary of Defense (Drug Enforcement Policy and Support)
DOD 528 Staff Specialist to the Principal Deputy Assistant Secretary for Dual Use Technology and International Programs
DOD 529 Staff Specialist to the Assistant to the Secretary of Defense, Legislative Affairs
DOD 531 Paralegal Specialist to a Judge, U.S. Court of Military Appeals
DOD 532 Paralegal Specialist to a Judge, U.S. Court of Military Appeals
DOD 533 Paralegal Specialist to the Chief Judge, U.S. Court of Military Appeals
DOD 535 Special Assistant to the Deputy to the Under Secretary of Defense for Policy Support
DOD 536 Personal and Confidential Assistant to the Assistant Secretary of Defense for Economic Security

*213.3307 Department of the Army (DOD)*

ARMY 1 Executive Assistant to the Secretary of the Army
ARMY 2 Personal and Confidential Assistant to the Under Secretary of the Army
ARMY 21 Secretary (Steno) to the General Counsel
ARMY 59 Staff Assistant to the Secretary of the Army
ARMY 68 Special Assistant to the Executive Director (Special Assistant to the Secretary of the Army), World War II Commemorative Committee
ARMY 69 Defense Fellow (Public Affairs) to the Chief of Public Affairs
ARMY 70 Defense Fellow (Training & Education) to the Assistant Secretary of the Army (Manpower and Reserve Affairs)

*213.3308 Department of the Navy (DOD)*

NAV 2 Staff Assistant to the Secretary of the Navy
NAV 30 Staff Assistant to the Deputy Under Secretary
NAV 47 Special Assistant to the Assistant to the Vice President and Chief of Staff to Mrs. Gore
NAV 48 Staff Assistant to the Principal Deputy General Counsel of the Navy
NAV 49 Staff Assistant to the Under Secretary of the Navy
NAV 50 Staff Assistant to the Assistant Secretary of the Navy (Manpower and Reserve Affairs)
NAV 51 Defense Fellow to the Under Secretary of the Navy
NAV 53 Staff Assistant to the Assistant Secretary of the Navy (Research, Development and Acquisition)
NAV 54 Staff Assistant to the General Counsel
NAV 55 Staff Assistant to the Assistant Secretary of the Navy (Manpower and Reserve Affairs)

*213.3309 Department of the Air Force (DOD)*

AF 1 Secretary (S/OA) to the Secretary of the Air Force
AF 2 Secretary (Steno) to the Under Secretary of the Air Force
AF 5 Assistant Secretary (Steno) to the Assistant Secretary Acquisition
AF 6 Secretary (Steno) to the Assistant Secretary (Manpower and Reserve Affairs, Installation and Environment)
AF 8 Secretary (Steno OA) to the General Counsel
AF 22 Secretary (Steno and OA) to the Assistant Secretary to the Vice President for National Security Affairs
AF 29 Confidential Assistant to the Secretary of the Air Force
AF 31 Staff Assistant (Typing) to the Assistant to the Vice President for National Security Affairs
AF 39 Secretary (OA) to the Assistant Secretary of the Air Force (Financial Management and Comptroller)

AF 41 Confidential Assistant for Environmental Legislation to the Deputy Assistant Secretary for Environmental Safety and Occupational Health
AF 42 Staff Assistant to the Principal Deputy Assistant Secretary of the Air Force (Manpower, Reserve Affairs, Installations and Environment).

*213.3310 Department of Justice*

JUS 13 Special Assistant to the Deputy Attorney General
JUS 21 Confidential Assistant to the Assistant Attorney General
JUS 27 Counsel to the Assistant Attorney General, Environmental and Natural Resources Division
JUS 37 Secretary (OA) to the U.S. Attorney, District of Columbia
JUS 38 Secretary (OA) to the United States Attorney, Northern District of Illinois
JUS 40 Secretary (OA) to the United States Attorney, Eastern District of Michigan
JUS 44 Secretary (OA) to the United States Attorney, District of Massachusetts
JUS 47 Secretary (OA) to the United States Attorney, Western District of New York
JUS 70 Special Assistant to the Assistant Attorney General, Civil Rights Division
JUS 75 Secretary (OA) to the United States Attorney, Northern District of Texas
JUS 97 Staff Assistant to the Attorney General
JUS 114 Staff Assistant to the Attorney General
JUS 115 Staff Assistant to the Assistant Attorney General, Office of Legislative Affairs
JUS 128 Secretary (OA) to the United States Attorney, District of Arizona
JUS 132 Special Assistant to the Commissioner, Immigration and Naturalization Service
JUS 133 Staff Assistant (OA) to the Attorney General
JUS 140 Attorney Advisor to the Assistant Attorney General
JUS 141 Special Assistant to the Assistant Attorney General (Legislative Affairs)
JUS 142 Special Assistant to the Assistant Attorney General General, Office of Legislative Affairs
JUS 144 Special Assistant to the Solicitor General
JUS 149 Special Assistant to the Assistant Attorney General, Environmental and Natural Resources Division
JUS 162 Confidential Assistant to the Assistant Attorney General, Civil Rights Division
JUS 165 Special Assistant to the Associate Attorney General
JUS 170 Assistant to the Attorney General
JUS 173 Secretary (OA) to the United States Attorney,
JUS 182 Senior Liaison Officer to the Assistant Attorney General, Office of Policy Development
JUS 184 Counselor to the Assistant Attorney General, Antitrust Division
JUS 186 Special Assistant to the Assistant Attorney General, Criminal Division
JUS 188 Counselor to the Assistant Attorney General
JUS 190 Senior Counsel to the Assistant Attorney General, Office of Policy Development
JUS 198 Special Assistant to the Assistant Attorney General, Criminal Division
JUS 204 Deputy Assistant Attorney General to the Assistant Attorney General, Office of Legislative Affairs
JUS 207 Staff Assistant to the Director, Office of Public Affairs
JUS 214 Special Assistant to the Assistant Attorney General, Office of Policy and Development
JUS 216 Special Assistant to the Administrator, Office for Juvenile Justice and Delinquency Prevention
JUS 217 Special Assistant to the Director, Bureau of Justice Assistance
JUS 224 Special Assistant to the Deputy Attorney General
JUS 231 Special Assistant to the Assistant Attorney General
JUS 242 Special Assistant to the Assistant Attorney General
JUS 243 Staff Assistant to the Assistant Attorney General, Civil Rights Division
JUS 245 Special Assistant to the Assistant Attorney General, Environmental and Natural Resources Division
JUS 265 Staff Assistant to the Director, Office of Public Affairs
JUS 266 Special Affairs Assistant to the Deputy Director, Office of Policy and Communications
JUS 268 Litigation Counsel to the Assistant Attorney General
JUS 269 Special Assistant to the Assistant Attorney General, Office of Legislative Affairs
JUS 270 Special Assistant to the Assistant Attorney General, Civil Rights Division
JUS 271 Confidential Assistant to the Assistant Attorney General, Office of Policy Development
JUS 273 Special Assistant to the Associate Attorney General
JUS 274 Special Assistant to the Assistant Attorney General, Office of Legal Counsel
JUS 275 Special Assistant to the Assistant Attorney General, Office of Policy and Development
JUS 279 Confidential Assistant to the Assistant Attorney General, Office of Legislative Affairs
JUS 282 Director, Liaison Services to the Assistant Attorney General, Office of Policy Development
JUS 285 Staff Assistant to the Assistant Attorney General, Office of Legislative Affairs
JUS 287 Special Assistant to the Deputy Attorney General
JUS 288 Special Assistant to the Deputy Attorney General
JUS 289 Special Assistant to the Deputy Attorney General
JUS 291 Senior Liaison Officer to the Assistant Attorney General
JUS 309 Senior Liaison Officer to the Assistant Attorney General, Office of Policy Development
JUS 312 Special Assistant to the Assistant Attorney General
JUS 316 Special Assistant to the Director, Office for Victims of Crime
JUS 317 Senior Counsel to the Assistant Attorney General, Office of Policy Development
JUS 319 Special Assistant to the Assistant Attorney General, Criminal Division
JUS 322 Special Assistant to the Assistant Attorney General, Office of Policy Development
JUS 324 Special Assistant to the Assistant Attorney General
JUS 331 Special Assistant to the Director, National Institute of Justice
JUS 343 Staff Assistant to the Attorney General
JUS 346 Deputy Director to the Director, Office of Public Affairs
JUS 347 Special Assistant to the Deputy Assistant Attorney General
JUS 353 Confidential Assistant to the Solicitor General
JUS 361 Special Assistant to the Director, Bureau of Justice Statistics
JUS 377 Staff Assistant to the Director, Office of Public Affairs
JUS 387 Public Affairs Specialist to the Director, Office of Public Affairs
JUS 388 Special Assistant to the Director, United States Marshals Service
JUS 389 Special Assistant to the Assistant Attorney General, Office of Legal Counsel
JUS 396 Staff Assistant to the Assistant Attorney
JUS 401 Counsel to the Deputy Attorney General
JUS 404 Assistant to the Attorney

General
JUS 407 Assistant to the Attorney General
JUS 409 Special Assistant to the Associate Attorney General
JUS 412 Public Affairs Specialist to the Director, Office of Public Affairs
JUS 417 Confidential Assistant to the U.S. Attorney, Eastern District of New York
JUS 418 Secretary (OA) to the U.S. Attorney, District of Nebraska
JUS 419 Secretary (OA/Stenography) to the U.S. Attorney, Northern District of Florida
JUS 420 Confidential Assistant to the U.S. Attorney, Eastern District of Pennsylvania
JUS 421 Secretary (OA) to the U.S. Attorney, Eastern District of Tennessee
JUS 422 Secretary (OA) to the U.S. Attorney, Eastern District of Wisconsin
JUS 423 Secretary to the U.S. Attorney, District of New Mexico
JUS 424 Secretary to the U.S. Attorney, Northern District of Iowa
JUS 425 Secretary (OA) to the U.S. Attorney, Middle District of Pennsylvania
JUS 426 Secretary (OA) to the U.S. Attorney, Sioux Falls, South Dakota
JUS 428 Secretary (OA) to the U.S. Attorney, District of Minnesota
JUS 429 Secretary (OA) to the U.S. Attorney, District of Maryland
JUS 430 Secretary (OA) to the U.S. Attorney, Western District of Michigan, Grand Rapids, MI.
JUS 431 Secretary (OA) to the U.S. Attorney, District of Oregon, Portland, OR
JUS 432 Secretary (OA) to the U.S. Attorney
JUS 433 Secretary (OA) to the U.S. Attorney, Middle District of Louisiana
JUS 434 Confidential Assistant, Sacramento, CA, to the U.S. Attorney
JUS 435 Secretary (OA) to the U.S. Attorney, Western District of Arkansas

*213.3312 Department of the Interior*

INT 171 Supervisory Public Affairs Specialist to the Commissioner of Reclamation, Bureau of Reclamation
INT 238 Director of Policy and External Affairs to the Commissioner of Reclamation, Bureau of Reclamation
INT 271 Special Assistant to the Director, Minerals Management Service
INT 375 Special Assistant to the Director, Minerals Management Service
INT 378 Special Assistant to the Director, Office of the Surface Mining
INT 386 Public Affairs Officer to the Director, Bureau of Land Management
INT 419 Special Assistant to the Director of the Mineral Management Service INT 426 Press Secretary to the Director of Communications
INT 427 Deputy Director to the Director of Communications
INT 430 Special Assistant to the Assistant to the Secretary
INT 431 Special Assistant to the Assistant Secretary for Policy, Management and Budget
INT 432 Scheduler to the Assistant to the Secretary
INT 433 Deputy Director for House Liaison to the Assistant to the Secretary, Office of Congressional and Legislative Affairs
INT 434 Deputy Director for Senate Liaison to the Assistant to the Secretary, Office of Congressional and Legislative Affairs
INT 435 Special Assistant to the Secretary of the Interior
INT 436 Special Assistant to the Assistant to the Secretary, Office of Congressional and Legislative Affairs
INT 437 Special Assistant to the Assistant to the Secretary
INT 439 Special Assistant to the Director, Bureau of Land Management
INT 440 Special Assistant to the Assistant Secretary Policy, Management and Budget
INT 442 Special Assistant to the Director, National Parks Service
INT 443 Special Assistant to the Solicitor
INT 444 Deputy Director for Legislative and Intergovernmental Affairs to the Assistant to the Secretary, Office of Congressional and Legislative Affairs
INT 446 Special Assistant to the Director, Bureau of Land Management
INT 447 Special Assistant to the Assistant to the Secretary
INT 449 Special Assistant to the Director, United States Fish & Wildlife Service
INT 450 Special Assistant to the Director, Unites States Fish & Wildlife Service
INT 451 Special Assistant to the Assistant Secretary-Territorial and International Affairs
INT 454 Special Assistant to the Chief of Staff
INT 455 Special Assistant to the Chief of Staff
INT 458 Deputy Director to the Assistant to the Secretary and Director of Regulatory Affairs
INT 460 Deputy Scheduler to the Special Assistant to the Secretary and Director of the Executive Secretariat
INT 461 Special Assistant to the Director, National Park Service
INT 462 Special Assistant to the Director, Mineral Management Service
INT 463 Special Assistant to the Director of the National Park Service
INT 465 Special Assistant to the Director, Mineral Management Service
INT 466 Special Assistant to the Chief of Staff
INT 467 Special Assistant to the Chief of Staff
INT 468 Special Assistant to the Chief of Staff
INT 470 Special Assistant to the Assistant Secretary, Indian Affairs
INT 472 Special Assistant to the Director, Bureau of Land Management
INT 473 Special Assistant to the Assistant Secretary—Water & Science
INT 474 Special Liaison for Congressional and Legislative Affairs to the Director of Policy and External Affairs, Bureau of Reclamation
INT 475 Special Liaison for Public Affairs to the Director, of Policy and External Affairs, Bureau of Reclamation
INT 476 Special Assistant to the Director, Bureau of Land Management
INT 477 Special Assistant to the Special Assistant to the Secretary and White House Liaison
INT 479 Special Assistant to the Deputy Director, Minerals Management Service
INT 480 Chief, Congressional and Legislative Affairs Division to the Director of Policy and External Affairs, Bureau of Reclamation

*213.3313 Department of Agriculture*

AGR 24 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 26 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 27 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 30 Private Secretary to the Manager, Federal Crop Insurance Corporation
AGR 31 Confidential Assistant to

the Administrator, Agricultural Stabilization and Conservation Service
AGR 48 Confidential Assistant to the Administrator, Food and Nutrition Service
AGR 56 Private Secretary to the Assistant Secretary for Congressional Relations
AGR 76 Confidential Assistant to the Assistant Secretary for Marketing and Inspection Services
AGR 77 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 79 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 96 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 100 Confidential Assistant to the Administrator, Food and Nutrition Service
AGR 103 Confidential Assistant to the Administrator of the Foreign Agricultural Service
AGR 106 Confidential Assistant to the Assistant Secretary for Congressional Relations to the Assistant Secretary for Congressional Relations
AGR 114 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 118 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 131 Private Secretary to the Assistant Secretary for Natural Resources and Environment
AGR 143 Confidential Assistant to the Administrator, Agricultural Marketing Service
AGR 151 Confidential Assistant to the Administrator, Agricultural Marketing Service
AGR 157 Confidential Assistant to the Administrator, Foreign Agricultural Service
AGR 160 Confidential Assistant to the Associate Administrator, Foreign Agricultural Service
AGR 163 Confidential Assistant to the Executive Assistant to the Secretary
AGR 179 Staff Assistant to the Director, Office of Public Affairs
AGR 182 Confidential Assistant to the Administrator, Rural Electrification Administration
AGR 188 Northeast Area Director to the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service
AGR 201 Confidential Assistant to the Executive Assistant to the Secretary
AGR 203 Confidential Assistant to the Executive Assistant to the Secretary
AGR 205 Confidential Assistant to the Administrator, Food and Nutrition Service
AGR 206 Director, Office of Consumer Advisor to the Assistant Secretary for Food and Consumer Services
AGR 222 Confidential Assistant to the Manager, Federal Crop Insurance Corporation
AGR 225 Confidential Assistant to the Manager, Federal Crop Insurance Corporation
AGR 232 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 236 Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service
AGR 237 Confidential Assistant to the Administrator, Agricultural Marketing Service
AGR 238 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 243 Confidential Assistant to the Director, Office of Public Affairs
AGR 244 Confidential Assistant to the Chief, Soil Conservation Service
AGR 257 Executive Assistant to the Assistant Secretary for Food and Consumer Services to the Assistant Secretary for Food and Consumer Services
AGR 258 Confidential Assistant to the Administrator, Foreign Agricultural Service
AGR 263 Confidential Assistant to the Assistant Secretary for Natural Resources and Environment
AGR 267 Confidential Assistant to the Deputy Director Public Liaison
AGR 268 Confidential Assistant to the Administrator, Rural Electrification Administration
AGR 273 Staff Assistant to the Administrator, Foreign Agricultural Service
AGR 283 Staff Assistant to the Administrator, Agricultural Stabilization and Conservation Service
AGR 284 Confidential Assistant to the Administrator, Food Safety and Inspection Service
AGR 287 Confidential Assistant to the Administrator, Foreign Agricultural Service
AGR 290 Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service
AGR 293 Confidential Assistant to the Administrator, Foreign Agricultural Service
AGR 295 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 298 Confidential Assistant to the Administrator
AGR 300 Confidential Assistant to the Manager, Federal Crop Insurance Corporation
AGR 302 Staff Assistant to the Administrator, Agricultural Stabilization and Conservation Service
AGR 306 Staff Assistant to the Director, Office of Public Affairs
AGR 312 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 313 Special Assistant to the Administrator, Farmers Home Administration
AGR 314 Confidential Assistant to the Director/Press Secretary, Office of Public Affairs
AGR 316 Staff Assistant to the Chief, Soil Conservation Service
AGR 327 Staff Assistant to the Director, Office of Public Affairs
AGR 328 Special Assistant to the Director of Intergovernmental Affairs, Office of Public Affairs
AGR 330 Confidential Assistant to the Director, Office of Public Affairs
AGR 332 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 333 Confidential Assistant to the Manager, Federal Crop Insurance Corporation
AGR 336 Confidential Assistant to the Secretary of Agriculture
AGR 337 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 339 Confidential Assistant to the Administrator, Food and Nutrition Service
AGR 341 Confidential Assistant to the Manager
AGR 343 Confidential Assistant to the Director, Office of Public Affairs
AGR 345 Confidential Assistant to the Director of Intergovernmental Affairs
AGR 346 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 347 Confidential Assistant to the Deputy Director to the Deputy Director, Office of Public Affairs
AGR 349 Confidential Assistant to the Deputy Administrator, Food and Nutrition Service
AGR 352 Confidential Assistant to the Administrator, Food and Nutrition Service
AGR 353 Speech Writer to the Director/Press Secretary, Office of Public Affairs
AGR 356 Staff Assistant (Typing) to the Secretary of Agriculture
AGR 366 Confidential Assistant to

the Administrator, Food and Nutrition Service
AGR 368 Confidential Assistant to the Manager, Federal Crop Insurance Corporation
AGR 381 Staff Assistant to the Under Secretary for Small Community and Rural Development
AGR 385 Confidential Assistant to the Deputy Director, Office of the Executive Secretariat
AGR 388 Staff Assistant to the Chief, Soil Conservation Service
AGR 389 Confidential Assistant to the Director, Office of Public Affairs
AGR 390 Staff Assistant to the Secretary of Agriculture
AGR 391 Private Secretary to the Deputy Secretary
AGR 392 Staff Assistant to the Manager of the Federal Crop Insurance Corporation
AGR 393 Confidential Assistant to the Administrator, Rural Development Administration
AGR 395 Confidential Assistant to the Director, Office of Advocacy and Enterprise
AGR 396 Staff Assistant to the Assistant Secretary for Congressional Relations
AGR 397 Special Assistant to the Chief, Soil Conservation Service
AGR 399 Secretary (Typing) to the Assistant Secretary for Administration
AGR 400 Confidential Assistant to the Assistant Secretary for Administration
AGR 401 Staff Assistant to the Assistant Secretary for Economics
AGR 402 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 404 Confidential Assistant to the Director of Personnel
AGR 405 Staff Assistant to the Secretary of Agriculture
AGR 406 Confidential Assistant to the Chief Financial Officer
AGR 407 Confidential Assistant to the Assistant Secretary for Science and Education
AGR 408 Private Secretary to the Chief Financial Officer, Office of the Assistant Secretary for Administration
AGR 409 Confidential Assistant to the Manager, Federal Crop Insurance Corporation
AGR 411 Staff Assistant to the Assistant Secretary for Administration
AGR 412 Confidential Assistant to the Administrator, Food Safety and Inspection Service
AGR 413 Special Assistant to the Chief of the Soil Conservation Service
AGR 414 Confidential Assistant to the Secretary of Agriculture
AGR 415 Confidential Assistant to the Administrator, Rural Electrification Administration
AGR 416 Staff Assistant to the Administrator, Farmers Home Administration
AGR 417 Confidential Assistant to the Administrator, Agricultural Marketing Service
AGR 418 Staff Assistant to the Chief, Soil Conservation Service
AGR 419 Confidential Assistant to the Under Secretary for Small Community and Rural Development
AGR 420 Confidential Assistant to the Administrator

*213.3314 Department of Commerce*

COM 1 Director of Special Projects to the Chief of Staff, Office of the Secretary
COM 4 Confidential Assistant to the Secretary
COM 5 Special Assistant to the Deputy Assistant Secretary for White House Liaison
COM 19 Private Chauffeur to the Secretary
COM 20 Confidential Assistant to the Deputy Assistant Secretary for Administration
COM 70 Director of Congressional Affairs to the Assistant Secretary for Economic Development, Economic Development Administration
COM 74 Director, Office of Public Affairs to the Assistant Secretary for Economic Development
COM 152 Special Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 158 Director of Public Affairs to the Deputy Under Secretary for Travel and Tourism, U. S. Travel and Tourism Administration
COM 159 Deputy Director of Public Affairs to the Director, Office of Public Affairs
COM 161 Confidential Assistant to the Deputy Under Secretary for International Trade, International Trade Administration
COM 162 Special Assistant to the Assistant Secretary for International Economic Policy, International Trade Administration
COM 173 Special Assistant to the Deputy Assistant Secretary for Economic Development, Economic Development Administration
COM 189 Special Assistant to the Assistant Secretary for National Communications and Information Administration
COM 190 Director, Office of Congressional Affairs, to the Assistant Secretary, National Telecommunications and Information Administration
COM 191 Confidential Assistant to the General Counsel
COM 193 Special Assistant to the Deputy Assistant Secretary for Trade Development
COM 194 Special Assistant to the Under Secretary, National Oceanic and Atmospheric Administration
COM 204 Special Assistant to the Chief Scientist, National Oceanic and Atmospheric Administration
COM 217 Special Assistant to the Director, Office of Public Affairs
COM 248 Confidential Assistant to the Deputy Secretary
COM 258 Special Assistant to the Deputy Assistant Secretary for Import Administration, International Trade Administration
COM 259 Director, Office of Legislative and Intergovernmental Affairs to the Under Secretary for International Trade
COM 260 Confidential Assistant to the Director of Intergovernmental Affairs
COM 262 Special Assistant to the Assistant Secretary for Trade Development, International Trade Administration
COM 268 Executive Assistant to the Counsellor and Chief of Staff
COM 274 Confidential Assistant to the Director, Office of Business Liaison
COM 275 Confidential Assistant to the Director, Office of Business Liaison
COM 284 Confidential Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs, Office of Legislative and Intergovernmental Affairs
COM 285 Director of Intergovernmental Affairs to the Assistant Legislative and Intergovernmental Affairs
COM 287 Confidential Assistant to the Director of Legislative, Intergovernmental and Public Affairs, Bureau of Export Administration
COM 289 Confidential Assistant to the Deputy Assistant Secretary for Legislative and Intergovernmental Affairs
COM 291 Confidential Assistant to the Director of Public Affairs
COM 292 Special Assistant to the Director of Intergovernmental Affairs
COM 293 Special Assistant to the Deputy Assistant Secretary for Legislative and Intergovernmental Affairs
COM 298 Special Assistant to the Assistant Secretary for

Communications and Information, National Telecommunications and Information Administration
COM 299 Confidential Assistant to the Chief Economist, Economics and Statistics Administration
COM 303 Special Assistant to the Chief Financial Officer and Assistant Secretary for Administration
COM 304 Special Assistant to the Under Secretary for Travel and Tourism, U.S. Travel and Tourism Administration
COM 306 Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 309 Confidential Assistant to the Director, Minority Business Development Agency
COM 312 Special Assistant to the Assistant Secretary and Director General U.S. and Foreign Commerce Service
COM 314 Special Assistant to the Director, Office of the White House Liaison
COM 320 Confidential Assistant to the Director, Office of External Affairs
COM 321 Director, Office of Public Affairs to the Under Secretary for International Trade, the International Trade Administration
COM 326 Confidential Assistant to the Assistant Secretary and Director General U.S. and Foreign Commercial Service
COM 330 Special Assistant to the Assistant Secretary for Trade Development, International Trade Administration
COM 338 Press Secretary to the Director, Office of Public Affairs
COM 342 Confidential Assistant to the Director of White House Liaison
COM 344 Congressional Liaison Specialist to the Director, Office of Legislative and Intergovernmental Affairs
COM 347 Confidential Assistant to the Director, Office of Public Affairs
COM 348 Special Assistant to the Director, Office of Public Affairs
COM 350 Deputy Director, Office of Business Liaison to the Director, Office of Business Liaison
COM 354 Confidential Assistant to the Assistant Secretary for Communications and Information, National Telecommunications and Information Administration
COM 358 Special Assistant to the Assistant Secretary for Import Administration, International Trade Administration
COM 361 Special Assistant to the Director, Bureau of Census
COM 368 Congressional Affairs Specialist to the Director, Congressional Affairs Division
COM 370 Chief, Legislative and Intergovernmental Affairs to the Assistant Director for External Affairs
COM 371 Confidential Assistant to the Director, Office of External Affairs
COM 374 Congressional Liaison Specialist to the Congressional Affairs Officer
COM 377 Special Assistant to the Director, White House Liaison
COM 380 Confidential Assistant to the Deputy Assistant Secretary for Import Administration, International Trade Administration
COM 389 Confidential Assistant to the Under Secretary, the International Trade Administration
COM 390 Confidential Assistant to the Under Secretary for Economic Affairs/Administrator, Economics and Statistics Administration
COM 397 Congressional Affairs Officer to the Assistant Director for Commerce
COM 398 Special Assistant to the Deputy Assistant Secretary for Domestic Operations
COM 401 Congressional Affairs Specialist to the Chief of Congressional Affairs, National Oceanic and Atmospheric Administration
COM 410 Confidential Assistant to the Under Secretary, International Trade Administration
COM 415 Congressional Affairs Specialist to the Chief Congressional Affairs Division
COM 416 Director, Office of Consumer Affairs to the Secretary of Commerce
COM 418 Confidential Assistant to the Under Secretary for Economic Affairs
COM 419 Confidential Assistant to the Under Secretary for International Trade, International Trade Administration
COM 420 Special Assistant to the Director General of the United States and Foreign Commercial Service, International Trade Administration
COM 422 Special Assistant to the Deputy Assistant Secretary
COM 423 Director of Congressional Affairs to the Assistant Secretary and Commissioner, Patent and Trademark Office
COM 424 Congressional Liaison Specialist to the Under Secretary for International Trade, International Trade Administration
COM 432 Confidential Assistant to the Assistant to the Deputy Secretary
COM 439 Special Assistant to the General Counsel
COM 442 Director of Public Affairs to the Assistant Secretary for Communications and Information
COM 443 Director, Office of External Affairs to the Deputy Assistant Secretary
COM 446 Special Assistant to the Deputy Under Secretary for Export Administration, Bureau of Export Administration
COM 448 Confidential Assistant to the Assistant Secretary for International Economic Policy, International Trade Administration
COM 452 Confidential Assistant to the Chief of Staff
COM 459 Confidential Assistant to the Director, Office External Affairs, Office of the Secretary
COM 466 Director of Public Affairs to the Under Secretary, Technology Administration
COM 468 Confidential Assistant to the Under Secretary for Export Administration, Bureau of Export Administration
COM 469 Confidential Assistant to the Deputy Assistant Secretary for White House Liaison
COM 477 Director of Legislative and Intergovernmental Affairs to the Deputy Under Secretary for Travel and Tourism
COM 480 Director of Congressional Affairs to the Under Secretary for Technology
COM 481 Special Assistant to the Under Secretary
COM 485 Special Assistant to the Chief of Staff
COM 486 Speechwriter to the Director of Public Affairs
COM 487 Special Assistant to the Deputy Assistant Secretary for White House Liaison
COM 488 Confidential Assistant to the Deputy Director, Office of Public Affairs
COM 490 Director of Scheduling to the Director, Office of External Affairs
COM 492 Confidential Assistant to the Chief of Staff
COM 500 Special Assistant to the Under Secretary for Travel and Tourism, U.S. Travel and Tourism
COM 503 Public Affairs Specialist to the Director of Legislative, Intergovernmental and Public Affairs, Office of the Under Secretary for Export Administration
COM 508 Special Assistant to the Director, Office of Space Commerce
COM 511 Confidential Assistant to the Assistant Secretary for Oceans

and Atmosphere, National Oceanic and Atmospheric Administration
COM 519 Special Assistant to the General Counsel, National Oceanic and Atmospheric Administration
COM 527 Executive Assistant to the Secretary
COM 528 Deputy Director of Scheduling to the Director of Scheduling, Office of the Secretary
COM 530 Special Assistant to the Under Secretary for Technology, Technology Administration
COM 531 Confidential Assistant to the Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods, International Trade Administration
COM 538 Special Assistant and Chief of Protocol to the Chief of Staff
COM 539 Special Assistant to the Chief of Staff
COM 544 Special Assistant to the Under Secretary for International Trade, International Trade Administration
COM 545 Director, Secretariat Staff to the Deputy Executive Secretary
COM 547 Confidential Assistant to the Director of Public Affairs, U.S. Travel and Tourism Administration
COM 549 Confidential Assistant to the Deputy Under Secretary Economic Affairs
COM 550 Confidential Assistant to the Assistant Secretary, Legislative and Interagency Affairs
COM 551 Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 553 Confidential Assistant to the Assistant Secretary for Export Administration
COM 556 Confidential Assistant to the Assistant to the Deputy Secretary
COM 557 Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 558 Confidential Assistant to the Director of Scheduling
COM 560 Special Assistant to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
COM 561 Confidential Assistant to the Assistant Secretary and Commissioner, Patent and Trademark Office
COM 562 Special Assistant to the Deputy Executive Secretary
COM 563 Director of Advance to the Director, Office of External Affairs
COM 564 Confidential Assistant to the Director, Office of External Affairs
COM 566 Congressional Liaison Specialist to the Chief, Legislative and Intergovernmental Affairs Division, Minority Business Development Agency
COM 567 Confidential Assistant to the Deputy Director, Minority Business Development Agency
COM 568 Special Assistant to the Deputy Assistant Secretary for Africa, Near East and South Asia
COM 569 Confidential Assistant to the Director, Office of Public Affairs
COM 570 Special Assistant to the Counsellor to the Counsellor to the Secretary
COM 571 Special Assistant to the Deputy Assistant Secretary for Service Industries and Finance
COM 573 Special Assistant to the Assistant Secretary and Director General, U.S. and Foreign Commercial Service
COM 574 Confidential Assistant to the Director, Office of Business Liaison
COM 575 Confidential Assistant to the Assistant Secretary for Import Administration, International Trade Administration
COM 576 Confidential Assistant to the Assistant to Secretary and Director Office of Policy and Strategic Planning
COM 577 Director of Media Relations to the Assistant Secretary and Commissioner, Patent and Trademark Office
COM 578 Confidential Assistant to the Director, of Legislative, Intergovernmental and Public Affairs, Bureau of Export Administration
COM 579 Director of Legislative, Intergovernmental and Public Affairs to the Under Secretary, Bureau of Export Administration
COM 580 Confidential Assistant to the Deputy Assistant Secretary for Economic Development
COM 581 Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 583 Special Assistant to the Counsellor to the Secretary of Commerce
COM 584 Confidential Assistant to the Deputy Director, Minority Business Development Agency
COM 585 Chief, Intergovernmental Affairs to the Director, Office of Sustainable Development and Intergovernmental Affairs
COM 586 Confidential Assistant to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
COM 587 Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 588 Congressional Affairs Specialist to the Director, Office of Legislative Affairs, National Oceanic and Atmospheric Administration
COM 589 Special Assistant to the Director, Office of Public and Constituent Affairs, National Oceanic and Atmospheric Administration
COM 590 Confidential Assistant to the Deputy Executive Secretary
COM 591 Special Assistant to the Assistant Secretary for Oceans and Atmosphere, National Oceanic and Atmospheric Administration
COM 592 Special Assistant to the Deputy Assistant Secretary for Technology and Aerospace Industries, International Trade Administration
COM 593 Special Assistant to the Director, Executive Secretariat
COM 594 Deputy Director of Advance to the Deputy Director of External Affairs and Director of Advance
COM 595 Confidential Assistant to the Director, Office Space Commerce
COM 596 Confidential Assistant to the Deputy Director Office of Public Affairs
COM 598 Special Assistant to the Deputy General Counsel
COM 599 Confidential Assistant to the Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration
COM 600 Intergovernmental Affairs Specialist to the Chief of Intergovernmental Affairs, Office of Sustainable Development and Intergovernmental Affairs, NOAA
COM 601 Director, Office of Public Affairs to the Under Secretary for Oceans and Atmosphere, National Oceanic and Atmospheric Administration
COM 602 Financial Officer to the Director, Minority Business Development Agency
COM 604 Assistant Director for Communications to the Director, Bureau of the Census
COM 605 Special Assistant to the Director International Technology, Policy and Programs, Technology Administration
COM 606 Speechwriter to the Director, Office of Public Affairs
COM 607 Intergovernmental Affairs Specialist to the Chief Intergovernmental Affairs, Office of

Sustainable Development and Intergovernmental Affairs (NOAA)
COM 608 Confidential Assistant to the Director, Office of Public Affairs, International Trade Administration
COM 609 Confidential Assistant to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
COM 610 Special Assistant to the Deputy Under Secretary for Policy Development, International Trade Administration
COM 611 Special Assistant to the Deputy Under Secretary for Policy Development, International Trade Administration
COM 612 Special Assistant to the Deputy Assistant Secretary for Service Industries and Finance, International Trade Administration
COM 613 Confidential Assistant to the Assistant to the Deputy Secretary
COM 615 Director of the Advocacy Center to the Deputy Assistant Secretary for Trade Development, International Trade Administration
COM 616 Confidential Assistant to the Assistant Secretary for Export Administration, Bureau of Export Administration
COM 617 Director, Office of Energy, Infrastructure and Machinery to the Deputy Assistant Secretary for Basic Industries
COM 618 Confidential Assistant to the Director, Secretariat Staff, Office of the Executive Secretariat
COM 619 Confidential Assistant to the Deputy Assistant Secretary for Economic Development
COM 620 Confidential Assistant to the Director, Office of Public Affairs

*213.3315 Department of Labor*

LAB 3 Special Assistant to the Deputy Secretary of Labor
LAB 17 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 25 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 35 Special Assistant to the Director of the Women's Bureau
LAB 41 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 43 Special Assistant to the Assistant Secretary for Occupational Safety and Health
LAB 44 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 55 Legislative Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 62 Special Assistant to the Assistant Secretary, Occupational Safety and Health Administration
LAB 66 Executive Assistant to the Deputy Assistant Secretary, Office of Federal Contracts Compliance Programs, Employment Standards Administration
LAB 76 Special Assistant to the Director of the Women's Bureau
LAB 79 Special Assistant to the Deputy Assistant Secretary for Program Economics, Research and Technical Support, Office of the Assistant Secretary for Policy
LAB 84 Confidential Assistant to the Assistant Secretary for the American Workplace
LAB 87 Staff Assistant to the Assistant Secretary for Employment Standards, Employment Standards Administration
LAB 89 Special Assistant to the Assistant Secretary for the American Workplace
LAB 92 Special Assistant to the Secretary of Labor
LAB 93 Special Assistant to the Chief of Staff to the Chief of Staff
LAB 94 Special Assistant to the Chief Economist
LAB 96 Chief of Staff to the Assistant Secretary for Employment and Training
LAB 99 Special Assistant to the Assistant Secretary of Labor, Employment and Training Administration
LAB 101 Special Assistant to the Administrator, Wage and Hour Division, Employment Standards Administration
LAB 103 Secretary's Representative, Boston, MA, to the Director, Office of Intergovernmental Affairs
LAB 104 Secretary's Representative to the Associate Director, Intergovernmental Affairs
LAB 105 Secretary's Representative, Philadelphia, PA, to the Associate Director, Office of Congressional and Intergovernmental Affairs
LAB 106 Secretary's Representative, Atlanta, GA, to the Director, Office of Intergovernmental Affairs
LAB 111 Secretary's Representative (San Francisco, CA) to the Director, Office of Intergovernmental Affairs
LAB 112 Secretary's Representative, Seattle, WA, to the Director, Office of Intergovernmental Affairs
LAB 129 Special Assistant to the Assistant Secretary for Occupational Safety and Health, Occupational Safety And Health Administration
LAB 130 Special Assistant to the Executive Secretary
LAB 132 Associate Director for Congressional Affairs to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 133 Special Assistant to the Director, Women's Bureau
LAB 137 Special Assistant to the Assistant Secretary for Public Affairs
LAB 145 Intergovernmental Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 147 Attorney-Advisor (Labor) to the Solicitor of Labor
LAB 151 Special Assistant to the Director, Women's Bureau
LAB 154 Associate Director for Congressional Affairs to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 159 Special Assistant to the Deputy Under Secretary for International Affairs, Bureau of International Labor Affairs
LAB 160 Special Assistant to the Secretary of Labor
LAB 161 Special Assistant to the Chief Economist
LAB 163 Special Assistant to the Assistant Secretary for Occupational Safety and Health Administration
LAB 169 Special Assistant to the Assistant Secretary for Policy
LAB 171 Confidential Assistant to the Secretary of Labor
LAB 172 Special Assistant to the Deputy Secretary of Labor
LAB 174 Special Assistant to the Deputy Secretary to the Deputy Secretary of Labor
LAB 175 Special Assistant to the Deputy Secretary to the Deputy Secretary
LAB 180 Associate Director to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 181 Special Assistant to the Deputy Under Secretary for International Affairs
LAB 182 Special Assistant to the Assistant Secretary for the American Workplace
LAB 186 Public Affairs Specialist to the Director, Women's Bureau
LAB 190 Special Assistant to the

Assistant Secretary for Policy
LAB 196 Executive Assistant to the Assistant Secretary for Veterans' Employment and Training
LAB 204 Special Assistant to the Assistant Secretary for Veterans' Employment and Training
LAB 205 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 208 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 210 Special Assistant to the Assistant Secretary for Policy
LAB 211 Special Assistant to the Executive Secretary
LAB 212 Special Assistant to the Chief of Staff
LAB 215 Special Assistant to the Director of the Women's Bureau
LAB 217 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 220 Special Assistant to the Assistant Secretary for Public Affairs
LAB 221 Special Assistant to the Assistant Secretary for Public Affairs
LAB 225 Special Assistant to the Assistant Secretary, Pension and Welfare Benefits Administration
LAB 228 Special Assistant to the Assistant Secretary for Occupational Safety and Health Administration
LAB 229 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 230 Special Assistant to the Assistant Secretary for Public Affairs
LAB 231 Staff Assistant to the Chief of Staff
LAB 234 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 235 Associate Director for Congressional Affairs to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 239 Special Assistant to the Chief of Staff
LAB 240 Deputy Secretary's Representative to the Secretary's Representative, Boston, MA
LAB 241 Special Assistant to the Assistant Secretary for Public Affairs
LAB 243 Intergovernmental Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 252 Special Assistant to the Secretary Chief of Staff
LAB 253 Staff Assistant to the Chief of Staff
LAB 254 Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 255 Special Assistant to the Assistant Secretary for Public Affairs
LAB 260 Special Assistant to the Chief of Staff
LAB 262 Special Assistant to the Assistant Secretary, Employment Standards Administration
LAB 263 Special Assistant to the Administrator, Wage and Hour Division
LAB 264 Staff Assistant to the Administrator, Wage and Hour Division
LAB 266 Staff Assistant to the Deputy Under Secretary for International Labor Affairs
LAB 269 Intergovernmental Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs

*213.3316 Department of Health and Human Services*

HHS 2 Special Assistant to the Chief of Staff
HHS 14 Special Assistant to the Executive Secretary
HHS 17 Director, Office of Scheduling to the Chief of Staff, Office of the Secretary
HHS 31 Special Assistant to the Secretary of Health and Human Services
HHS 127 Special Assistant to the Director, Office for Civil Rights
HHS 273 Special Assistant to the Deputy Assistant Secretary for Legislation (Human Services)
HHS 292 Confidential Assistant to the Deputy Assistant Secretary for Planning and Evaluation
HHS 293 Special Assistant to the Commissioner, Administration for Children, Youth and Families
HHS 315 Special Assistant to the Director of Intergovernmental Affairs
HHS 331 Special Assistant to the Administrator, Health Care Financing Administration
HHS 340 Executive Assistant to the Assistant Secretary for Legislation
HHS 344 Congressional Liaison Specialist to the Deputy Assistant for Legislation (Congressional Liaison)
HHS 359 Congressional Liaison Specialist to the Deputy Assistant Secretary for Congressional Liaison
HHS 361 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison)
HHS 373 Confidential Assistant to the Executive Secretary
HHS 374 Confidential Assistant to the Executive Secretary
HHS 392 Confidential Assistant to the Assistant Secretary for Planning and Evaluation
HHS 395 Special Assistant to the Director, Office of Community Services, Administration for Children and Families.
HHS 399 Special Assistant to the Assistant Secretary for Children and Families
HHS 419 Special Assistant to the Secretary of Health and Human Services
HHS 427 Executive Director, President's Committee on Mental Retardation to the Assistant Secretary for the Administration for Children and Families
HHS 446 Special Assistant to the Chief of Staff
HHS 451 Confidential Staff Assistant to the Director, Office of Community Services, Administration for Children and Families
HHS 457 Special Assistant to the Deputy Secretary
HHS 475 Special Assistant to the Deputy Assistant Secretary for Policy and External Affairs, Administration for Children and Families
HHS 489 Special Assistant to the Assistant Secretary for Children and Families
HHS 500 Director, Office of Public Liaison to the Associate Administrator for Communications, Health Care Financing Administration
HHS 510 Deputy Director, Office of Public Liaison to the Director, Office of Public Liaison, Health Care Financing Administration
HHS 513 Confidential Assistant to the Administrator, Health Care Financing Administration
HHS 522 Special Assistant to the Director, Office of Public Affairs, Administration for Children and Families
HHS 526 Confidential Staff Assistant to the Administrator, Health Care Financing Administration
HHS 533 Executive Assistant to the Commissioner, Social Security Administration
HHS 539 Special Assistant to the General Counsel

HHS 545 Special Assistant to the Associate Commissioner for Public Affairs.
HHS 549 Speechwriter to the Director of Speechwriting
HHS 551 Special Assistant for Legislative Affairs to the Associate Commissioner for Legislative Affairs, Food and Drug Administration
HHS 556 Director of Speechwriting to the Deputy Assistant Secretary for Public Affairs (Media)
HHS 558 Executive Assistant to the Assistant Secretary for Public Affairs
HHS 570 Confidential Assistant (Advance) to the Director of Advance, Office of the Secretary
HHS 585 Special Assistant (Speechwriting) to the Director of Speechwriting
HHS 589 Speechwriter to the Deputy Assistant Secretary for Public Affairs (Media)
HHS 594 Confidential Assistant (Advance) to the Director, Office of Scheduling
HHS 595 Special Assistant to the Director, Office of Public Affairs, Administration for Children and Families
HHS 606 Special Assistant for Policy to the Deputy Commissioner for Policy
HHS 609 Special Initiatives Coordinator to the Assistant Secretary for Public Affairs
HHS 610 Executive Assistant to the Deputy Assistant Secretary for Aging (Operations)
HHS 611 Confidential Assistant to the Assistant Secretary for Planning and Evaluation
HHS 612 Special Assistant to the Deputy Assistant Secretary for Planning and Evaluation/Health Policy
HHS 613 Executive Assistant to the Assistant Secretary for Planning and Evaluation
HHS 614 Confidential Assistant to the Assistant Secretary for Aging
HHS 615 Special Assistant to the Director of Communications
HHS 616 Special Assistant to the Principal Deputy Assistant Secretary for Planning and Evaluation
HHS 617 Confidential Assistant to the Special Assistant to the Secretary of Health and Human Services
HHS 618 Special Assistant to the Principal Deputy Assistant Secretary for Planning and Evaluation
HHS 620 Special Assistant to the Deputy Assistant Secretary for Planning and Evaluation, Office of Family, Community and Long-Term Care Policy
HHS 622 Special Assistant to the Director, Office of Public Liaison, Health Care Financing Administration
HHS 623 Executive Assistant to the Deputy Assistant Secretary for Health, Public Health Service
HHS 624 Special Assistant to the Commissioner, Administration for Children and Families
HHS 625 Special Assistant to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy)
HHS 626 Confidential Assistant to the Principal Deputy Assistant Secretary for Planning and Evaluation
HHS 627 Confidential Assistant to the Deputy Assistant Secretary for Family, Community and Long-Term Care Policy
HHS 628 Special Assistant to the Administrator, Substance Abuse and Mental Health Services Administration
HHS 629 Special Assistant for Media Affairs, Office of National Aids Policy, to the Assistant Secretary for Health
HHS 630 Special Assistant to the Deputy Assistant Secretary for Health (Communications)
HHS 631 Special Assistant to the Assistant Secretary, Administration for Children and Families
HHS 632 Special Outreach Coordinator to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy)
HHS 633 Special Assistant to the Director, Office of Community Services, Administration for Children and Families

*213.3317 Department of Education*

EDU 1 Special Assistant to the Assistant Secretary for Intergovernmental and Interagency Affairs
EDU 3 Confidential Assistant to the Assistant Secretary, Office of Human Resources and Administration
EDU 4 Deputy Secretary's Regional Representative, Region IV (Atlanta, GA) to the Secretary's Regional Representative, Region IV, Office of Intergovernmental and Interagency Affairs
EDU 7 Special Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 8 Confidential Assistant to the Director, Scheduling and Briefing Staff
EDU 10 Confidential Assistant to the Chief of Staff, Office of the Secretary
EDU 11 Confidential Assistant to the Chief of Staff
EDU 12 Confidential Assistant to the Chief of Staff
EDU 13 Special Assistant to the Assistant Secretary, Office of Human Resources and Administration
EDU 16 Confidential Assistant to the Director, Community Development Services Staff, Community Reform Initiatives Services
EDU 20 Steward to the Chief of Staff
EDU 21 Confidential Assistant to the Deputy Secretary
EDU 23 Confidential Assistant to the Assistant Secretary, Office of Human Resources and Administration
EDU 25 Confidential Assistant to the Director, Schedueduling and Briefing Staff
EDU 26 Confidential Assistant to the Director, Intergovernmental and Constituent Services
EDU 27 Confidential Assistant to the Assistant Secretary, Office of Civil Rights
EDU 28 Confidential Assistant to the Deputy Secretary of Education
EDU 29 Special Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 30 Director, Scheduling and Briefing Staff to the Chief of Staff, Office of the Secretary
EDU 31 Special Assistant to the Secretary of Education
EDU 33 Special Assistant to the Chief of Staff
EDU 35 Special Assistant to the Director, Policy Development Staff
EDU 38 Director, Community Reform Initiatives Services to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs
EDU 40 Confidential Assistant to the Chief of Staff
EDU 42 Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education
EDU 44 Special Assistant to the Assistant Secretary, Office of Educational Research and Improvement
EDU 47 Confidential Assistant to the Chief of Staff
EDU 49 Confidential Assistant to the Chief of Staff
EDU 50 Special Assistant to the Director, Office of Public Affairs
EDU 53 Special Assistant to the Assistant Secretary, Office of Policy

and Planning
EDU 54 Confidential Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 55 Special Assistant (Special Advisor, HBCU) to the Director, Historically Black Colleges and Universities Staff
EDU 56 Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 57 Special Assistant to the Director, Office of Bilingual Education and Minority Languages Affairs
EDU 62 Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 67 Special Assistant to the Secretary of Education
EDU 69 Confidential Assistant to the Director, Office of Public Affairs
EDU 70 Confidential Assistant to the Director, Intradepartmental Services Staff, Federal Interagency and International Services
EDU 71 Executive Assistant to the Deputy Secretary of Education
EDU 72 Special Assistant to the Assistant Secretary, Office of Special Education and Rehabilitive Services
EDU 74 Chief of Staff to the Deputy Secretary
EDU 76 Special Assistant to the Chief of Staff
EDU 78 Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 79 Confidential Assistant to the Director, Office of Public Affairs
EDU 80 Director, Corporate Liaison Staff, to the Deputy Secretary of Education
EDU 81 Special Assistant to the Secretary of Education
EDU 82 Special Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 84 Confidential Assistant to the Director, Corporate Liaison Staff, Office of the Deputy Secretary
EDU 85 Special Assistant to the Deputy Assistant Secretary, Office of Student Financial Assistance Programs
EDU 87 Special Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 91 Special Assistant to the Director, Office of Public Affairs
EDU 94 Confidential Assistant to the Assistant Secretary, Office of Vocational and Adult Education
EDU 95 Special Assistant to the Assistant Secretary, Office for Civil Rights
EDU 97 Special Assistant to the Under Secretary of Education
EDU 98 Special Assistant to the Assistant Secretary for Special Education and Rehabilitation Services
EDU 99 Executive Assistant for Policy and Operations to the Assistant Secretary, Office of Civil Rights
EDU 101 Deputy Secretary's Regional Representative to the Secretary's Regional Representative, Region I, Boston, MA
EDU 103 Secretary's Regional Representative, Region VIII-Denver, CO, to the Assistant Secretary for Intergovernmental and Interagency Affairs
EDU 104 Special Assistant to the Director, Community Development Services Staff, Reform Initiatives Services
EDU 106 Special Assistant to the Assistant Secretary, Office of Human Resources Division
EDU 107 Secretary's Regional Representative, Region V, Chicago, IL, to the Director, State, Local and Regional Services Staff, Office of Intergovernmental and Interagency Affairs
EDU 108 Special Assistant to the Director, Office of Public Affairs
EDU 109 Secretary's Regional Representative, Region VII, Kansas City, MO, to the Director, of the State, Local and Regional Services Staff, Office of Intergovernmental and Interagency Affairs
EDU 110 Secretary's Regional Representative-Region II New York, NY, to the Director of State, Local and Regional Services Staff
EDU 113 Special Assistant to the Assistant Secretary, Office of Educational Research and Improvement
EDU 117 Director, Historically Black Colleges to the Assistant Secretary, Office of Postsecondary Education
EDU 118 Confidential Assistant to the Assistant Secretary, Office of Educational Research and Improvement
EDU 119 Secretary's Regional Representative to the Assistant Secretary for Intergovernmental and Interagency Affairs
EDU 120 Director, Congressional Affairs Staff to the Assistant Secretary for Legislative and Congressional Affairs
EDU 121 Special Assistant to the Assistant Secretary, Office of Civil Rights
EDU 123 Secretary's Regional Representatives, Region VI Dallas, TX, to the Assistant Secretary for Intergovernmental and Interagency Affairs
EDU 124 Liaison for Community and Junior Colleges to the Assistant Secretary, Office of Vocational and Adult Education
EDU 125 Deputy Director, Office of Bilingual Education and Minority Languages Affairs to the Director
EDU 126 Confidential Assistant to the Special Assistant, Office of the Secretary
EDU 127 Secretary's Regional Representative Region I Boston, MA, to the Assistant Secretary for Intergovernmental and Interagency Affairs
EDU 128 Confidential Assistant to the Director, Intergovernmental and Constituent Services
EDU 129 Special Assistant to the Assistant Secretary for Vocational and Adult Education
EDU 130 Confidential Assistant to the Director, Executive Secretariat
EDU 131 Secretary's Regional Representative, Region IX, San Francisco, CA, to the Director, State, Local and Regional Services Staff, Office of Intergovernmental and Interagency Affairs
EDU 132 Confidential Assistant to the Chief of Staff, Office of the Deputy Secretary of Education
EDU 133 Special Assistant to the Under Secretary
EDU 134 Confidential Assistant to the Assistant Secretary, Office of Legislative and Congressional Affairs
EDU 135 Confidential Assistant to the Chief of Staff
EDU 136 Confidential Assistant to the Director, Interagency Services Staff, Federal Interagency and International Services
EDU 137 Special Assistant to the Under Secretary
EDU 138 Special Assistant to the Under Secretary
EDU 139 Confidential Assistant to the General Counsel
EDU 141 Special Assistant to the Assistant Secretary, Office of Civil Rights
EDU 143 Confidential Assistant to the Director, Information Resources Services Center, Community Reform Initiatives Services
EDU 157 Confidential Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 159 Confidential Assistant to the Deputy Assistant Secretary, Student Financial Assistance Programs, Office of Postsecondary Education.

EDU 161 Confidential Assistant to the Counselor to the Secretary
EDU 169 Confidential Assistant to the Director, Community Development Field Services Staff, Community Reform Initiatives Services
EDU 174 Confidential Assistant to the Chief of Staff, Office of the Deputy Secretary
EDU 175 Confidential Assistant to the Chief of Staff, Office of the Secretary of Education
EDU 178 Confidential Assistant to the Chief of Staff
EDU 202 Confidential Assistant to the Director, Community Reform Initiatives Services
EDU 340 Deputy Secretary's Regional Representative, Region II, New York, NY, to the Secretary's Regional Representative
EDU 347 Secretary's Regional Representative, Region X, Seattle, WA, to the Director of the State, Local and Regional Services Staff, Office of Intergovernmental and Interagency Affairs
EDU 350 Deputy Secretary's Regional Representative to the Secretary's Regional Representative, Region IX, San Francisco, CA
EDU 356 Deputy Director, Office of Public Affairs to the Director Office of Public Affairs
EDU 404 Secretary's Regional Representative, Region IV, Atlanta, GA, to the Director, State, Local and Regional Services Staff, Office of Intergovernmental and Interagency Affairs
EDU 427 Confidential Assistant to the Assistant Secretary for Legislation and Congressional Affairs
EDU 428 Confidential Assistant to the Chief of Staff
EDU 429 Confidential Assistant to the Director, Federal Interagency and International Services
EDU 430 Special Assistant to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs
EDU 431 Special Assistant to the Assistant Secretary, Office of Legislation and Congressional Affairs
EDU 432 Confidential Assistant to the Director, Community Field Services Staff, Community Reform Initiatives Services
EDU 433 Confidential Assistant to the Director, Intergovernmental and Constituent Service, Office of Intergovernmental and Interagency Affairs
EDU 434 Confidential Assistant to the Director, State, Local and Regional Services Staff, Intergovernmental and Constituent Services
EDU 435 Confidential Assistant to the Chief of Staff, Office of the Secretary
EDU 436 Special Assistant to the Director, Policy Development Staff
EDU 437 Special Assistant to the Deputy Secretary
EDU 438 Confidential Assistant to the Deputy Assistant Secretary
EDU 439 Special Assistant to the Deputy Chief of Staff

*213.3318 Environmental Protection Agency*

EPA 153 Confidential Assistant to the Administrator
EPA 155 Congressional Liaison Specialist to the Associate Administrator
EPA 160 Director, Congressional Liaison Division to the Associate Administrator for Congressional and Legislative Affairs
EPA 161 Deputy Director to the Director, Congressional Liaison Division
EPA 163 Communications Specialist to the Associate Administrator for Communications, Education and Public Affairs
EPA 165 Congressional Liaison Specialist to the Associate Administrator
EPA 167 Director, Public Liaison Division to the Associate Administrator for Communications, Education and Public Affairs
EPA 168 Program Advisor to the Assistant Administrator, Office of Air and Radiation
EPA 170 Staff Assistant (Management) to the Assistant Administrator for Office of Policy, Planning and Evaluation
EPA 171 Congressional Liaison Specialist to the Director, Congressional Liaison Division
EPA 172 Special Assistant to the Assistant Administrator, Office of Solid Waste and Emergency Response
EPA 173 Special Assistant to the Assistant Administrator for Solid Waste and Emergency Response
EPA 174 Special Assistant to the Chief of Staff
EPA 175 Director, Office of the Executive Secretariat to the Chief of Staff, Office of the Administrator
EPA 176 Staff Assistant to the Associate Administrator, Office of Communications, Education and Public Affairs
EPA 177 Senior Policy Advisor to the Assistant Administrator, Office of Air and Radiation
EPA 178 Policy Advisor to the Assistant Administrator, Office of Air and Radiation
EPA 179 Advanced Program Advisor to the Assistant Administrator for Enforcement
EPA 180 Special Assistant to the Associate Administrator for Regional Operations and State/Local Relations
EPA 181 Special Counsel to Deputy Administrator of the Environmental Protection Agency
EPA 182 Legal Advisor to the Assistant Administrator for Prevention, Pesticides and Toxic Substances
EPA 183 Confidential Assistant to the Chief of Staff
EPA 184 Chief, Policy Counsel to the Assistant Administrator, Office of Water
EPA 185 Special Assistant to the Associate Administrator for Regional Operations and State/Local Relations
EPA 186 Special Assistant to the Chief of Staff
EPA 187 Counsel to the Assistant Administrator for Air and Radiation
EPA 188 Legislative Coordinator to the Assistant Administrator, Office of Solid Waste and Emergency Response
EPA 189 Director, Policy Development to the Assistant Administrator
EPA 190 Special Assistant to the General Counsel
EPA 191 Special Assistant to the Regional Administrator, Region III, Philadelphia, PA
EPA 192 Director, State/Local Relations Division to the Associate Administrator, for Regional Operations and State/Local Relations

*213.3319 Administrative Conference of the United States*

ACUS 4 Confidential Assistant to the Chairman

*213.3322 Interstate Commerce Commission*

ICC 6 Confidential Assistant to the Commissioner
ICC 60 Staff Advisor (Economic) to a Commissioner
ICC 67 Special Assistant to the Director, Office of Congressional and Legislative Affairs
ICC 68 Confidential Assistant to the Chairman of the Interstate Commerce Commission
ICC 69 Congressional Affairs Advisor to the Chairman
ICC 70 Confidential Assistant to a Commissioner

*213.3323 Federal Communications Commission*

FCC 11 Special Assistant to the Director, Office of Public Affairs
FCC 23 Special Assistant to the Director, Office of Legislative Affairs
FCC 24 Research Assistant to the Director, Office of Public Affairs
FCC 25 Special Assistant to the Deputy Chief, Cable Services Bureau

*213.3325 United States Tax Court*

TCOUS 40 Secretary and Confidential Assistant to a Judge
TCOUS 41 Secretary and Confidential Assistant to a Judge
TCOUS 42 Secretary and Confidential Assistant to a Judge
TCOUS 43 Secretary and Confidential Assistant to a Judge
TCOUS 44 Secretary and Confidential Assistant to a Judge
TCOUS 45 Secretary and Confidential Assistant to a Judge
TCOUS 46 Secretary and Confidential Assistant to a Judge
TCOUS 47 Secretary and Confidential Assistant to a Judge
TCOUS 48 Secretary and Confidential Assistant to a Judge
TCOUS 49 Secretary and Confidential Assistant to a Judge
TCOUS 50 Secretary and Confidential Assistant to a Judge
TCOUS 51 Secretary and Confidential Assistant to a Judge
TCOUS 53 Secretary and Confidential Assistant to a Judge
TCOUS 54 Secretary and Confidential Assistant to a Judge
TCOUS 55 Secretary and Confidential Assistant to a Judge
TCOUS 56 Secretary and Confidential Assistant to a Judge
TCOUS 57 Secretary and Confidential Assistant to a Judge
TCOUS 58 Secretary and Confidential Assistant to a Judge
TCOUS 59 Secretary and Confidential Assistant to a Judge
TCOUS 61 Secretary and Confidential Assistant to a Judge
TCOUS 62 Secretary and Confidential Assistant to a Judge
TCOUS 63 Secretary and Confidential Assistant to a Judge
TCOUS 64 Secretary and Confidential Assistant to a Judge
TCOUS 65 Secretary and Confidential Assistant to a Judge
TCOUS 66 Trial Clerk to a Judge
TCOUS 67 Trial Clerk to a Judge
TCOUS 68 Trial Clerk to a Judge
TCOUS 69 Trial Clerk to a Judge
TCOUS 71 Trial Clerk to a Judge
TCOUS 72 Trial Clerk to a Judge
TCOUS 73 Trial Clerk to a Judge
TCOUS 74 Trial Clerk to a Judge
TCOUS 76 Trial Clerk to a Judge
TCOUS 78 Trial Clerk to a Judge
TCOUS 79 Trial Clerk to a Judge
TCOUS 81 Secretary (Confidential Assistant) to a Judge
TCOUS 82 Secretary (Confidential Assistant) to a Judge

*213.3327 Department of Veterans Affairs*

VA 72 Special Assistant to the Assistant Secretary for Congressional Affairs
VA 73 Special Assistant to the Secretary of Veterans Affairs
VA 74 Special Assistant to the Secretary of Veterans Affairs
VA 76 Special Assistant to the Assistant Secretary for Congressional Affairs
VA 77 Special Assistant to the Director, National Cemetery System
VA 78 Special Assistant to the Assistant Secretary for Finance and Information Resources Management
VA 79 Special Assistant to the Assistant Secretary for Human Resources and Administration
VA 80 Special Assistant to the Deputy Secretary of Veterans Affairs
VA 81 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs
VA 82 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs
VA 83 Special Assistant to the Assistant Secretary for Policy and Planning
VA 84 Special Assistant to the Assistant Secretary for Public and Congressional Affairs
VA 85 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs.

*213.3328 United States Information Agency*

USIA 14 Special Assistant to the Associate Director, Bureau of Policy and Programs
USIA 22 Supervisory Public Affairs Specialist (New York, N.Y.) to the Associate Director for Policy and Programs
USIA 26 Special Assistant to the Associate Director, Bureau of Policy and Programs
USIA 26 Special Assistant to the Associate Director, Bureau of Policy and Programs
USIA 33 Staff Assistant to the Director, Office of Public Liaison
USIA 37 Special Assistant to the Director, Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs
USIA 45 Director, Office of Program Coordination and Development, to the Associate Director, Bureau of Policy and Programs
USIA 54 Special Assistant to the Associate Director, Bureau of Policy
USIA 67 Chief, Voluntary Visitors Division to the Director, Office of International Visitors, Bureau of Educational and Cultural Affairs
USIA 80 Special Advisor to the Director, Office of Public Liaison
USIA 83 Special Assistant to the Director, Office of Research
USIA 89 Staff Director, Advisory Board for Cuba Broadcasting to the Chairman of the Advisory Board
USIA 93 Program Officer to the Deputy Director, Office of European Affairs
USIA 99 White House Liaison to the Chief of Staff, Office of the Director
USIA 101 Public Affairs Specialist to the Director, New York Foreign Press Center, New York, NY
USIA 112 Special Assistant to the Director, Office of Program Coordination and Development, Bureau of Policy and Programs
USIA 116 Special Projects Officer to the Director, Office of Special Projects
USIA 118 Senior Advisor to the Director, United States Information Agency
USIA 124 Special Assistant to the Associate Director for Programs, Bureau of Policy and Programs
USIA 125 Special Assistant to the Director, Office of Academic Affairs, Bureau of Educational and Cultural Affairs
USIA 126 Special Assistant to the Director, Office of Congressional and Intergovernmental Affairs
USIA 127 Writer to the Director, Office of Policy
USIA 128 Senior Advisor to the Director, Bureau of Educational and Cultural Affairs
USIA 129 Special Assistant to the Director of Worldnet Television and Film Service, Bureau of Broadcasting
USIA 130 Confidential Assistant to the Director, Voice of America, Bureau of Broadcasting
USIA 131 Director, Policy and Planning Unit to the Deputy Director, United States Information Agency
USIA 132 Director, Office of International Visitors, to the Associate Director of the Bureau of Educational and Cultural Affairs

*213.3330 Securities and Exchange Commission*

SEC 3 Confidential Assistant to the Commissioner
SEC 4 Confidential Assistant to a Commissioner
SEC 5 Confidential Assistant to a Commissioner
SEC 6 Confidential Assistant to a Commissioner
SEC 8 Secretary (OA) to the Chief Accountant
SEC 11 Confidential Assistant to the Chairman
SEC 12 Supervisory Public Affairs Specialist to the Chairman
SEC 15 Secretary to the Director, Division of Market Regulations
SEC 16 Secretary to the Director
SEC 18 Secretary to the Director, Investment Management
SEC 19 Secretary (OA) to the Director
SEC 24 Secretary to the Chief Economist
SEC 27 Secretary (Typing) to the Director
SEC 28 Confidential Assistant to the Chairman of the Securities and Exchange Commission
SEC 29 Secretary to the Deputy Director of Market Regulation
SEC 31 Public Affairs Specialist to the Director of Public Affairs, Office of Public Affairs, Policy Evaluation and Research
SEC 32 Confidential Assistant to the Director of Public Affairs
SEC 33 Confidential Assistant to the Regional Administrator
SEC 34 Secretary to the Executive Director
SEC 35 Secretary to the General Counsel
SEC 36 Confidential Assistant to the Chairman
SEC 37 Writer-Editor to the Chairman

*213.3331 Department of Energy*

DOE 77 Staff Assistant to the Secretary of Energy
DOE 571 Intergovernmental Affairs Specialist to the Deputy Assistant Secretary for Intergovernmental Affairs
DOE 573 Staff Assistant to the Director, Office of Public Affairs
DOE 574 Confidential Assistant to the Chief of Staff
DOE 575 Special Assistant to the Chief of Staff
DOE 576 Director, Office of Scheduling and Logistics to the Secretary of Energy
DOE 577 Staff Assistant to the Assistant Secretary for Policy, Planning and Program Evaluation
DOE 580 Staff Assistant to the Director, Office of Intelligence and National Security
DOE 581 Staff Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 582 Special Assistant to the Deputy Secretary for Scheduling and Logistics
DOE 586 Senior Policy Specialist to the Director, Office of Civilian Radioactive Waste Management
DOE 587 Staff Assistant to the Assistant Secretary for Environmental Safety and Health
DOE 589 Congressional Liaison Officer to the Deputy Assistant Secretary for House Liaison
DOE 590 Staff Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 591 Staff Assistant to the Deputy Assistant Secretary for Building Technologies
DOE 592 Staff Assistant to the Deputy Assistant Secretary for Gas and Technology
DOE 593 Special Assistant to the Assistant Secretary for Policy Planning and Program Evaluation
DOE 594 Staff Assistant to the Assistant Secretary for Congressional, Intergovernmental, and International Affairs
DOE 595 Special Assistant to the Deputy Secretary of Energy
DOE 596 Legislative Affairs Specialist to the Assistant Secretary for Congressional, Intergovernmental and International Affairs
DOE 597 Special Assistant to the General Counsel
DOE 598 Staff Assistant to the Deputy Secretary of Energy
DOE 599 Staff Assistant to the Director, Office of Civilian Radioactive Waste Management
DOE 600 Special Assistant to the Principal Deputy Assistant Secretary for Policy, Planning and Program Evaluation
DOE 601 Program Information Coordinator to the Director, Office of Strategic Planning
DOE 602 Technology Transfer Specialist to the Director, Office of Technology Utilization
DOE 603 Special Assistant to the Director, Office of Strategic Planning and Analysis
DOE 604 Special Assistant to the Assistant Secretary for Policy, Planning and Program Evaluation
DOE 605 Special Assistant to the Principal Deputy Assistant Secretary for Policy, Planning and Program Evaluation
DOE 606 Staff Assistant to the Senior Staff Assistant, Office of the Deputy Assistant Secretary for Gas and Petroleum Technology
DOE 607 Special Assistant to the General Counsel
DOE 609 Special Assistant to the Under Secretary of Energy
DOE 610 Staff Assistant to the Director, Office of Energy Research
DOE 611 Staff Assistant to the Principal Deputy Assistant Secretary, Office of Energy Efficiency and Renewable Energy
DOE 612 Policy Specialist to the Director, Office of Strategic Planning and Analysis
DOE 613 Special Assistant to the Assistant Secretary for Environmental Restoration and Waste Management
DOE 614 Staff Assistant to the Deputy Assistant Secretary for Building Technologies, Office of Energy Efficiency and Renewable Energy
DOE 615 Staff Assistant to the Director, Office of Intelligence and National Security
DOE 617 Senior Advisor for Diversity Programs and Education Initiatives to the Director, Office of Science Education and Technical Information
DOE 618 Special Assistant to the Director, Office of Public Accountability, Environmental Restoration and Waste Management
DOE 619 Confidential Assistant to the General Counsel
DOE 620 Executive Assistant to the Chief of Staff
DOE 621 Executive Assistant to the Secretary of Energy
DOE 622 Legislative Affairs Specialist to the Deputy Assistant Secretary for Senate Liaison, Office of Congressional and Intergovernmental Affairs
DOE 623 Staff Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 624 Special Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 625 Staff Assistant to the Deputy Associate Deputy Secretary for Field Management
DOE 626 Staff Assistant to the Director, Office of Public Accountability
DOE 627 Staff Assistant to the Assistant Secretary for Environmental Restoration and Waste Management
DOE 628 Policy Analyst to the Assistant Secretary for Policy, Planning and Program Evaluation
DOE 629 Staff Assistant to the Administrator, Office of Energy

Information Administration
DOE 630 Special Assistant to the Deputy Assistant Secretary for Planning and Administration, Office of Environment, Safety and Health
DOE 631 Special Assistant to the Press Secretary, Press Services Division, Office of Public and Consumer Affairs
DOE 632 Special Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy

Federal Energy Regulatory Commission

FERC 1 Executive Assistant to the Chairman, Federal Energy Regulatory Commission
FERC 2 Attorney Advisor (Public Utilities) to the Chairman
FERC 3 Confidential Assistant to a Member
FERC 4 Attorney-Adviser (Public Utilities) to a Member of the Federal Energy Regulatory Commission

*213.3332 Small Business Administration*

SBA 4 Special Assistant to the Deputy Administrator
SBA 11 Deputy Assistant Administrator for Congressional and Legislative Affairs to the Assistant Administrator for Congressional and Legislative Affairs
SBA 45 Special Assistant to the Associate Deputy Administrator for Economic Development
SBA 59 Deputy Assistant Administrator for Public Communications to the Administrator
SBA 90 Confidential Assistant to the Administrator of the Small Business Administration
SBA 97 Confidential Assistant to the General Counsel
SBA 100 Special Assistant to the Regional Administrator, Dallas Regional Office
SBA 126 Special Assistant to the Assistant Administrator for Public Communications
SBA 128 Assistant Administrator for Women's Business Ownership to the Associate Deputy Administrator for Economic Development
SBA 143 Special Assistant to the Administrator
SBA 151 Director of External Affairs to the Associate Administrator for Communications and Public Liaison
SBA 152 Deputy Director of Intergovernmental Affairs to the Chief of Staff
SBA 159 Special Assistant to the Associate Deputy Administrator for Business Development
SBA 165 Special Assistant to the Administrator for District Operations
SBA 166 Staff Assistant to the Chief of Staff
SBA 167 Special Assistant to the Administrator
SBA 168 Director of Intergovernmental Affairs to the Associate Administrator for Communications and Public Liaison
SBA 169 Regional Administrator, Region I, Boston, MA, Administrator
SBA 170 Regional Administrator, Region VIII, Denver CO, to the Administrator
SBA 172 Regional Administrator, Region VII, Kansas City, MO, to the Administrator
SBA 173 Regional Administrator, Region VI, Dallas, TX, to the Administrator
SBA 174 Regional Administrator, Region V, Chicago, IL, to the Administrator
SBA 175 Regional Administrator, Region IV, Atlanta, GA, to the Administrator
SBA 176 Regional Administrator, Region II, New York, NY, to the Administrator
SBA 177 Director of Strategic Planning and Policy to the Associate Deputy Administrator for Economic Development
SBA 178 Regional Administrator, Region III, Philadelphia, PA, to the Administrator
SBA 179 Press Secretary to the Administrator to the Associate Administrator for Communications and Public Liaison
SBA 180 Special Assistant to the Associate Administrator for Communications and Public Liaison
SBA 181 Associate Administrator for Field Operations to the Administrator
SBA 182 Assistant Administrator for Marketing and Outreach to the Associate Administrator for Communications and Public Liaison
SBA 183 Special Assistant to the Associate Administrator for Communications and Public Liaison
SBA 184 Special Assistant to the Administrator and Director of Special Capital Initiatives to the Associate Deputy Administrator for Economic Development

*213.3333 Federal Deposit Insurance Corporation*

FDIC 2 Administrative Assistant to a Director

*213.3334 Federal Trade Commission*

FTC 2 Director of Public Affairs to the Chairman
FTC 14 Congressional Liaison Specialist to the Chairman
FTC 18 Executive Secretary to the Chairman
FTC 19 Congressional Liaison Specialist to the Director, Office of Congressional Relations
FTC 20 Special Assistant to the Commissioner

*213.3337 General Services Administration*

GSA 24 Special Assistant to the Commissioner, Public Buildings Service
GSA 26 Special Assistant to the Commissioner, Public Buildings Service
GSA 44 Special Assistant to the Chief of Staff
GSA 52 Special Assistant to the Commissioner, Public Buildings Service
GSA 58 Special Assistant to the Deputy Administrator
GSA 62 Special Assistant to the Commissioner, Information Resources Management Service
GSA 63 Special Assistant to the Associate Administrator for Business, Industry and Government Affairs
GSA 82 Special Assistant to the Regional Administrator, Region 4, Atlanta, GA
GSA 89 Congressional Liaison Officer to the Associate Administrator for Congressional and Intergovernmental Affairs
GSA 94 Congressional Relations Officer to the Associate Administrator, Office of Congressional and Intergovernmental Affairs
GSA 105 Special Assistant to the Associate Administrator for Public Affairs
GSA 106 Special Assistant to the Associate Administrator for Public Affairs
GSA 107 Special Assistant to the Associate Administrator for Administration
GSA 113 Senior Advisor (Region 1—Boston, MA) to the Regional Director
GSA 114 Special Assistant to the Regional Administrator
GSA 126 Director, Office of Media Relations to the Associate

Administrator for Public Affairs
GSA 127 Special Assistant to the Director of Small and Disadvantaged Business Utilization

*213.3339 U.S. International Trade Commission*

ITC 1 Confidential Assistant to a Commissioner
ITC 3 Staff Assistant (Legal) to a Commissioner
ITC 7 Special Assistant (Economics) to a Commissioner
ITC 9 Confidential Assistant to the Chairman (Commissioner)
ITC 12 Staff Assistant to a Commissioner
ITC 13 Staff Assistant (Economics) to a Commissioner
ITC 14 Staff Assistant (Legal) to a Commissioner
ITC 17 Staff Assistant (Legal) to a Commissioner
ITC 19 Staff Assistant (Economics) to a Commissioner
ITC 22 Staff Assistant to a Commissioner
ITC 24 Staff Assistant (LEGAL) to the Chairman
ITC 26 Staff Assistant to the Chairman
ITC 29 Staff Assistant to a Commissioner
ITC 30 Confidential Assistant to a Commissioner
ITC 31 Executive Assistant to a Commissioner
ITC 32 Special Assistant to a Commissioner
ITC 33 Special Assistant to a Commissioner
ITC 34 Staff Assistant (Legal) to a Commissioner

*213.3340 National Archives and Records Administration*

NARA 3 Presidential Diarist to the Archivist of the United States
NARA 5 Supervisory Public Affairs Specialist to the Archivist of the United States
NARA 6 White House Liaison to the Archivist of the United States

*213.3341 National Labor Relations Board*

NLRB 1 Confidential Assistant to the Chairman
NLRB 6 Confidential Assistant to a Board Member
NLRB 9 Confidential Assistant to the General Counsel

*213.3342 Export-Import Bank of the United States*

EXIM 3 Administrative Assistant to the Director
EXIM 30 Administrative Assistant to the Director
EXIM 38 Assistant to the Chairman and President
EXIM 39 Assistant to the Chairman and President
EXIM 40 Assistant to the Chairman and President
EXIM 41 Confidential Assistant to President and Chairman
EXIM 42 Assistant to the President and Chairman
EXIM 43 Administrative Assistant to the President and Chairman
EXIM 44 Personal and Confidential Assistant to the Vice Chairman

*213.3343 Farm Credit Administration*

FCA 6 Executive Assistant to a Member
FCA 8 Secretary to the Chairman
FCA 11 Special Assistant to the Chairman
FCA 12 Congressional Affairs Specialist to the Director, Congressional and Public Affairs
FCA 13 Special Assistant to a Member
FCA 15 Congressional and Public Affairs Specialist to the Director of Congressional and Public Affairs

*213.3344 Occupational Safety and Health Review Commission*

OSHRC 2 Special Assistant to the Chairman
OSHRC 3 Confidential Assistant to a Member (Commissioner)
OSHRC 6 Confidential Assistant to a Member (Commissioner)
OSHRC 8 Counsel to a Member (Commissioner)
OSHRC 11 Counselor to a Member (Commissioner)

*213.3347 Federal Mediation and Conciliation Service*

FMCS 7 Special Assistant to the Director, Federal Mediation Conciliation Service

*213.3348 National Aeronautics and Space Administration*

NASA 21 Public Affairs Specialist to the Administrator,
NASA 22 Special Assistant to the Associate Administrator for Legislative Affairs
NASA 24 Legislative Affairs Assistant to the Special Assistant to the Associate Administrator for Legislative Affairs
NASA 25 Public Affairs Specialist to the Senior Public Affairs Specialist
NASA 26 Legislative Affairs Specialist to the Special Assistant to the Associate Administrator for Legislative Affairs
NASA 27 White House Liaison Officer to the Administrator

*213.3351 Federal Mine Safety and Health Review Commission*

FM 7 Attorney Advisor (General) to a Commissioner
FM 8 Attorney Advisor (General) to a Commissioner
FM 16 Confidential Assistant to the Vice Chairman
FM 17 Confidential Assistant to the Chairman
FM 19 Attorney-Advisor(General) to the Chairman
FM 20 Confidential Assistant to the Chairman

*213.3352 Government Printing Office*

GPO 3 Congressional and Public Affairs Officer to the Public Printer

*213.3356 Commission on Civil Rights*

CCR 1 Special Assistant to the Staff Director
CCR 12 Special Assistant to a Commissioner
CCR 13 Special Assistant to a Commissioner
CCR 15 Special Assistant to a Commissioner
CCR 23 Special Assistant to a Commissioner
CCR 29 Special Assistant to a Commissioner
CCR 30 Special Assistant to a Commissioner
CCR 32 Special Assistant to a Commissioner

*213.3357 National Credit Union Administration*

NCUA 9 Staff Assistant to the Chairman of the Board, National Credit Union Administration
NCUA 12 Executive Assistant to the Vice Chairman
NCUA 20 Executive Assistant to a Board Member
NCUA 21 Secretary (Typing) to a Board Member
NCUA 23 Special Assistant to the Executive Director
NCUA 24 Deputy Director to the Director of Community Development Credit Unions

*213.3359 Corporation for National and Community Service*

CNCS 4 Executive Assistant to the Managing Director
CNCS 5 Special Assistant to the Director
CNCS 7 Special Assistant to the Special Assistant to the Director
CNCS 8 Special Assistant to the Assistant Director of Vista/Student Community Service Programs
CNCS 9 Special Assistant to the Director
CNCS 10 Special Assistant to the Director of Public Liaison

CNCS 11 Special Assistant to the Director of Public Affairs
CNCS 12 Special Assistant to the Director
CNCS 13 Confidential Assistant to the Director
CNCS 14 Legislative and Intergovernmental Specialist to the Director, Congressional and Intergovernmental Affairs

*213.3360 Consumer Product Safety Commission*

CPSC 12 Special Assistant (Legal) to the Chairman
CPSC 49 Staff Assistant to a Commissioner
CPSC 50 Staff Assistant to a Commissioner
CPSC 51 Special Assistant (Legal) to a Commissioner
CPSC 52 Director, Office of Information and Public Affairs to the Chairman
CPSC 53 Special Assistant to the Chairman
CPSC 54 Special Assistant (Legal) to the Chairman
CPSC 55 Executive Assistant to the Chairman
CPSC 56 Director, Office of Congressional Relations to the Chairman
CPSC 57 Staff Assistant to the Chairman
CPSC 58 Executive Assistant to a Commissioner

*213.3364 U.S. Arms Control and Disarmament Agency*

ACDA 17 Secretary (OA) to the Director
ACDA 20 Special Assistant to the Director of Public Affairs
ACDA 27 Special Assistant to the Director, U.S. Arms Control and Disarmament Agency
ACDA 31 Speechwriter to the Director, United States Arms Control and Disarmament Agency
ACDA 35 Policy Analyst to the Director, United States Arms Control and Disarmament Agency

*213.3367 Federal Maritime Commission*

FMC 5 Counselor to a Commissioner
FMC 9 Secretary (Steno) to a Commissioner
FMC 10 Special Assistant to a Commissioner
FMC 26 Executive Assistant to the Chairman
FMC 29 Administrative Assistant to the Chairman

*213.3368 Agency for International Development*

AID 125 Executive Assistant to the Chief of Staff
AID 126 Special Assistant to the Administrator
AID 127 Supervisory Public Affairs Specialist to the Director, Office of External Affairs
AID 128 Special Assistant to the Director, Office of External Affairs
AID 129 Public Affairs Specialist to the Chief of Public Relations Division, Office of External Affairs
AID 130 Public Affairs Specialist to the Deputy Chief of Public Liaison Division, Office of External Affairs
AID 131 Public Affairs Specialist to the Chief of Public Liaison Division, Office of External Affairs
AID 132 Supervisory Public Affairs Specialist to the Chief of Public Liaison Division, Office of External Affairs
AID 133 Public Affairs Specialist to the Chief of Public Relations Division, Office of External Affairs
AID 134 Special Assistant to the Chief of Public Relations, Office of External Affairs
AID 135 Junior Press Officer to the Chief of Press Relations Division, Office of External Affairs
AID 136 Congressional Liaison Officer to the Deputy Assistant Administrator, Bureau of Legislative Affairs
AID 137 Congressional Liaison Officer to the Deputy Assistant Administrator, Bureau of Legislative Affairs
AID 138 Public Affairs Specialist to the Assistant Administrator, Bureau of Legislative and Public Affairs
AID 139 Deputy Director, Office of Public Affairs to the Assistant Administrator, Bureau of Legislative and Public Affairs
AID 141 Special Assistant and Legal Counsel to the General Counsel
AID 142 Special Assistant to the Assistant Administrator, Bureau of Europe and New Independent States
AID 143 Administrative Operations Assistant to the Chief of Staff

*213.3371 Office of Government Ethics*

OGE 2 Executive Secretary to the Director, Office of Government Ethics

*213.3373 United States Trade and Development Agency*

TDA 1 Special Assistant for Policy and Public Affairs to the Director of the U.S. Trade and Development Agency
TDA 2 Congressional Liaison Officer to the Director, Trade and Development Agency

*213.3377 Equal Employment Opportunity Commission*

EEOC 9 Special Assistant to the Chairman
EEOC 17 Special Assistant to a Member
EEOC 18 Media Contact Specialist to Director for the Office of Communications and Legislative Affairs
EEOC 43 Communications and Legislative Specialists to the Director, Office of Communications and Legislative Affairs

*213.3379 Commodity Futures Trading Commission*

CFTC 3 Administrative Assistant to a Commissioner
CFTC 4 Administrative Assistant to a Commissioner
CFTC 5 Administrative Assistant to a Commissioner
CFTC 6 Administrative Assistant to a Commissioner
CFTC 21 Governmental Affairs Officer to the Chairman
CFTC 26 Special Assistant to a Commissioner

*213.3382 National Endowment for the Arts*

NEA 9 Congressional Liaison Officer to the Chairman
NEA 68 Attorney Adviser to the Chairman
NEA 70 Special Assistant to the Chairman
NEA 71 Secretary (Typing) to the Chairman
NEA 72 Director of Policy, Planning and Research to the Chairman
NEA 73 Chief of Staff and White House Liaison to the Chairman
NEA 74 Staff Assistant to the Chairman
NEA 76 Executive Secretary to the Chairman
NEA 77 Director of Public Affairs to the Chairman, National Endowment for the Arts

National Endowment for the Humanities

NEH 48 Congressional Liaison Officer to the Chairman
NEH 63 Special Assistant to the Chairman for Institutional Relations
NEH 65 Special Assistant to the Chairman
NEH 67 Special Assistant to the Deputy Chairman

*213.3384 Department of Housing and Urban Development*

HUD 33 Legislative Officer to the

Deputy Assistant Secretary for Legislation
HUD 37 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations
HUD 39 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations
HUD 42 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations, Office of Congressional and Intergovernmental Relations
HUD 60 Director, Office of Executive Scheduling to the Assistant Secretary for Administration
HUD 64 Staff Assistant to the Deputy Assistant Secretary for Operations, Office of Community Planning and Development
HUD 65 Special Assistant to the Assistant Secretary for Community Planning and Development
HUD 68 Special Assistant to the Assistant Secretary for Community Planning and Development
HUD 120 Special Assistant (Speechwriter) to the Assistant Secretary for Public Affairs
HUD 126 Special Assistant (Litigation Liaison) to the Assistant Secretary for Fair Housing and Equal Opportunity
HUD 137 Special Assistant to the Assistant Secretary for Fair Housing and Equal Opportunity
HUD 160 Special Assistant to the Assistant Secretary for Policy Development and Research
HUD 163 Special Assistant to the Deputy Assistant Secretary for Multifamily Housing Programs
HUD 172 Special Assistant to the Assistant Secretary for Public and Indian Housing
HUD 176 Staff Assistant to the Special Assistant to Secretary
HUD 187 Special Assistant to the Deputy Assistant Secretary for Single Family Housing, Federal Housing Commission
HUD 188 Special Assistant to the Assistant Secretary for Administration
HUD 190 Special Assistant to the Deputy Assistant Secretary for Multifamily Housing Programs
HUD 192 Special Assistant to the Secretary of Housing and Urban Development
HUD 193 Deputy General Counsel (Finance and Regulations) to the General Counsel
HUD 195 Special Assistant to the Deputy Assistant Secretary for Economic Development, Office of Community Planning and Development
HUD 198 Special Assistant to the Secretary of Housing and Urban Development
HUD 211 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations
HUD 215 Special Assistant to the Assistant Secretary for Housing, Federal Housing Commission
HUD 238 Special Assistant to the Secretary of Housing and Urban Development
HUD 247 Special Assistant to the Assistant Secretary for Housing, Federal Housing Commissioner
HUD 249 Intergovernmental Relations Specialist to the Deputy Assistant Secretary for Intergovernmental Relations
HUD 259 Special Assistant to the Secretary of Housing and Urban Development
HUD 263 Special Assistant (Speechwriter) to the Assistant Secretary for Public Affairs, Office of Policy Support
HUD 272 Deputy Assistant Secretary for Grant Programs to the Assistant Secretary for Community Planning and Development
HUD 279 Executive Assistant to the Assistant Secretary for Fair Housing and Equal Opportunity
HUD 280 Special Assistant to the Assistant Secretary for Community Planning and Development
HUD 281 Special Administrator to Regional Administrator
HUD 285 Legislative Officer to the Deputy Assistant Secretary for Legislation, Office of Congressional and Intergovernmental Relations
HUD 289 Deputy Assistant Secretary for Operations to the Assistant Secretary for Community Planning and Development
HUD 292 Special Assistant to the Deputy Assistant Secretary for Economic Development
HUD 293 Special Assistant to the President, Government National Mortgage Association
HUD 317 Special Assistant to the Regional Administrator- Regional Housing Commissioner, Region V, Chicago, IL
HUD 323 Executive Assistant to the Assistant Secretary for Housing
HUD 328 Deputy Assistant Secretary for Public Affairs to the Assistant Secretary for Public Affairs
HUD 335 Deputy Assistant Secretary for Economic Development to the Assistant Secretary for Community Planning and Development
HUD 336 Special Assistant to the Assistant Secretary for Administration
HUD 340 Staff Assistant to the Chief of Staff
HUD 341 Special Assistant to the Secretary of Housing and Urban Development
HUD 363 Special Assistant to the Assistant Secretary for Policy Development and Research
HUD 366 Special Assistant to the Deputy Assistant Secretary for Operations, Federal Housing Commission
HUD 372 Staff Assistant (Advance) to the Assistant Secretary for Administration, Office of Executive Scheduling
HUD 373 Special Assistant (Speech Writer) to the Assistant Secretary for Public Affairs
HUD 381 Special Assistant to the Secretary of Housing and Urban Development
HUD 385 Special Assistant to the Assistant Secretary for Public Affairs, Office of Press Relations
HUD 387 Staff Assistant to the Assistant Secretary for Public Affairs
HUD 394 Staff Assistant to the Deputy Assistant Secretary for Operations, Office of Community Planning and Development
HUD 398 Special Assistant to the Assistant to the Secretary for Field Management
HUD 400 Deputy Assistant Secretary for Legislation to the Assistant Secretary for Congressional and Intergovernmental Relations
HUD 401 Special Assistant to the Assistant Secretary for Housing-Federal Housing Commissioner
HUD 404 Special Assistant to the Regional Administrator/ Regional Housing Commissioner, Region V, Chicago, IL
HUD 410 Special Assistant to the General Counsel
HUD 412 Special Assistant to the Secretary of Housing and Urban Development
HUD 419 Special Assistant (Speech Writer) to the Assistant Secretary for Public Affairs
HUD 420 Secretary's Representative (Rocky Mountain) to the Deputy Secretary
HUD 421 Assistant Director to the Director, Executive Secretariat, Office of Administration
HUD 425 Director, Office of Resident Initiatives to the Assistant Secretary for Public and Indian

Housing
HUD 428 Special Assistant to the Assistant Secretary for Public and Indian Housing
HUD 431 Secretary's Representative (Great Plains) to the Deputy Secretary
HUD 432 Regional Administrator/ Regional Housing Commissioner, Region X, Seattle, WA, to the Senior Advisor and Assistant to the Secretary for Field Management
HUD 437 Special Assistant to the Assistant Secretary for Public Affairs, Office of Press Relations
HUD 438 Director, Hospital Mortgage Insurance Staff to the Associate General Deputy Assistant Secretary, Office of the Assistant Secretary for Housing-Federal Housing Commissioner
HUD 441 Deputy Assistant Secretary for Policy Development to the Assistant Secretary for Policy Development and Research
HUD 445 Special Assistant to the Deputy Assistant Secretary for Economic Development
HUD 446 Senior Intergovernmental Relations Officer to the Deputy Assistant Secretary for Intergovernmental Relations
HUD 447 Special Assistant to the Assistant Secretary for Administration
HUD 448 Special Assistant to the Assistant Secretary for Administration
HUD 449 Legislative Assistant to the Deputy Assistant Secretary for Legislation, Office of Congressional and Intergovernmental Relations
HUD 450 Special Assistant to the Deputy Assistant Secretary for Federal Relief—South Dade County (Miami, FL)
HUD 451 Special Assistant for Labor Relations to the Secretary of Housing and Urban Development
HUD 452 Deputy Director, Special Actions Office to the Director, Special Actions Office
HUD 453 Executive Assistant to the Director, Office Federal Housing Enterprise Oversight
HUD 454 Staff Assistant to the Special Assistant to the Deputy Assistant Secretary for Federal Relief—South Dade County, Florida
HUD 455 Deputy Assistant Secretary for Multifamily Housing Programs to the Assistant Secretary for Housing
HUD 456 Legislative Assistant to the Deputy Assistant Secretary for Legislation
HUD 457 Staff Assistant to the Deputy Assistant Secretary for Federal Relief (South Dade County)
HUD 458 Special Assistant to the Assistant Secretary for Administration
HUD 460 Staff Assistant to the Assistant Secretary for Administration
HUD 461 Special Assistant to the Chief Financial Officer
HUD 462 Staff Assistant to the Assistant Secretary for Administration
HUD 463 Special Projects Officer to the Director, Special Actions Office
HUD 464 Special Projects Officer to the Director, Special Actions Office, Office of the Assistant Secretary for Administration
HUD 465 Special Projects Officer to the Director, Special Actions Office, Office of the Assistant Secretary for Administration
HUD 466 Director, Special Actions Office to the Secretary
HUD 467 Staff Assistant to the Deputy Assistant Secretary for Economic Development, Office of the Assistant Secretary for Community Planning and Development
HUD 468 Special Assistant to the Deputy Assistant Secretary for Economic Development, Office of Community Planning and Development
HUD 469 Special Assistant to the Deputy Assistant Secretary for Economic Development, Office of Community Planning and Development
HUD 470 Staff Assistant (Typing) to the General Counsel
HUD 471 Special Projects Officer to the Regional Administrator-Regional Housing Commissioner, Region I, Boston, MA
HUD 472 Deputy Assistant Secretary for Congressional Relations to the Assistant Secretary for Congressional and Intergovernmental Relations
HUD 473 Special Assistant to the Assistant Secretary for Community Planning and Development
HUD 474 Special Assistant to the Deputy Assistant Secretary for Distressed and Troubled Housing
HUD 475 Staff Assistant to the Chief Financial Officer
HUD 476 Special Projects Officer to the Director, Special Actions Office
HUD 477 Special Assistant to the Deputy Assistant Secretary for Distressed and Troubled Housing
HUD 478 Special Projects Officer to the Regional Administrator-Regional Housing Commissioner, Region VI, Fort Worth, TX
HUD 480 Special Assistant to the Deputy Assistant Secretary for Distressed and Troubled Housing
HUD 481 Special Projects Officer to the Director, Special Actions Office
HUD 482 Special Projects Officer to the Director, Special Actions Office
HUD 483 Special Assistant (Advance/Security) to the Director, Executive Scheduling
HUD 485 Special Assistant (Advance) to the Assistant Secretary for Administration, Office of Executive Scheduling
HUD 486 Director, Policy and Planning Division to the Director, Office of Distressed and Troubled Housing Recovery
HUD 487 Staff Assistant (Advance) to the Assistant Secretary for Administration, Office of Executive Scheduling
HUD 488 Special Assistant to the Director, Office of Distressed and Troubled Housing Recovery
HUD 489 Special Assistant to the Deputy Assistant Secretary for Distressed and Troubled Housing
HUD 490 Special Advisor to the Assistant Secretary for Community Planning and Development
HUD 491 Deputy Assistant Secretary for Planning to the Assistant Secretary for Community Planning

*213.3389 National Mediation Board*

NMB 52 Confidential Assistant to a Board Member
NMB 53 Confidential Assistant to a Board Member
NMB 54 Confidential Assistant to the Chairman

*213.3391 Office of Personnel Management*

OPM 7 Deputy Director to the Director, Office of Congressional Relations
OPM 62 Confidential Assistant to the Director, Office of Personnel Management
OPM 63 Confidential Assistant to the Director, Office of Congressional Relations
OPM 64 Director of Program Management to the Chief of Staff
OPM 65 Special Assistant to the Director, Office of Congressional Relations
OPM 66 Special Assistant to the Director of Congressional Relations
OPM 67 Executive Assistant to the Deputy Director, Office of Personnel Management
OPM 68 Deputy Director, Office of Communications to the Director,

Office of Communications
OPM 69 Special Assistant to the Director of Communications
OPM 70 Confidential Assistant (Office Automation) to the Director, Office of Personnel Management
OPM 71 Special Assistant to the Director, Office of Congressional Relations
OPM 72 Director of International Affairs to the Director, Office of Personnel Management
OPM 73 Public Affairs Specialist to the Deputy Director, Office of Communications
OPM 74 Public Affairs Specialist to the Deputy Director, Office of Communications
OPM 75 Policy Analyst to the Director of Policy
OPM 76 Speech Writer to the Director, Office of Communications

*213.3392 Federal Labor Relations Authority*

FLRA 5 Executive Assistant to a Member
FLRA 7 Confidential Assistant and Public Information Specialist to the Chairman
FLRA 13 Staff Assistant to the General Counsel
FLRA 14 Executive Assistant to the General Counsel

*213.3393 Pension Benefit Guaranty Corporation*

PBGC 6 Confidential Assistant to the Executive Director
PBGC 7 Assistant Executive Director for Legislative Affairs to the Executive Director
PBGC 11 Special Assistant to the Deputy Executive Director and Chief Financial Officer
PBGC 12 Staff Assistant to the Deputy Executive Director
PBGC 14 Special Assistant to the Deputy Executive Director and Chief Financial Officer

*213.3394 Department of Transportation*

DOT 20 Congressional Liaison Officer to the Director, Office of Congressional Affairs
DOT 55 Senior Congressional Liaison Officer to the Director of Congressional Affairs
DOT 61 Special Assistant to the Deputy Secretary of Transportation
DOT 69 Director, Office of Public Affairs, to the Administrator, Federal Railroad Administration
DOT 100 Chief, Consumer Information Division to the Director, Office of Public and Consumer Affairs
DOT 105 Staff Assistant to the Administrator, Federal Highway Administration
DOT 123 Intergovernmental Relations Officer to the Director, Office of the Intergovernmental and Consumer Affairs
DOT 127 Special Assistant to the Assistant Secretary for Budget and Programs
DOT 128 Special Assistant to the Deputy Administrator, Federal Highway Administration
DOT 129 Special Assistant to the General Counsel
DOT 141 Special Assistant to the Secretary of Transportation
DOT 142 Intergovernmental Relations Officer to the Director, Intergovernmental and Consumer Affairs
DOT 147 Special Assistant to the Assistant to Secretary and Director of Public Affairs
DOT 151 Director of Technology Deployment to the Deputy Secretary of Transportation
DOT 202 Special Assistant to the Administrator, Federal Highway Administration
DOT 226 Special Assistant to the Maritime Administrator
DOT 235 Special Assistant for Scheduling and Advance to the Secretary of Transportation
DOT 254 White House Liaison to the Chief of Staff
DOT 257 Deputy Director of Public Affairs to the Assistant to the Secretary and Director of Public Affairs
DOT 271 Special Assistant to the Administrator Federal, Aviation Administration
DOT 272 Special Assistant to the Director, Small and Disadvantaged Business Utilization
DOT 274 Special Assistant to the Associate Director for Media Relations and Special Projects
DOT 279 Associate Director for Speechwriting and Research to the Assistant to the Secretary and Director of Public Affairs
DOT 287 Scheduling Assistant to the Special Assistant for Scheduling and Advance, Office of the Secretary
DOT 292 Intergovernmental Liaison Officer to the Director of Intergovernmental Affairs
DOT 294 Special Assistant to the Associate Deputy Secretary
DOT 296 Special Assistant to the Deputy Administrator, Maritime Administration
DOT 313 Director, Office of Public and Consumer Affairs to the Deputy Administrator, National Highway Transportation Safety Administration
DOT 316 Special Assistant to the Assistant Secretary for Transportation Policy
DOT 317 Deputy Assistant Administrator for Government and Industry Affairs to the Assistant Administrator for Government and Industry Affairs, Federal Aviation Administration
DOT 320 Special Assistant to the Secretary of Transportation
DOT 324 Scheduling Assistant to the Special Assistant for Scheduling and Advance
DOT 338 Special Assistant to the Deputy Administrator, Federal Highway Administration
DOT 341 Congressional Liaison Officer to the Director, Office of Congressional Affairs
DOT 347 Special Assistant for Scheduling to the Special Assistant for Scheduling and Advance
DOT 349 Special Assistant to the Associate Administrator for Motor Carriers, Federal Highway Administration
DOT 351 Special Assistant to the Deputy Secretary
DOT 352 Regional Administrator, Region II, New York, N.Y. to the Deputy Administrator, Federal Transit Administration

*213.3395 Federal Emergency Management Agency*

FEMA 46 Special Assistant to the Associate Director, State and Local Programs and Support Directorate
FEMA 52 Supervisory Public Affairs Specialist to the Director, Federal Emergency Management Agency
FEMA 53 Policy Advisor to the Director, Federal Emergency Management Agency

*213.3396 National Transportation Safety Board*

NTSB 1 Special Assistant to a Member
NTSB 2 Secretary (Typing) to the Chairman, National Transportation Safety Board
NTSB 25 Special Assistant to a Board Member
NTSB 30 Confidential Assistant to the Chairman
NTSB 31 Confidential Assistant to a Board Member
NTSB 34 Confidential Assistant to a Board Member
NTSB 92 Director, Office of Congressional and Intergovernmental Relations to the Chairman
NTSB 102 Special Assistant to a Board Member
NTSB 105 Special Assistant to the

Chairman

*213.3397 Federal Housing Finance Board*

FHFB 2 Special Assistant to the Board Director

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218

Office of Personnel Management.

**Lorraine A. Green,**

*Deputy Director.*

[FR Doc. 94–24166 Filed 9–30–94; 8:45 am]

BILLING CODE 6325–01–P

## Excepted Services

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

**FOR FURTHER INFORMATION CONTACT:** Sherry Turpenoff, (202) 606–0940.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on September 9, 1994 (59 FR 46275). Individual authorities established or revoked under Schedules A and B and established under Schedule C between August 1 and August 31, 1994, appear in the listing below. Further notice will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30, will also be published.

### Schedule A

No Schedule A authorities were established or revoked during August 1994.

### Schedule B

No Schedule B authorities were established or revoked during August 1994.

### Schedule C

*Corporation for National and Community Service*

Senior Policy Advisor to the Executive Vice President and Managing Director, Corporation for National and Community Service. Effective August 11, 1994.

Executive Assistant to the Vice President/Director, Domestic Volunteer Service Programs, Corporation for National and Community Services. Effective August 22, 1994.

Executive Assistant to the Senior Counsellor to the Chief Executive Officer, Corporation for National and Community Services. Effective August 22, 1994.

Special Assistant to the Director of Public Affairs, Corporation for National and Community Services. Effective August 22, 1994.

Legislative Officer to the Director, Congressional and Intergovernmental Affairs. Effective August 22, 1994.

*Department of Agriculture*

Staff Assistant to the Administrator of the Farmers Home Administration. Effective August 5, 1994.

Staff Assistant to the Administrator, Farmers Home Administration. Effective August 5, 1994.

Special Assistant (Jackson, MS) to the Administrator, Farmers Home Administration. Effective August 5, 1994.

Southeast Area Director to the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service. Effective August 11, 1994.

Southwest Area Director to the Deputy Administrator, State and County Operations, Agricultural Conservation and Stabilization Service. Effective August 18, 1994.

Confidential Assistant to the Administrator, Rural Development Administration. Effective August 19, 1994.

*Department of Commerce*

Special Assistant to the General Counsel, Office of the General Counsel. Effective August 19, 1994.

Confidential Assistant to the Deputy Assistant Secretary for Program Support, Economic Development Administration. Effective August 29, 1994.

*Department of Defense*

Special Assistant to the Executive Director, President's Foreign Intelligence Advisory Board. Effective August 3, 1994.

Secretary (OA) to the Deputy Assistant Secretary of Defense for Public Affairs (Information). Effective August 3, 1994.

Staff Specialist to the Principal Deputy Assistant Secretary of Defense for Dual Use Technology Policy and International Programs. Effective August 10, 1994.

*Department of Education*

Special Assistant to the Assistant Secretary, Office of Human Resources and Administration. Effective August 10, 1994.

Confidential Assistant to the Director, Scheduling and Briefing Staff. Effective August 16, 1994.

*Department of Energy*

Senior Advisor to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective August 3, 1994.

Staff Assistant to the Assistant Secretary for Policy. Effective August 3, 1994.

Staff Assistant to the Assistant Secretary for Efficiency and Renewable Energy. Effective August 26, 1994.

*Department of Health and Human Services*

Special Assistant (Speechwriting) to the Director of Speechwriting. Effective August 22, 1994.

Director of Communications to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy). Effective August 23, 1994.

*Department of Housing and Urban Development*

Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective August 1, 1994.

Staff Assistant to the Deputy Assistant Secretary for Intergovernmental Relations. Effective August 8, 1994.

Intergovernmental Relations Specialist to the Deputy Assistant Secretary for Intergovernmental Relations. Effective August 11, 1994.

*Department of the Interior*

Staff Assistant to the Director, Office of Surface Mining Reclamation and Enforcement. Effective August 10, 1994.

Staff Assistant to the Assistant Secretary for Indian Affairs. Effective August 10, 1994.

Special Assistant to the Deputy Chief of Staff, Office of the Secretary. Effective August 10, 1994.

Special Assistant to the Director, National Biological Survey. Effective August 10, 1994.

*Department of Justice*

Secretary (OA) to the United States Attorney, District of Delaware. Effective August 5, 1994.

Deputy Assistant Attorney General to the Assistant Attorney General, Office of Policy Development. Effective August 8, 1994.

Confidential Assistant to the Deputy Attorney General. Effective August 12, 1994.

Counsel to the Deputy Attorney General. Effective August 16, 1994.

Staff Assistant to the Assistant Attorney General, Office of Policy Development. Effective August 16, 1994.

Special Assistant to the Deputy Attorney General. Effective August 16, 1994.

Public Affairs Specialist to the Director, Public Affairs. Effective August 26, 1994.

*Department of Labor*

Special Assistant to the Director, Women's Bureau. Effective August 1, 1994.

Secretary, U.S. National Administrative Office to the Deputy Under Secretary for International Affairs. Effective August 2, 1994.

Secretary's Representative to the Associate Director, Congressional and Intergovernmental Affairs. Effective August 4, 1994.

Special Assistant to the Assistant Secretary for Veterans Employment and Training. Effective August 11, 1994.

Special Assistant to the Assistant Secretary, Pension and Welfare Benefits Administration. Effective August 25, 1994.

*Department of the Navy (DOD)*

Staff Assistant to the Assistant Secretary of the Navy (Financial Management). Effective August 2, 1994.

*Department of State*

Special Assistant to the Assistant Secretary, Bureau of International Narcotics Matters. Effective August 11, 1994.

Special Advisor to the Under Secretary for Global Affairs. Effective August 18, 1994.

*Department of the Treasury*

Special Assistant to the Chief of Staff. Effective August 18, 1994.

Policy Advisor to the Under Secretary (Enforcement). Effective August 18, 1994.

Public Affairs Specialist to the Director, Office of Public Affairs. Effective August 24, 1994.

*Export-Import Bank of the United States*

Administrative Assistant to the Bank Director. Effective August 11, 1994.

Administrative Assistant to the Chief of Staff. Effective August 26, 1994.

*Federal Communications Commission*

Special Assistant (Public Affairs) to the Chief, Cable Services Bureau. Effective August 19, 1994.

*Federal Labor Relations Authority*

Staff Assistant to the Chairman. Effective August 2, 1994.

*Federal Maritime Commission*

Counsel to the Commissioner. Effective August 26, 1994.

*General Services Administration*

Special Assistant to the Administrator, General Services Administration. Effective August 5, 1994.

Special Assistant to the Regional Administrator, Region 10, Auburn, Washington. Effective August 24, 1994.

*National Aeronautics and Space Administration*

Public Affairs Specialist to the Associate Administrator for Public Affairs. Effective August 8, 1994.

*Office of Management and Budget*

Confidential Assistant to the Deputy Director for Management. Effective August 5, 1994.

Confidential Assistant to the Associate Director for Human Resources. Effective August 26, 1994.

*Office of National Drug Control Policy*

Confidential Assistant to the Director, Office of the National Drug Control Policy. Effective August 11, 1994.

*Office of Science and Technology Policy*

Research Assistant to the Director, Office of Science Technology and Policy. Effective August 3, 1994.

*Office of the United States Trade Representative*

Confidential Assistant to the Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison. Effective August 23, 1994.

Private Sector Liaison to the Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison. Effective August 23, 1994.

Congressional Affairs Specialist to the Assistant United States Trade Representative for Congressional Affairs. Effective August 31, 1994.

*Small Business Administration*

Special Assistant to the Assistant Administrator for Women's Business Ownership. Effective August 26, 1994.

*U.S. Arms Control and Disarmament Agency*

Confidential Assistant to the Assistant Director, Multilateral Affairs Bureau. Effective August 8, 1994.

*U.S. International Trade Commission*

Staff Assistant to the Commissioner. Effective August 3, 1994.

Staff Assistant (Economics) to the Commissioner. Effective August 23, 1994.

Staff Assistant (Legal) to the Commissioner. Effective August 23, 1994.

Staff Assistant (Legal) to the Commissioner. Effective August 23, 1994.

Congressional Liaison to the Chairman. Effective August 26, 1994.

*United States Information Agency*

Program Officer to the Associate Director, Bureau of Information. Effective August 18, 1994.

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p.218.

Office of Personnel Management.

**Lorraine A. Green,**

*Deputy Director.*

[FR Doc. 94–24286 Filed 9–30–94; 8:45 am]

BILLING CODE 6325–01–M

## OFFICE OF PERSONNEL MANAGEMENT

### National Partnership Council Meeting

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice of meeting.

**SUMMARY:** The Office of Personnel Management (OPM) announces the eleventh meeting of the National Partnership Council (the Council). Notice of this meeting is required under the Federal Advisory Committee Act.

**TIME AND PLACE:** The Council will meet October 12, 1994, 1 p.m., in the OPM Conference Center, Room 1350, at the Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC 20415–0001. The conference center is located on the first floor.

**TYPE OF MEETING:** This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact OPM to obtain appropriate accommodations.

**POINT OF CONTACT:** Douglas K. Walker, National Partnership Council, Executive Secretariat, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 5315, Washington, DC 20415–0001, (202) 606–1000.

**SUPPLEMENTARY INFORMATION:** The Council will receive reports on and discuss activities contained in its work plan for calendar year 1994, *Strategy To Promote Change*, which was adopted at the April 12, 1994, meeting.

**PUBLIC PARTICIPATION:** We invite interested persons and organizations to submit written comments or recommendations. Mail or deliver your comment or recommendations to Mr. Douglas K. Walker at the address shown above. Comments should be received by

October 7, in order to be considered at the October 12, meeting.

Office of Personnel Management.

**James B. King,**

*Director.*

[FR Doc. 94–24287 Filed 9–30–94; 8:45 am]

BILLING CODE 6325–01–M

## Privacy Act of 1974; Amendment to Existing Notices of Systems of Records

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice of updates to existing systems of records.

**SUMMARY:** OPM proposes to rescind routine uses recently added to two existing record systems.

**DATES:** The changes will become effective without further notice on date of publication of this notice in the **Federal Register** (October 3, 1994).

**ADDRESSES:** Written comments should be sent to C. Ronald Trueworthy, Chief, Information Policy Branch, Room CHP 500, Plans and Policies Division, Office of Information Resources Management, Administration Group, Office of Personnel Management, 1900 E Street NW., Washington DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Leslie Crawford, 703–908–8550.

**SUPPLEMENTARY INFORMATION:** On June 15, 1994, the Office of Personnel Management (OPM) published changes to four existing system notices (59 FR 30817). The routine uses added to OPM/Central–10 (Directory of Federal Executive Institute Alumni) and OPM/Central–11 (Presidential Management Intern Program Records) by that publication allowed disclosure of names and home address of participants and alumni of the programs to other program participants and alumni.

It has been determined that the Federal Executive Institute already obtains consent for disclosure directly from the individuals involved, and the Presidential Management Intern program will establish a similar procedure for release of such data. Therefore, routine uses to cover disclosure of the information are not necessary, and routine use "m" added to OPM/Central–10 and routine use "n" added to OPM/Central–11 are hereby rescinded.

**Lorraine A. Green,**

*Deputy Director.*

[FR Doc. 94–24288 Filed 9–30–94; 8:45 am]

BILLING CODE 6325–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–34711; File No. SR–CBOE–94–30]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Storage of Customer Account Records

September 23, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 7, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Currently, paragraph (c) of CBOE Rule 9.8, "Supervision of Accounts," provides that background and financial information of customers who have been approved for options transactions must be maintained at both the branch office servicing the customer's account and at the principal supervisory office with jurisdiction over the branch office. In addition, copies of options customer account statements over the most recent six months must be maintained at both the branch office supervising the accounts and at the principal supervisory office with jurisdiction over that branch. The CBOE proposes to amend CBOE Rule 9.8(c) and Interpretation and Policy .03 to enable members' supervisory offices to maintain certain customer account information at off-site locations as long as the records are readily accessible and promptly retrievable.

The text of the proposal is available at the Office of the Secretary, CBOE, and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The CBOE states that the purpose of the proposal is to enable supervisory offices of CBOE members to store certain customer account records off-site. CBOE members that elect to do so must ensure that the records are easily accessible and promptly retrievable.

Currently, under CBOE Rule 9.8, background and financial information about customers, as well as copies of customer account statements, must be maintained at the branch office serving the customer and at that branch's principal supervisory office. The substance of this rule appears uniformly in the rules of the other options exchanges and in the options account rules of the National Association of Securities Dealers, Inc. ("NASD"). According to the CBOE, on-site storage in major financial centers is expensive, and, in today's market environment, automated and secure facilities for data storage and retrieval make it unnecessary to require on-site storage. The CBOE states that, given those realities, the Options Self-Regulatory Council ("OSRC")[1] has recommended that record retention requirements be relaxed and that the exchanges and the NASD amend their rules to permit supervisory offices to store customer records off-premises as a matter of routine practice.[2]

The CBOE concurs with the OSRC's recommendation and believes that its proposal will afford the CBOE's members the opportunity to discharge their supervisory responsibilities more efficiently and more cost-effectively. Accordingly, the CBOE's proposal amends paragraph (c) and Interpretation and Policy .03 of CBOE Rule 9.8 to

[1] The OSRC, which was created pursuant to a plan submitted by the options exchanges under Rule 17d–2 ("17d–2 plan") under the Act, includes representatives from each of the registered options exchanges and the NASD. The 17d–2 plan was developed by the exchanges and approved by the Commission to reduce regulatory duplication and to coordinate solutions to options-related sales practice issues common to firms which are members of two or more self-regulatory organizations.

[2] In connection with the OSRC's recommendation, the designated options examining authorities, including the CBOE, have committed to periodic examinations of the document retention and supervisory practices of firms using off-site storage arrangements.

enable CBOE members' supervisory offices to use off-premises storage for certain of the customer records specified in the rules, provided the records are easily accessible and promptly retrievable.[3]

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

*(B) Self-Regulatory Organization's Statement of Burden on Competition*

The CBOE does not believe that the proposed rule change will impose any 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 were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days after the publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, 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 at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 24, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–24301 Filed 9–30–94; 8:45 am]

BILLING CODE 8016–01–M

[3] Interpretation and Policy .03 requires member to maintain, at the principal supervisory office with jurisdiction over the office servicing a customer's account, information to permit review of each customer's account to determine (1) the compatibility of options transactions with investment objectives and with the types of transactions for which the account was approved; (2) the size and frequency of options transactions; (3) commission activity in the account; (4) profit or loss in the account; (5) undue concentration in any options class or classes and (6) compliance with the provisions of Regulation T of the Federal Reserve Board.

[4] 17 CFR 200.30–3(a)(12) (1993).

## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Incorporated

September 27, 1994.

The above named national securities exchange has filed application with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Boise Cascade
Preferred Stock Dep. Sh. (1/10 Pfd. E, No Par Value (File No. 7–12994)
Sunamerica, Inc.
Preferred Stock Dp. Sh. (1/100 PFP) o Par Value $.10 (File No. 7–12995)
USX Corp.
Preferred Stock Cum. Conv. Pfd., No Par Value (File No. 7–12996)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 19, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 94–24306 Filed 9–30–94; 8:45 am]

BILLING CODE 8010–01–M

## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Incorporated

September 27, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Amax Gold, Inc.
$3.75 Ser. B Conv. Pfd. Stk., $1.00 Par Value (File No. 7–12970)
Americas Income Trust, Inc.
Common Stock, No Par Value (File No. 7–12971)
Apartment Investment & Management Co.
Common Stock, $.01 Par Value (File No. 7–12972)
Bush Industries, Inc.
Class A Common Stock, $.10 Par Value (File No. 7–12973)
Chilgener S.A.
American Depositary Shares (rep. 4 shs. Common Without, Par Value (File No. 7–12974)
Corning Delaware, L.V.
. Conv. Mon. Income Pfd. Shs. (MIPS) (File No. 7–12975)
Dominion Resources Black Resources Trust
Trust Units (File No. 7–12976)
Embotelladora Andina S.A.
American Depositary Shares (rep. 6 Common Shares, Without Par Value (File No. 7–12977)
Freeport McMoran Copper & Gold
Depositary Shares (rep. .025 of a sh. of Silver-Din. Pfd., $10.00 Par Value (File No. 7–12978)
Greenbrier Companies, Inc.
Common Stock, $.001 Par Value (File No. 7–12979)
Greenwich Street Municipal Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–12980)
Grupo Elektra S.A. De C.V.

Global Depositary Shares (rep. 2 Ord. Partic, Ctfs.) (File No. 7–12981)
Grupo Sidek, S.A. De C.V.
Ser. L American Depositary Shares (rep. 4 sh. Ser. L Common Stock, No Par Value (File No. 7–12982)
Istituto Nazionale Delle Assicurazioni SPA
American Depositary Shares (rep. 10 Ord. Shs., Lit. 1,000 Par Value) (File No. 7–12983)
Labortorio Chile S.A.
American Depositary Shares (rep. 20 sh. Common Stock, Without Par Value (File No. 7–12984)
Nokia Corp.
American Depositary Shares (rep. ½ of a Pfd. Sh., FIM 20 Par Value (File No. 7–12985)
Paragon Group, Inc.
Common Stock, $.01 Par Value (File No. 7–12986)
Penelec Capital L.P.
98 ¾% Cum. Mon. Income Pfd. Shs. (MIPS) (File No. 7–12987)
UAL Corp.
Depositary Shares (rep. 1/1000 sh. of 12¼% Ser. B Pfd. Stock) (File No. 7–12988)
Vastar Resources, Inc.
Common Stock, $1.00 Par Value (File No. 7–12989)
Enzo Biochemical, Inc.
Common Stock, $.01 Par Value (File No. 7–12990)
Cardinal Health, Inc.
Common Shares, Without Par Value (File No. 7–12991)
LSB Industries, Inc.
Common Stock, $10.00 Par Value (File No. 7–12992)
Newbridge Network Corp.
Common Stock, Without Par Value (File No. 7–12993)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 19, 1994, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 94–24307 Filed 9–30–94; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–34710; File No. SR–PSE–94–25]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Extension of the Lead Market Maker System Pilot Program

September 23, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 9, 1994, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Commentary .01 to PSE Rule 6.82, "Lead Market Maker Pilot Program," states that the PSE's Lead Market Maker ("LMM") system pilot program will expire on September 30, 1994. The PSE proposes to amend Commentary .01 to extend the Exchange's LMM system pilot program through September 30, 1995.

The text of the proposed rule change is available at the PSE and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) *Purpose.*

On January 17, 1990, the Commission approved the PSE's LMM system on a pilot basis.[1] Previously, the Commission has approved Exchange requests for extension of the pilot program,[2] which is set to expire on September 30, 1994.[3] The PSE submitted pilot program reports to the Commission on September 18, 1992, and on July 26, 1993. In addition, on April 20, 1994, the Exchange withdrew several pending rule filings relating to the LMM program and did so with the intention of resubmitting a consolidated filing at a later date.[4] At this time, the PSE is considering additional rule changes to be included in the consolidated filing. Therefore, the Exchange proposes to amend its rules to extend the LMM pilot program through September 30, 1995, in order to provide additional time for evaluation of the LMM program in light of any changes that may be approved within the next year.

(b) *Basis.*

The PSE believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it will promote just and equitable principles of trade and contribute to the protection of investors and the public interest.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others.*

Written comments on the proposed rule change were neither solicited or received.

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[1] *See* Securities Exchange Act Release No. 27631 (January 17, 1990), 55 FR 2462 (January 24, 1990).

[2] *See* Securities Exchange Act Release Nos. 33854 (April 1, 1994), 59 FR 16873 (April 8, 1994) ("April 1994 Pilot Approval Order"); 31063 (August 21, 1992), 57 FR 39255 (August 28, 1992); and 31635 (December 22, 1992), 57 FR 62414 (December 30, 1992).

[3] *See* April 1994 Pilot Approval Order, *supra* note 3.

[4] *See* Letter from David P. Semak, Vice President, Regulation, PSE, to Sharon M. Lawson, Assistant Director, Division of Market Regulation, Commission, dated April 20, 1994 (withdrawing File Nos. SR–PSE–91–08, SR–PSE–92–35, SR–PSE–92–36, and SR–PSE–93–16).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PSE has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

The Commission finds that the proposal to extend the LMM pilot program through September 30, 1995, is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, the requirements of Section 6.[5] The Commission concludes, as it did in approving the LMM pilot program, that the pilot program may enhance the market making mechanism on the PSE, thereby improving the markets for listed options on the Exchange. Specifically, the Commission believes that the LMM pilot may improve the PSE's market making capabilities by creating long-term commitments to options classes. Moreover, the pilot program will continue with adequate due process safeguards in the LMM selection and termination procedures and will retain procedures that prevent the misuse of material non-public LMM information by either an LMM or a broker-dealer affiliated with an LMM. The Commission notes, however, that before the pilot program can be approved on a permanent basis, the PSE must provide the Commission with a report on the operation of the pilot program.

Specifically, before requesting permanent approval or further extension of the pilot program the PSE must submit a pilot program report by June 1995 that addresses: (1) whether there have been any complaints regarding the operation of the pilot; (2) whether the PSE has taken any disciplinary or performance action against any member due to the operation of the pilot; (3) the number of LMMs involved in the pilot; (4) the extent to which the pilot has been used on the PSE; (5) whether the PSE has terminated or replaced an LMM and the reasons therefore; (6) the impact of the pilot on the bid/ask spreads, depth and continuity in PSE options markets; and (7) whether the PSE has taken any action or there have been any complaints against LMMs or associated broker-dealers relating to improper activity as a result of LMM affiliations with upstairs firms.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register because the PSE has not indicated that there have been any problems associated with the operation of the LMM system pilot program and because the Commission has not received any adverse comments concerning the pilot program. In addition, the Commission believes good cause exists to approve the extension of the LMM pilot program on an accelerated basis in order to allow the pilot program to continue uninterrupted. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6 of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, 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 they may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 24, 1994.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–PSE–94–25) is approved on an accelerated basis, and, accordingly, that the LMM pilot program is extended until September 30, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

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[5] 15 U.S.C. § 78f(b) (1982).

[6] 15 U.S.C. § 78s(b)(2) (1982).

[7] 17 CFR 200.30–3(a)(12) (1993).

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[Release No. 34–34712; International Series Release No. 717; File No. SR–PHLX–93–13]

## Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Modifications of the Position and Exercise Limits for Foreign Currency Options

September 23, 1994.

On March 29, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposal to amend PHLX Rules 1001, "Position Limits", and 1002," "Exercise Limits,"[3] to increase the position and exercise limits for foreign currency options ("FCOs") from 100,000 contracts to 150,000 contracts for FCOs with annual trading volume of at least 3,500,000 contracts, based on the previous year's trading volume.[4]

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] Position limits impose a ceiling on the number of option contracts in each class on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls) that can be held or written by an investor or group of investors acting in concert. Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days. Throughout this approval order, the terms "position limits" or "limits" will be used to refer to both position and exercise limits.

[4] On July 19, 1994, the PHLX amended its proposal to establish an FCO position limit of 150,000 contracts for FCOs with annual trading volume of at least 4,000,000 contracts. *See* Letter from Gerald D. O'Connell, First Vice President, Regulation and Trading Operations, PHLX, to Michael Walinskas, Branch Chief, Options Regulation, Division of Market Regulation ("Division"), Commission, dated July 19, 1994 ("Amendment No. 1"). In addition, the PHLX submitted information concerning the implementation and effective date of the proposal. *See* Letter from Edith Hallahan, Attorney, Market Surveillance, PHLX, to Richard Zack, Branch Chief, Options Branch, Division, Commission, dated July 27, 1993 ("July 27 Letter"). On July 26, 1994, the PHLX amended the proposal to provide that FCOs with annual trading volume of 3,500,000 contracts would be eligible for a position limit of 150,000 contracts and to indicate that the PHLX plans a one-time immediate review to implement the higher position limit for FCOs which meet the annual trading volume requirement. *See* Letter from Gerald D. O'Connell, First Vice President, Regulation and Trading Operations, PHLX, to Michael Walinskas, Branch Chief, Options Regulation, Division, Commission, dated July 26, 1994 ("Amendment No. 2"). On September 22, 1994, the PHLX amended its proposal to revise the effective date of a change to a lower FCO position limit. Specifically, if the PHLX's beginning-of-the-year review of FCO trading volume indicates that the position limit for an FCO

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Notice of the proposal appeared in the **Federal Register** on August 18, 1994.[5] No comments were received on the proposal.

Currently, PHLX Rule 1001 establishes a position limit of 100,000 contracts for FCOs traded on the PHLX. The PHLX proposes to amend Exchange Rules 1001 and 1002 to increase the position and exercise limits for FCOs, including cross-rate FCOs.[6] Specifically, under proposed Commentary .05(b) to PHLX rule 1001, the PHLX proposes to establish a position limit of 150,000 contracts for FCOs with annual trading volume of at least 3,500,000 contracts, based upon the previous year's volume. At the beginning of each calendar year, the PHLX will review FCO volume information from the previous year to determine which limit will apply; a higher limit will be effective on the date set by the Exchange, and a lower limit will take effect on the Monday following the mid-month June expiration. If the PHLX's beginning-of-the-year FCO trading volume review indicates that the position limit for an FCO must be lowered from 150,000 contracts to 100,000 contracts, the PHLX will promptly notify FCO participants that the lower limit will be effective for all series in that option on the Monday following the mid-month June expiration, and FCO participants will be required to comply with the lower limit.[7] In addition, the PHLX's Market Surveillance Department plans to monitor trading volume on a monthly basis, so that FCOs will be eligible immediately for a higher position limit when annual trading volume, as measured from the beginning of the calendar year, exceeds the levels established in the proposal.

In order to implement the proposal prior to the end of 1994, the PHLX plans to conduct a one-time review of FCO volume, calculating volume for the 12-month period immediately preceding approval of the proposal, so that FCOs with annual trading volume during that period of at least 3,500,000 contracts will be eligible for the 150,000-contract limit immediately after approval of the proposal.[8] The PHLX states that for the 12-month period from September 1993–August 1994, the Deutsche mark and the French franc would qualify for the higher limit.[9]

The PHLX notes that the Exchange's exercise limits are established by reference to position limits, so that any increase in position limits will also increase exercise limits. Accordingly, the PHLX proposes to amend Exchange Rule 1002 to reflect the proposed amendment to Exchange Rule 1001.

The Exchange views the current FCO position and exercise limits as too low in light of increased levels of trading activity in the underlying currency markets and the resultant growth in liquidity of PHLX FCOs in recent years. The PHLX's proposal is designed to identify and accommodate those active currencies where heavier trading and open interest warrant higher limits. The PHLX understands that if it were to begin trading a new currency, measurement of the new currency's trading volume for purposes of establishing its eligibility for the 150,000-contract limit would be calculated from the beginning of the "calendar year."

When FCOs began trading on the PHLX in 1982, FCO position limits were set at 10,000 contracts.[10] Since that time the position limits have been changed three times, including an increase to the current level of 100,000 contracts in 1986.[11] Since 1986, the PHLX has added several new products for which position limits are aggregated with other trading in the same underlying foreign currency.[12] As a result, many traders have begun to regularly accumulate positions near existing limits, especially in certain more active currencies. In those active currencies, the PHLX believes that trading interest could migrate to the over-the-counter ("OTC") market, hampering PHLX liquidity if large traders continue to be restricted by the current position limits.

The PHLX notes that since the time of the most recent increase in position limits, the size of the underlying currency market has grown exponentially.[13] Since 1986, average daily trading volume in PHLX FCOs has grown from 30,880 to 48,246 contracts in 1992.[14] As of February 1993, average daily volume was 61,062 contracts. Monthly volume and open interest have also increased dramatically since 1986, especially in certain FCOs. Further, the highest monthly open interest in FCOs reached 995,941 in 1986; 1,188,570 contracts in 1987; 1,190,389 contracts in 1992; and 1,338,458 in 1993. Total annual volume has increased from 7,905,239 contracts in 1986 to 12,158,069 contracts in 1992 to 13,101,365 contracts in 1993. Total FCO trading volume as of July 1994 was 5,755,939 contracts.

In light of these market changes, the PHLX believes that increased position and exercise limits are necessary to add depth and liquidity to the market. Because of the large size of the underlying market in foreign currencies, the PHLX does not believe that higher position and exercise limits will increase manipulative concerns. Moreover, the Exchange believes that these increases are particularly appropriate because the FCO market attracts a large number of institutional and corporate investors who have substantial hedging needs and execute block-sized[15] transactions in FCOs.

Although the Exchange may grant position limit exemptions in the interest of fair and orderly markets, the Exchange believes that it is more direct and logical to establish more appropriate position limits for all investors.

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must be lowered from 150,000 to 100,000 contracts, the PHLX will promptly advise FCO participants that all series in that FCO will be subject to the lower limit effective the Monday following the mid-month June expiration. *See* Letter from Gerald D. O'Connell, First Vice President, Regulation and Trading Operations, PHLX, to Michael Walinskas, Branch Chief, Options Regulation, Division, Commission, dated September 22, 1994 ("Amendment No. 3").

[5] *See* Securities Exchange Act Release No. 34525 (August 11, 1994), 59 FR 42620 (August 18, 1994).

[6] Currently, the PHLX trades two cross-rate FCOs, the British pound/Deutsche mark and the Deutsche mark/Japanese yen.

[7] *See* Amendment No. 3, *supra* note 4.

[8] *See* Amendment No. 2, *supra* note 4.

[9] *See* Amendment No. 3, *supra* note 4.

[10] *See* Securities Exchange Act Release No. 19313 (December 8, 1982) 47 FR 56591 (order approving File No. SR–PHLX–81–04).

[11] *See* Securities Exchange Act Release No. 27310, *supra* note 2. *See also* Securities Exchange Act Release Nos. 21676 (January 18, 1985) 50 FR 3859 (order approving File No. SR–PHLX–84–18) (increasing position limits from 10,000 to 25,000 contracts); and 22479 (September 27, 1985), 50 FR 41276 (order approving File No. SR–PHLX–85–22) (increasing position limits to 50,000 contracts).

[12] *See e.g.* Securities Exchange Act Release Nos. 24859 (August 27, 1987) 52 FR 33493 (order approving File No. SR–PHLX–87–24) (aggregating European-style contracts); 30945 (July 21, 1992) 57 FR 33381 ((order approving File No. SR–PHLX–92–13) (aggregating month-end options); and 33732 (May 8, 1994), 59 FR 12023 (order approving File No. SR–PHLX–93–10) (aggregating cash-spot FCOs).

[13] In 1989, total gross global foreign exchange turnover was estimated to be $932 billion per day and net global turnover was estimated to be $640 billion per day. *See* Bank for International Settlements ("BIS") Survey of Foreign Exchange Market Activity, April 1989. In 1992, total gross global foreign exchange turnover was estimated to be $1,354 billion per day, a 35% increase since April 1989. After allowing for the elimination of local and cross-border double-counting and estimated gaps in reporting (*e.g.*, exchange-traded options and futures and countries not providing counterparty information for over-the-counter transactions), global "net-net" exchange market turnover in spot, forward and derivative contracts may be estimated at $880 billion per day during April 1992. *See* BIS Central Bank Survey of Foreign Exchange Market Activity in April 1992, March 1993.

[14] Average daily volume in foreign currency options was 14,829 contracts in 1985 and 30,880 contracts in 1986.

[15] For the purposes of this proposal, the PHLX defines "block-sized orders" as orders of 100 contracts or more. *See* July 27 Letter, *supra* note 4.

The PHLX believes that the proposed rule change is consistent with Section 6 of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade as well as to protect investors and the public interest. The PHLX believes that the increased depth and liquidity of the FCO market should promote just and equitable principles of trade. In addition, the PHLX believes that the proposed approach to FCO position limits should ensure that the applicable limit is reasonably related to trading volume. The PHLX believes that this, in turn, should result in position limit levels that serve the purposes of protecting investors and the public interest as well as preventing unfair acts and practices, such as manipulation.

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, the requirements of Section 6(b)(5).[16] Specifically, the Commission believes that the proposal to raise the position limit for only those FCOs with annual trading volume of at least 3,500,000 contracts should help to accommodate the needs of investors and market participants while ensuring that the increased limits are only available for those currencies with extremely large and liquid markets.

In this regard, the Commission believes, as it has stated in the past, that although position and exercise limits for FCOs must be sufficient to protect the options and related markets from disruptions by manipulation, the limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent market makers from adequately meeting their obligations to maintain a fair and orderly market.[17] In its proposal, the PHLX states that the FCO market attracts a large number of institutional and corporate investors who have substantial needs and who execute block-sized transactions in FCOs. In addition, the PHLX believes that trading in active currencies could migrate to the OTC market if traders continue to be restricted by the PHLX's current FCO position limits. In light of the size of the FCO market and the needs of FCO investors and market makers, the Commission believes that the PHLX's proposal is a reasonable effort to accommodate the needs of market participants and to help the Exchange remain competitive with the OTC market for FCOs.

At the same time, the Commission does not believe that the proposal significantly increases concerns regarding intermarket manipulations or disruptions of the markets for FCOs or the underlying currencies. The Commission notes that the interbank foreign currency spot market is an extremely large, diverse market comprised of banks and other financial institutions worldwide.[18] That market is supplemented by equally deep and liquid markets for standardized options and futures on foreign currencies and options on those futures. An active OTC market also exists in FCOs. Given the probable expense of attempting to affect the cash market for the currencies underlying the FCOs, the Commission believes that it would be difficult for a market participant to manipulate the underlying cash market to benefit a previously established FCO position.

In addition, the Commission believes the proposal's requirement that FCOs have annual trading volume of 3,500,000 contracts to be eligible for the 150,000 contract limit further minimizes the potential for manipulations and helps to ensure that only consistently active currencies will be eligible for the higher position limit. In this regard, the Commission notes that if the PHLX's annual review of FCO trading volume indicates that an FCO is no longer eligible for the higher position limit, then the lower limit will be effective in all series of the FCO effective the Monday following the mid-month June expiration.[19]

The Commission believes that the proposal's two-tiered approach to FCO position limits is consistent with the three-tiered position limits for equity and narrow-based index options traded on the PHLX, and that tiering is consistent with the evolutionary approach that the Commission and the options exchanges have adopted in increasing position and exercise limits.[20] The Commission believes that the PHLX has had considerable experience monitoring the tiered framework in equity options and narrow-based index options, and that differing position limits in those options have not created programming or monitoring problems for securities firms, or led to significant customer confusion.[21] Based on the PHLX's experience with the three-tiered approach in equity and narrow-based index options, the Commission believes the two-tiered approach for FCOs is appropriate.

Moreover, the absence of discernible manipulative problems under the current FCO position limit leads the Commission to conclude that the proposed increase is warranted. The Commission recognizes, as it has stated in the past, that there are no ideal limits in the sense that options positions of any given size can be stated conclusively to be free of any manipulative concerns.[22] The PHLX and the Commission, however, have relied largely on the absence of discernible manipulation or disruption problems under the current limit as an indicator that additional increases can be safely considered. The Commission believes for these reasons that the liberalization of existing FCO position and exercise limits under the condition specified is appropriate.[23]

In addition, the Commission believes that the PHLX's surveillance programs will be adequate to detect and deter the use of illegal position limits by market participants as well as detect and deter attempted manipulative activity and other trading abuses.

The Commission believes that it is reasonable for the PHLX, on a timely basis, to review annual FCO volume during the year measured immediately prior to approval of the proposal in order to allow the Exchange to implement the higher position limit for eligible FCOs prior to the end of 1994.

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

The Commission believes that Amendment No. 3 strengthens the PHLX's proposal by requiring that lower position limits be implemented sooner than originally proposed, *i.e.*, six months rather than up to two years, if an FCO's trading volume for the previous year is less than 3,500,000 contracts, thereby helping to ensure that

[16] 15 U.S.C. § 78f(b)(5) (1982).

[17] *See* Securities Exchange Act Release No. 22479, *supra* note 11.

[18] *See* Securities Exchange Act Release No. 31627 (December 21, 1992), 57 FR 62399 (December 30, 1992) (order approving File No. SR–Amex–92–36).

[19] *See* Amendment No. 3, *supra* note 4.

[20] *See* Securities Exchange Act Release No. 33288 (December 3, 1994), 58 FR 65221 (December 13, 1993) (order partially approving File No. SR–PHLX–93–07).

[21] *Id.*

[22] *See* Securities and Exchange Act Release No. 33288, *supra* note 20.

[23] The Commission continues to believe that proposals to increase position and exercise limits must be justified and evaluated separately. After reviewing the proposed exercise limits, along with the eligibility criteria for the higher tier, the Commission has concluded that the exercise limit increase does not raise manipulation problems or increase concerns over market disruption in the underlying currencies.

only actively traded currencies are eligible for the higher position limit. Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b) of the Act to approve Amendment No. 3 to the proposed rule change on an accelerated basis.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 24, 1994.

*It is therefore ordered,* Pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–PHLX–93–13) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

**Margaret H. McFarland,**

*Deputy Secretary.*

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[24] 15 U.S.C. § 78s(b)(2) (1982).

[25] 17 CFR 200.30–3(a)(12) (1993).

**[Release No. 34–34721; File No. SR–Phlx–92–03]**

## Self Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1, 2, and 3 to the Proposed Rule Change, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 4 to the Proposed Rule Change, by the Philadelphia Stock Exchange, Inc., Amending Options Floor Procedure Advice A–2 and Rule 1066

September 26, 1994.

On February 26, 1992, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Phlx Options Floor Procedure Advice ("OFPA") A–2 and Phlx Rule 1066. The Exchange filed Amendment No. 1 to the proposed rule change on January 6, 1993,[3] Amendment No. 2 on June 19, 1993,[4] Amendment No. 3 on June 23, 1994,[5] Amendment No. 4 on September 21, 1994.[6]

The proposed rule change and Amendment Nos. 1, 2, and 3 thereto were published for comment in the **Federal Register** on July 1, 1994.[7] No comments were received on the proposed rule changes, nor the amendments. This order approves the proposal and the floor amendments.

The proposed rule change to existing OFPA A–2 relates to the acceptance of contingency orders by Exchange specialists ("Specialists"). The changes to part (ii), and the addition of part (iii), of OFPA A–2 would permit Specialists to accept contingency orders currently forwarded through the Automated Options Market System (also known as "AUTOM") without the requirement of approval by an Exchange floor official ("Floor Official"). Such contingency orders would include those currently listed and defined in paragraph (c) of Phlx Rule 1066,[8] as well as additional types of contingency orders that the Exchange is proposing to add to Rule 1066(c). In addition, the Exchange is proposing to make changes to the fine schedule of OFPA A–2.

Curently, a Specialist is prohibited under OFPA A–2 from accepting contingency orders, other than stop (stop-loss) and stop-limit orders, without the express approval of a Floor Official.[9] The proposed changes would make permissible the acceptance of contingency orders by Specialists without the approval of a Floor Official. The change would extend the acceptance of certain contingency orders without floor official approval beyond the currently permitted acceptance of stop (stop-loss) and stop-limit orders to include contingency orders as defined as such in Rule 1066(c), and will apply to both customer and broker-dealer accounts. Furthermore, a Specialist would be able

[1] 15 U.S.C. § 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

[3] Amendment No. 1 clarifies that an Exchange specialist may accept or refuse contingency orders for placement on the Exchange order book, except that Exchange floor official approval is required to refuse to accept a customer contingency order. *See* Letter from Gerald D. O'Connell, Vice President, Market Surveillance, Phlx, to Sharon Lawson, Assistant Director, Division of Market Regulation, Commission, dated January 5, 1995.

[4] In Amendment No. 2, the Exchange notified the Commission of its intention to withdraw File No. SR–Phlx–92–37, because proposed changes to Phlx Rule 1066(c) contained therein, which would clarify the definitions of stop-limit and stop (stop-loss) orders and add definitions of all-or-none, opening-only-market, market-on-close, and cancel-replacement orders, would have duplicated the changes proposed by the Exchange in this File No. SR–Phlx–92–03. *See* Securities Exchange Act Release No. 32380 (May 28, 1993), 58 FR 31765 (June 4, 1993) ("Release No. 32380"). Also in Amendment No. 2, the Exchange proposed that Exchange specialists be permitted to accept spread, straddle, and combination orders, in addition to contingency orders, without the prior approval of an Exchange floor official. Amendment No. 2 added that Exchange specialists would not be permitted to refuse to accept customer contingency, spread, straddle, or combination orders without the prior approval of two Exchange floor officials. *See* Letter from Gerald D. O'Connell, Vice President, Market Surveillance, Phlx, to Michael Walinskas, Staff Attorney, Division of Market Regulation, Commission, dated June 17, 1993.

[5] In Amendment No. 3, the Exchange deleted from its proposal its request that Exchange specialists be permitted to accept spread, straddle, and/or combination orders without the prior approval of an Exchange floor official. *See* Letter from Gerald D. O'Connell, First Vice President, Phlx, to Michael Walinskas, Branch Chief, Options Regulation, Division of Market Regulation, Commission, dated June 23, 1994.

[6] In Amendment No. 4, the Phlx revised the text of Option Floor Procedure Advice A–2 to reflect the requirement that Exchange specialists are not permitted to accept discretionary orders, including spread, straddle, and combination orders, regardless of whether they receive the approval of a floor official. *See* Letter from Gerald D. O'Connell, First Vice President, Phlx, to Michael Walinskas, Branch Chief, Options Regulation, Division of Market Regulation, Commission, dated September 21, 1994.

[7] *See* Securities Exchange Act Release No. 32455 (June 24, 1994), 59 FR 33998 (July 1, 1994).

[8] Phlx Rule 1066 generally sets forth certain types of orders, including contingency orders, market orders, and limit orders. Paragraph (c) of Rule 1066 lists certain types of contingency orders, and specifically defines such orders. Currently, the contingency orders currently listed and defined under paragraph (c) are stop (stop-loss) orders, stop-limit orders, delta orders, and multi-part orders.

[9] In addition, a Specialist is prohibited from accepting option orders consisting of two or more option series (*i.e.*, spread, straddle, and/or combination orders). *See* Phlx OFPA A–2. The Exchange's proposed rule change does not affect this prohibition, which continues to apply to Specialists. *See* Amendment No. 3, *supra* note 5.

to refuse to accept contingency orders, but may only refuse to accept contingency orders from customer accounts upon the prior approval of two Floor Officials.

The Exchange is proposing to clarify the existing definitions of stop (stop-loss) and stop-limit orders in Phlx Rule 1066, and to add new subparagraphs (c)(4)–(7) to Rule 1066. This new text would expand the existing list of the types of contingency orders and define each contingency order permitted. Specifically, the Exchange proposes to add all-or-none,[10] opening-only-market,[11] market-on-close,[12] and cancel-replacement orders.[13]

Finally, the Exchange is proposing to amend the fine schedule to OFPA A–2 to increase the penalties for infractions of those guidelines by Specialists.

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, the requirements of Section 6(b)(5) of the Act.[14] Specifically, the Commission finds the amendment to OFPA A–2 permitting Specialists to accept contingency orders, as defined in Phlx Rule 1066, without prior Floor Official approval, will remove impediments to and perfect the mechanism of a free and open market and a national market system by facilitating quicker and more efficient executions of such contingency orders. While the Commission believes that it is permissible for Specialists to retain the ability to refuse to accept contingency orders as market conditions necessitate, the Commission also believes that the proposed amendment to OFPA A–2 requiring the express approval of two Floor Officials in order for a Specialist to refuse to accept a contingency order from a customer account will serve to prevent Specialists from arbitrarily rejecting such customer orders, and will thereby help to protect investors and the public interest. In this regard, the Commission would expect the Phlx to monitor this area to assure that orders are not arbitrarily or unfairly being refused.

The Commission finds that the expansion of Phlx Rule 1066(c) to include four additional types of contingency orders is consistent with the Act and the rules thereunder, as well as the rules of other self-regulatory organizations which trade option products. Specifically, the definitions of all-or-none,[15] opening-only-market,[16] and market-on-close[17] orders are consistent with the definitions contained in the rules of other options self-regulatory organizations, all of which rules have been previously approved by the Commission. In addition, although not contained in the rules of other self-regulatory organizations, the ability, or in some cases the responsibility, of Exchange members to submit cancel-replacement orders in appropriate circumstances is set forth in Phlx OFPA A–7(b), which was previously approved by the Commission.[18]

The Commission also finds that the proposed amendments to the definitions of stop (stop-loss) and stop-limit orders in Rule 1066(c) merely clarify the current definitions of those terms, and therefore present no new regulatory issues.

The Commission also finds that the amendment to OFPA A–2's fine schedule to increase the penalties for infractions thereof will continue to provide a fair and effective means to enforce compliance with the provisions and thereby promote just and equitable principles of trade and the protection of investors and the public interest.

Finally, the Commission finds good cause for approving Amendment No. 4 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Currently, OFPA A–2(ii) permits specialists to accept spread, straddle, or combination orders, as those terms are defined in Phlx Rule 1066(d), (g) and (h), respectively with the express approval of one Floor Official. However, because such orders are discretionary in nature, and Section 11(a) of the Act[19] prohibits specialists from accepting discretionary orders, the Phlx has amended OFPA A–2 to prohibit specialists from accepting such orders, regardless of Floor Official approval. Thus, the purpose of Amendment No. 4 is merely to conform OFPA A–2 with the requirements and prohibitions of the Act, and necessarily serves to promote just and equitable principles of trade and protect investors and the public interest. Therefore, the Commission finds that no new regulatory issues are raised by Amendment No. 4. Accordingly, the Commission believes it is consistent with Sections 19(b)(2) and 6(b)(5) of the Act to approve Amendment No. 4 on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 4 to the proposed rule change. 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 foregoing that are filed with the Commission, and all written communications relating to the foregoing between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory orgainzation. All submissions should refer to File No. SR–Phlx–92–03, and should be submitted by October 24, 1994.

[10] The Exchange defines an all-or-none order as a market order or limit order which is to be executed in its entirety, or not at all.

[11] The Exchange defines an opening-only-market order as a market order which is to be executed in whole or in part during the opening rotation of an options series, or not at all.

[12] The Exchange defines a market-on-close order as a market or limit order to be executed as close as possible to the closing bell, or during the closing rotation, and should be near to or at the closing price for the particular series.

[13] The Exchange defines a cancel-replacement order as a contingency order consisting of two or more parts which require the immediate cancellation of a previously received order prior to the replacement of a new order with new terms and conditions. If the previously placed order is already filled partially or in its entirety, the replacement order is automatically cancelled or reduced by such number.

[14] 15 U.S.C. § 78f(b)(5) (1988).

[15] *See* American Stock Exchange, Inc. ("Amex") Rule 131(c); Chicago Board Options Exchange, Inc. ("CBOE") Rule 6.53(i); and New York Stock Exchange, Inc. ("NYSE") Rule 13. *See also* Phlx OFPA A–7.

[16] *See* Amex Rule 131(e); CBOE Rule 6.53(l); and NYSE Rule 13.

[17] *See* Amex Rule 131(f) and NYSE Rule 13.

[18] *See* Securities Exchange Act Release No. 30670 (May 6, 1992), 57 FR 20312 (May 12, 1992) ("Release No. 30670"). OFPA A–7(b) states that in order to effect a change in the option series of an order placed on the Specialist book, a member shall submit separate cancel and replacement orders to the Specialists. In order to effect a change in the price or volume of an order placed on the Specialist book, a member may submit the appropriate cancel and replacement ticket or tickets to the Specialist. In Release No. 30670, the Commission found that this provision "served the needs of investors and promotes investor confidence in the quality and integrity of the Phlx's options market by requiring specialists to respond promptly to cancellation instructions and to indicate immediately that the cancellation was accepted or that the cancellation was too late, and therefore, that the order was executed." In addition, the Commission found that the provision "will improve the execution of customer orders by providing an efficient procedure for submitting changes in the terms of an order on the specialist's book." *Id.*

[19] 15 U.S.C. 78k(a).

*It is Therefore Ordered,* pursuant to section 19(b)(2) of the Act,[20] that the proposed rule change (File No. SR–Phlx–92–03), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–24305 Filed 9–30–94; 8:45 am]

BILLING CODE 8010–01–M

## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

September 27, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

WHX Corporation Holding Co.
Series D Conv. Pfd. Stock (File No. 7–12997)
US 1 Industries, Inc.
Common Stock, $.01 Par Value (File No. 7–12998)
Clarcor, Inc.
Common Stock, $1 Par Value (File No. 7–12999)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 19, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

[20] 15 U.S.C. § 78s(b)(2) (1988).

[21] 17 CFR 200.30–3(a)(12) (1993).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 94–24308 Filed 9–30–94; 8:45 am]

BILLING CODE 8010–01–M

**[Rel. No. IC–20574; 812–9186]**

## ACM Institutional Reserves, Inc.; Notice of Application

September 26, 1994.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** ACM Institutional Reserves, Inc. ("ACM").

**RELEVANT ACT SECTIONS:** Exemption requested under section 6(c) from rule 24f–2 under the Act.

**SUMMARY OF APPLICATION:** ACM requests an order to permit it to pay a share registration fee due under rule 24f–2 for its fiscal year ending April 30, 1994 based on net sales, *i.e.*, new sales minus redemptions, rather than on gross sales, *i.e.*, with no credit for redemptions.

**FILING DATE:** The application was filed on August 19, 1994.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested parties may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 20, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, 1345 Avenue of the Americas, New York, New York 10105.

**FOR FURTHER INFORMATION CONTACT:** Fran Pollack-Matz, Senior Attorney, at (202) 942–0570, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicants' Representations

1. Applicant, a registered open-end investment company, has filed a declaration pursuant to rule 24f–2 under the Act to register an indefinite amount of shares under the Securities Act of 1933.

2. An investment company that has filed a declaration under rule 24f–2 must file annual notices with the SEC and pay share registration fees for shares sold in the previous fiscal year. If the rule 24f–2 notice is filed within two months after the close of the investment company's fiscal year, the amount of the registration fee is based on net sales (new sales minus redemptions) in the year in question. If the rule 24f–2 notice is not filed within two months, the registration fee is based on gross sales (with no credit for redemptions). At the latest, the rule 24f–2 notice along with the appropriate registration fee must be filed within six months after the end of an investment company's fiscal year.

3. ACM's fiscal year ends on April 30. ACM submitted the rule 24f–2 notice for the fiscal year ending April 30, 1994 to a same day courier service on June 30, 1994, the last day of the two month filing deadline. Because ACM had net sales during the fiscal year, the notice was accompanied by $25,031.59, the fee payable to register the shares sold by ACM in excess of redemptions. The filing arrived at the SEC's filing desk after 5:30 p.m. on June 30, 1994, and was then made on July 1, 1994, but was rejected as having been filed too late to be eligible for a registration fee based on net sales. Thus, absent relief, applicant owes registration fees based on gross sales. For the fiscal year ending April 30, 1994, this would amount to an additional $573,733.41.

### Applicants' Legal Analysis

1. Section 6(c) permits the SEC to exempt any person, security, or transaction from any provisions of the Act if and to the extent the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. In addition, the SEC must find that an investment company was not at fault to grant an exemption from the two month filing deadline of rule 24f–2.[1]

2. ACM believes that it made a good faith effort to file the rule 24f–2 notice on a timely basis by same-day courier. ACM states that the delay in receipt of its filing was caused by an extraordinary

[1] *See* Decision of the Comptroller General of the United States, File No. B–239769.2 (July 24, 1992).

series of delays precipitated by the same-day courier service.

3. ACM believes that the requested relief meets the section 6(c) standards. Thus, ACM requests an exemption under section 6(c) from rule 24f–2 to permit them to pay registration fees based on net sales.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–24309 Filed 9–30–94; 8:45 am]

BILLING CODE 8010–01–M

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**[Investment Company Act Release No. 20575; 812–8842]**

## Colonial Trust I, et al.; Notice of Application

September 26, 1994.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

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**APPLICANTS:** Colonial Trust II, Colonial Trust II, Colonial Trust III, Colonial Trust IV, Colonial Investment Grade Municipal Trust, Colonial Municipal Income Trust (collectively, the "Closed-End Trusts"), and any subsequently registered investment companies advised by Colonial Management Associates, Inc. (collectively, with the Open-End Trusts and Closed-End Trusts, the "Trusts"); and Colonial Management Associates, Inc. (the "Adviser").

**RELEVANT ACT SECTIONS:** Order requested (a) under section 6(c) of the Act granting an exemption from sections 13(a)(2), 18(a), 18(c), 18(f)(1), 22(f), 22(g), and 23(a), and rule 2a–7 thereunder, (b) under sections 6(c) and 17(b) of the Act granting an exemption from section 17(a)(1), and (c) pursuant to section 18(d) of the Act and rule 17d–1 thereunder.

**SUMMARY OF APPLICATION:** Applicants seek an order permitting each applicant investment company to establish deferred compensation plans for its trustees who are not affiliated persons of the company's investment adviser or principal underwriter.

**FILING DATES:** The application was filed on February 16, 1994, and amended on April 29, 1994, August 12, 1994, and September 16, 1994.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 24, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, One Financial Center, Boston, Massachusetts 02111.

**FOR FURTHER INFORMATION CONTACT:** James J. Dwyer, Staff Attorney, at (202) 942–0581, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicants' Representations

1. Each existing Trust is organized as a Massachusetts business trust and advised by the Adviser. The Open-End Trusts are registered open-end management investment companies, and the Closed-End Trusts are registered closed-end management investment companies. The Colonial Investment Services division (the "Distributor") of the Adviser serves as the principal underwriter of the Open-End Trusts. Certain of the existing Trusts offer multiple series of shares. The term "Fund" refers to any series of a Trust, if the Trust offers shares in multiple series, or to a Trust that offers shares only in one series.

2. The board of trustees [1] of each Fund currently consists of nine persons, eight of whom are not "affiliated persons" of the Adviser or the Distributor within the meaning of section 2(a)(3) of the Act. Only the trustees who are not affiliated persons of the Adviser or the Distributor (the "Eligible Trustees") are entitled to receive annual fees for their services. The aggregate annual fees are, and are expected to remain, insignificant in comparison to applicants' total net assets.[2]

3. Applicants request relief to permit the Eligible Trustees to elect to defer receipt of all or part of their trustees' fees pursuant to a deferred fee agreement (the "Agreement") entered into between each Eligible Trustee and appropriate Fund. Under the Agreement, the Eligible Trustees could defer payment of trustees' fees to defer payment of income taxes or for other reasons.

4. Under the Agreement, the deferred fees payable by a Fund to a particular Eligible Trustee will be credited to a book reserve account established by the Fund (the "Deferred Fee Account"), as of the date such fees would have been paid to the Eligible Trustee. Trustees' fees payable for attending board meetings or board committee meetings will be credited to the Deferred Fee Account on the following business day. The value of a Deferred Fee Account shall equal the value such account would have had if the amounts credited to such account had been invested and reinvested in certain designated securities ("Underlying Securities") as of the date credited. Each Deferred Fee Account shall be credited or charged with book adjustments reflecting all dividends, including interest income and capital gains, and all unrealized gains and losses that would have been earned had the account been investing in such Underlying Securities.

5. The Underlying Securities will be shares of Funds as agreed to between the applicable board of trustees and the participating trustee. Although a Fund's own shares may serve as an Underlying Security, applicants do not anticipate that a Fund will purchase its own shares. Rather, monies equal to the amount credited to the Deferred Fee Account will be invested along with and in the same securities and proportions as the rest of the Fund's assets. Under existing deferral agreements, certain trustees have deferred receipt of their compensation under an arrangement where the trustee is entitled to receive an amount equal to the value such deferred compensation would have had if it had been invested in U.S. Treasury Bills on the date upon which such compensation otherwise would have been paid to such trustee.[3]

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[1] The term "trustee," as used herein, also refers to directors of a Fund that is organized as a corporation.

[2] It is expected that the aggregate amount payable to all trustees of the Trusts who receive remuneration from the Trusts for their services in 1994 will be $791,000, which would represent .0053% of the Trusts' aggregate net assets as of December 31, 1993.

[3] The staff of the Division of Investment Management has stated that it would not recommend that the Commission take any enforcement action under the Act if registered investment companies establish deferred compensation plans where the rate of return on the deferred compensation is based on the return on

Continued

6. The obligations of a Fund to make payments to the Deferred Fee Accounts will be general unsecured obligations of the Fund, and payments made pursuant to the Agreement will be made from the Fund's general assets and property. As a matter of risk management, each Fund intends and, with respect to any money market Fund that values its assets by the amortized cost method, undertakes, to purchase and maintain the Underlying Securities in amounts equal to the deemed investment of the Deferred Fee Accounts of its trustees. If a Fund chooses to purchase Underlying Securities to cover its obligations under the Agreement, any and all such Underlying Securities will continue to be a part of the general assets and property of the Fund. Any purchase of Underlying Securities will be made for the benefit of shareholders generally and not for the Eligible Trustees.

7. Under the Agreement, an Eligible Trustee may elect to defer payment of all or part of his or her trustee's fees until (a) The trustee ceases to be a trustee of the Fund, (b) the trustee dies, (c) the dissolution, liquidation, or winding up of the Fund, or the disposition of all of or substantially all of the Fund's assets (unless the Fund's obligations under the Agreement have been assumed by a financially responsible party purchasing such assets), or (d) the merger or consolidation of the Fund (unless, prior to such merger or consolidation, the board of trustees determines that the Agreement shall survive the merger or consolidation).[4] Payments shall be made in a lump sum or in a number of annual installments, not to exceed ten, elected by the trustee at the time of entering into the Agreement. Each annual payment will be made as of January 31. The trustee's right to receive payments will be nontransferable, except that, in the event of a trustee's death, amounts payable to him or her thereafter will be payable to his or her designated beneficiary.

8. The Agreement will not obligate a Fund to retain the services of a trustee, nor will it obligate a Fund to pay any particular level of fees to any trustee. The proposed arrangements will not affect the voting rights of any of the Funds' shareholders. If a Fund purchases Underlying Securities issued by another Fund, the purchasing Fund will vote such shares in proportion to the votes of all other holders of shares of such affiliated Fund.

**Applicants' Legal Analysis**

1. Applicants believe that the deferred fee arrangements are in the best interests of each Fund and its shareholders, and that the arrangements will enhance the ability of the Funds to attract and retain high caliber trustees.

2. Sections 18(a) and 18(c) restrict the ability of a registered closed-end investment company to issue senior securities. Similarly, section 18(f)(1) generally prohibits a registered open-end investment company from issuing senior securities. Section 13(a)(2) requires that any registered investment company obtain shareholder authorization before issuing any senior securities not contemplated by the recitals of policy in its registration statement. Applicants contend that the Agreement possesses none of the characteristics of senior securities that led Congress to enact these sections. The Agreement would not: (a) Induce speculative investments or provide opportunities for manipulative allocation of the expenses and profits of a Fund; (b) affect control of a Fund; (c) confuse investors or convey a false impression of safety; or (d) be inconsistent with the theory of mutuality of risk. All liabilities for deferred fees are expected to be offset by essentially equal amounts of assets that would not otherwise exist if the fees were paid on a current basis.

3. Section 22(f) prohibits undisclosed restrictions on transferability or negotiability of redeemable securities issued by open-end investment companies. Applicants contend that any restrictions created under the Agreement clearly would be set forth in the Agreement, are included primarily to benefit the Eligible Trustees, and would not adversely affect the interests of any shareholder of any Fund.

4. Sections 22(g) and 23(a) generally prohibit a registered open-end and closed-end investment company, respectively, from issuing any of their securities for services or for property other than cash or securities. Applicants assert that, while a trustee would receive fees for services, such fees would be payable independent of the Agreement. The Agreement would merely provide for deferral of payment of such fees and thus should be viewed as being issued not in return for services but in return for a Trust not being required to pay such fees on a current basis. Applicant further assert that these sections primarily are concerned with the dilutive effect on the equity and voting power than can result when securities are issued for consideration that is not readily valued. Applicants submit that the Agreement would not have such effect.

5. Rule 2a–7 imposes certain restrictions on the investments of "money market funds," as defined under the rule, that would prohibit a Fund that is a money market fund from investing in the shares of any other Fund. Applicants submit that the requested exemption would permit the Funds in question to achieve an exact matching of Underlying Securities with the deemed investments of the Deferred Fee Accounts, thereby ensuring that the deferred fees would not affect net asset value. Applicants further assert that the amounts involved in all cases would be *de minimis* in relation to the total net assets of each Fund, and would have no effect on the per share net asset value of the Funds.

6. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the proposed arrangements satisfy the standards for an exemption from the provisions discussed above.

7. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company from selling any security to such registered investment company. Each Fund may be an affiliated person of each other Fund under section 2(a)(3) of the Act. Applicants assert that section 17(a)(1) was designed to prevent sponsors of investment companies from using investment company assets as capital for enterprises with which they were associated or to acquire controlling interests in such enterprises. Applicants submit that the sale of securities issued by the Funds pursuant to the Agreement does not implicate the concerns of Congress in enacting this section, but merely would facilitate the matching of each Fund's liability for deferred fees with the Underlying Securities that would determine the amount of such liability. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person

U.S. Treasury Bills. *See, e.g., The North Carolina Cash Management Trust* (pub. avail. Jan. 23, 1992).

[4] Applicants acknowledge that the requested order would not permit a party acquiring a Fund's assets to assume a Fund's obligations under the Agreement if such assumption of obligations would violate the Act. Accordingly, such assumption would be permitted only if the assuming party is (1) Another Fund, (2) another registered investment company that has received exemptive relief similar to that sought by the application, or (3) not a registered investment company.

concerned, the transaction is consistent with the policies of the registered investment company, and the transaction is consistent with the general purposes of the Act. Applicants assert that the proposed transaction satisfies the criteria of section 17(b).

8. Section 17(d) and rule 17d–1 generally prevent a registered investment company's joint or joint and several participation with an affiliated person in a transaction in connection with any joint enterprise or other joint arrangement or profit-sharing plan on a basis different from or less advantageous than that of the affiliated person. Applicants assert that any adjustments made to the Deferred Fee Accounts to reflect the income, gain, or loss on investments of the assets of a Fund would be identical in amount to income, gain, and loss by other shareholders in the Fund. An Eligible Trustee would neither directly or indirectly receive a benefit that otherwise would inure to the Funds or their shareholders. Deferral of an Eligible Trustee's fees in accordance with the Agreement essentially would maintain the parties, viewed both separately and in their relationship to one another, in the same position as if the fees were paid on a current basis. When all payments have been made to an Eligible Trustee, such Eligible Trustee will be, relative to the Funds, no better off than if such Eligible Trustee had received deferred fees on a current basis and invested them in shares of the Underlying Securities.

**Applicants' Conditions**

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. With respect to the requested relief from rule 2a–7, any money market Fund that values its assets by the amortized cost method or penny-rounding method will buy and hold Underlying Securities that determine the performance of Deferred Fee Accounts to achieve an exact match between such Fund's liability to pay deferred fees and the assets that offset that liability.

2. If a Fund purchases Underlying Securities issued by an affiliated Fund, the purchasing Fund will vote such shares in proportion to the votes of all other holders of shares of such affiliated Fund.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–24311 Filed 9–30–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20577; No. 811–4515]

## Colonial United States Equity Index Trust

September 26, 1994.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

**APPLICANT:** Colonial United States Equity Index Trust.

**RELEVANT 1940 ACT SECTION:** Order requested under Section 8(f) of the 1940 Act.

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

**FILING DATE:** The application was filed on August 25, 1994.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 21, 1994, and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, Colonial United States Equity Index Trust, One Financial Center, Boston, Massachusetts 02111.

**FOR FURTHER INFORMATION CONTACT:** Yvonne M. Hunold, Senior Counsel, on (202) 942–0670, Office of Insurance Products (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the Application; the complete Application is available for a free from the SEC's Public Reference Branch.

**Applicant's Representations**

1. The Applicant (formerly, the GNMA Trust) is a Massachusetts business trust and an open-end, diversified investment management company registered under the 1940 Act.

2. On December 17, 1985, Applicant filed a notification of registration under Section 8(a) of the 1940 Act and a registration statement under the Securities Act of 1933 and Section 8(b) of the 1940 Act registering an unlimited number of shares of beneficial interest. The registration statement became effective on July 22, 1986, and the initial public offering commenced July 25, 1986.

3. On August 13, 1993, Applicant's board of trustees unanimously approved the terms of an agreement and plan of reorganization ("Plan"). The Plan was approved by Applicant's shareholders on December 10, 1993. Applicant relied upon Rule 17a–8 under the 1940 Act in determining to merge its assets into an existing series of a registered investment management company.

4. On December 16, 1993, Applicant made a final distribution of dividend income to its security holders in the amount of $0.1825 per share, for a total distribution of $342,672.

5. On December 17, 1993, pursuant to the Plan, Applicant transferred all of its assets to Colonial U.S. Fund for Growth ("Colonial Growth") in a non-taxable transaction. Colonial Growth is a series of Colonial Trust VI, a registered management investment company. In exchange for the transfer of assets, Colonial Growth assumed Applicant's liabilities and issued *pro rata* to Applicant's shareholders 3,552,164 of Colonial Growth Class A shares at a rate of 1.88 shares for each former share of the Applicant. The exchange resulted in the complete liquidation, distribution and cancellation of 1,885,910.722 shares of Applicant then outstanding, valued at $42,692,625.55 based on the closing net asset value for Applicant and the Colonial Growth as of December 17, 1993 of $22.64 and $12.02, respectively. The aggregate net assets of Colonial Growth immediately after the exchange were $227,715,458. The Plan did not affect the net asset value of the shares held by Applicant's shareholders.

6. Applicant's investment adviser paid all expenses incurred in connection with the Plan. These expenses totaled approximately $79,063, and consisted of legal, auditing, printing, mailing and proxy solicitation expenses. No brokerage commissions were paid with respect to the Plan.

7. Applicant has retained no assets and has no security holders. Applicant does not have any debts or other liabilities which remain outstanding and is not a party to any litigation or administrative proceeding.

8. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are security holders of Applicant.

9. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs. Applicant will, after receipt of the relief requested, file certificates of dissolution or similar documents in accordance with state law.

10. Applicant states that it is current with all of its filings under the 1940 Act, including all Form N–SAR filings for each semi-annual period for which such filing was or is required.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–24312 Filed 9–30–94; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. IC–20573; No. 812–9112]**

## Great-West Life & Annuity Insurance Company, et al.

September 26, 1994.

**AGENCY:** Securities and Exchange Commission ("Commission" or "SEC").

**ACTION:** Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

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**APPLICANTS:** Great-West Life & Annuity Insurance Company ("Great-West Life"), Maxim Series Account ("Separate Account"), and The Great West Life Assurance Company ("Great West Assurance").

**RELEVANT 1940 ACT SECTIONS:** Order requested under Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

**SUMMARY OF APPLICATION:** Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of: (a) The Separate Account in connection with the offer and sale of certain flexible premium payment variable annuity contracts ("Contracts"); (b) the Separate Account in connection with the issuance of variable annuity contracts that are substantially similar in all material respects to the Contracts ("Future Contracts"); and (c) any other separate account established in the future by Great-West Life in connection with the issuance of Future Contracts.

**FILING DATE:** The application was filed on July 15, 1994, and amended and restated on September 20, 1994.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request at hearing by writing to the Commission's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 21, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o Beverly A. Byrne, Esq., The Great-West Life Assurance Company, 8515 East Orchard Road, Englewood, Colorado 80111.

**FOR FURTHER INFORMATION CONTACT:** Yvonne Hunold, Senior Counsel, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

**Applicants' Representatives;**

1. Great-West Life is a stock file insurance company and a wholly-owned subsidiary of Great-West Assurance. Great-West Assurance is a subsidiary of Great-West Lifeco, Inc. ("Great-West Lifeco"), an insurance holding company and a subsidiary of Power Financial Corporation of Canada, a financial services company. Great-West Life is principally engaged in offering insurance and annuity contracts, and is admitted to do business in the District of Columbia and in all states, except New York.

2. The Separate Account is a separate investment account established by Great-West Life for the purpose of investing purchase payments received under the Contracts. The Separate Account is registered under the 1940 Act as a unit investment trust and the Contracts are registered as securities under the Securities Act of 1933.

The Separate Account currently has nine investment divisions ("Divisions"). Seven Divisions invest solely in corresponding portfolios of the Maxim Series Fund Inc. ("Maxim Fund"), and two Divisions invest solely in corresponding Portfolios of TCI Portfolios Inc. ("TCI Fund") (collective, "Funds"). Each Division is subdivided into six subaccounts ("Subaccounts"), two of which are used for allocations under the Contracts. The remaining four Subaccounts are used for allocations under other variable annuity contracts previously offer by Great-West life. Additional Divisions may be established in the future to invest in other portfolios of Maxim Fund or TCI Fund, or in other investments.

Great-West Life may, in the future, issue through the Separate Account, and through other separate accounts that it may establish in the future, other variable annuity contracts that are substantially similar in all material respects to the Contracts (collectively, "Future Contracts").

3. Maxim Fund and TCI Fund are registered open-end, diversified investment companies under the 1940 Act, each consisting of one or more investment series or portfolios (collectively, "Portfolios") with different investment objectives and policies. Great-West Life purchases and redeems Portfolio shares for the corresponding Divisions at net asset value. Shares of the Funds also are offered to other affiliated or unaffiliated separate accounts of insurance companies offering variable annuity or variable life insurance contracts.

4. Great-West Assurance will serve as the principal underwriter of the Contracts. Great-West Assurance is a subsidiary of Great-West Lifeco and is an affiliate of Great-West Life. Great-West Assurance is registered under the Securities Exchange Act of 1934 as a broker-dealer and is a member of the National Association of Securities Dealers, Inc.

5. The Contracts are to be used in connection with retirement plans that qualify for favorable federal income tax treatment under Section 401 or Section 408 of the Internal Revenue Code as an individual retirement plan ("Qualified Plan") or with plans purchased on a non-tax qualified basis ("Non-Qualified Plan"). The Contracts may be used for other purposes in the future, or offered only in connection with Qualified or Non-Qualified Plans.

6. The Contracts provide for minimum initial purchase payments and permit additional minimum purchase payments and periodic payments, subject to certain limitations. The Contracts provide for the accumulation of values on a variable basis determined by the investment experience of the Divisions to which the Contract owner allocates Purchase Payments. The Contracts also provide four Annuity Options for the payment of annuity benefits on a fixed and/or variable basis.

7. The Contracts also provide for the payment of a death benefit. If the Annuitant dies prior to the date on which annuity payments are to begin

("Retirement Date") and before age 75, the death benefit will be equal to the greater of either; (a) Contract Value less premium taxes, if any; or (b) total purchase payments made, less any partial surrenders of Contract Value, surrender charges, periodic payments, and premium taxes, if any. If the Annuitant dies prior to Retirement Date and after age 75, the Contract Value, less premium taxes, if any, will be paid to the beneficiary.

8. Various fees and expenses are deducted under the Contracts. An annual maintenance charge of $27 will be deducted from the Contract Value prior to the Retirement Date to compensate Great-West Life for administrative services. This charge is guaranteed not to exceed the cost of services to be provided over the life of the Contract, in accordance with the provisions of Rule 26a–1 under the 1940 Act. Great-West Life does not anticipate any profit from this charge.

9. Any premium or other taxes assessed by any governmental entity will be paid by Great-West Life. If the Contract Value is used to purchase an annuity under the Annuity Options, the dollar amount of any premium tax previously paid or payable upon annuitization by Great-West Life will be charged against Contract Value. The applicable premium tax rates currently range from 0% to 2.50%. The Separate Account and the Divisions will bear their own operating expenses and charges for federal income taxes, should such taxes be incurred by Great-West Life in connection with the operation of the Separate Account. No charge is made by Great-West Life for transfers of Contract Value among the Divisions. The Contracts also are not subject to any Contract policy fee.

10. No sales charges are deducted from premium payments under the Contracts. A contingent deferred sales charge ("CDSC") is deducted on any total or partial surrender of Contract Value prior to the Retirement Date that are attributable to Purchase Payments which have been credited to a Contract for less than seven years. Up to 10% of Contract Value as of December 31 of a calendar year prior to the year in which the amount is being surrendered can be withdrawn once per year without incurring the CDSC. Additional withdrawals are subject to a surrender charge equal to a percentage of the amount distributed according to the following schedule:

| Year completed | Maximum surrender charge percent |
|---|---|
| 1 | 7 |
| 2 | 6 |
| 3 | 5 |
| 4 | 4 |
| 5 | 3 |
| 6 | 2 |
| 7+ | 0 |

Total surrender charges will not exceed 7% of Purchase Payments under the Contracts. No CDSC is assessed on or after the seventh year of the Contracts. Applicants are relying on Rule 6c–8 under the 1940 Act to deduct the CDSC.

Great-West Life does not anticipate that the CDSC will generate sufficient revenues to pay the cost of distributing the Contracts. If this charge is insufficient to cover the expenses, the deficiency will be met from Great-West Life's general account assets, which may include amounts derived from the charge for mortality and expenses risks, discussed below.

11. A daily charge equal to an effective annual rate of 1.25% of the net asset value of the Separate Account will be imposed to compensate Great-West Life for bearing certain mortality and expense risks in connection with the Contracts and in connection with Future Contracts. Of this amount, 0.85% is allocable to mortality risks and 0.40% is allocable to expense risks. No deduction will be made for mortality and expense risks after the Retirement Date under Contracts electing certain Annuity Options that do not vary with the investment performance of the Divisions. The mortality and expense risk charge is guaranteed never to exceed 1.25%. This charge may be a source of profit for Great-West Life which will be added to its surplus and may be used for, among other things, the payment of distribution expenses.

12. The mortality risk arises from Great-West Life's contractual obligations to make Annuity Payments where one of the Life Annuity Options is selected (determined in accordance with the Annuity Tables and other provisions contained in the Contracts) regardless of how long an Annuitant may live. The mortality risk under the Contracts is the risk that, upon selection of an Annuity Option with a life contingency, Annuitants will live longer than Great-West Life's actuarial projections indicate, thereby resulting in higher than expected Annuity Payments. Great-West Life also assumes a mortality risk if the Annuitant should die prior to the Contract anniversary nearest the 75th birthday. In that event, Great-West Life is at risk to the extent that the amount of the Purchase Payments made exceed the Contract Value, less partial surrenders and surrender charges as of the date notice of death is received.

13. The expense risk borne by Great-West Life is the risk that the charges for administrative expenses, which are guaranteed not to increase for the life of the Contracts, may be insufficient to cover the actual costs of issuing and administering the Contracts in excess of the Contract Maintenance Charge.

**Applicants' Legal Analysis**

1. Applicants request an order of the Commission under Section 6(c) for exemptions from Section 26(a)(2) and 27(c)(2) of the 1940 Act to the extent necessary to permit the dedication of a maximum charge of 1.25% for the assumption of mortality and expense risks from the assets of: (a) The Separate Account in connection with the issuance of the Contracts; (b) the Separate Account in connection with the issuance of any Future Contracts; and (c) any other separate account established in the future by Great-West Life in connection with the issuance of Future Contracts. Applicants believe that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants submit that their request for exemptive relief for deduction of the 1.25% mortality and expense risk charge from the assets of the Separate Account, or any other separate account established by Great-West Life in the future, in connection with the issuance of Future Contracts, would promote competitiveness in the variable annuity contract market by eliminating the need for Great-West Life the file redundant exemptive applications, thereby reducing Great-West Life's administrative expenses and maximizing the efficient use of its resources. Applicants further submit that the delay and expense involved in having repeatedly to seek exemptive relief would impair Great-West Life's ability effectively to take advantage of business opportunities as they arise. Further, if Great-West Life were required repeatedly to seek exemptive relief with respect to the same issues addressed in this Application, investors would not receive any benefit or additional protection thereby. Thus, Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and purposes

fairly intended by the policy and provisions of the 1940 Act.

3. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

4. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

5. Applicants represent that the 1.25% mortality and expense risk charge under the Contracts is within the range of industry practice for comparable annuity contracts. This representation is based on Applicants' analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the manner in which charges are imposed, the existence of charge level or annuity-rate guarantees, and the markets in which the Contracts are offered. Applicants represent that Great-West Life will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

Similarly, prior to making available any Future Contracts through the Separate Account, or through other separate accounts established in the future by Great-West Life, Applicants will represent that the mortality and expense risk charge under any such Future Contracts will be within the range of industry practice for comparable contracts. Applicants represent that Great-West Life will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology, and results of, its comparative survey.

6. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge under the Contracts, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the CDSC. Great-West Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Account and the Contract owners. The basis for that conclusion is set forth in a memorandum which will be maintained by Great-West Life at its administrative offices and will be made available to the Commission.

Additionally, Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge under Future Contracts, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the CDSC. Great-West Life also will maintain and make available to the Commission a memorandum setting forth the basis for the same representation with respect to Future Contracts offered by the Separate Account and by any other separate account established in the future by Great-West Life.

7. Applicants also represents that the Separate Account, and separate accounts established by Great-West Life in the future, will invest only in underlying funds which undertake, in the event they should adopt a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors or trustees, majority of whom are not "interested persons" of the company, formulate and approve any such plan.

**Condition**

Applicants undertake that such Future Contracts funded by the Separate Account, or by separate accounts established in the future by Great-West, which seek to rely on the order issued pursuant to this Application will be substantially similar in all material respects to the Contracts.

**Conclusion**

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–24314 Filed 9–30–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20584/812–9160

## The Park Avenue Portfolio; Notice of Application

September 27, 1994

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** The Park Avenue Portfolio (the "Portfolio").

**RELEVANT ACT SECTIONS:** Order requested under section 17(b) of the Act for an exemption from section 17(a), and under section 17(d) of the Act and rule 17d–1 thereunder permitting certain joint transactions.

**SUMMARY OF APPLICATION:** Applicant requests an order to permit The Guardian U.S. Government Securities Fund series (the "Government Fund") of the Portfolio to merge with The Guardian Investment Quality Bond Fund series (the "Bond Fund") of the Portfolio. Because of certain affiliations, the two series may not rely on rule 17a–8 under the Act.

**FILING DATE:** The application was filed on August 12, 1994 and amended on September 21, 1994.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 20, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 201 Park Avenue South, New York, New York 10003.

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

**Applicant's Representations**

1. The Portfolio is an open-end management investment company. Prior to October 14, 1992, the Portfolio was known as The Guardian U.S. Government Trust (the "Trust"), and issued shares in a single series. Effective October 14, 1992, the Trust changed its name to "The Park Avenue Portfolio" and established six additional series within the Portfolio. These series include the Government Fund and the Bond Fund, as well as The Guardian Park Avenue Fund, The Guardian Baillie Gifford International Fund (the "International Fund"), The Guardian Asset Allocation Fund, The Guardian Tax-Exempt Fund, and The Guardian Cash Management Fund.

2. Guardian Investor Services Corporation ("GISC") serves as the distributor for all of the series and as investment adviser for all of the series except the International Fund. GISC is a wholly-owned subsidiary of The Guardian Insurance & Annuity Company, Inc., which in turn is a wholly-owned subsidiary of Guardian Life Insurance Company of America ("Guardian Life"). Guardian Life is a mutual life insurance company organized in the State of New York.

3. GISC provided the initial capital for the Trust in 1989. As of June 30, 1994, GISC owned 13.55% of the Government Fund and may be considered to control the Fund. In January 1993, Guardian Life provided the initial capital for the Bond Fund. As of June 30, 1994, Guardian Life owned 50.24% of the Bond Fund and may be considered to control the Fund. The investment objective of the Government Fund is to achieve a high level of current return through a combination of interest income and net capital gains consistent with prudent investment risk and security of principal. The investment objective of the Bond Fund is to secure a high level of current income and capital appreciation without undue risk to principal.

4. At a meeting held on June 23, 1994, the board of trustees of the Portfolio, including a majority of those trustees who are not "interested persons" as defined in the Act, approved an agreement and plan of reorganization the "Plan"). Pursuant to the Plan, on the effective date of the transaction (the "Closing Date"), the Government Fund will transfer all of its assets and liabilities to the Bond Fund in exchange for a number of shares of the Bond Fund having an aggregate net asset value equal to the aggregate net assets of the Government Fund exchanged. The Government Fund then will distribute such Bond Fund shares to its shareholders on a *pro rata* basis. Each Government Fund shareholder will have his or her Government Fund shares exchanged for the number of full and fractional shares of the Bond Fund which, when multiplied by the net asset value per share of Bond Fund, will have an aggregate net asset value equal to the aggregate net asset value of that holder's shares in the Government Fund on the Closing Date. On July 29, 1994, the Portfolio registered the shares of the Bond Fund to be issued pursuant to the Plan with the SEC on Form N–14.

5. While the Bond Fund ordinarily imposes in initial sales charge in connection with the purchase of shares, the sales charge will not apply to shares of the Bond Fund acquired pursuant to the proposed reorganization. Neither Fund imposes a contingent deferred sales charge or other fee in connection with the redemption of shares.

6. In evaluating whether to adopt the Plan and recommend its approval by shareholders of the Government Fund, the board of trustees has considered the following factors, among others: (a) The potential benefits of the reorganization to shareholders; (b) the compatibility of investment objectives, policies, restrictions and investment holdings of the Government Fund and the Bond Fund; (c) the current total net assets of the two Funds and the current and historical expenses and performance of each Portfolio; (d) the terms and conditions of the proposed reorganization and whether it would result in dilution of any shareholder's interest; (e) the absence of any direct or indirect costs to be incurred by either Fund or the Portfolio; and (f) the tax-free nature of the reorganization.

7. The Portfolio will submit the proposed Plan to the shareholders of the Government Fund for their approval at a meeting called for that purpose on October 19, 1994. Shareholders of the Government Fund will receive a notice of the special meeting of shareholders and a proxy statement and prospectus containing all material disclosures, including a description of all material aspects of the proposed reorganization and a copy of the Plan. Consistent with the declaration of trust, a majority of the outstanding shares of the Government Fund must approve the reorganization. GISC will vote the shares it owns in the Government Fund in favor of the Plan and will pay all the costs of the reorganization. In addition to shareholders approval, the consummation of the reorganization is conditioned upon receipt from the SEC of the order requested herein.

**Applicant's Legal Analysis**

1. Section 17(a) of the Act, in pertinent part, prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from selling to or purchasing from such registered company, any security or other property. Section 2(a)(3) of the Act provides, in pertinent part, that any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of any other person is an affiliated person of that person.

2. Section 17(b) provides that the SEC may exempt a transaction from section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act.

3. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all the assets involving registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors and/or common officers. The exemption provided by the rule is conditioned upon a determination by a majority of the directors of each such investment company (including a majority of the directors of each company who are not interested persons of the participating registered investment companies) that (a) participation in the transaction is in the best interests of that registered investment company, and (b) the interests of existing shareholders of that registered investment company will not be diluted as a result of the transaction.

4. The proposed reorganization could rely on rule 17a–8, except for the fact that the Government Fund and the Bond Fund may be affiliated persons for reasons other than those set forth in the rule. Because GISC, an indirect wholly-owned subsidiary of Guardian Life, directly owns more than 5% of the outstanding voting securities of the Government Fund, and Guardian Life directly owns more than 5% of the outstanding voting securities of the Bond Fund, if the series funds are treated as separate entities, the Portfolio may not rely upon rule 17a–8 because the Bond Fund and the Government Fund may be affiliated persons because

of the ultimate ownership by a single shareholder.

5. The Portfolio believes that the terms of the proposed reorganization meet the standards of section 17(b). The board of trustees of the Portfolio, including a majority of the trustees who are not "interested persons," has reviewed and approved the terms of the proposed reorganization as set forth in the Plan, including the consideration to be paid or received by all parties. They have independently determined for each of the Government Fund and the Bond Fund, that the proposed reorganization will be in the best interests of the shareholders of each Fund and that the consummation of the proposed reorganization will not result in the dilution of the current interests of the shareholders of the Funds. If effectuated according to the Plan, the proposed reorganization will result in the Government Fund's assets being managed together with the Bond Fund's assets in a combined portfolio of substantially greater size. The investment objectives of the Government Fund and the Bond Fund are substantially similar, to provide positive total returns without undue risks. The proposed transaction will comply with all the conditions that rule 17a–8 requires for the protection of investment companies and their shareholders.

6. Section 17(d) prohibits any affiliated person of a registered investment company, acting as principal, from effecting any transaction in which such registered investment company is a joint participant with such person in contravention of SEC rules and regulations. Rule 17d–1 provides that no joint enterprise or arrangement may be consummated unless the SEC first approves the transaction.

7. The Funds may be affiliated persons of each other, and the proposed transaction might be deemed to be a joint enterprise or other joint arrangement. The Portfolio believes that the terms of the proposed Plan meet the standards for relief under rule 17d–1, in that the terms of the Plan are reasonable and fair to all parties, do not involve overreaching and are consistent with the investment policies of the Funds. The participation in the Plan by each Fund is also not on a basis different from or less advantageous than that of the other participants.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–24376 Filed 9–30–94; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. IC–20585; 812–8958]**

## Twentieth Century Investors, Inc., et al.; Notice of Application

September 27, 1994.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

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**APPLICANTS:** Twentieth Century Investors, Inc. ("Twentieth Century"), TCI Portfolios, Inc. ("TCI"), ("Twentieth Century World Investors, Inc., Twentieth Century Premium Reserves, Inc. ("Premium Reserves"), Twentieth Century Capital Portfolios, Inc. ("Capital") (collectively, the "Investment Companies"), Investors Research Corporation (the "Manager"), and all subsequently registered open-end investment companies advised by the Manager (together with the Investment Companies, the "Funds").

**RELEVANT ACT SECTIONS:** Order requested pursuant to section 6(c) for an exemption from sections 13(a)(2), 13(a)(3), 18(f)(1), 22(f), and 22(g) of the Act and rule 2a–7 thereunder; pursuant to sections 6(c) and 17(b) for an exemption from section 17(a)(1); and pursuant to section 17(d) of the Act and rule 17d–1 thereunder to permit certain joint transactions.

**SUMMARY OF APPLICATION:** Applicants seek an order to permit the Funds to enter into deferred compensation arrangements with certain of their directors and to effect transactions incident to those arrangements.

**FILING DATE:** The application was filed on May 3, 1994 and amended on July 20, 1994. By letters dated September 15, 1994 and September 20, 1994, applicants' counsel stated that an amendment, the substance of which is incorporated herein, will be filed during the notice period.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m., on October 24, 1994 and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC, 20549, Applicants, Twentieth Century Tower, 4500 Main Street, P.O. Box 419200, Kansas City, Missouri 64141–6200.

**FOR FURTHER INFORMATION CONTACT:** James M. Curtis, Senior Counsel, at (202) 942–0563 or Barry D. Miller, Senior Special Counsel, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicants' Representations

1. Each of the Investment Companies is an open-end management investment company organized under the laws of the State of Maryland. The Manager serves as the investment adviser for the Investment Companies.

2. The Board of Directors of each Investment Company currently consists of seven persons, five of whom are not "interested persons" of that Investment Company within the meaning of section 2(a)(19) of the Act. Each director is entitled to receive an annual fee plus meeting attendance fees from each Investment Company, except that directors who are interested persons of the Manager receive no remuneration from the Investment Companies. Non-interested directors who serve on certain committees of the directors are entitled to additional fees for such service. The aggregate amount payable to the non-interested directors will be *de minimis* in comparison to the aggregate net assets of the existing Funds.

3. Applicants propose to implement a Deferred Compensation Plan for non-interested directors (the "Plan"). The purpose of the Plan is to permit individual directors to elect to defer receipt of all or a portion of the fees (the "Deferred Fees") to enable them to defer payment of income taxes on such fees or for other financial goals. Applicants believe that the availability of deferred fee arrangements will enhance the ability of the Funds to attract and retain qualified directors.

4. Under the Plan, a director's Deferred Fees are credited as of the date such fees would have been paid to a separate book reserve account established with respect to each series of each participating Fund (each a "Deferred Fee Account"). The value of the Deferred Fee Account as of any date will be equal to the value each account would have had of such date if the amounts credited to such account had been invested and reinvested as of the date credited in shares of certain designated series of the Funds. Shares of any series of any Fund, other than TCI or Premium Reserves,[1] as the Plan Committee and the participating director shall have agreed upon in writing from time to time, may be selected (the "Designated Shares"). Each Deferred Fee Account shall be credited or charged with book adjustments representing all interest, dividends, and other earnings, and all gains and losses that would have been realized had such account been invested in the Designated Shares.

5. With respect to the obligations created under the Plan, each director will remain a general unsecured creditor. The Plan does not create an obligation of any Fund to any director to purchase, hold, or dispose of any investments, and if a Fund or series thereof should choose to purchase investments, including Designated Shares, all such investments will continue to be part of the general assets and property of such Fund or series.

6. As a matter of prudent risk management, each Fund intends, where it determines appropriate, and with respect to money management series that employ the amortized cost method of valuation, will undertake, to purchase and maintain Designated Shares in amounts equal to the amount of Deferred Fees so credited.

7. The Plan will allow a director to elect to defer payment of fees payable to him by a Fund with respect to any year (including all adjustments representing interest, dividends and other earnings, and all gains and losses, credited or charged with respect thereof) until (a) the director ceases to be a director of the Fund or (b) the Plan is terminated. Payments to directors may be made in a lump sum or in such number of annual installments (not to exceed 10) as shall be elected by the director. In the event of death, amounts payable to the director under the Plan will become payable to his designated beneficiary; in all other events, the director's right to receive payments will be non-transferable.

8. The Plan will not obligate any Fund to retain the services of a director, nor will it obligate any Fund or series to pay any (or any particular level of) fees to any director. Rather, it will merely permit a director to defer receipt of those fees that would otherwise be payable from each Fund.

9. No Fund will purchase any Designated Shares, nor will it credit the Deferred Fee Accounts as though it had purchased any Designated Shares, before the requested exemptive order is issued.

**Applicants' Legal Analysis**

1. Sections 13(a)(2), 13(a)(3), 18(f)(1), 22(f), 22(g), 17(a)(1), and 17(d) of the Act and rules 2a–1 and 17d–1 thereunder, taken together, might be deemed to preclude the Funds and their directors from implementing the Plan absent an exemptive order form the Commission. Each Investment Company and the Manager believes, however, that the Plan is and will be in the best interests of each Fund adopting the Plan and its shareholders and is and will be consistent with the purposes fairly intended by the policy and provisions of the Act. In addition, applicants believe that exemption of the deferred fee arrangement and transactions related thereto from certain provisions of the Act is necessary and appropriate in the public interest and consistent with the protection of investors.

2. Applicants submit that the ability of the Funds to recruit and retain highly qualified directors will be enhanced if they are able to offer their directors the option of deferred payment of fees. Moreover, on a comparative basis, deferral would have a negligible effect on each Fund's total assets and liabilities because the total fees paid to each director will be *de minimis* in relation to the size of each Fund, and will have no effect on net assets and net income per share.

3. Section 18(f)(1) of the Act generally prohibits a registered open-end investment company from issuing any class of senior security or selling any senior security of which it is the issuer. In addition, section 13(a)(2) of the Act requires that a registered investment company obtain authorization by the vote of a majority of its outstanding voting securities before issuing any senior securities not contemplated by the recitals of policy contained in its registration statement. The Plan does not and would not give rise to any of the "evils" that led to Congress' concerns in enacting these provisions.

4. Section 13(a)(3) of the Act prohibits registered investment companies from, absent shareholder approval, deviating from any "fundamental" investment policy that is changeable only upon shareholder approval. The fundamental investment policies of certain series of the Funds[2] would prohibit investment in Designated Shares of other series offered by the Funds. Any series of the Funds with these types of policies would be prevented, without shareholder approval, from purchasing shares of other series of the Funds. If any such series of Funds are prevented from so investing, they will not be able to effect the matching of Designated Shares with the liabilities credited to the Deferred Fee Accounts. This matching is desirable because it will help ensure that the deferred fee arrangements will not affect the net asset value of any series' shares. Applicants believe that it is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act to exempt the Funds from the provisions of section 13(a)(3). The relief requested from section 13(a)(3) would extend only to the specifically named applicants and not to future investment companies or series because future open-end management investment companies or future series of currently effective open-end management companies will be able to establish fundamental policies with the necessary exceptions to accommodate purchases of Fund shares in connection with the Plan.

5. Section 22(f) of the Act prohibits a registered open-end investment company from restricting the transferability or negotiability of any

[1] TCI and Premium Reserves are excluded from those Funds the shares of which are eligible for selection because neither generally would be available to participating directors in their individual capacities. TCI is sold to insurance companies and Premium Reserves has a minimum investment requirement of $100,000 (an amount in excess of amounts anticipated to be deferred by any director). Because the directors believe it inappropriate to be able to invest in Funds they would not otherwise be able to invest in individually, it is anticipated that future Funds with restrictive provisions also will be excluded similarly from those eligible for selection under the Plan.

[2] The specific Funds seeking relief from the provisions of section 13(a)(3) are: Twentieth Century's Cash Reserve, U.S. Governments Short-Term, U.S. Governments Intermediate-Term, Limited-Term Bond, Intermediate-Term Bond, Long-Term Bond, Tax-Exempt Short-Term Bond, Tax-Exempt Intermediate-Term Bond, and Tax-Exempt long-Term Bond, all of which are limited to the purchase of bonds and other fixed income securities; Twentieth Century's Balanced Investors, which is limited to "common stocks * * * bonds and other fixed income securities"; Capital's Value which is restricted to "securities that management believes to be undervalued at the time of purchase"; and Premium Reserves' Government Reserve, Capital Reserve, and Management Bond, which are limited to the purchase of bonds and other fixed income securities.

security of which it is the issuer unless the restriction is disclosed in its registration statement and does not contravene rules and regulations prescribed by the Commission. Section 22(g) of the Act generally prohibits a registered open-end investment company from issuing any of its securities for services or for property other than cash or securities.

6. Section 22(f) was designed to bar only those restrictions on transferability or negotiability not disclosed to the holder of the subject security or expressly prohibited by Commission rule or regulations, neither of which circumstances would apply to the restriction of transferability of a director's benefits under the Plan. Such restriction is clearly set forth in the Plan, is included primarily to benefit the participating director, and does not adversely affect the interests of the directors or of a shareholder of any Fund.

7. With respect to section 22(g), the legislative history of the Act suggests that Congress was concerned with the dilutive effect on the equity and voting power of common stock of, or units of beneficial interest in, an open-end company if the company's securities were issued for consideration not readily valued. Applicants assert that the Plan would not have this effect. Also, a director's right to receive payments under the Plan are not granted in return for services or property other than cash already owed to the director. Although any director's fees that may be payable to a director would clearly be for services rendered, a Fund's obligation to pay such fees would exist whether or not the Plan was in effect. The Plan would merely provide for deferral of the payment of such fees and thus any rights under the Plan should be viewed as being "issued" not for services but for the Fund's not being required to pay such fees on a current basis. Thus, the requested exemption of the proposed deferred fee arrangement and future transactions effected pursuant to such arrangement from section 22(g) of the Act would not be inconsistent with the protection of investors and the purposes of the Act.

8. Section 17(a)(1) of the Act generally prohibits an affiliated person of a registered investment company, or any affiliated person of such person, from selling any security to such registered investment company. The section was designed to prevent sponsors of investment companies from using investment company assets as capital for enterprises with which they are associated or to acquire controlling interest in such enterprises. Applicants believe that the sale of securities issued by the various series of the Funds pursuant to the Plan does not implicate Congress concerns in enacting this section, but merely facilities the matching of the liabilities for Deferred Fees with Designated Shares, the value of which determines the amount of such liabilities.

9. Rule 2a–7 provides that the current price per share of any "money market fund" may be computed by use of the amortized cost method or the penny-rounding method, provided that the money market funds meets certain conditions. These conditions include, among others, (a) that the money market fund limit its investments to securities that have a remaining maturity of 397 days or less and that meet certain quality standards and (b) that the money market fund will not maintain a dollar-weighted average portfolio maturity that exceeds 90 days. Applicants believe that an exemption from rule 2a–7 for each money market fund to the limited extent required to permit them to invest in Designated Shares (and to exclude Designated Shares from the calculation of such series' dollar-weighted average maturities) is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Such an exemption would permit the series in question to achieve an exact matching of Designated Shares with the deemed investments of the Deferred Fee Accounts, thereby ensuring that the deferred fee arrangements will not affect net asset value.

10. Section 17(d) of the Act and rule 17d–1 thereunder are designed to limit or prevent a registered investment company's joint or joint and several participation with an affiliated person in a transaction in connection with any joint enterprise or other joint arrangement or profit-sharing plan on a basis different or less advantageous than that of the affiliated person.

11. Under the Plan, each Fund will have discretion to set aside cash to fund the general obligations accruing thereunder, and each Fund may invest cash in those shares of one or more series of Funds representing Designated Shares. Adjustments are to be made to the Deferred Fee Accounts to reflect the income, gain or loss with respect to the Designated Shares. The changes in value would be identical to the changes in share value experienced by any shareholder of the same series during the same period, but whose shares were not held in a Deferred Fee Account.

As an affiliated person, the participating director would neither directly nor indirectly receive a benefit that would otherwise inure to the Funds or any of their shareholders and thus the Plan would not constitute a joint or joint and several participation by any Fund with an affiliated person on a basis different from or less advantageous than that of the affiliated person.

**Applicants' Conditions**

Applicants agree that the order of the Commission granting the requested relief shall be subject to the following conditions:

1. With respect to the requested relief from rule 2a–7, any money market series of the Funds that values its assets by the amortized cost method will buy and hold Designated Shares that determine the performance of Deferred Fee Accounts to achieve an exact match between such series' liability to pay deferred fees and the assets that offset that liability.

2. If a Fund purchases Designated Shares issued by an affiliated Fund, the Fund will vote such shares in proportion to the votes of all other holders of shares of such affiliated Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–24377 Filed 9–30–94; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. IC–20576; File No. 812–8424]**

## Sentry Life Insurance Company, et al.

September 26, 1994.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act" or "Act").

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**APPLICANTS:** Sentry Life Insurance Company ("Sentry"), Sentry Variable Account II of Sentry ("Sentry Account"), Sentry Investors Life Insurance Company ("SILIC"), Sentry Investors Variable Account II of SILIC ("SILIC Account," and, together with the Sentry Account, the "Accounts"), and Sentry Equity Services, Inc. ("SESI") (collectively, the "Applicants").

**RELEVANT 1940 ACT SECTION:** Order requested under Section 17(b) of the 1940 Act for exemption from Section 17(a) thereof and under Section 6(c) of the Act for exemptions from Sections 26(a)(2)(C) and 27(c)(2) thereof.

**SUMMARY OF APPLICATION:** Applicants seek an Order to the extent necessary to

permit the transfer of assets of the SILIC Account to the Sentry Account and to permit the deduction of a mortality and expense risk charge under certain variable annuity contracts from the assets of the Sentry Account as provided for by the SILIC Contracts originally issued through the SILIC Account and proposed to be transferred to and supported by the Sentry Account.

**FILING DATE:** The application was filed on May 28, 1993 and was amended and restated on March 29, 1994 and on September 6, 1994.

**HEARING OR NOTIFICATION OF HEARING:** An Order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 21, 1994, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Applicants: Sentry Life Insurance Company, 1800 North Point Drive, Stevens Point, Wisconsin 54481; Sentry Investors Life Insurance Company, 1800 North Point Drive, Stevens Point, Wisconsin 54481; Sentry Equity Services, Inc., 1800 North Point Drive, Stevens Point, Wisconsin 54481.

**FOR FURTHER INFORMATION CONTACT:** W. Thomas Conner, Attorney, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch

**Applicants' Representations**

1. Sentry is a stock life insurance company that was organized under the laws of the State of Wisconsin in 1958. SILIC is a stock life insurance company that was originally organized in 1966 under the laws of the Commonwealth of Massachusetts as Patriot General Life Insurance Company. SILIC is a wholly-owned subsidiary of Sentry. SESI is registered with the SEC as a broker-dealer, is a member of the National Association of Securities Dealers, Inc., and serves as the principal underwriter for variable annuity contracts issued through the Sentry Account and the SILIC Account (the "Sentry Contracts" and the "SILIC Contracts," respectively, and, together, the "Contracts"). Sentry, SILIC , and SESI are direct or indirect subsidiaries of Sentry Insurance a Mutual Company, a Wisconsin mutual insurer.

2. Sentry established the Sentry Account in 1983 pursuant to the laws of the State of Wisconsin. The Sentry Account is registered under the Act as a unit investment trust, and the Sentry Contracts are registered under the Securities Act of 1933 ("1993 Act"). SILIC established the SILIC Account in 1983 to the laws of the Commonwealth of Massachusetts. The SILIC Account is registered under the 1940 Act as a unit investment trust, and the SILIC Contracts are registered under the 1933 Act.

3. Each Account consists of four subaccounts: a Liquid Asset Subaccount; a Growth Subaccount; a Limited Maturity Bond Subaccount; and a Balanced Subaccount. Each of the subaccounts invests exclusively in shares of a corresponding portfolio of the Neuberger & Berman Advisers Management Trust ("Fund"). The Fund is registered under the 1940 Act as a diversified open-end management investment company, and the shares issued by the Fund are registered under the 1933 Act.

4. The Sentry Contracts and the SILIC Contracts are identical in all material respects, except for the identity and depositor of the separate account issuing the respective Contract. The Contracts provide for the accumulation of contract values and payment of monthly annuity payments on a variable basis. The Contracts are designed for use by individuals in retirement plans on a qualified or non-qualified basis.

5. Sentry has or will shortly enter into an agreement providing for the sale of all outstanding stock of SILIC to an unrelated third party. One of the conditions of the sale will be that Sentry and SILIC enter into an assumption reinsurance arrangement providing for the transfer to Sentry of all assets and liabilities of SILIC, other than the minimum amount of capital necessary to support SILIC's licenses. Sentry will, pursuant to the assumption reinsurance agreement, assume legal ownership of the SILIC Account assets and become responsible for satisfaction of all liabilities and obligations arising under the SILIC Contracts and outstanding at the time of the transaction.

6. In order to avoid the administrative duplication that would result from maintaining two identical unit investment trusts, Sentry has decided to effectively merge the Accounts by transferring the assets of the SILIC Account (consisting of shares of the Fund) to the Sentry Account (the "Proposed Transaction"). The Sentry Account will continue to exist, and the SILIC Separate Account thereafter will be deregistered as an investment company. The effect of the Proposed Transaction will be that, as of its effective date, the Sentry Account will support the Sentry Contracts, the SILIC Contracts (*i.e.*, those originally issued by the SILIC Account), and any Contracts issued subsequent to the effective date of the Proposed Transaction. The assets supporting the former SILIC Contracts will continue to be invested exclusively in shares of the Fund.

7. The Proposed Transaction will be effected at the net asset values of the subaccounts involved, and no charges will be imposed or other deductions made in connection therewith. The Proposed Transaction also will not affect the net asset value of any subaccount: the net asset values for the four subaccounts of the Sentry Account in effect immediately after the transaction will be identical to the net asset values for the subaccounts of the SILIC Account in effect immediately prior to the transaction. All costs of the transaction will be borne by Sentry and not by Contractowners.

8. The succession of Sentry to SILIC as the insurance company issuing the Contracts will not dilute or otherwise adversely affect the economic interests of the Contractowners. The only change discernible to a Contractowner as a result of the Proposed Transaction will be the identity and depositor of the separate account in which his or her cash value is invested. The fees deducted from assets supporting the former SILIC Contracts after the Proposed Transaction will not differ in amount or type from those currently being deducted from the Sentry Account. After the Proposed Transaction, the guarantees that are not allocated to the Sentry Account (*e.g.*, the minimum death benefit) will be backed by Sentry's pool of assets, which, based on financial information as of December 31, 1993, is more than sixty times larger than SILIC's. Moreover, as of the date hereof, Sentry is rated "A+" by A.M. Best, while SILIC is rated "NA4" (rating procedure inapplicable).

9. The Proposed Transaction and the other transactions related to the sale of SILIC will be approved in advance by the respective Boards of Directors of Sentry and SILIC. Prior approval of the transaction will be obtained from the

Massachusetts Insurance Department and any other applicable regulatory authority. To the extent notification to Contractowners is required pursuant to generally applicable state insurance laws relating to assumption reinsurance, it will be provided. Applicable state insurance law does not require that Contractowners vote on the transaction or be granted any "opt-out" rights.

10. In offer to reflect the transfer of assets supporting the SILIC Contracts to the Sentry Account, Sentry will file a new 1933 Act registration statement for the Contracts and will amend the 1940 Act registration statement for the Sentry Account. Once the new 1933 Act registration statement becomes effective, Sentry will distribute copies of the prospectus contained therein to owners of outstanding Contracts. Once the Proposed Transaction is effected, application will be made to the Commission pursuant to Section 8(f) of the Act and Rule 8f–1 thereunder for an order declaring that the SILIC Account has ceased to be an investment company.

11. Certain charges will be imposed under the SILIC Contracts proposed to be supported by the Sentry Account. Sentry will deduct a mortality and expense risk charge equal on an annual basis to 1.20% of the average daily net asset value of the Sentry Account. Of this charge, .80% will be for mortality risks and .40% will be for expense risks. This charge compensates Sentry for providing a mortality guarantee, a death benefit, an expense guarantee, and the waiver of the Contingent Deferred Sales Charge, if any, upon the death of the annuitant.

12. Sentry will deduct a contract maintenance charge of $30 per SILIC Contract from contract values on each contract anniversary the SILIC Contract is in force, or when the value of the SILIC Contract is withdrawn in full prior to a contract anniversary. Sentry guarantees that the amount of the contract maintenance charge will not be increased in the future.

13. No sales charge was imposed on the SILIC Contracts at the time of sale. A contingent deferred sales charge is imposed on surrenders of purchase payments within six years after their being made. Thereafter, the charge is equal to zero. The amount of the contingent deferred sales charge is calculated by allocating purchase payments to the amount surrendered, multiplying each such allocated purchase payment by the appropriate percentage determined on the basis of the table below, and adding the products of each such multiplication.

| Time between receipt of allocated purchase payment and date of surrender | Percentage |
|---|---|
| Less than 1 year | 6 |
| At least 1 year but less than 2 years | 5 |
| At least 2 years but less than 3 years | 4 |
| At least 3 years but less than 4 years | 3 |
| At least 4 years but less than 5 years | 2 |
| At least 5 years but less than 6 years | 1 |
| At least 6 years | 0 |

The contingent deferred sales charge is intended to provide reimbursement for sales-related expenses. To the extent the charge is insufficient to cover all distribution costs, Sentry may use the mortality and expense risk charge to make up any difference.

14. Sentry will permit SILIC Contractowners to transfer all or part of the contract values between eligible mutual fund(s) or portfolio(s) subject to certain conditions. Currently, Sentry does not impose any charge for effecting transfers but it reserves the right to assess a transfer fee in the future subject to prior Commission approval or pursuant to any applicable exemptive release issued by the Commission.

15. Any premium taxes payable to any governmental entity as a result of the existence of the SILIC Contracts or the Sentry Account will be charged against contract value. Premium taxes currently imposed range from 0% to 4.0%.

16. Sentry deducts from the Sentry Account any income taxes resulting from the operation of the Sentry Account. Sentry has not made a provision for taxes within the Sentry Account for the payment of any tax obligation because Sentry believes that the operations of the Sentry Account and the underlying Trust will be conducted in such a manner as to not give rise to such tax obligation. Sentry has reserved the right, however, to establish such a provision in the future if it determines that it will incur a tax as a result of the operation of the Sentry Account.

17. On July 17, 1984, the SEC issued an order pursuant to Section 6(c) of the 1940 Act to SILIC, the SILIC Account, and SESI, exempting them from Sections 26(a) and 27(c) of the Act to the extent necessary to permit certain deductions and practices in connection with the SILIC Contracts. The SEC granted identical relief on the same day to Sentry, the Sentry Account, and SESI in connection with the Sentry Contracts.

**Applicants' Legal Analysis**

1. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, from knowingly selling any securities or other property to that company. Section 17(a)(2) of the Act prohibits these persons from knowingly purchasing any security or other property from the registered investment company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include any person directly or indirectly controlling, controlled by, or under common control with such other person. The Sentry Account and the SILIC Account may be deemed to be under the common control of Sentry, which is the depositor of the Sentry Account and the parent of the depositor of the SILIC Account. While Applicants do not concede that Section 17(a) applies to the Proposed Transaction, because the Sentry Account and the SILIC Account are affiliated persons, the transfer of assets from the SILIC Account to the Sentry Account arguably involves these entities, acting as principals, in buying and selling securities or other property from or to one another in contravention of Section 17(a).

2. Section 17(b) of the Act provides that a person may apply for an order of exemption from the provisions of Section 17(a) in connection with a transaction prohibited by that section, and that the Commission shall grant such an application if evidence establishes that (1) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (3) the proposed transaction is consistent with the general purposes of the Act.

3. Although Rule 17a–8 is not available in this case, Applicants submit that the Commission can look to the rule to determine whether the transaction is reasonable and fair. Applicants assert that the participating companies' investment objectives, policies, restrictions, and portfolios are compatible. Both the Sentry Account and SILIC Account invest exclusively in shares of the Fund, and, after the Proposed Transaction, the Sentry Account will continue to invest in shares of the Fund and provide holders of SILIC Contracts with the same

investment options as before the Proposed Transaction. Accordingly, the Proposed Transaction will result in no change in the investment objectives, policies, restrictions, or portfolios of the separate account funding the SILIC Contracts.

4. Applicants also represent that the transfer of assets held by the SILIC Account to the Sentry Account will be made at the relative net asset values of the subaccounts. No dilution of, or increase in, the SILIC Contractowners' contract values will occur as a result of the Proposed Transaction. The transfer will not result in any change in charges, costs, fees, or expenses borne by Contractowners.

5. Finally, Applicants state that no direct or indirect costs will be incurred by the SILIC Account or the Sentry Account as a result of the transaction. No charges, costs, fees, or other expenses would be incurred by holders of the Contracts as a result of, or in connection with, the Proposed Transaction. Thus, the Proposed Transaction will not result in dilution of the economic interests of the Contractowners.

6. Applicants represent that the Proposed Transaction does not involve overreaching on the part of any person involved. The purpose of the transfer is to consolidate two identical separate accounts, both of which issue identical contracts, have the same principal underwriter, and invest in the same underlying mutual fund, into a single separate account. This aggregation will allow for administrative efficiencies and cost savings on Sentry's part because Sentry can consolidate its separate account operations. It also will allow SILIC Contractowners to participate in a separate account that is sizable in terms of its total net assets and can be expected to grow since sales of Sentry contracts will continue after the Proposed Transaction.

7. Section 17(b) also requires that the Proposed Transaction be consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act. Applicants represent that because the assets underlying the SILIC Contracts and the Sentry Contracts will continue to be invested in shares of one or more portfolios of the Fund in the same manner as before the Proposed Transaction, the assets underlying the SILIC Contracts and the Sentry Contracts will continue to be invested according to the investment policies recited in their respective registration statements.

8. Finally, Section 17(b) requires that the Proposed Transaction be consistent with the general purposes of the Act. Applicants represent that the Proposed Transaction is consistent with the general policies and purposes of the Act. The transfer does not present any of the issues or abuses that Section 17(a) in particular, and the 1940 Act in general, were designed to prevent.

9. In light of the foregoing, Applicants request an exemption from Section 17(a) of the Act, pursuant to Section 17(b) thereof, to permit the proposed transfer. Applicants represent that the terms of the proposed transfer described in this Application, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; are consistent with the investment policies of each of the Accounts; and are consistent with the general purposes of the Act.

10. Section 26(a)(2)(C) provides that no payment to the depositor of, or principal underwriter for, a registered unit investment trust shall be allowed the trustee or custodian as an expense except compensation, not exceeding such reasonable amount as the Commission may prescribe for performing bookkeeping and other administrative duties normally performed by the trustee or custodian. Section 27(c)(2) prohibits a registered investment company or a depositor or underwriter for such company for selling periodic payment plan certificates unless the proceeds of all payments on such certificates, other than sales loads, are deposited with a trustee or custodian having the qualifications prescribed in Section 26(a)(1), and are held by such trustee or custodian under an agreement containing substantially the provisions required by Sections 26(a)(2) and 26(a)(3) of the 1940 Act.

11. Sentry, the Sentry Account, and SESI ("Section 6(c) Applicants") request an order under Section 6(c) of the 1940 Act exempting them from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of the mortality and expense risk charge from the Sentry Account as provided for by the SILIC Contracts previously issued through the SILIC Account and proposed to be supported by the Sentry Account pursuant to the Proposed Transaction.

12. Sentry represents that the charge of 1.20% for mortality and expense risks is reasonable in relation to the risks undertaken by Sentry and within the range of industry practice with respect to comparable annuity products. This representation is based upon Sentry's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. Sentry will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of its comparative survey.

13. The Section 6(c) Applicants acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed as being offset by distribution expenses not reimbursed by the sales charge. Sentry has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Sentry Account and SILIC Contractowners. The basis for such conclusion is set forth in a memorandum maintained by the Sentry at its administrative offices and will be available to the Commission.

14. Sentry represents that the Sentry Account will invest only in management investment companies that undertake, in the event the company adopts a plan to finance distribution expenses under Rule 12b–1 under the 1940 Act, to have a board of directors, a majority of whom are not interested persons of the company within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any such plan.

**Conclusion**

Applicants request that the Commission issue an order pursuant to Section 17(b) of the 1940 Act exempting the Proposed Transaction from the provisions of Section 17(a), to the extent necessary to permit that transfer of assets underlying the SILIC Contracts to the Sentry Account. In addition, the Section 6(c) Applicants request that the Commission issue an order pursuant to Section 6(c) of the Act to the extent necessary to permit the deduction by Sentry of mortality and expense risk charges from Sentry Account as provided for by the SILIC Contracts previously supported by the Sentry Account pursuant to the Proposed Transaction. Applicants and the Section 6(c) Applicants, as appropriate, submit that, for all of the reasons stated above, granting the relief requested herein is appropriate in the public interest, and consistent with the policy and purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–24315 Filed 9–30–94; 8:45 am]

BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster Loan Area #2744]**

### North Carolina; Declaration of Disaster Loan Area

Transylvania and Watauga Counties and the contiguous Counties of Ashe, Avery, Buncombe, Caldwell, Haywood, Henderson, Jackson, and Wilkes in North Carolina; Carter and Johnson Counties in Tennessee; and Greenville, Pickens, and Oconee Counties in South Carolina constitute a disaster area as a result of damages caused by severe storms and flooding which occurred on August 16 and 17, 1994. Applications for loans for physical damage may be filed until the close of business on November 28, 1994 and for economic injury until the close of business on June 27, 1995 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308 or other locally announced locations.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners With Credit Available Elsewhere | 8.000 |
| Homeowners Without Credit Available Elsewhere | 4.000 |
| Businesses With Credit Available Elsewhere | 8.000 |
| Businesses and Non-Profit Organizations Without Credit Available Elsewhere | 4.000 |
| Others (Including Non-Profit Organizations) With Credit Available Elsewhere | 7.125 |
| For Economic Injury: | |
| Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |

The numbers assigned to this disaster for physical damage are 274406 for North Carolina; 274506 for Tennessee; and 274606 for South Carolina. For economic injury the numbers are 834900 for North Carolina; 835000 for Tennessee; and 835100 for South Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 27, 1994.

**Erskine B. Bowles,**

*Administrator.*

[FR Doc. 94–24380 Filed 9–30–94; 8:45 am]

BILLING CODE 8025–01–M

### Interest Rate—Amendment #1

In the Notice published on Tuesday, September 27, 1994, in Volume 59, page 49272, the date for the beginning of the 1st quarter for FY 95 was stated incorrectly. The 1st quarter of FY 95 begins on October 1 and ends on December 31, 1994.

**John R. Cox,**

*Associate Administrator for Financial Assistance.*

[FR Doc. 94–24334 Filed 9–30–94; 8:45 am]

BILLING CODE 8025–01–M

## THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

### National Advisory Board Meeting

**AGENCY:** Thrift Depositor Protection Oversight Board.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., announcement is hereby published for a meeting of the National Advisory Board. The meeting is open to the public.

**DATES:** The National Advisory Board meeting is scheduled for Wednesday, October 12, 1994, 9 a.m. to 12 noon. Due to scheduling difficulties, this notice is being published less than fifteen days prior to the meeting date.

**ADDRESSES:** The meeting will be held at the Federal Deposit Insurance Corporation, Board Room 6010, 550 17th St., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 808 17th Street, NW., Washington, DC 20232, 202/416–2626.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 21A(d) of the Federal Home Loan Bank Act, the Thrift Depositor Protection Oversight Board established a National Advisory Board and six Regional Advisory Boards to advise the Oversight Board and the Resolution Trust Corporation (RTC) on the disposition of real property assets of the Corporation.

### Agenda

A detailed agenda will be available at the meeting. The meeting will include remarks from the national chairperson and briefings from the chairpersons of the six regional advisory boards on the results of their respective meetings held throughout the country from September 13 through September 29. The major issues to be discussed at the national meeting will include RTC's Small Investor Program and Land II Sales.

### Statements

Interested persons may submit, in writing, data, information or views on the issues pending before the National Advisory Board prior to or at the meeting. Seating is available on a first come first served basis for this open meeting.

Dated: September 28, 1994.

**Jill Nevius,**

*Committee Management Officer.*

[FR Doc. 94–24379 Filed 9–30–94; 8:45 am]

BILLING CODE 2221–01–M

## DEPARTMENT OF TRANSPORTATION

### Aviation Proceedings

Aviation Proceedings; Agreements filed during the Week Ended September 23, 1994. 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:* 49776

*Date filed:* September 19, 1994

*Parties:* Members of the International Air Transport Association

*Subject:* TC1 Reso/P 0435 dated August 26, 1994; TC1 Areawide Resolutions, r–1 to r–5; TC1 Reso/P 0436 dated August 26, 1994; TC1 Caribbean Resolutions r–6 to r–20; TC1 Reso/P 0438 dated August 26, 1994; TC1 Longhaul Resolutions r–21 to r–69; Minutes—TC1 Meet/P 0105 dated September 13, 1994, Summary of Agreements

*Proposed Effective Date:* January 1, 1995

*Docket Number:* 49777

*Date filed:* September 19, 1994

*Parties:* Members of the International Air Transport Association

*Subject:* TC1 Reso/P 0437 dated August 26, 1994; TC1 Within South America Resos r–1 to r–9

*Proposed Effective Date:* January 1, 1995

*Docket Number:* 49778

*Date filed:* September 19, 1994

*Parties:* Members of the International Air Transport Association

*Subject:* Comp MV/P 0777 dated August 18, 1994, Mail Vote 705—Fares from Mozambique, Amendment to Mail Vote

*Proposed Effective Date:* October 1, 1994

*Docket Number:* 49780

*Date filed:* September 21, 1994
*Parties:* Members of the International Air Transport Association
*Subject:* TC2 Reso/P 1643 dated September 20, 1994, Within Middle East resos 002a (r–1) & 015v (r–2), Minutes—TC2 Meet/P 0338 dated September 20, 1994
*Proposed Effective Date:* Expedited November 1, 1994
*Docket Number:* 49785
*Date filed:* September 23, 1994
*Parties:* Members of the International Air Transport Association
*Subject:* TC23 Telex Mail Vote 711—Australia-Europe fares r–1—07111 r–2—07100
*Proposed Effective Date:* November 15, 1994

**Phyllis T. Kaylor,**
*Chief, Documentary Services Division.*
[FR Doc. 94–24295 Filed 9–30–94; 8:45 am]
BILLING CODE 4910–62–P

## Coast Guard

**[CGD 94–079]**

## National Offshore Safety Advisory Committee Meeting

**AGENCY:** Coast Guard, DOT.
**ACTION:** Notice of meeting.

**SUMMARY:** The National Offshore Safety Advisory Committee (NOSAC) will meet to discuss various offshore safety related issues. The meeting will be open to the public.

**DATES:** The meeting will be held on Monday, November 14, 1994, from 12:30 p.m. to 4:00 p.m. Written material should be submitted not later than October 28, 1994.

**ADDRESSES:** The meeting will be held in the Shell Annex Auditorium (2nd Floor of the Parking Bldg), 701 Poydras Street, New Orleans, Louisiana. Written material should be submitted to CDR Adan Guerrero, Executive Director, Commandant (G–MVI–4), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593.

**FOR FURTHER INFORMATION CONTACT:** CDR Adan Guerrero, Executive Director, National Offshore Safety Advisory Committee (NOSAC), Room 1405, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–2307.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 Section 1 et seq. The agenda will include discussion of the following topics:

(1) Clean Air Act of 1990;
(2) ISM Code Implementation for the Offshore Industry;
(3) Status of Coast Guard Maritime Regulatory Reform (MRR);
(4) Revision of Subchapter "L" on OSVs and Liftboats;
(5) Legislative initiatives on new category of larger OSV;
(6) IMO Items Affecting the Offshore Industry;

Attendance at the meeting is open to the public. With advance notice, and at the discretion of the Chairman, members of the public may make oral presentations at the meeting. Persons wishing to make oral presentations should notify the Executive Director, listed above under **ADDRESSES**, no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee at any time; however, to ensure distribution to each Committee member, 20 copies of the written materials should be submitted to the Executive Director no later than October 28, 1994.

Dated: September 22, 1994.

**J.F. McGowam,**
*Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.*
[FR Doc. 94–24387 Filed 9–30–94; 8:45 am]
BILLING CODE 4910–14–M

## Federal Aviation Administration

**[Docket No. 27649]**

## Supplemental Draft Environmental Impact Statement; Effects of Changes in Aircraft Flight Patterns Over the State of New Jersey

**AGENCY:** Federal Aviation Administration (FAA), DOT.
**ACTION:** Issuance of A Supplemental Draft Environmental Impact Statement (EIS) For Public Review and Comment.

**SUMMARY:** The FAA has decided to prepare a supplement to the draft environmental impact statement (DEIS) on the effects of changes in aircraft flight patterns over the State of New Jersey caused by implementation of the Expanded East Coast Plan (EECP). As a result of the analysis phase of the comment period associated with the DEIS, new information was developed by the FAA. Additionally, new information was received from the public during the comment period. Since this information is pertinent to the decision process leading to issuance of a final EIS (FEIS), the public should have an opportunity to examine the new material and comment on it prior to completion of the FEIS.

The supplemental DEIS (SDEIS) was prepared in accordance with the National Environmental Policy Act (NEPA). Copies have been mailed to individuals that participated in the EIS process as well as to libraries in select locations throughout New Jersey.

**SUPPLEMENTARY INFORMATION:** The following is a summary of key portions of the SDEIS and major areas of concern identified by the public. It is not intended to duplicate or cover every aspect of the SDEIS. Substantive comments submitted to the FAA should address the SDEIS, not this summary.

### I. Summary of Key Portions of the SDEIS

*A. Alternatives and Mitigation Under Consideration*

The following alternatives were evaluated and are being considered by the FAA:

(1) Alternative A. Maintain the current (as defined in 1991) EECP structure. (Proposed action and no action)

(2) Alternative B. Return to 1986 air traffic routes and procedures using 1991 traffic. (Rollback)

(3) Alternative C2. Route Newark south flow departure traffic from over Raritan Bay to over the ocean (at night only) via a specific path defined by the Solberg and Colts Neck navigational aids. (Nighttime only oceanic/military routing)

Alternative D3. Spread aircraft departing Newark runways 22L and 22R to three different headings. (Spreading of fanning)

These alternatives are described in detail in Chapter 3 of the SDEIS. Two mitigation measures were evaluated and are also being considered:

(1) Routing some westbound departures from Newark to a new departure gate in the vicinity of the Solberg navigational aid.

(2) Moving LaGuardia arrival traffic further south from its current routing.

These mitigation measures are described in detail in Chapter 6 of the SDEIS. These measures, if selected by the decision-maker for implementation, would reduce noise by Day-Night Level (DNL) 5 dB or greater for approximately 18,500 residents of the Scotch Plains and Fanwood areas of Union County, New Jersey. These were two of the areas that experienced some of the greatest increases in noise as a result of implementation of the EECP.

*B. Environmental Consequences*

None of the alternatives would cause significant noise, air quality or water quality impacts. (The one exception identified in the area of noise results from the assumptions used in

reconstructing and modeling the return to 1986 routes and procedures.) Noise analysis indicates that 1.45 million individuals would be impacted by noise increases of DNL 5 dB or greater if the FAA returned to use of 1986 routes and procedures, while approximately 45,000 individuals would experience noise benefits of DNL 5 dB or greater. Fanning and nighttime use of ocean routing would have marginal noise benefits. In response to the volume of comments concerning noise impacts in particular communities, Appendix F of the SDEIS provides the increases in noise level predicted for each census block in New Jersey.

*C. Public Participation*

In preparing the SDEIS the FAA has carefully summarized and addressed the comments received on the DEIS and made revisions to the text as appropriate. There have been extensive opportunities for public participation since the DEIS was made available on November 12, 1992. In January, 1993, the FAA held public hearings in New Jersey to obtain comments on the DEIS. In addition, two public meetings were held in Staten Island, New York to address the DEIS and the New York Metropolitan Area Aircraft Noise Mitigation Review, a study mandated by Congress, which specifically addressed noise issues in the New York metropolitan area, including parts of Connecticut and New Jersey, separate from the EIS action. The comment period on the DEIS extended from November 12, 1992 to November 23, 1993. This 369 day comment period was well in excess on NEPA requirements.

**II. Areas of Controversy**

In addition to noise, air, and water quality impacts, the major areas of controversy concerning this EIS were alternate use of ocean routing, effects or aircraft noise on property values, and the scope of the EIS.

*A. Ocean Routing*

Many commenters believed the alternative of using ocean routes 24 hours a day should be studied in detail as a reasonable alternative. Several different proposals were considered in the DEIS, but eliminated due to concerns about operational feasibility and potential environmental impacts. In June 1993, the New Jersey Citizens for Environmental Research (NJCER), on behalf of the New Jersey Coalition Against Aircraft Noise, submitted a proposal to route all Newark Airport departures south, down the Arthur Kill and over Raritan Bay to the ocean. This study was analyzed operationally and modeled to determine its noise impacts within the scope of this EIS.

Operational examination indicates this proposal would cause about 5 points of conflicting traffic within New Jersey, require tunneling of traffic from Newark under traffic from other airports, and cause substantial delays at Newark.

Noise analysis indicates this proposal would have net benefits of DNL 5 dB or greater for approximately 228,000 New Jersey residents (690,000 residents would benefit while 462,000 residents would experience increased noise of DNL 5 dB or greater). In addition there appear to be potentially significant adverse noise impacts in areas south of Newark that would be overflown by aircraft at altitudes below 3,000 above ground level (AGL) feet as well as in New York and Connecticut. Additional environmental review would be required to examine these impacts, which are beyond the scope of this EIS. This proposal is described in detail in Chapter 1 of the SDEIS.

*B. Effect of Noise on Property Values*

Another area of concern was the effect of noise increases on real property values. There is insufficient scientific data to support a reasonable conclusion about whether the noise levels associated with implementation of the EECP have, or its alternatives would have, depressed property values in New Jersey. The economic studies of the effects of airport noise on house values to date, which have found a slight devaluation, have involved properties in or near urban areas surrounding major airports at noise exposure levels exceeding those in this EIS. This is discussed in detail in Section 5.2.1 of the SDEIS.

*C. Scope of the EIS*

Another controversial issue was the scope of the EIS. The legal and policy reasons supporting the decision to limit the scope of the EIS to New Jersey and to air traffic changes above 3,000 AGL feet are fully explained in Chapter 2 of the SDEIS and Appendix A. Briefly, the FAA adhered strictly to the congressional mandate to study New Jersey because of the complexity of an expanded study, the difficulty of identifying objective criteria for excluding portions of the other 18 States and the District of Columbia that were also potentially affected by the EECP, and the time constraints on the EIS process. The EIS examines changes above 3,000 AGL feet because that was the scope of the EECP. To assure compliance with NEPA, no alternative will be selected for implementation until all applicable environmental review requirements have been satisfied.

**FOR FURTHER INFORMATION CONTACT:**

For further information contact Mr. William J. Marx, FAA Office of Air Traffic System Management, Environmental Issues Program Office, ATM–700, Washington, DC 20591, telephone (202) 267–7900.

Any person may obtain a copy of the SDEIS by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling FAA's toll-free Consumer Hotline: 1–800–FAA–SURE between 8 a.m. and 4 p.m. Eastern Time, Monday through Friday, excluding Federal holidays.

**COMMENT PERIOD:** The public will be afforded a 60-day period to comment upon release of the SDEIS. The opportunity to comment will extend from September 30, until November 30, 1994. Comments will be considered in preparing the FEIS. Late-filed comments will be considered to the extend practicable.

Written comments on the SDEIS should be received at the following address, in triplicate, by November 30, 1994: Headquarters Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Docket No. 27649, 800 Independence Avenue SW., Washington, DC 20591. Comments may be delivered or inspected at Room 915G in FAA headquarters between 8:30 a.m. and 5 p.m., Monday through Friday, excluding Federal holidays.

Additionally, the FAA intends to conduct hearings and a meeting to gather comments on the SDEIS. The FAA will conduct public hearings in Cranford, Bernardsville and Tinton Falls, New Jersey to solicit both written and oral comments. A public meeting will also be held in Staten Island, New York. All persons wishing to make oral presentations at the public hearings and the public meeting are strongly urged to provide a written copy of their statements at the hearing/meeting or at the FAA address provided in the above paragraph. The exact dates, times and locations of the hearings in New Jersey and the meeting in Staten Island will be published in a subsequent **Federal Register** Notice and through the Press when arrangements are finalized.

Issued in Washington, DC on September 28, 1994.

**Bill F. Jeffers,**

*Acting Associate Administrator for Air Traffic.*

[FR Doc. 94–24368 Filed 9–30–94; 8:45 am]

BILLING CODE 4910–13–M

## National Highway Traffic Safety Administration

**[Docket No. 94–80; Notice 1]**

### Ford Motor Company; Receipt of Application for Decision of Inconsequential Noncompliance

Ford Motor Company (Ford) of Dearborn, Michigan has determined that some of its windows fail to comply with the labeling requirements of 49 CFR 571.205, Federal Motor Vehicle Safety Standard (FMVSS) No. 205, "Glazing Materials," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Ford has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 (formerly Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417)) and does not represent any agency decision or other exercise of judgement concerning the merits of the application.

Standard No. 205, which incorporates, by reference, the American National Standards Institute's "Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways" Z–26.1–1977, January 26, 1977, as supplemented by Z26.1a, July 3, 1980 (ANS Z26.1), specifies that typical automotive tempered glass with a luminous transmittance of less than 70 percent shall be labeled "AS3."

Ford manufactured approximately 1,820,000 quarter windows with a luminous transmittance of less than 70 percent for use in 1986 through 1994 model year Ranger Supercab vehicles. These windows were labeled "AS2" instead of "AS3." Approximately 7,900 were located and scrapped. The remaining windows have been used in vehicle production or provided to aftermarket distributors for service replacement.

For supports its application for inconsequential noncompliance with the following:

[Ford believes that t]he incorrect marking presents no risk of accident or injury. The windows can be installed only as rear quarter windows in Ranger Supercab trucks; AS2 and S3 glazing are both appropriate for these applications in accordance with Standard 205. In Ford's judgement, the mismarking is inconsequential as it relates to motor vehicle safety. The stated purposes of FMVSS No. 205 are to reduce injuries resulting from impact to glazing surfaces, to ensure a necessary degree of transparency in motor vehicle windows for driver visibility, and to minimize the possibility of occupants being thrown through vehicle windows in collisions. As previously noted the affected quarter windows fully comply with the performance requirements of FMVSS No. 205. Because all performance requirements are met, the incorrect marking of the quarter windows has no effect upon the ability of the glazing to perform in the manner intended by the standard. Ford is not aware of any complaints, accidents, or injuries related to this condition.

The mismarking should not cause confusion in glass replacement in vehicles in service. Aftermarket distributors do not use the marking to determine which glazing is used for replacement. Rather, replacement parts are determined by service part numbers which are obtained from cataloged listings. Further, we are not aware of any confusion in aftermarket servicing of vehicles as a result of this mismarking.

Interested persons are invited to submit written data, views, and arguments on the application of Ford, 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, D.C., 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 2, 1994.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and NHTSA Order 800–2)

Issued on : September 27, 1994.

**Stanley R. Scheiner,**

*Acting Associated Administrator for Rulemaking.*

[FR Doc. 94–24299 Filed 9–30–94; 8:45 am]

BILLING CODE 4910–59–M

**[Docket No. 94–79; Notice 1]**

### General Motors Corporation; Receipt of Application for Decision of Inconsequential Noncompliance

General Motors Corporation (GM) of Warren, Michigan, has determined that some of its vehicles fail to comply with 49 CFR 571.209, Federal Motor Vehicle Safety Standard (FMVSS) No. 209, "Seat Belt Assemblies," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." GM has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 (formerly Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417)) and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Paragraph S4.6(b) of FMVSS No. 209 states that a seat belt assembly shall be labeled with the following statement:

This seat belt assembly is for use only in [insert specific seating position(s), e.g., 'front right'] in [insert specific vehicles make(s) and model(s)].

GM produced two different populations of vehicles which do not meet the labeling requirements stated in the standard. The first population of vehicles, 68,405 1994 model year Chevrolet and GMC G-vans, were built with left-side seat belt assemblies that were labeled as right-side assemblies.

The second population of vehicles, 31,978 1992–94 model year Chevrolet and GMC K20753 extended cap pickups, were built with front outboard seat belt assemblies with the appropriate model designation omitted. The model designation is K20753.

GM supports its application for inconsequential noncompliance with the following.

For both these issues, the GM part numbers and manufacturer's model numbers correctly identify the affected seat belt assemblies. In addition, the service parts manuals correctly specify the proper part numbers if replacement parts were needed. In the case of the G-van seat belt assemblies, it is not possible to install the left front seat belt assembly at the right front position. For the K 20753 model, the issue is the omission of an appropriate model. Usage of the seat belt assembly in any of the models identified on the label is appropriate, as would be usage in the K 20753.

It is GM's understanding that the purposed of the subject requirement was to provide the

person *replacing* a seat belt assembly in a vehicle with appropriate seat position and vehicle model information. However, original equipment seat belt assemblies have already been installed in the appropriate models and positions at the assembly plant. The Agency stated in a recent rulemaking proposal (Docket 74–14; Notice 81, dated May 10, 1993), "* * * that seat belt assemblies installed as original equipment in new motor vehicles need not be required to be labeled with position model information. This information is only useful if the assembly is removed with the intention of using the assembly as a replacement in another vehicle. NHTSA does not believe this is a common practice." GM agrees and believes that the removal of original equipment seat belt assemblies for the purpose of replacement installation in another vehicle is rare. The Agency finalized that rulemaking action on April 15, 1994, eliminating the required label verbiage on seat belt assemblies installed as original equipment by vehicle manufacturers.

Interested persons are invited to submit written data, views, and arguments on the application of GM, 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 six copies be submitted.

All comments received before the close of business on the closing date indicate below be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 2, 1994.

(49 U.S.C. 30118, 30120 delegations of authority at 49 CFR 1.50 and NHTSA Order 800–2)

Issued on: September 27, 1994.

**Stanley R. Scheiner,**

*Acting Associate Administrator for Rulemaking.*

[FR Doc. 94–24300 Filed 9–30–94; 8:45 am]

BILLING CODE 4910–59–M

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**[Docket No. 94–58; Notice 2]**

## Decision That Nonconforming 1991 Mercedes-Benz 300CE Passenger Cars Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of decision by NHTSA that conforming 1991 Mercedes-Benz 300CE passenger cars are eligible for importation.

**SUMMARY:** This notice announces the decision by NHTSA that 1991 Mercedes-Benz 300CE passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1991 Mercedes-Benz 300CE), and they are capable of being readily altered to conform to the standards.

**DATES:** This decision is effective October 3, 1994.

**FOR FURTHER INFORMATION CONTACT:** Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

**SUPPLEMENTARY INFORMATION:**

### Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), 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 (formerly section 114 of the Act), 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 peition 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.**

G&K Automotive Conversion, Inc. of Santa Ana, California (Registered Importer R–90–007) petitioned NHTSA to decide whether 1991 Mercedes-Benz 300CE passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on July 22, 1994 (59 FR 37530) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

### Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 83 is the vehicle eligibility number assigned to vehicles admissible under this decision.

### *Final Decision*

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1991 Mercedes-Benz 300CE (Model ID 124.051) not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1991 Mercedes-Benz 300CE originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

**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: September 26, 1994.

**William A. Boehly,**

*Associate Administrator for Enforcement.*

[FR Doc. 94–24296 Filed 9–30–94; 8:45 am]

BILLING CODE 4910–59–M

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**[Docket No. 94–81; Notice 1]**

## Notice of Receipt of Petition for Decision That Nonconforming 1995 Mercedes-Benz Gelaendewagen 300GE (Long Wheel Base Type 463) Multi-Purpose Passenger Vehicles Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Request for comments on petition for decision that nonconforming 1995 Mercedes-Benz Gelaendewagen 300GE (long wheel base Type 463) multi-purpose passenger vehicles (MPVs) are eligible for importation.

**SUMMARY:** This notice requests comments on a petition submitted to the National Highway Traffic Safety Administration (NHTSA) for a decision that a 1995 Mercedes-Benz

Gelaendewagen 300GE (long wheel base Type 463) MPV that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because it has safety features that comply with, or are capable of being altered to comply with, all such standards.

**DATES:** The closing date for comments on the petition is November 2, 1994.

**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 Street SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm.]

**FOR FURTHER INFORMATION CONTACT:** Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5606).

**SUPPLEMENTARY INFORMATION:**

**Background**

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)((3)(A)(i)(I) of the National Traffic and Motor Vehicle safety Act (the Act)), 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 (formerly section 114 of the Act), 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. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. § 30141(a)(1)(B) (formerly section 108(c)(3)(A)(i)(II) of the Act, 15 U.S.C. § 1397(c)(3)(A)(i)(II)) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 40 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.**

Europa International, Inc. of Santa Fe, New Mexico (Registered Importer No. R–91–002) has petitioned NHTSA to decide whether 1995 Mercedes-Benz Gelaendewagen 300GE (long wheel base Type 463) MPVs are eligible for importation into the United States. Europa contends that this vehicle is eligible for importation under 49 U.S.C. § 30141(a)(1)(B) because it has safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Specifically, the petitioner claims that the 1995 Mercedes-Benz Gelaendewagen 300GE (long wheel base Type 463) MPV has safety features that comply with Standard Nos. 102 Transmission Shift Lever Sequence * * * (based on visual inspection and operation), 103 Defrosting and Defogging Systems (based on inspection), 104 Windshield Wiping and Washing Systems (based on operation), 106 Brake Hoses (based on visual inspection of certification markings), 107 Reflecting Surfaces (based on visual inspection), 113 Hood Latch Systems (based on information in owner's manual describing operation of secondary latch mechanism), 116 Brake Fluids (based on visual inspection of certification markings and information in owner's manual describing fluids installed at factory), 119 New Pneumatic Tires for Vehicles other than Passenger Cars (based on visual inspection of certification markings), 124 Accelerator Control Systems (based on operation and comparison to U.S.-certified vehicles), 201 Occupant Protection in Interior Impact (based on test data and certification of vehicle to European standard), 202 Head Restraints (based on test data and certification of vehicle to European standard), 204 Steering Control Rearward Displacement (based on test film), 205 Glazing Materials (based on visual inspection of certification markings), 207 Seating Systems, (based on test results and certification of vehicle to European standard), 209 Seat belt Assemblies (based on certification markings), 211 Wheel Nuts, Wheel Discs and Hubcaps (based on visual inspection), 214 Side Impact Protection (based on test results), 219 Windshield Zone Intrusion (based on engineering evaluation of Standard No. 208 compliance test film and test data), and 302 Flammability of Interior Materials (based on composition on upholstery).

The petitioner also contends that the 1995 Mercedes-Benz Gelaendewagen 300GE (long wheel base Type 463) MPV is capable of being altered to comply with the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: (a) substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a speedometer/odometer calibrated in miles per hour.

Standard No. 105 Hydraulic Brake Systems: placement of warning label on brake fluid reservoir cap.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: (a) installation of U.S.—model sealed beam headlamps; (b) installation of U.S.—model side marker lamps and reflectors; (c) installation of a high mounted stop lamp. The petitioner asserts that testing performed on the taillamp reveals that it complies with the standard, even though it lacks a DOT certification marking, and that all other lights are DOT certified.

Standard No. 111 Rearview Mirrors: inscriptions of the required warning statement on the convex surface of the passenger side rearview mirror.

Standard No. 114 Theft Protection: installation of a warning buzzer in the steering lock electrical circuit.

Standard No. 115 Vehicle Identification Number: installation of a VIN plate that can be read from outside the left windshield pillar.

Standard No. 118 Power-Operated Window Systems: rewiring of the power window system so that the window transport is inoperative when the front doors are open.

Standard No. 120 Tire Selection and Rims for Vehicles Other Than Passenger Cars: installation of a tire information placard. The petitioner asserts that even though the tire rims lack a DOT certification marking, they comply with the standard, based on their manufacturer's certification that they comply with the German TUV regulations, as well as their certification by the British Standards Association and the Rim Association of Australia.

Standard No. 206 Door Locks and Door Retention Components: installation of interior locking buttons on all door locks and modification of rear door locks to disable latch release controls when locking mechanism is engaged.

Standard No. 208 Occupant Crash Protection: installation of a complying driver's side air bag and a seat belt warning buzzer. The petitioner asserts that the vehicle conforms to the standard's injury criteria at the front

passenger position based on a test report from the vehicle's manufacturer.

Standard No. 210 Seat Belt Assembly Anchorages: insertion of instructions on the installation and use of child restraints in the owner's manual for the vehicle. The petitioner asserts that the vehicle is certified as complying with a European standard that contains more severe force application requirements than those of this standard.

Standard No. 212 Windshield Retention: application of cement to the windshield's edges.

The petitioner provided test data indicating that the vehicle satisfied the frontal barrier requirements of Standard No. 301 Fuel System Integrity. The petitioner also supplied data on a rear barrier crash at 31 mph with crash forces approximating those required by the standard. The data revealed that fuel leaked from the vent during the rollover that was conducted as part of this test. The petitioner installed a rollover valve in the fuel tank line to resolve that problem. The petitioner also stated that the vehicle should comply with the lateral impact test at the lower speed of 20 mph due to the reinforcing structure surrounding the fuel tank and the placement of the fuel lines inside the main frame of the vehicle.

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 will be published in the **Federal Register** pursuant to the authority indicated below.

**Authority:** 49 U.S.C. § 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

**William A. Boehly,**

*Associate Administrator for Enforcement.*

[FR Doc. 94–24297 Filed 9–30–94; 8:45 am]

BILLING CODE 4910–59–P

**[Docket No. 94–82; Notice 1]**

## Notice of Receipt of Petition for Decision That Nonconforming 1989 Audi 100 Passenger Cars Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of receipt of petition for decision that nonconforming 1989 Audi 100 passenger 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 1989 Audi 100 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 importation into and 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 November 2, 1994.

**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 Street SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.].

**FOR FURTHER INFORMATION CONTACT:** Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

**SUPPLEMENTARY INFORMATION:**

### Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), 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 (formerly section 114 of the Act), 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.**

J.K. Motors, Inc. of Kingsville, Maryland ("J.K.") (Registered Importer 90–006) has petitioned NHTSA to decide whether 1989 Audi 100 passenger cars are eligible for importation into the United States. The vehicle which J.K. believes is substantially similar is the 1989 Audi 100 that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1989 Audi 100 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.

J.K. submitted information with its petition intended to demonstrate that the non-U.S. certified 1989 Audi 100, 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 1989 Audi 100 is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 Transmission Shift Lever Sequence. * * *, 103 *Defrosting and Defrosting Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 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 Reaward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 214 *Side Door Strength*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System*

*Integrity, and* 302 *Flammability of Interior Materials.*

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 an ECE symbol on the brake failure indicator lamp; (b) 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 taillamp lenses which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a key microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 208 *Occupant Crash Protection:* installation of a seat belt warning buzzer, wired to the seat belt latch.

Additionally, the petitioner states that the bumpers on the non-U.S. certified 1989 Audi 100 must be reinforced to comply with the Bumper Standard found in 49 CFR Part 581.

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.

Issue on: September 26, 1994.

**Willian A. Boehly,**

*Associate Administrator for Enforcement.*

[FR Doc. 94–24298 Filed 9–30–94; 8:45 am]

BILLING CODE 4910–59–M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review.

September 27, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0028.

*Form Number:* IRS Forms 940 and 940–PR.

*Type of Review:* Revision.

*Title:* Employer's Annual Federal Unemployment (FUTA) Tax Return (940) Planilla Para La Declaracion Anual Del Patrono-La Contribucion Para El Desempleo (FUTA) (940–PR).

*Description:* Internal Revenue Code (IRC) section 3301 imposes a tax on employers based on the first $7,000 of taxable annual wages paid to each employee. IRS uses the information reported on Forms 940 and 940–PR (Puerto Rico) to ensure that employers have reported and figured the correct FUTA wages and tax.

*Respondents:* Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations.

*Estimated Number of Respondents/ Recordkeepers:* 1,332,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | Form 940 | Form 940–PR |
|---|---|---|
| Record-keeping. | 12 hr., 26 min | 12 hr., 12 min. |
| Learning about the law or the form. | 18 min ..... | 12 min. |
| Preparing and sending the form to the IRS. | 36 min ..... | 24 min. |

*Frequency of Response:* Annually.

*Estimated Total Reporting/ Recordkeeping Burden:* 17,529,302 hours.

*Clearance Officer:* Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

*OMB Reviewer:* Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*

[FR Doc. 94–24370 Filed 9–30–94; 8:45 am]

BILLING CODE 4830–01–P

### Public Information Collection Requirements Submitted to OMB for Review

September 23, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**Bureau of Alcohol, Tobacco and Firearms (BATF)**

*OMB Number:* 1512–0092.

*Form Number:* ATF Form 5100.31 (1648/1649/1650).

*Type of Review:* Extension.

*Title:* Application for Certification/ Exemption of Label/Bottle Approval Under the Federal Alcohol Administration Act.

*Description:* The Federal Alcohol Administration Act regulates the labeling of alcoholic beverages and designates the Treasury Department to oversee compliance with regulations. This form is completed by the regulated industry and submitted to Treasury as an application to label

their products. Treasury oversees label application to prevent consumer deception and to deter falsification of unfair advertising practices on alcoholic beverages.

*Respondents:* Businesses or other for-profit, Small businesses or organizations.

*Estimated Number of Respondents:* 6,060.

*Estimated Burden Hours Per Respondent:* 30 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 27,300 hours.

*Clearance Officer:* Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue NW., Washington, DC 20226.

*OMB Reviewer:* Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*

[FR Doc. 94–24369 Filed 9–30–94; 8:45 am]

BILLING CODE 4810–31–P

## Office of the Secretary

### List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986)

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: September 27, 1994.

**Norman Richter,**

*Acting International Tax Counsel for Tax Policy.*

[FR Doc. 94–24352 Filed 9–30–94; 8:45 am]

BILLING CODE 4810–25–M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Request for Public Comment With Respect To the Annual National Trade Estimate Report on Foreign Trade Barriers

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice.

**SUMMARY:** Pursuant to section 303 of the Trade and Tariff Act of 1984, as amended, USTR is required to publish annually the National Trade Estimate Report on Foreign Trade Barriers (NTE). With this notice, the Trade Policy Staff Committee (TPSC) is requesting interested parties to assist it in identifying significant barriers to U.S. exports of goods, services and overseas direct investment for inclusion in the NTE. Particularly important are impediments materially affecting the actual and potential financial performance of an industry sector. The TPSC invites written comments which provide views relevant to the issues to be examined in preparing the NTE.

**DATES:** Public comments are due at USTR not later than noon on November 1, 1994.

**ADDRESSES:** Carolyn Frank, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street NW., Room 501, Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:** John Panulas, Assistant Director for Policy Coordination, Office of the United States Trade Representative, (202) 395–9599.

**SUPPLEMENTARY INFORMATION:** Submissions should contain descriptions of any or all of the following nine categories of foreign trade barriers:

(1) import policies (e.g., tariffs and other import charges, quantitative restrictions, import licensing, and customs barriers);

(2) standards, testing, labeling, and certification (including unnecessarily restrictive application of phytosanitary standards, refusal to accept U.S. manufacturers' self-certification of conformance to foreign product standards, and environmental restrictions);

(3) discriminatory government procurement practices (e.g., "buy national" policies and closed bidding);

(4) export subsidies (e.g., export financing on preferential terms and agricultural export subsidies that displace U.S. exports in third country markets);

(5) lack of intellectual property protection (e.g., inadequate patent, copyright, and trademark regimes);

(6) services barriers (e.g., limits on the range of financial services offered by foreign financial institutions, regulation of international data flows, restrictions on the use of data processing, and quotas on imports of foreign films);

(7) investment barriers (e.g., limitations on foreign equity participation and on access to foreign government-funded R&D consortia, local content, technology transfer and export requirements, and restrictions on repatriation of earnings, capital, fees and royalties);

(8) anticompetitive practices tolerated by foreign governments (including anticompetitive activities of both state-owned and private firms which apply to services or to goods and which restrict the sale of U.S. products to any firm, not just to the foreign firms that perpetuate the practices); and

(9) other barriers (i.e., barriers that encompass more than one category listed above or that affect a single sector).

In comparison with last year's report, this year we are adding a new category, anti-competitive practices, to the NTE. In addition, the standards category will now encompass restrictive foreign environmental practices, and the investment category will cover restrictions on U.S. access to foreign government-funded research and development (R&D) consortia.

Submissions should contain estimates of the potential increase in exports that would result from the removal of the barrier, as well as a clear discussion of the method(s) by which the estimates were computed. Estimates should fall within the following value ranges: less than $5 million; $5 to $25 million; $25 million to $50 million; $50 million to $100 million; $100 million to $500 million; or over $500 million.

Please note that interested parties discussing barriers in more than one country should provide a separate submission for each country.

**Written Comments**

All written comments should be addressed to: Carolyn Frank, Trade Policy Staff Committee, Office of the United States Trade Representative, 600

17th Street NW., Room 501, Washington, DC 20506.

All submissions must be in English and should conform to the information requirements of 15 CFR 2007.

A party must provide ten copies of its submission which must be received at USTR no later than noon on November 1, 1994. If the submission contains business confidential information, ten copies of a non-confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked "confidential" at the top and bottom of the cover page (or letter) and of each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, "public version" or "non-confidential."

Written comments submitted in connection with this request, except for information granted "business confidential" status pursuant to 15 CFR 2007.7, will be available for public inspection shortly after the filing deadline. Inspection is by appointment only with the staff of the USTR Public Reading Room and can be arranged by calling (202) 295–6186.

**Frederick L. Montgomery,**

*Chairman, Trade Policy Staff Committee.*

[FR Doc. 94–24363 Filed 9–30–94; 8:45 am]

BILLING CODE 3190–01–M

# Sunshine Act Meetings

Federal Register
Vol. 59, No. 190
Monday, October 3, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## COMMODITY CREDIT CORPORATION

**TIME AND DATE:** 2:00 p.m., October 11, 1994.

**PLACE:** Room 104–A Administration Building, U.S. Department of Agriculture, Washington, D.C.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Special Open Meeting of March 22, 1994.
2. Memorandum re: Update of Commodity Credit Corporation (CCC)-Owned Inventory.
3. Memorandum re: Commodity Credit Corporation's (CCC,s) Financial Condition Report.
4. Memorandum re: Commodity Credit Corporation's (CCC's) Annual Financial Statement and Related Activities.
5. Docket CZ–161a, Revision 6 re: Policies for Collection, Settlement, and Adjustment of Certain Claims By or Against the Commodity Credit Corporation.
6. Memorandum re: Revised Availability of Commodity Credit Corporation Stocks for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, for Fiscal Year 1994.
7. Memorandum re: Availability of Commodity Credit Corporation Stocks for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, for Fiscal Year 1995.
8. Resolution re: Docket CZ–266, Resolution No. 32, Ratification of Commodities Available for Public Law 480 During Fiscal Year 1995.

**CONTACT PERSON FOR MORE INFORMATION:** Deborah A. Dawson, Secretary, Commodity Credit Corporation, Room 3603 South Building, U.S. Department of Agriculture, Post Office Box 2415, Washington, DC 20013; telephone (202) 690–0490.

Dated: September 29, 1994.

**Deborah A. Dawson,**

*Secretary, Commodity Credit Corporation.*

[FR Doc. 94–24545 Filed 9–29–94; 3:23 pm]

BILLING CODE 3410–05–M

## U.S. CONSUMER PRODUCT SAFETY COMMISSION

**TIME AND DATE:** 10:00 a.m., Wednesday, October 5, 1994.

**LOCATION:** Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Open to the Public.

**MATTER TO BE CONSIDERED:**

**Voluntary Standards/International Activities**

The staff will brief the Commission on voluntary standards and international activities.

For a recorded message containing the latest agenda information, call (301) 504–0709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: September 29, 1994.

**Sadye E. Dunn,**

*Secretary.*

[FR Doc. 94–24544 Filed 9–29–94; 3:18 pm]

BILLING CODE 6355–01–M

## FEDERAL ENERGY REGULATORY COMMISSION

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** September 26, 1994, 59 FR 49103.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** September 28, 1994, 10:00 a.m.

**CHANGE IN THE MEETING:** The following Docket Numbers have been added on the Agenda scheduled for September 28, 1994:

*Item No., Docket No., and Company*

CAG–10 RP94–67–000, *et al.*, Southern Natural Gas Company
CAG–12 RP94–150–000, *et al.*, ANR Pipeline Company
CAG–34 TM94–4–32–000 and 001, Colorado Interstate Gas Company

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–24426 Filed 9–28–94; 4:47 pm]

BILLING CODE 6717–01–M

federal register

Monday
October 3, 1994

Part II

# Department of Health and Human Services

Food and Drug Administration

21 CFR Part 314
Abbreviated New Drug Application Regulations; Patent and Exclusivity Provisions; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 314

[Docket No. 85N–0214]

RIN 0905–AB63

## Abbreviated New Drug Application Regulations; Patent and Exclusivity Provisions

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing regulations on certain requirements governing the submission, review, and approval of abbreviated new drug applications (ANDA's). Specifically, these new regulations pertain to patent issues, certification and notice of certification of invalidity or noninfringement of a patent by ANDA applicants, effective date of approval of an application under the Federal Food, Drug, and Cosmetic Act (the act), and new drug product exclusivity. These regulations are intended to complete FDA's implementation of Title I of the Drug Price Competition and Patent Term Restoration Act of 1984.

EFFECTIVE DATE: November 2, 1994.

FOR FURTHER INFORMATION CONTACT: Sharon M. Sheehan, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0340.

SUPPLEMENTARY INFORMATION:

### I. Background

On September 24, 1984, the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments) was enacted. The law consisted of two different titles. Title I authorized the approval of duplicate versions of approved drug products (other than those reviewed and approved under section 507 of the act (21 U.S.C. 357)) under an ANDA procedure. Title II authorized the extension of patent terms for approved new drug products (including antibiotics and biological drug products), some medical devices, food additives, and color additives. Congress intended these provisions to provide a careful balance between promoting competition among brand-name and duplicate or "generic" drugs and encouraging research and innovation.

Title I also amended section 505 of the act (21 U.S.C. 355) by requiring all New Drug Application (NDA) applicants and holders to provide certain patent information, requiring ANDA applicants to certify as to the status of patents claiming the drug product they intend to copy, providing for the submission and approval of applications for which the investigations relied on by the applicant to satisfy the "full reports" of safety and effectiveness requirements were not conducted by the applicant or for which the applicant had not obtained a right of reference or use from the person who conducted the investigations, establishing rules for disclosure of safety and effectiveness data submitted as part of an NDA, and providing specific time periods during which an NDA or an ANDA cannot be submitted or approved. The 1984 amendments also required FDA to promulgate new regulations implementing the statute. In the **Federal Register** of July 10, 1989 (54 FR 28872), FDA published a proposed rule on Title I. In the **Federal Register** of April 28, 1992 (57 FR 17950), FDA published a final rule on some aspects of Title I, such as ANDA content and format, approval and nonapproval of an application, and suitability petitions. In that final rule, FDA stated that it was still examining issues concerning patents and market exclusivity, and would issue a final rule once it had completed its deliberations. This document now finalizes those provisions.

In the **Federal Register** of March 7, 1988 (53 FR 7298), FDA published a final rule implementing Title II. That rule is codified at 21 CFR part 60.

### II. Highlights of the Final Rule

#### *A. Patent Information, Certification, and Notice of Certification to Patent Owner and Certain Application Holders*

The statute prohibits the agency from making effective the approval of an ANDA or an application described by section 505(b)(2) of the act (referred to as a 505(b)(2) application) before all relevant product and use patents for the listed drug (a drug product listed in an approved drug product list published by the agency) have expired, except where the generic applicant asserts either that its product will not infringe the patent or that the patent is invalid. In the latter case, approval of the ANDA or the 505(b)(2) application may not be made effective until the patent owner and the NDA holder have been notified and have had an opportunity to litigate the issue of patent infringement or validity. To facilitate the patent protection provisions, the statute requires that applications submitted under section 505(b) of the act include the patent number and expiration date of all relevant patents that claim the drug (including product and formulation patents) in the application or use patents that claim a method of using the drug. The agency publishes this patent information in its approved drug product list ("Approved Drug Products With Therapeutic Equivalence Evaluations," also known as the "Orange Book") for each listed drug for which patent information has been submitted.

A generic drug applicant submitting an ANDA that refers to a listed drug must include a certification as to the status of all patents applicable to the listed drug. Similarly, an applicant submitting a 505(b)(2) application must make certifications with respect to patents claiming any listed drug or claiming a use for such listed drug. If a generic applicant certifies that a relevant patent expires on a specified date, the effective date of approval of the ANDA or 505(b)(2) application will be delayed until the expiration of the patent. Thus, for example, if the patent expired on January 1, 1995, the effective date of approval of the ANDA or 505(b)(2) application would be January 1, 1995. The agency regards drug products with delayed effective dates as having tentative approvals; it does not consider the approval to be final until the effective date and the issuance of a final approval letter (see 57 FR 17950 at 17956). When a generic applicant certifies that any product or use patent is invalid or will not be infringed, the applicant must give notice of such certification to the patent owner and appropriate approved application holder for the listed drug. The generic applicant must include in the notice the factual and legal basis for the applicant's opinion that the patent is invalid or will not be infringed. Finally, a patent owner has 45 days from receipt of the notice of certification to file suit against the generic applicant to defend the patent. If the patent owner files suit within 45 days, the effective date of approval of the ANDA or 505(b)(2) application may be delayed up to 30 months pending resolution of the lawsuit.

The final rule describes: (1) The requirements for the submission of patent information by an NDA holder or applicant, (2) the patent certification requirements applicable to generic applicants, and (3) the content of a patent certification notice. The final rule also specifies: (1) When and to whom the notice is to be sent, and (2) the effect of each type of patent certification on

the effective date of approval of an application for a generic drug product.

*B. Exclusivity*

Section 505(c)(3)(D) and (j)(4)(D) of the act protects certain listed drugs, or certain changes in listed drugs, from generic copying for specified periods by placing a moratorium on the submission, or by delaying the effective date of approval, of ANDA's and 505(b)(2) applications for those listed drugs. These so-called "exclusivity provisions" provide the following periods of protection from generic competition: (1) A 10-year period of exclusivity for new chemical entities approved during the period January 1, 1982, to September 24, 1984, the date of enactment of the 1984 amendments; (2) a 5-year period of exclusivity for new chemical entities approved after September 24, 1984; (3) a 3-year period of exclusivity for drugs that are not new chemical entities approved after September 24, 1984, if the applicant submitted an application containing reports of "new clinical investigations (other than bioavailability studies) essential to approval and conducted or sponsored by the applicant"; (4) a 3-year period of exclusivity for certain changes made after September 24, 1984, if the applicant submitted a supplement containing reports of "new clinical investigations (other than bioavailability studies) essential to approval and conducted or sponsored by the person submitting the application"; and (5) a 2-year period of exclusivity for drugs that are not new chemical entities, or for certain changes made to already approved drug products, approved during the period January 1, 1982, to September 24, 1984.

The agency is codifying the provisions regarding 5- and 3-year exclusivity; FDA is not codifying the other exclusivity provision because they have expired. The final rule also defines certain terms used in the regulations, and clarifies the agency's interpretation of each of the provisions.

**III. Comments on the Proposed Rule**

*A. Section 314.50—Content and Format of an Application (21 CFR 314.50)*

The proposed rule contained several additions to the existing requirements in § 314.50. The proposed additions focused on patent information and certifications and claimed exclusivity. Under proposed § 314.50(i), for example, a 505(b)(2) applicant would be required to include in its application one of four possible certifications: (1) That patent information on the reference listed drug had not been submitted to FDA; (2) that the patent had expired; (3) the date on which the patent will expire; or (4) that the patent was invalid or would not be infringed by the manufacture, use, or sale of the proposed drug product.

1. Two comments objected to the provision regarding use patents (patents that claim a use for the patented invention) under proposed § 314.50(i). The comments explained that the provision would permit applicants to decide whether a use would infringe a patent and whether the patent owner should be notified. Both comments asked FDA to require applicants to send a certification of invalidity or noninfringement to all patent owners whose patents claim the active ingredient involved in the proposed drug product. One comment would also revise the provision to withhold approval of an application if the patent owner disagreed with the patent certification in order to give the patent owner an opportunity to initiate a lawsuit.

The regulation corresponds to the statutory language at section 505(b)(2)(B) of the act. The statute does not require a patent certification with respect to a use patent if the applicant is seeking approval for a drug product that does not claim a use protected by the patent. FDA also declines to revise the provision to have FDA withhold approval of an application under these circumstances. The statute provides express and specific grounds for delaying an effective date of approval (see section 505(c)(3) of the act). These do not include any express authority to delay an effective date of approval based on an inadequate notice, and the agency is not prepared to infer such authority. NDA holders are advised, however, to notify FDA of the patented uses that appear in the approved labeling for their products; this will enable the agency to provide some guidance to applicants required to submit either a patent certification under section 505(b)(2)(A) or (j)(2)(A) of the act, or a statement under section 505(b)(2)(B) or (j)(2)(A)(viii) of the act. These uses will be listed in the Orange Book.

2. One comment noted that "United States Office of Patent and Trademark" in proposed § 314.50(i)(1)(i) should be "United States Patent and Trademark Office."

FDA agrees and has revised the provision accordingly.

3. One comment asked FDA to give examples of patent certifications under proposed § 314.50(i)(1)(i)(A)(*1*) to (i)(1)(i)(A)(*3*). As proposed, these provisions would require an applicant to certify that: (1) No patent information had been submitted to FDA, (2) the patent has expired, or (3) the patent would expire on a specific date.

Generally, most applicants making paragraph I, II, or III patent certifications simply paraphrase the language used in § 314.50(i)(1)(i)(A)(*1*) to (i)(1)(i)(A)(*3*) for each patent.

4. The agency, on its own initiative, has amended § 314.50(i)(1)(i)(A) to replace the reference to a patent that claims "the drug or drugs" with a patent that claims "a drug (the drug product or drug substance that is a component of the drug product)." The agency has made this amendment to clarify the types of patents for which a certification should be made.

5. The agency, on its own initiative, has also amended § 314.50(i)(1)(i)(A)(*4*) and § 314.94(a)(12)(i)(A)(*4*) (21 CFR 314.94(a)(12)(i)(A)(*4*)) to include a reference to unenforceable patents. As proposed, these provisions would have required applicants to certify that a patent is invalid or will not be infringed by the manufacture, use, or sale of the drug product that is the subject of the application. The agency has revised these certification statements to clarify how an applicant challenging a patent as unenforceable should word its paragraph IV certification. Although the agency realizes that courts have, in patent cases, distinguished invalid patents from unenforceable patents, the only court addressing the issue of unenforceable patents in the context of the provisions of section 505 of the act interpreted the phrase "invalid or not infringed" to include an unenforceable patent. (See *Merck* v. *Danbury Pharmacal, Inc.*, 694 F.Supp. 1 (D. Del. 1988), *aff'd*, 873 F.2d 1418 (Fed. Cir. 1989) (applying section 505(j)(4)(B)(iii) of the act).) The agency agrees with the court's construction of the act. The alternative interpretation, precluding applicants challenging patents as unenforceable from filing certifications under paragraph IV, would be contrary to Congress' obvious intent in allowing patent challenges under section 505 of the act and would lead to absurd results. Subsequent to the *Merck* decision, the agency has accepted paragraph IV certifications from applicants challenging patents as unenforceable.

The agency has also made corresponding changes to other provisions, such as the notice requirements in §§ 314.52 and 314.95, to include certifications for "unenforceable" patents.

6. Two comments disagreed with proposed § 314.50(i)(1)(ii), which would require an applicant to state that, in its opinion and to the best of its knowledge, there are no patents that

claim the drug or drugs on which investigations that the applicant relied upon in its application were conducted or that claim a use for the drug or drugs. One comment said applicants should only be required to certify that there are no listed patents. The other comment suggested deleting the provision and combining this patent certification with a paragraph I (no patent information submitted) certification.

FDA believes the comments have misconstrued proposed § 314.50(i)(1)(ii). The provision would require a "no relevant patents" certification if, "in the opinion of the applicant and to the best of its knowledge," there are no patents described in the patent certification section (§ 314.50(i)(1)(i)). In other words, if an applicant made one of the four patent certifications under § 314.50(i)(1)(i), the applicant would not make another certification under § 314.50(i)(1)(ii).

7. One comment strongly objected to proposed § 314.50(i)(4). The provision would require section 505(b)(2) applicants whose applications were submitted after the late patent information is filed, or did not contain an appropriate patent certification at the time of the late submission, to submit a patent certification on such patents. The comment explained that section 505(d)(6) and 505(e)(4) of the act authorizes the agency, after providing an opportunity for a hearing, to refuse to approve an application or to withdraw approval of an NDA for failure to provide patent information. Thus, the comment argued that proposed § 314.50(i)(4) conferred a benefit on NDA applicants by permitting late patent information submissions without applying the statutory requirements for timely submission.

The agency has considered this and other comments which suggest regulatory approaches for handling patents that are filed outside the statutory time limits. Congress clearly intended to enforce timely submission of patent information. The statute requires that patent information be submitted with the application, by amendment prior to approval of the application, or within 30 days after the patent issues. (See 21 U.S.C. 355(b)(1) and (c)(2)). For the most extreme example of untimely patent filing—when a pioneer fails to file required patent information within 30 days of notice from the agency—Congress has provided the extreme remedy of withdrawal of approval of the new drug application. (See 21 U.S.C. 355(e)(4)). Congress did not directly address the question of patent filings that occur more than 30 days after issuance of the patent and for which the agency does not provide notice of the deficiency. The agency could treat these filings in a number of ways. The agency could refuse to publish in the list the untimely patent information. This approach has been rejected because it would provide no notice to subsequent 505(b)(2) or ANDA applicants that a patent exists that the NDA holder believes is applicable to the pioneer drug product. Absence of publication could lead an applicant to submit a 505(b)(2) application or an ANDA that it would not have submitted had the patent been listed. As a result, the applicant and the agency may expend resources unnecessarily. In addition, 505(b)(2) or ANDA applicants could thereby subject themselves and the NDA holder to unnecessary patent litigation.

Prior to publication of the proposed rule, the agency was asked to consider regulatory language designed to allow a pioneer holder to update, at any time, its patent information. This approach has been rejected because it would allow for manipulation of the patent filing system by the holder of the NDA and could result in delays in approval of otherwise approvable ANDA's. For example, if patents could be filed at any time after issuance, the holder of the NDA could delay the filing of a patent, and subsequent publication, until within 30 months prior to the expiration of the latest-expiring patent. Even if the ANDA applicant does not believe the patent is applicable to the pioneer drug, it will then be required either to file a paragraph III certification and wait until the patent expires, or to file a paragraph IV certification and therefore initiate the procedure set out at section 505(c)(3)(C) and (j)(4)(B). This procedure requires that the agency wait at least 30 months, unless a shorter or longer period is judicially ordered, before it makes effective approval of the application. Even if the NDA holder is unsuccessful in defending the late-filed patent, it will have extended its period of market monopoly in a manner inconsistent with the intent of Congress when it struck the balance between protecting the patent rights of innovators and encouraging prompt and efficient entry of generics onto the market. By requiring timely filing of patent information, the agency hopes to permit judicial resolution of patent disputes without unduly extending the innovator's period of patent protection.

The approach adopted by the agency as best embodying the compromise adopted by Congress requires that if an NDA applicant submits required patent information on an approved drug product more than 30 days after issuance of the patent, FDA will publish the untimely information, but will not require ANDA and 505(b)(2) applicants with pending applications who have previously submitted a certification, i.e. those applicants who would be prejudiced by the late submission, to recertify to the new patent. Only applicants who initially submit ANDA's or 505(b)(2) applications after the submission of the patent information or whose pending applications do not contain a valid certification at the time of submission would be required to submit a certification as to that patent. (See §§ 314.50(i)(4) and 314.94(a)(12)(vi).) While this could result in two categories of ANDA's for a pioneer drug, those without certifications for the late-filed patent and those with certifications for that patent, this approach is the best means for discouraging manipulation of the patent filing scheme and providing optimum notice of applicable patents. Disputes over patent issues arising from this approach will be resolved by Federal courts.

It is the agency's opinion that this remedy may also prove suitable in certain instances when an NDA holder fails to respond to an agency request for patent information within the statutory 30-day period. It is a less severe sanction than withdrawing the approval of the NDA, but nonetheless effectuates congressional intent to encourage timely filing and protect patent rights.

8. One comment asked FDA to clarify supplemental patent certifications under proposed § 314.50(i)(6)(i). The comment noted that the provision would have applicants submit new patent certifications if a patent were found valid and infringed, but does not instruct applicants what to do if a patent is found to be infringed, but also invalid.

FDA has revised §§ 314.50(i)(6)(i) and 314.94(a)(12)(vii)(A) to state that an applicant does not have to provide an amended patent certification if a court finds a patent to be invalid and infringed. FDA recognizes that courts have the discretion to focus on patent infringement issues and not decide patent validity. However, court decisions have also recognized the desirability of a court ruling on patent infringement even if the patent is held invalid. (See, e.g., *Medtronic, Inc.* v. *Cardiac Pacemakers, Inc.*, 721 F.2d 1563 at 1583 (Fed. Cir. 1983).) ("Though an invalid claim cannot give rise to liability for infringement, whether it is infringed is an entirely separate question capable of determination without regard to its validity. Because

both validity and infringement involve construction of a claim, and because the construction must be the same in determining both, it is desirable to decide both questions at the same time.") Moreover, in such instances, the Supreme Court has indicated that "of the two questions, validity has the greater public importance." (See *Sinclair & Carroll Co.* v. *Interchemical Corp.*, 325 U.S. 327, 330 (1945).) Consequently, if a court finds a patent to be invalid and infringed, FDA will attach more importance to the finding of invalidity, and will not require an amended patent certification even if the patent is also found to be infringed.

9. The agency, on its own initiative, has also revised § 314.50(i)(6)(ii) regarding patent certifications when a patent is removed from the list of patents for any reason other than a declaration of invalidity. Section 314.50(i)(6)(ii), as proposed, would have required an applicant to certify that there are no patents that claim the drug or, if other relevant patents claim the drug, to submit a request to withdraw the paragraph IV (patent is invalid, unenforceable, or will not be infringed) certification. FDA has revised this section so that an applicant must certify that there are no patents that claim the drug or, if other relevant patents claim the drug, to provide an appropriate patent certification.

10. On its own initiative, the agency has also revised § 314.50(i)(6)(iii)(*b*) (now renumbered as § 314.50(i)(6)(iii)(B)). As proposed, this provision would not require an applicant to amend a patent certification "when information on an otherwise applicable patent is submitted after the 505(b)(2) application is approved, whether or not the approval of the abbreviated application is effective." Because an approval with a delayed effective date is tentative and is not final (see 57 FR 17950 at 17956), the agency has revised § 314.50(i)(6)(iii)(B) to require section 505(b)(2) applicants to amend their patent certifications until the effective date of approval.

11. FDA received five comments on proposed § 314.50(j) and the applicant's obligations when claiming marketing exclusivity for a product. One comment would change proposed § 314.50(j) to have an applicant submit exclusivity information "with" its application rather than "to" its application.

FDA agrees, in part, with the comment. In general, applicants should submit exclusivity information with their NDA's. If the NDA has been submitted, but has not been approved, the applicant should submit exclusivity information as an amendment.

12. One comment would revise proposed § 314.50(j)(3) to have an applicant state that, "to the best of its knowledge or belief, a drug has not been approved." The comment said proposed § 314.50(j)(3) would require applicants to "prove a negative" because they would have to show that "no drug has previously been approved under section 505(b) of the act containing any active moiety in the drug for which the applicant is seeking approval."

FDA agrees and has amended the rule accordingly.

13. Proposed § 314.50(j)(4)(i) contained a typographical error. As originally drafted, the provision interpreted "new clinical investigations" as a certification that, to the best of the applicant's knowledge, the clinical investigations included in the application "meet the definitions of 'new' and 'clinical investigations' set forth in § 314.108(a)." Proposed section 314.108(a), however, only defined "new clinical investigation." The agency has corrected § 314.50(j)(4)(i) to refer to "new clinical investigation." The agency has also replaced the reference to "the clinical investigations" with "each of the clinical investigations." This change is intended to clarify that each clinical investigation, as opposed to some clinical investigations, must meet the definition of a "new clinical investigation" in § 314.108. The agency has also made a minor grammatical change to § 314.50(j)(4) to simplify its sentence structure.

14. Proposed § 314.50(j)(4)(ii) interpreted the phrase "essential to approval" as:

> A list of all published studies or publicly available reports of clinical investigations known to the applicant through a literature search that are relevant to the conditions for which the applicant is seeking approval, a certification that the applicant has thoroughly searched the scientific literature and, to the best of the applicant's knowledge, the list is complete and accurate and, in the applicant's opinion, such published studies or publicly available reports do not provide a sufficient basis for the approval of the conditions for which the applicant is seeking approval without reference to the new clinical investigation(s) in the application, and an explanation as to why the studies or reports are insufficient.

Three comments would revise proposed § 314.50(j)(4)(ii) to have FDA declare whether a study is "essential to approval" before the applicant begins the study or at the applicant's request. Another comment would consider the agency's rejection of a suitability petition or ANDA as conclusive evidence that studies are "essential to approval."

As stated elsewhere in this final rule, determining whether a study is essential for approval before a firm submits an application or even begins the study is not always feasible. Research goals and objectives often change during clinical investigations. Moreover, as stated in the preamble to the proposed rule, one cannot determine what studies will be essential to approval of an application by a review of protocols without knowing what drugs have been approved and what is in the published literature at the time the application is approved. If published reports of investigations, other than those conducted or sponsored by the applicant, are sufficient to approve a drug product, no additional studies would be essential to approval of that drug product as of the date of approval, and no exclusivity would be granted (see 54 FR 28872 at 28900 and 28901). Thus, it is far more practical for FDA to decide whether a study is essential for approval at the time the application is approved. FDA also believes that, if a pivotal study that could form the basis for approval were published by someone other than the applicant after submission but before approval of the application, there would be no exclusivity.

The agency also declines to treat its rejection of a suitability petition or ANDA as conclusive evidence that studies are "essential to approval." FDA may refuse to approve a suitability petition or ANDA for a variety of reasons. For example, under 21 CFR 314.93(e)(1)(ii), the agency may not approve a suitability petition that seeks to change an active ingredient if the drug product that is the subject of the petition is not a combination drug. Under 21 CFR 314.127(a), the agency may refuse to approve an ANDA if the methods used in, or the facilities and controls used for, the manufacture, processing, and packing of the drug product are inadequate to ensure and preserve its identity, strength, quality, and purity. Thus, the agency's refusal to approve a suitability petition or ANDA does not necessarily mean that studies conducted or sponsored by the applicant are "essential to approval."

15. One comment also interpreted the terms "scientific literature" in proposed § 314.50(j)(4)(ii) as literature existing at the time the application was submitted.

FDA agrees that § 314.50(j)(4)(ii) only requires applicants to provide a list of all published studies or publicly available reports of clinical investigations known to the applicant at the time the applicant submits the application.

*B. Section 314.52—Notice of Certification of Invalidity or Noninfringement of a Patent*

Proposed § 314.52 described the process whereby an applicant would provide notice of certification of invalidity or noninfringement of a patent. Proposed § 314.52(a) would have required applicants to provide notice to each patent owner that is the subject of the certification and the holder of the approved application. Proposed § 314.52(b) instructed applicants to provide notice after receipt of a letter from FDA stating that the application has been filed. Proposed § 314.52(c)(6) specified the content of a notice, including a "detailed statement of the factual and legal basis of the applicant's opinion that the patent is not valid or will not be infringed." Proposed § 314.52(d) would have required an applicant who amended its application to contain a patent certification to provide notice of certification of invalidity or noninfringement of a patent. Proposed § 314.52(e) would have required applicants to document receipt of notice.

16. FDA received two comments on proposed § 314.52(a). One comment agreed with the provision, but stated that notice to the holder of the approved application should be considered only as informational "with no legal ramifications since the NDA holder has *no* patent rights by reason of its NDA." (Emphasis added in original.)

The legal ramifications under patent law, if any, of this notice of certification of invalidity or noninfringement of a patent are beyond the scope of this rulemaking.

17. One comment objected to proposed § 314.52(a)(3). The comment explained that the provision would permit an applicant whose application did not cover any use claimed in a patent to refrain from making any patent certifications or providing any notice. The comment would require all applicants to provide notice of certification of invalidity or noninfringement of a patent to all patent owners whose patents claim the active ingredient that is the subject of the application.

Under section 505(b)(2)(A) of the Act, an application must contain a certification with respect to each patent which claims the listed drug or which claims a use for such listed drug for which the 505(b)(2) applicant is seeking approval. One of these patent certifications is that the patent is invalid or will not be infringed by the manufacture, use, or sale of the new drug for which the application is submitted. (See section 505(b)(2)(A)(iv) of the Act). If an applicant makes a "paragraph IV" certification, it must give notice to the patent owner and the NDA holder. (See section 505(b)(3)(A) of the Act.) If, however, the applicant is not seeking approval for a use that is covered by a use patent, the statute does not require a "paragraph IV" certification or notice to that patent owner and NDA holder. (See section 505(b)(2)(B) and (b)(2)(A) of the Act.)

Thus, § 314.52(a) is consistent with the statute, and FDA declines to revise it as suggested by the comment.

18. FDA received three comments on proposed § 314.52(c) regarding the content of a notice of certification of invalidity or noninfringement of a patent. Two comments favored extremely detailed statements of the factual and legal basis of the applicant's opinion that the patent is not valid or will not be infringed. These comments would require the applicant to list all components used in the proposed drug product, the proportions of each component, and list all grounds supporting its opinion that the patent is invalid or will not be infringed. One comment opposed disclosure of the proposed drug product's formulation and also objected to the use of a "designated intermediary" in proposed § 314.52(c)(6)(iii).

In general, the statute requires a notice of certification of invalidity or noninfringement of a patent to state that an application has been submitted and to include "a detailed statement of the factual and legal basis of the applicant's opinion that the patent is not valid or will not be infringed." (See section 505(b)(3)(B) and 355(j)(2)(B)(ii).) The proposed rule listed the type of information FDA considered necessary to enable patent owners to decide whether to sue for patent infringement. The list at proposed §§ 314.52(c) and 314.95(c) generated substantial debate, as reflected in the comments, as to the details to be included in a notice. The agency is neither prepared nor required to become involved in issues concerning sufficiency of notice for purposes of enforcing patent law. Therefore, FDA has revised both §§ 314.52(c) and 314.95(c) so that the detailed statement of the factual and legal basis behind the applicant's opinion that the patent is invalid, unenforceable, or will not be infringed must include: (1) For each claim of the patent alleged not to be infringed, a full and detailed explanation why the claim is not infringed; and (2) for each claim of a patent alleged to be invalid or unenforceable, a full and detailed explanation of the grounds supporting the allegation. These provisions, as revised, paraphrase the statutory language. The sufficiency of the notice, for purposes of patent enforcement, is an issue to be resolved by the applicant and the patent owner or the holder of the approved application.

The agency has also revised §§ 314.52(c)(6) and 314.95(c)(6) by removing paragraphs (c)(6)(iii) entirely. FDA is making this change due to the numbers of comments that objected to the use of a "designated intermediary" and the "referee" concept in proposed §§ 314.52 and 314.95.

19. One comment would amend proposed § 314.52(e) pertaining to documentation of receipt of notice of certification of invalidity or noninfringement of a patent. The comment would include a signed receipt or delivery manifest as documentation of notice.

Section 314.52(e) clearly states that documentation of notice may be a copy of the return receipt or "other similar evidence of the date the notification was received." The provision also states that FDA will accept as adequate documentation of the date of receipt a return receipt or "a letter acknowledging receipt by the person provided the notice." Thus, § 314.52(e) does not limit an applicant to a particular form of documentation of notice. Applicants are required, however, to obtain agreement from FDA in advance if they intend to use a form of documentation other than return receipt.

20. The agency has also revised § 314.52(f) to state that the 45-day period provided for in section 505(c)(3)(C) of the Act will begin on the day following the date of receipt of the notice by the patent owner or its representative and by the approved application holder. The reasons for this change are described in comment 62 below.

The agency, on its own initiative, has also revised § 314.52(f) to state that the agency may begin the 45-day period on a later date if the applicant has amended its application to state that a later date should be used. This could occur, for example, where the applicant has amended its notice to the patent owner to provide more information regarding the applicant's notice of invalidity or noninfringement. This revision is also consistent with the corresponding provision for ANDA's.

*C. Section 314.53—Submission of Patent Information*

Proposed § 314.53 contained general requirements for the submission of patent information by NDA applicants

and NDA holders. For example, proposed § 314.53(b) would have required an NDA applicant to submit information on each patent that claims the drug or drug product for which the applicant is seeking approval or a method of using the drug that is the subject of the NDA or amendment or supplement and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product. Proposed § 314.53(c) described general reporting requirements, such as information on the type of patent and the name of the patent owner, and also required applicants to submit "certifications" with respect to formulation or composition patents (proposed § 314.53(c)(2)) and method of use patents (proposed § 314.53(c)(3)).

21. One comment addressed patent information and amendments of patent information under proposed §§ 314.50(h) and 314.53. These provisions would require each application under section 505(b) of the act to contain specific information about each patent that claimed the drug product or a method of using the drug product. The provisions also would require applicants to amend patent information or patent certifications and would permit the agency to disclose patent information. The comment said FDA should only publish patent information filed by NDA applicants at the time FDA approves the NDA.

A drug product does not necessarily have a patent by the time FDA approves the NDA. The statute expressly recognizes that a patent might issue after NDA approval, and, under such circumstances, instructs the NDA holder to file patent information within 30 days of the patent's issue date. Once FDA receives this information, the agency is obliged to publish it (see section 505(c)(2) of the act). Patent information might also change after NDA approval. For example, the patent term restoration provisions at 35 U.S.C. 156 give patent holders the opportunity to extend patent terms. The extended patent term may be as long as 5 years. However, patent owners cannot apply for patent term extension until FDA approves the product for marketing (see 35 U.S.C. 156(d)(1)). Thus, patent term restoration (also known as "patent term extension") always occurs after NDA approval, and patent owners who obtain such extensions usually notify FDA of the new patent expiration date. The new expiration date will be important to ANDA applicants because section 505(j)(2)(A)(vii) of the act requires ANDA applicants to submit patent certifications. Consequently, FDA does not accept the comment's suggestion.

22. One comment would amend proposed § 314.53 to establish a mechanism "for review of submitted patent information to determine, at least on a very general basis, applicability to the particular NDA in question."

FDA declines to adopt the comment. As stated elsewhere in this final rule, FDA does not have the expertise to review patent information. The agency believes that its scarce resources would be better utilized in reviewing applications rather than reviewing patent claims.

23. FDA, on its own initiative, has amended § 314.53(b) by replacing the phrase, "such patents consist of drug (ingredient) patents" with "such patents consist of drug substance (ingredient) patents." The final rule also replaces the phrase "For patents that claim a drug or drug product" with "For patents that claim a drug substance or drug product." These changes are intended to clarify the type of patents involved.

24. One comment would amend proposed § 314.53(b) by requiring an applicant to declare that it holds each patent or is the exclusive licensee of the patent owner or is authorized to submit patent information on behalf of the patent owner. The comment would also prohibit an applicant from submitting patent information and would prohibit the agency from listing any patent information if the applicant did not make any of these declarations.

The agency declines to amend the provision. Under § 314.53(c), the applicant must provide the name of the patent owner or, if the patent owner or applicant does not reside or have a place of business within the United States, the name of an agent or representative who resides or maintains a place of business within the United States and is authorized to receive notice of patent certification. Requiring an applicant to declare that it is the patent owner or exclusive licensee or is authorized to submit patent information would go beyond the statutory language at section 505(b)(1) of the act and would not serve any statutory purpose.

FDA also declines to amend the rule to prohibit the applicant from submitting patent information or to prohibit the agency from listing patent information without a declaration of ownership or license. Such an amendment would be contrary to section 505(b)(1) of the act and may result in less published patent information, thereby causing applicants to question the accuracy and validity of any patent information listed by FDA.

25. FDA received two comments that objected to proposed § 314.53(b) and (c) regarding the submission of patent information by NDA applicants. Both comments claimed that the 1984 amendments only require NDA applicants to provide patent numbers and patent expiration dates.

FDA disagrees with the comments. Section 505(b)(1) of the act requires an applicant to file "the patent number and the expiration date of any patent which claims the drug for which the applicant submitted the application * * * and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug." The requirement in § 314.53(b) and (c) that applicants provide information on the type of patent and the name of the patent owner or authorized representative is consistent with the purpose of section 505(b)(1) of the act.

26. One comment objected to proposed § 314.53(c)(2) and (c)(3). Proposed § 314.53(c)(2) would have required an applicant to provide a patent certification for each formulation or composition patent in addition to certain, general patent information. Proposed § 314.53(c)(3) would have required applicants to provide similar certifications for method of use patents. The comment said that a patent may contain formulation, composition, and method of use claims. The comment suggested deleting the proposed rule's classification of patents and replacing it with a general certification that the patents listed by the applicant contain claims with respect to which the applicant could reasonably assert a claim of infringement against a person engaged in the unlicensed manufacture, use, or sale of the drug for which the application was submitted.

FDA acknowledges that a patent may contain a variety of claims, and has revised proposed § 314.53(c)(2) by creating a single certification statement. The new certification statement would have an applicant state that, "The undersigned declares that Patent No. _____ covers the formulation, composition, and/or method of use of (*name of drug product*). This product is (*currently approved under section 505 of the Federal Food, Drug, and Cosmetic Act*) [or] (*the subject of this application for which approval is being sought*): _____." However, because section 505(b)(1) of the act specifically requires applicants to "file with the application the patent number and the expiration date of any patent which claims the drug for which the applicant submitted the application or which

claims a method of using such drug," and because FDA lacks patent law expertise, the agency strongly encourages applicants to identify, to the best of their ability, the type of patent covering the drug or drug product. This information will help FDA determine which claims cover the drug or drug product and which claims cover a method of use.

27. One comment said FDA should not list formulation patents. Proposed § 314.53(c)(2) would require applicants under section 505(b) of the act to provide information on formulation or composition patents, and FDA would publish this information under § 314.53(e). The comment said this would increase the number of generic drug applications by avoiding difficult questions of exclusivity for "patentably distinct formulations" and noted that patent owners can always resort to patent law to halt possible patent infringement.

FDA disagrees with the comment. The statute expressly requires applicants to file "the patent number and the expiration date of any patent which claims the drug for which the applicant submitted the application * * *" (section 505(b)(1) of the act). Thus, if the formulation patent claimed the drug product in the application, the applicant must file information on that patent.

28. One comment would revise proposed § 314.53(c)(2)(i), (c)(3)(i), and (c)(4) to refer to a "declaration" rather than "certification." The comment explained that the 1984 amendments used the word "certification" with respect to patent information to be submitted by applicants under section 505(b)(2)(A) and (j)(2)(A)(vii) of the act, so use of the word "certification" in proposed § 314.53(c) would be confusing.

The agency agrees and has revised these and other sections of the rule accordingly.

29. One comment would delete proposed § 314.53(c)(2)(ii) and (c)(3)(ii). The comment said that the provision for the correction of patent information at proposed § 314.53(f) would ensure that patent information is correct.

The provisions cited by the comment serve different purposes. As revised, § 314.53(c)(2)(ii) requires an applicant to provide patent information about a product within 30 days after the date of approval; these provisions contemplate the possibility that the patents pertaining to a product's formulation, composition, and uses may change between the time the application is initially submitted and the time the application is approved (see 54 FR 28872 at 28909). Although § 314.53(f) enables any person to dispute the accuracy or relevance of the patent information submitted to FDA, it is the responsibility of the applicant, not the general public or the applicant's competitors, to ensure that the information provided by the applicant is accurate. These provisions for amending patent information are necessary for maintaining an accurate list of patent information and useful for applicants who must comply with the patent certification requirements. Therefore, FDA declines to adopt the comment.

30. FDA received two comments on proposed § 314.53(c)(4) (now renumbered as § 314.53(c)(3)), which would enable an applicant to claim that there are no relevant patents that claim the drug product or a method of using the drug product. One comment supported the provision; the other recommended deleting it entirely, stating that the only party that would be injured by the failure to list a patent is the NDA applicant.

FDA declines to delete the provision as suggested. The agency disagrees with the assertion that the NDA applicant would be the only party injured by the failure to list a patent. The patent holder may be a person other than the NDA applicant and may be injured if the patented invention is made, sold, or used without the patent owner's knowledge or consent. Failure to list a patent may also result in injury to other applicants who devote resources towards submitting applications for duplicate products without realizing that those products may be covered by the patent.

31. FDA, on its own initiative, has reorganized § 314.53(d) to clarify further when and where patent information should be submitted. As revised, § 314.53(d)(1) pertains to patent information requirements for original applications. New § 314.53(d)(2), formerly § 314.53(d)(2)(ii), applies to patent information requirements for supplements, and a new § 314.53(d)(3), formerly § 314.53(d)(2)(i), applies to patent information submitted after an application has been approved. The agency has renumbered the remaining paragraphs accordingly.

32. Proposed § 314.53(d) instructed applicants when and where to submit patent information in an original application and in a supplement and would require an applicant to provide patent information within 30 days if a patent issues for a drug, drug product, or method of use after the application had been approved. Three comments asked FDA to extend the 30-day period in proposed § 314.53(d) to 60 days.

FDA declines to accept the comment. The 30-day period is consistent with section 505(c)(2) of the act and permits the agency to include the latest patent information in supplements to the Orange Book. If FDA provided for a longer time period, the Orange Book and its supplements might be less likely to contain current patent information for each product, and potential applicants might be misled by outdated patent information. FDA has, on its own initiative, clarified § 314.53(d)(1) and (d)(3) to mention the 30-day deadline.

33. Proposed § 314.53(d)(2)(ii) (now renumbered as § 314.53(d)(2)) would require an applicant to submit patent information for a patent that claims the drug, drug product, or a method of using the product if the applicant sought approval of certain, listed changes through a supplemental application. One comment would revise proposed § 314.53(d)(2)(ii) to require an applicant to provide a patent declaration for each supplement. The comment explained that this would "eliminate the risk that the four types of supplements described in the proposal do not comprise the entire universe of supplements that may affect the patent information filed with the FDA." The comment would also require an NDA applicant to submit information on patents that claim the formulation or composition each time the NDA applicant submits a supplement to revise the formulation or composition.

FDA disagrees with the comment. Section 505(b)(1) of the act requires an applicant to submit information on each patent that claims the drug or a method of using a drug product for which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug. The supplements listed in new § 314.53(d)(2)(i)—supplements to change a formulation, to add a new indication or other condition of use, to change the strength, or to make any other patented change regarding the drug, drug product, or any method of use—are those that concern the drug product or a method of using the drug product. Additionally, new § 314.53(d)(2)(i)(D) provides for the submission of patent information for any other type of patented change. Requiring an applicant to provide patent information for all supplements, even if the supplement did not involve a change to the drug product or a method of using the product (i.e., a change in the site of manufacturing), would increase the workload on applicants and the agency without a significant benefit.

The suggestion that FDA require an applicant to submit information on patents that claim the formulation or composition each time the NDA applicant submits a supplement to revise the formulation or composition is apparently based on a misreading of proposed § 314.53(d)(2)(ii)(A) (now renumbered as § 314.53(d)(2)(i)(A)). This section already requires an applicant to provide such information. Thus, the comment's suggestion is unnecessary.

34. One comment would revise proposed § 314.53(d)(2)(ii)(D) (now renumbered as § 314.53(d)(2)(i)(D)) to require the submission of patent information if the applicant submits a supplement to make any other patented change "except patented manufacturing processes."

The suggested revision is unnecessary because § 314.53(b) clearly states that, "Process patents are not covered by [§ 314.53] and information on process patents may not be submitted to FDA."

35. One comment would delete proposed § 314.53(d)(2)(v) (now renumbered as § 314.53(d)(2)(iv)), which would require an applicant to comply with the requirements for amending formulation, composition, or method of use patent information. The comment said applicants are already required to comply with such requirements.

FDA disagrees with the comment. Section 314.53(d)(2)(iv) requires applicants to amend the patent information to account for changes proposed in supplemental applications whereas § 314.53(c)(2)(ii) and (d)(2)(ii) require an applicant to amend patent information when there have been changes in status, or there is other new information regarding the relevant patents.

36. Proposed § 314.53(d)(3) (now renumbered as § 314.53(d)(4)) would require an applicant to submit two copies of each submission of patent information. One copy would go to the archival copy of the application and the other copy would go to the chemistry, manufacturing, and controls section of the review copy. One comment would delete the phrase "of the review copy" from proposed § 314.53(d)(3) on the grounds that the phrase appeared to be a typographical error.

FDA believes that the comment misreads proposed § 314.53(d)(3). An applicant is required to submit an archival copy and a review copy of an application consisting of several separately bound technical sections. New § 314.53(d)(4) requires an applicant to provide two copies of each submission of patent information. One copy will go to the archival copy of the NDA; the other will go to the chemistry, manufacturing, and controls technical section of the review copy of the NDA.

37. FDA, on its own initiative, has amended § 314.53(e) regarding public disclosure of patent information. As originally proposed, § 314.53(e) stated that, for each use patent, FDA would publish the "approved indications or other conditions of use covered by a patent and any unapproved indications or condition of use to which the applicant certified." The agency is deleting the reference to "any unapproved indications or condition of use" to be consistent with the patent information requirements in § 314.53(c).

38. FDA received two comments on proposed § 314.53(f) regarding corrections of patent information errors. The proposed provision would require a person disputing the accuracy or relevance of patent information submitted to and published by FDA to first notify the agency in writing stating the grounds for the disagreement. The agency would then ask the NDA holder to confirm whether the patent information was correct, but would not change the patent information listed in the Orange Book unless the NDA holder withdrew or amended that information. If the NDA holder did not change the patent information, a 505(b)(2) applicant or ANDA applicant would be required to make a certification for the listed patent despite any disagreement as to its correctness.

Both comments said that FDA should ensure that patent information submitted to the agency is complete and applies to a particular NDA. One comment would also amend the rule to have FDA confirm, upon request from any person, the accuracy or relevance of the patent information submitted to the agency. One comment said the agency should not provide applicants the grounds for a disagreement on the accuracy or relevance of patent information.

As stated elsewhere in this rule, FDA does not have the resources or the expertise to review patent information for its accuracy and relevance to an NDA. Therefore, the agency declines the comment's requests to ensure that patent information is complete and relevant to an NDA and to confirm, upon request, the validity of patent information submitted to the agency. The agency believes that the declaration requirements under § 314.53(c), as well as an applicant's potential liability if it submits an untrue statement of material fact, will help ensure that accurate patent information is submitted.

FDA also declines to amend the rule to prevent the agency from providing applicants the grounds for a disagreement on the accuracy or relevance of patent information. Absent such information, a patent owner will be unable to evaluate the disagreement or to explain whether the patent information is correct.

39. One comment noted that proposed § 314.53(f) does not require applicants to correct patent listings. The comment would revise the provision to permit applicants to "make otherwise pertinent certifications while a listing dispute is pending." The comment would also require FDA to notify the NDA holder of the disagreement within 15 days of notification and require patent owners or NDA holders to respond to a disagreement on patent information or to withdraw or amend the patent information within 30 days. The comment would then require FDA to immediately send the NDA holder's response to the party that began the disagreement and inform the party whether the patent would remain listed.

As originally proposed, § 314.53(f) expressly required an applicant to make "an appropriate certification for each listed patent" notwithstanding any disagreement as to the correctness of the listed patent information. If, as FDA assumes, the proposed reference to "otherwise pertinent certifications" means "appropriate certifications," the proposal is unnecessary. If the proposed reference is to negate any responsibility to file an appropriate certification for a patent that is subject to a dispute over listing, FDA rejects the proposal. Until the dispute is resolved, the patent is listed within the meaning of the act. FDA also declines to amend the rule to impose deadlines for resolving patent disagreements. The agency believes that such deadlines would be impractical, considering the agency's lack of expertise in patent matters and the volume of applications FDA receives, and agency resources would be better spent on reviewing applications rather than exchanging disputed patent information among parties as proposed by the comment. The agency also notes that it has not had any significant problems with the informal procedures described in proposed § 314.53(f) as most NDA holders have amended or corrected their patent information after FDA has informed them of a dispute.

The agency has, however, revised § 314.53(f) to provide a new address for the submission of written statements disputing the relevance or accuracy of patent information. Such statements should now be directed to the Drug Information Services Branch in the Division of Drug Information Resources.

This change reflects current FDA operations.

*D. Section 314.54—Procedure for Submission of an Application Requiring Investigations for Approval of a New Indication for, or Other Change From, a Listed Drug*

Proposed § 314.54(a)(1)(vii) would require an applicant seeking approval of a drug product that represents a modification of a listed drug, to provide certain information regarding marketing exclusivity if the applicant believed the modification would be entitled to such exclusivity.

The agency received no comments on this provision and has finalized it without change.

*E. Section 314.70—Supplements and Other Changes to an Approved Application*

Proposed § 314.70(e) (now renumbered as § 314.70(f)) would require applicants submitting a supplement to an approved application to provide certain marketing exclusivity information if the applicant intended to seek market exclusivity.

The agency received no comments on this provision and has finalized it without change.

*F. Section 314.94—Content and Format of an Abbreviated Application (21 CFR 314.94)*

Proposed § 314.94(a)(12) contained the patent certification requirements for ANDA's. For example, under proposed § 314.94(a)(12)(i), an ANDA applicant would provide a patent certification with respect to each patent that claims the reference listed drug or that claims a use of the reference listed drug for which the ANDA applicant is seeking approval. Proposed § 314.94(a)(12)(ii) would permit an ANDA applicant to certify that there are no relevant patents that claim the listed drug or a method of use of the listed drug. Proposed § 314.94(a)(12)(iii) would permit an ANDA applicant to state that the use for which the applicant is seeking approval is not covered by a patent claiming a use for the listed drug.

40. One comment claimed that proposed § 314.94(a)(12)(i)(A) was inconsistent with the statute because the statute only requires ANDA applicants to make certifications for listed patents rather than patents issued by the United States Patent and Trademark Office. Two comments added that the suggestion regarding patent searches that FDA made in the preamble to the proposed rule was irrational and legally insupportable. One company, however, agreed that ANDA applicants should submit patent certifications with respect to all patents, including those that had not been submitted to FDA for listing.

The rule simply paraphrases the statutory language in section 505(j)(2)(A)(vii) of the act. The rule does not require ANDA applicants to conduct patent searches. If the applicant believes that no patent exists, the applicant is to submit a patent certification under § 314.94(a)(12)(ii) that no relevant patents exist. If the applicant believes that a patent exists but that the patent owner has not filed patent information at FDA, the ANDA applicant would certify that, "in its opinion and to the best of its knowledge," no patent information has been submitted (i.e., make a paragraph I certification). FDA, however, believes it would be prudent for applicants to conduct patent searches if possible. A patent search could reveal the existence of an unlisted, but valid, patent and thus prevent an unnecessary expenditure of resources by applicants and FDA on a product that might not be marketable. A patent search might also enable ANDA applicants to avoid unnecessary patent infringement litigation.

41. One comment suggested that FDA publish all patent information, including descriptions of the patents and patent numbers, in the Orange Book.

The Orange Book already contains an addendum listing both patent and exclusivity information. This section provides patent numbers and patent expiration dates as well as exclusivity codes and expiration dates. In addition, for a use patent, FDA includes in the Orange Book a code identifying the indication covered by the patent. As for patent descriptions, FDA lacks the expertise to review and summarize patents and individual patent claims and does not believe that expanding the Orange Book to include patent descriptions would be an efficient use of FDA resources. However, persons who wish to obtain a synopsis of a particular patent can consult the Official Gazette for Patents, which is published by the United States Patent and Trademark Office. The Official Gazette for Patents contains short descriptions of patents and is publicly available.

42. One comment asserted that FDA should list patents that claim drug products for which the patent owner is not seeking or has not obtained approval. The comment explained that the statute requires NDA holders and applicants to submit information on "any patent which claims the drug for which the applicant submitted the application" (section 505(b)(1) of the act). The comment, citing § 314.50(d)(1), claimed that "drug" means the active ingredient while "drug product" denotes a marketed product composed of active and inactive ingredients. Thus, because section 505(b)(1) of the act uses the term "drug," the comment continued, any patent that claims the active ingredient is a patent that claims the drug for which the applicant submitted the application and should be listed.

FDA disagrees with the comment's interpretation of section 505(b)(1) of the act. The statutory provision states that patent information is to be filed on patents that claim the drug "for which the applicant submitted the application." Similarly, the House Report accompanying the Drug Price Competition and Patent Term Restoration Act indicates that the patent information to be filed "includes the patent number and the expiration date of any patent which claims the drug *in the NDA* or which claims *a method of using such drug* with respect to which a claim of patent infringement could reasonably be asserted * * *." H. Rept. 857, 98th Cong., 2d sess. 31–32 (1984) (emphasis added). Thus, both the statute and its legislative history reveal that Congress intended the term "drug" to mean "drug product" rather than "active ingredient" because NDA's are granted only for drug products and not for active ingredients. FDA's interpretation of this provision has been upheld by a United States magistrate in *Pfizer* v. *FDA*, No. HM–88–1019, slip op. at 10–13 (D. Md. October 2, 1989) and adopted by a Federal district court (see *Pfizer, Inc.* v. *Food and Drug Administration*, 753 F.Supp. 171 (D. Md. 1990)).

43. Several comments sought clarification regarding the interaction between proposed § 314.94(a)(12)(i)(A)(*4*) and § 314.94(a)(12)(v), 180-day exclusivity periods under section 505(j)(4)(B)(iv) of the act, and licensees.

Because patent licensees are subject to 180-day exclusivity that has been granted to another applicant, the only instance in which proposed § 314.94(a)(12)(v) would apply would be where a patent licensee would seek to have an effective approval of its ANDA or 505(b)(2) application within 45 days of its receipt or filing (because the patent holder has 45 days to file a lawsuit against an ANDA applicant making a paragraph IV certification). Because the agency does not anticipate approving an ANDA or 505(b)(2) application in 45 days, FDA, on its own initiative, removed the provisions in § 314.94(a)(12)(v) and § 314.107(b)(1)(iv) related to consent by a patent owner to

an immediate effective date of approval for a licensee.

44. Two comments disagreed with proposed § 314.94(a)(12)(ii), which would require ANDA applicants to certify that there are no relevant patents that claim the listed drug referred to in the ANDA. One comment said that ANDA applicants should only be required to certify that no listed patents claim the listed drug referred to in the ANDA. The second comment suggested deleting the provision and revising proposed § 314.94(a)(12)(i)(A)(*1*) so ANDA applicants would certify that no patent information had been filed.

FDA declines to accept the comments. As stated in the preamble to the proposed rule, an applicant makes a patent certification under § 314.94(a)(12)(ii) if "in the applicant's opinion and to the best of its knowledge, no relevant patents claim the listed drug or a method of using the listed drug" (54 FR 28872 at 28885). The applicant makes the patent certifications under § 314.94(a)(12)(i) when it is aware of or believes that a patent covers the listed drug. (Id.) FDA believes that § 314.94(a)(12)(ii) will enable FDA to ensure that each applicant has complied with the patent certification requirements.

45. One comment asked FDA to define "relevant" for proposed § 314.94(a)(12)(ii). The word "relevant" refers to those patents defined by section 505(j)(2)(A)(vii) of the act for which a patent certification would be required, i.e., patents that claim the listed drug, or drug substance component thereof, referred to in the ANDA or that claim a use of the listed drug or drug substance for which the ANDA applicant seeks approval and for which patent information is required to be filed under section 505 (b) and (c) of the act and § 314.53.

Although patents that are held to be invalid or unenforceable in a judicial decision may be removed from the list by FDA, a patent that has been declared invalid or unenforceable in a lawsuit resulting in 180-day exclusivity will be deemed relevant under § 314.94(a)(12)(ii) and will not be removed from the list until the end of the 180-day exclusivity period. This will ensure that 180-day exclusivity cannot be avoided by changing a patent certification.

46. Several comments objected to proposed § 314.94(a)(12)(iii), which would require ANDA applicants to provide a patent statement if the listed patent is for a method of use and that applicant does not intend to claim any of the patented uses. The comments recommended that such ANDA applicants certify, under § 314.94(a)(12)(i)(A)(*4*), that the listed use patent would not be infringed, thereby giving the patent owner notice of possible patent infringement. One comment asked how proposed § 314.94(a)(12)(iii) would affect eligibility for the 180-day exclusivity period. The comment explained that the statute requires ANDA applicants to make patent certifications under section 505(j)(2)(A)(vii) of the act and statements for method of use patents under section 505(j)(2)(A)(viii) of the act. However, the comment stated, for method of use patents, the proposed rule could be interpreted as giving ANDA applicants the option of making a patent certification of noninfringement under proposed § 314.94(a)(12)(i)(A)(*4*) or a statement that the applicants' drug products do not involve a patented claim under proposed § 314.94(a)(12)(iii).

FDA does not intend § 314.94(a)(12)(i)(A)(*4*) to authorize certifications with respect to patents that claim a use for the listed drug for which the applicant is not seeking approval. The statute requires patent certifications only if the patent "claims a use for [the] listed drug for which the applicant is seeking approval * * *" (section 505(j)(2)(A)(vii) of the act). The statute requires an applicant to make a patent statement when a method of use patent "does not claim a use for which the applicant is seeking approval * * *" (section 505(j)(2)(A)(viii) of the act).) The proposed rule recognized this distinction. FDA stated that if a patent claims a method of using the listed drug, and labeling for the ANDA applicant's proposed drug product does not contain any indications covered by the method of use patent, the ANDA applicant "should not submit a certification under § 314.94(a)(12)(i)(A) for such a patent" (54 FR 28872 at 28886). The preamble also indicated that if the labeling for the ANDA applicant's product did contain an indication that was claimed by a patent, the applicant should make a certification under § 314.94(a)(12)(i)(A). (Id.) Thus, the two provisions cited by the comment are not overlapping, and an applicant does not have the option of making a certification under § 314.94(a)(12)(i)(A)(*4*) in lieu of, or in addition to, a statement under § 314.94(a)(12)(iii).

If, however, there are listed patents that present both a product and method of use claim, the applicant may file a paragraph IV certification with respect to the product patent or patent claim and a statement that the product that is the subject of the application does not involve a patented method of use with respect to the method of use patent or patent claim.

47. One comment recommended revising proposed § 314.94(a)(12)(v) to provide NDA holders the opportunity to consent to licensing agreements between ANDA applicants and patent owners. As written, proposed § 314.94(a)(12)(v) did not address this issue.

Neither the statute nor the legislative history suggests that NDA holders should be given such a right, and the agency is not prepared to infer such a right to interfere in the patent holder's enjoyment of its right to license. However, as stated earlier, FDA has elected to remove the language in § 314.94(a)(12)(v) regarding consent by the patent owner.

48. One comment objected, in part, to proposed § 314.94(a)(12)(vi), which would require an ANDA applicant to provide a patent certification in response to an untimely submission of patent information if the ANDA was submitted after the untimely submission of patent information or did not contain an appropriate patent certification at the time the patent information was submitted. The comment correctly noted that FDA may refuse to approve or may even withdraw approval of an application for failure to submit patent information (see section 505 (d)(6) and (e)(4) of the act). The comment said these sanctions emphasize the importance of filing patent information, and FDA "should not provide any benefit to the NDA applicant who ignores the statutory requirement for timely submission of such information."

Section 314.94(a)(12)(vi) is intended to effectuate Congress' intent to enforce timely submission of patent information. As discussed more fully in the response to comment 7 above, FDA believes a less severe sanction than the withdrawal of NDA approval for late submission of patent information would ordinarily effectuate congressional intent. For the reasons discussed in response to comment 7 FDA has concluded that if an NDA applicant submits required patent information on an approved drug product more than 30 days after issuance of the patent, the agency will publish the untimely information but will not require ANDA applicants with pending applications who have previously submitted a certification that was correct at the time it was submitted, i.e., those applicants who would be prejudiced by the late submission, to recertify as to the new patent. Applicants who initially submit ANDA's after the submission of the patent information or whose pending

applications do not contain a valid certification at the time of the submission would be required to submit a certification as to that patent. The agency, therefore, declines to revise this provision.

FDA also notes that, if an ANDA applicant with a pending application voluntarily makes a patent certification for an untimely filed patent, the ANDA applicant may withdraw the patent certification for the untimely filed patent. The agency, on its own initiative, has amended § 314.94(a)(12)(viii) to make this clear. Additionally, if the patent certification for the untimely filed patent was a paragraph IV certification (claiming that the patent is invalid or would not be infringed), the agency would not consider the withdrawn paragraph IV certification to preclude FDA from granting 180-day exclusivity to another ANDA applicant.

49. Proposed § 314.94(a)(12)(vii) would permit an ANDA applicant to seek confirmation of the correctness of patent information, but would also require an ANDA applicant to submit the appropriate patent certification if the disputed patent information was not amended or withdrawn. One comment suggested amending proposed § 314.94(a)(12)(vii) to declare the end of the error correction process for patent information to be final agency action. The comment explained that this section permits challenges to listed patents but, in conjunction with proposed § 314.53(f), neglects to contain a process to require patent owners to withdraw or modify patent listings. The comment said that declaring the end of the error correction process to be final agency action would enable ANDA applicants to seek judicial review rather than wait for the patent owner to voluntarily correct the patent information.

FDA disagrees with the comment. Disputes between ANDA applicants and patent holders regarding the validity or correctness of the listed patent information must be resolved among the ANDA applicants and the patent holders rather than by agency action. FDA stated this position in the preamble to the proposed rule (see 54 FR 28872 at 28910).

50. One comment addressed proposed § 314.94(a)(12)(viii) and asked FDA to permit applicants to amend their patent certifications if a patent is declared invalid. The comment proposed that any amendment, with the exception of a paragraph IV certification being changed to a paragraph III certification, be considered nunc pro tunc (now for then). If a patent were declared invalid, the comment suggested that an amendment from paragraph IV to paragraph III be considered "as if a III were originally filed, subject to a prior IV certificant's exclusivity rights during the remaining lifetime of the patent." Finally, the comment said that applicants should be permitted to make a paragraph I certification if the patent were removed from the list.

FDA agrees in part with the comment. An applicant may change its certification at any time. Although there is no need for the agency to pronounce such changes in certification nunc pro tunc, the agency agrees that the protection offered by 180-day exclusivity should not be undermined by changes from paragraph IV certification or by the filing of original certifications other than paragraph IV certifications. If a patent were removed from the list immediately upon a court decision that the patent is invalid or unenforceable, an applicant with a subsequently filed application might seek to certify that there is no relevant patent and seek an immediately effective approval. To ensure that this does not occur, the agency has required that a patent remain on the list after being declared invalid or unenforceable until the end of any applicable 180-day exclusivity period. This means that a patent is deemed to be relevant under § 314.94(a)(12)(ii) until the end of the term of the patent or applicable 180-day exclusivity period, whichever occurs first. Thus, where there is a patent that has been challenged by a paragraph IV applicant, a subsequent applicant will not be able to file a certification that there is no relevant patent or seek an immediately effective approval until either the patent or the 180-day exclusivity period expires. The agency has amended § 314.94(a)(12)(viii)(B) and made a similar change to § 314.50(i)(6)(ii) to reflect this position.

The agency also notes that an applicant may withdraw its patent certification at any time. However, as stated earlier, if an ANDA applicant made a paragraph IV certification and later withdraws that certification, the agency will not regard the withdrawn paragraph IV certification as precluding the agency from granting 180-day exclusivity to a subsequent ANDA applicant.

51. One comment suggested that ANDA applicants amend their patent certifications to a paragraph I certification if FDA or the NDA holder "delists" a patent.

As stated in the preamble to the proposed rule, the agency believes that a certification under § 314.94(a)(12)(ii), stating that no relevant patents claim the listed drug, would be more appropriate if a patent is "delisted" (see 54 FR 28872 at 28886).

52. One comment asked FDA to clarify proposed § 314.94(a)(12)(viii)(A) so that an amended patent certification would be required if a patent were held valid and infringed but not required if a patent were held infringed, but not valid.

If a claim is found to be invalid or unenforceable, the patent will ordinarily be removed from the list, and applicants with pending applications containing certifications with respect to that patent must amend their certifications accordingly to certify that no relevant patents claim the drug or, if another relevant patent claims the drug, to make an appropriate certification regarding that patent. In the amendment, the applicant must state the reason for the change in certification (that the patent has been removed from the list). A patent that is the subject of a lawsuit under § 314.107(c) will not be removed from the list until FDA determines either that no delay in effective dates of approval is required as a result of the lawsuit or that any such period of delay in effective dates of approval is ended. The agency has amended § 314.94(a)(12)(viii)(B) to clarify its position regarding certifications and patents removed from the list.

The agency also advises applicants to submit any patent certification changes by letter if the applicant has not received a "not approvable" letter from the agency. If the applicant has received a "not approvable" letter, it may include the amended certification along with the complete response to the deficiencies in the "not approvable" letter. This will enable FDA to process amendments more efficiently.

53. Six comments addressed amended certifications under proposed § 314.94(a)(12)(viii)(C)(*2*) which would not require applicants to amend their patent certifications when patent information is submitted after the abbreviated application's approval "whether or not the approval of the abbreviated application is effective." One comment would require amended patent certifications only if a new patent issued after the ANDA had been submitted and make supplements optional after ANDA approval. Five comments would require ANDA applicants to amend patent certifications until the effective date of their ANDA approvals because the existence of a patent would affect the ANDA's effective date of approval.

In the **Federal Register** of April 28, 1992 (57 FR 17950 at 17953), FDA stated that it had clarified its policies

with respect to drug products with delayed effective dates of approval. The agency stated that an approval with a delayed effective date is tentative and does not become final until the effective date. Therefore, FDA has amended § 314.94(a)(12)(viii)(C)(*2*) by deleting the phrase "whether or not the approval of the abbreviated application is effective," and, consistent with this change, and in response to the comments, by requiring an ANDA applicant to amend its patent certifications until the effective date of ANDA approval.

*G. Section 314.95—Notice of Certification of Invalidity or Noninfringement of a Patent*

Proposed § 314.95 described an ANDA applicant's obligations with respect to a notice of certification of invalidity or noninfringement of a patent. Proposed § 314.95(a), for example, would require an ANDA applicant to provide notice to the patent owner and the NDA holder. Proposed § 314.95(b) would require an ANDA applicant to send the notice when it receives an acknowledgment letter from FDA stating that the ANDA is sufficiently complete for review to begin. Proposed § 314.95(c) prescribed the contents of a notice of certification of invalidity or noninfringement of a patent, including "a detailed statement of the factual and legal basis of the applicant's opinion that the patent is not valid or will not be infringed."

54. One comment recommended that FDA revise the regulation by adding a mechanism whereby FDA or the United States Patent and Trademark Office would review notices of certification of invalidity or noninfringement. The comment would have FDA suspend the 45-day period provided by section 505(j)(4)(B)(iii) of the act until FDA or the United States Patent and Trademark Office determined that the notice was sufficient.

FDA declines to adopt the comment. As stated elsewhere in this preamble, FDA lacks expertise in patent law. Moreover, neither FDA nor the United States Patent and Trademark Office currently has access to the additional resources that would be necessary to review these notices, and a patent certification review system would subject the agency's decisions to questioning that would require further resource expenditures and create delays in the statutory patent certification and challenge process.

The agency does note, however, that in cases where the notice was deemed inadequate by the patent owner or exclusive patent licensee and where the ANDA applicant subsequently amends the notice, the agency may, if the applicant amends its ANDA with a written statement that the date of receipt of the amended notification should be considered the date of receipt of notice, use the date of the amended notification to begin the 45-day statutory period for institution of an action for patent infringement (see 54 FR 28872 at 28888; see also § 314.95(f)).

55. Two comments addressed return receipts under proposed § 314.95(a). One comment would amend the rule to provide for signed receipts while the second would revise the rule to permit reliance on "any appropriate federal rule for transmitting notice to another party or for receipt of such notice."

Under § 314.95(e), applicants are required to document receipt of a notice of invalidity or noninfringement by submitting "a copy of the return receipt or other similar evidence of the date the notification was received." The rule states that FDA will accept return receipts, letters acknowledging receipt by the person provided the notice, or "another form of documentation only if FDA has agreed to such documentation in advance." Thus, the rule provides several methods for documenting receipt of a notice, so the comment's recommendations are unnecessary.

56. One comment asked FDA to clarify when multiple notices might be required.

Section 314.95(a) requires applicants to send notices to each patent owner and each holder (or its attorney, agent, or other authorized official) of the approved application under section 505(b) of the act for the listed drug that is claimed by the patent and for which the applicant is seeking approval (§ 314.95 (a)(1) and (a)(2)). Consequently, applicants could be obliged to send multiple notices under several situations. For example, a patent owner is usually an individual whereas the holder of an approved application is often a corporation. The applicant, therefore, would send one notice to the patent owner and another to the firm holding the approved application. If several patents cover the listed drug, there may be several different patent owners, so the applicant would be required to provide separate notices to each patent owner.

57. Two comments suggested revising proposed § 314.95(a)(1) to include the patent owner's name and address in the Orange Book.

The patent owner's name and address are printed on each patent. As a result, whenever a prospective applicant examines a patent to determine whether its proposed product would infringe any of the patent claims, the applicant would have access to the patent owner's name and address. The comment's suggestion, therefore, is unnecessary.

58. Several comments asked when and how applicants should send notices under proposed § 314.95(b). Two comments would have an applicant provide a statement to FDA declaring that the applicant "will give," rather than "has provided," notice of certification of invalidity or noninfringement of a patent. These comments explained that the statute does not specify a time for the notice, so the rule should permit applicants to decide when to send such notices. One comment would revise the rule to give FDA 30 days to determine whether the ANDA was complete before the applicant would be required to send a notice of certification of invalidity or noninfringement of a patent.

The legislative history discussing a notice of certification of invalidity or noninfringement of a patent clearly states that ANDA applicants should provide notice "simultaneously with the submission of an ANDA" and that Congress did "not intend that applicants be permitted to circumvent this notice requirement by filing sham ANDA's or ANDA's which are substantially incomplete" (see H. Rept. 857, 98th Cong., 2d sess. 24 (1984)). Thus, to permit applicants to state that they "will provide" notice to the patent owner and holder of the approved application would be contrary to congressional intent. Moreover, such a statement would be redundant relative to that required under § 314.94(a)(12)(i) and would not inform FDA whether notice has, in fact, been provided. With regard to the suggestion of a 30-day deadline for FDA to respond before an applicant sends notice, FDA believes such a requirement would be impractical. The time required to review an application may vary depending upon the application's complexity, the review division's workload, the timing and scope of an applicant's response to FDA's questions or requests, etc. Although FDA intends to review applications expeditiously, current resources and priorities may not, in all instances, enable the agency to determine whether an application is sufficiently complete for review to begin within 30 days after receiving the application. Consequently, FDA declines to adopt the comments.

59. One comment argued that proposed § 314.95(b) creates a delay that is detrimental to ANDA applicants and is contrary to the 1984 amendments and the legislative history. The comment said that proposed § 314.95(b) would deprive ANDA applicants of "statutory

rights" associated with the 45-day period and the 30-month period for the effective date of an ANDA approval and could present problems among competing ANDA applicants. The comment said FDA should permit ANDA applicants to provide notice upon submission of an application or have ANDA applicants await an initial FDA determination (presumably as to whether the application is received) before providing notice.

FDA disagrees with the comment. As stated above, the legislative history expressly states that notice of certification of invalidity or noninfringement of a patent must be given simultaneously with the submission of an ANDA and that the ANDA cannot be a "sham" ANDA or one that is substantially incomplete (see H. Rept. 857, 98th Cong., 2d sess. 24 (1984)). As written, § 314.95(b) is consistent with the legislative history because it requires the ANDA applicant to provide notice once FDA has determined that the ANDA is substantially complete to permit a substantive review. To permit an ANDA applicant to provide notice before FDA has determined whether the ANDA is sufficiently complete would be contrary to the legislative history because it would only encourage ANDA applicants to file incomplete or "sham" ANDA's and to supplement them later to secure a place in the review queue in an attempt to secure the first ANDA approval.

60. FDA received five comments regarding the exact contents of a notice of certification of invalidity or noninfringement of a patent. Two comments would revise the rule to require applicants to disclose all components, including active and inactive ingredients, in the applicant's prospective formulation, the proportions of those components, and all grounds supporting the applicant's assertion that the patent is invalid or will not be infringed. Three comments opposed disclosure of the applicant's formulation or composition information or a detailed statement of the applicant's legal reasoning. These comments explained that such information and statements might compromise the applicant's trade secrets and adversely affect the applicant's ability to engage in litigation.

As noted above in comment 18, the agency did not anticipate that the list in proposed § 314.95(c) would generate the debate reflected in the comments and, again, reiterates that the agency does not have the expertise or the desire to become involved in issues concerning patent law and sufficiency of notice. Therefore, FDA has revised § 314.95 to require that the detailed statement of the factual and legal basis behind the applicant's opinion that the patent is invalid, unenforceable, or will not be infringed include the following: (1) For each claim of a patent alleged not to be infringed, a full and detailed explanation why the claim is not infringed; and (2) for each claim of a patent alleged to be invalid or unenforceable, a full and detailed explanation of the grounds supporting the allegation (see §§ 314.52(c)(6)(i) and (c)(6)(ii) and 314.95(c)(6)(i) and (c)(6)(ii)). Disputes involving the sufficiency of the notice must be resolved by the applicant, patent owner, and holder of the approved application rather than by action on the part of FDA.

61. FDA also received five comments opposing the use of a referee or designated intermediary under proposed § 314.95(c)(6)(iii). The proposal would have required an ANDA applicant to describe a mechanism for disclosing the formulation or composition of the proposed drug product to the patent owner or to a "designated intermediary who will act as a referee" on the subject of patent invalidity or noninfringement. The comments said that the concept was legally unauthorized and interfered with the traditional judicial process for resolving patent disputes.

FDA agrees that traditional processes for resolving patent disputes, which do not involve the agency's regulations, are appropriate under these circumstances. Therefore, the agency has deleted the provision in its entirety.

62. Proposed § 314.95(f) would presume a notice of certification of invalidity or noninfringement to be complete and sufficient if the ANDA applicant complied with the regulatory requirements under § 314.95(a) through (e) and would start the 45-day clock for filing a patent infringement suit on the date following receipt of the notice. One comment challenged the presumption that a notice is complete and sufficient to permit the statutory 45-day period to begin. The comment would revise the rule to require applicants to file a complete copy of the certification and notice of service with FDA and delay the start of the 45-day period if any dispute over the certification's sufficiency arose. A second comment argued that an approved application holder who is also an exclusive patent licensee might have different interests than the patent owner. The comment would revise the rule to require notice to both the patent owner and to the licensee or approved application holder.

With respect to FDA's presumption that a notice is complete and sufficient to begin the 45-day period, § 314.95(c), as amended, paraphrases the statutory language concerning notices and does not attempt to establish more detailed requirements for "sufficiency" of a notice. FDA has revised § 314.95(f) to state that it will begin the 45-day period on the first day after the documented date of receipt by the person(s) receiving the notice. FDA will be able to determine this date because § 314.95(e) requires applicants to submit documentation of receipt of notice. FDA may, if the applicant amends its ANDA with a written statement that a later date should be used, count from the later date.

FDA also agrees that an exclusive patent licensee's interests may differ from those of the patent owner. Therefore, FDA has revised §§ 314.52(f) and 314.95(f) to start the 45-day period on the day following the date of receipt of the notice by the patent owner or its representative and by the approved application holder.

*H. Section 314.101—Filing an Application and an Abbreviated Antibiotic Application and Receiving an Abbreviated New Drug Application (21 CFR 314.101)*

63. The agency, on its own initiative, is revising § 314.101(e) to add a new paragraph stating that the agency will refuse to file a 505(b)(2) application or receive an ANDA if the drug product that is the subject of the 505(b)(2) application or ANDA is protected by a 5-year exclusivity period under section 505(c)(3)(D)(ii) and (j)(4)(D)(ii) of the act. This amendment is consistent with the statutory language and § 314.108(b)(2).

*I. Section 314.107—Effective Date of Approval of a 505(b)(2) Application or Abbreviated New Drug Application Under Section 505(j) of the Act)*

Proposed § 314.107 was intended to codify the requirements under section 505(c)(3) and (j)(4) of the act regarding the effective dates of approval for a 505(b)(2) application or an ANDA. For example, if the 505(b)(2) applicant or ANDA applicant certified that there are no relevant patents, that patent information has not been submitted, that the patent has expired, or that the patent is invalid, unenforceable, or not infringed, and the patent owner has not brought suit for patent infringement, proposed § 314.107(b)(1) would treat the date FDA issues an approval letter as the effective date of approval. If the 505(b)(2) applicant or ANDA applicant certified that the patent would expire on

a specific date, proposed § 314.107(b)(2) would treat that specific date as the effective date of approval. Proposed § 314.107(b)(3) described several situations in which the effective date of approval could vary, depending upon the disposition of patent litigation.

Proposed § 314.107 also implemented the "180-day exclusivity period" described in section 505(j)(4)(B)(iv) of the act. In brief, section 505(j)(4)(B)(iv) of the act states that if an ANDA contains a paragraph IV patent certification (declaring the patent to be invalid or not infringed) and the ANDA is for a drug for which a previous ANDA containing a paragraph IV patent certification has been submitted, approval of the subsequently submitted ANDA will be made effective 180 days after the date FDA receives from the previous ANDA applicant notice of the first commercial marketing of the drug or the date a court holds the patent that is the subject of the patent certification to be invalid or not infringed, whichever date is earlier (see section 505(j)(4)(B)(iv) of the act). Proposed § 314.107(c) provided that an applicant must be the first ANDA applicant to submit a substantially complete application with a paragraph IV certification and must have been sued for patent infringement in order to qualify for 180-day exclusivity.

64. One comment asked FDA to permit any person to contact FDA informally to determine whether the listed patent information was correct and later petition the agency to correct any errors. As proposed, § 314.107 did not provide for inquiries concerning patent information.

Sections 314.53(f) and 314.94(a)(12)(vii) describe the procedures that an applicant can use to question the validity of patent information. In brief, if an applicant disputes the accuracy or relevance of patent information, it should first notify FDA in writing and state the reasons for the disagreement. FDA will then request that the relevant NDA holder confirm the validity of the patent information, but will not change the patent information itself unless the NDA holder withdraws or amends the patent information. The agency believes that these procedures for determining the validity of patent information are sufficient, and, therefore, declines to adopt the change suggested by the comment.

65. FDA, on its own initiative, has amended § 314.107(b)(1) to state that an approval will become effective on the date FDA issues an approval letter except as provided under paragraphs (b)(3), pertaining to approvals resulting from the disposition of patent litigation; (b)(4), pertaining to approvals where an applicant has submitted multiple certifications; and (c), regarding subsequent ANDA submissions. These changes are to clarify that there are other situations that may make an approval effective.

66. Two comments would revise proposed § 314.107(b)(1)(iv) regarding a certification that a patent is "invalid or will not be infringed." The comments would have this certification state that the patent is "invalid and will not be infringed."

FDA declines to adopt the suggested language. The provision simply paraphrases the statutory language for a paragraph IV certification (see section 505(j)(2)(A)(vii)(IV) of the act). The agency has, however, amended the provision to account for a certification that a patent is unenforceable and, as stated earlier, removed the language regarding consent from the patent holder.

67. One comment asked FDA to amend proposed § 314.107(b)(1)(iv)(B)(*2*) to require NDA holders to have a role in or consent to licensing agreements between patent owners and ANDA applicants. The proposed rule would consider the effective date of approval for a 505(b)(2) application or an ANDA to be the date FDA issues an approval letter if, among other things, the drug product is covered by a patent licensing agreement and the 505(b)(2) application or ANDA contains a statement that the applicant has been granted a patent license and a statement from the patent owner that it has a licensing agreement with the applicant for the proposed drug product and that the patent owner consents to an immediate effective date.

As stated elsewhere in this final rule, FDA believes that the negotiations surrounding licensing agreements and the parties entering into such agreements are outside the scope of this rule. Additionally, as stated in the response to comment 43 above, the agency has deleted the provisions in § 314.107(b)(1)(iv) relating to consent by a patent owner to an immediate effective date of approval for a licensee.

68. The agency, on its own initiative, has made minor grammatical changes and other revisions to § 314.107 (b)(2) and (b)(3). These revisions replace "Upon patent expiration" with "Patent Expiration" and "Upon disposition of patent litigation" with "Disposition of patent litigation." Additionally, the changes specify that the patent owner must receive the notice of certification and clarify, in § 314.107(b)(3)(i)(B), the effective date of approval.

69. Proposed § 314.107(b)(3) described the effective date of approval of a 505(b)(2) application or ANDA upon disposition of patent litigation. Under proposed § 314.107(b)(3)(i)(A), if an applicant certified that the relevant patent was invalid or would not be infringed, and the patent owner or its representative brought suit for patent infringement, the effective date of approval for the 505(b)(2) application or ANDA would be 30 months after the date of receipt of the notice of certification of patent invalidity or noninfringement by the patent owner or its representative unless a court extended or reduced the 30-month period. Proposed § 314.107(b)(3)(i)(B) described the effective date of approval of a 505(b)(2) application or an ANDA upon disposition of patent litigation when the patented drug product also qualified for 5 years of market exclusivity. Proposed § 314.107(b)(3)(ii) through (b)(3)(iv) represented additional modifications to the effective date of approval due to court decisions or orders.

One comment concerned the proposed language in § 314.107(b)(3)(i) regarding the 30-month period. The comment would amend this provision to shorten or lengthen the 30-month period pursuant to a court order.

The suggested change is unnecessary because § 314.107(b)(3)(i) through (b)(3)(iv) explains how the 30-month period may be changed due to court decisions or orders.

The agency also emphasizes that disposition of patent litigation will not result in automatic approval of a pending application. FDA notes that section 505(c)(3)(C) and (j)(4)(B)(iii) of the act describe when approval of a 505(b)(2) application or an ANDA shall be made effective if an applicant submitting a 505(b)(2) application or ANDA has made a paragraph IV certification and has or has not been sued for patent infringement. For example, if the applicant made a paragraph IV certification, was sued for patent infringement, and the court hearing the patent infringement suit decided that the patent was either invalid or not infringed, section 505(c)(3)(C)(i) and (j)(4)(B)(iii)(I) of the act state, respectively, that approval of the 505(b)(2) application or ANDA may "be made effective on the date of the court decision." However, the agency interprets these provisions of the act as requiring, as a preliminary matter, final agency approval of the application in order for any approval to be made effective. Thus, an applicant with a tentative approval may not begin marketing its drug product until it has

received an approval letter from the agency because a tentative approval letter does not constitute a final "approval" of the application. In such cases, the agency will examine the application to determine whether there have been any changes in the conditions under which the application was tentatively approved. The tentative approval would become final and, therefore, effective only when the agency sends an approval letter to the applicant.

Similarly, an applicant that has not yet received a tentative approval letter may not begin marketing its drug product in the event that a court reaches a decision in any related patent infringement litigation because there is no final "approval" by FDA that could be made "effective" within section 505(c)(3)(C)(i) or (j)(4)(B)(iii) of the act.

Other provisions of the act support this interpretation of section 505(c)(3)(C)(i) and 505(j)(4)(B)(iii) of the act as they relate to the expiration of the 30-month period or the date of the court decision. For example, section 505(j)(3) of the act states that the agency shall approve an ANDA unless certain circumstances are found to exist. Section 505(j)(3)((A) of the act prevents the agency from approving an ANDA if the agency finds that "the methods used in, or the facilities and controls used for, the manufacture, processing, and packing of the drug are inadequate to assure and preserve its identity, strength, quality, and purity." Consequently, until FDA assesses the available information, often from an additional current good manufacturing practices inspection, it cannot determine whether the applicant's methods and controls used for the manufacture, processing, and packing of the drug are adequate to assure and preserve the drug's identity, strength, quality, and purity and therefore, under section 505(j)(3) of the act, whether the ANDA should be approved. Thus, unless FDA has formally approved an ANDA under section 505(j)(3) of the act, there is no "approval" that could be made effective under section 505(j)(4)(B) of the act upon resolution of the patent litigation. (Section 505(d) of the act establishes an analogous approval requirement for 505(b)(2) applications.)

The legislative history provides additional support for FDA's interpretation. In describing the provisions regarding effective dates of approval and court decisions, the House Report states:

> The Committee wishes to emphasize that the court *may not order an ANDA approved* under this provision. These are times when approval of an ANDA may be made effective *if the FDA has approved the ANDA.*

See H. Rept. 857, 98th Cong., 2d sess., Part 1, 27–28 (1984) (emphasis added). The same concept is applicable to 505(b)(2) applications (see id. at 34).

This interpretation of section 505(j)(4)(B) of the act reflects current FDA practice and revises the agency's previous policy that was stated in the preamble to the proposed rule (see 54 FR 28872 at 28894). It also clarifies the agency's position on delayed effective dates of approvals as expressed in the preamble to the final rule on ANDA content and format that was published in the **Federal Register** on April 28, 1992 (57 FR 17950 at 17956). Consequently, FDA, on its own initiative, has amended § 314.107(b)(3) to clarify when approval of an application may become effective and by adding a new paragraph (b)(3)(v) to state that, in order for an approval to become effective under paragraph (b)(3), the applicant must first receive a final approval letter from the agency.

70. One comment would restrict proposed § 314.107(b)(3)(ii) to district court orders. The comment would revise the rule to state: "If before the expiration of the 30-month period, or 7½ years where applicable, the district court decides such patent is invalid or not infringed, the approval will be made effective on the date of the district court order or judgment." The comment would also replace the words "a final order" in proposed § 314.107(b)(3)(iii) and (b)(3)(iv) with "an order or judgment."

FDA declines to limit the rule to district court orders. As stated in the preamble to the proposed rule, FDA interprets the requirement of a "court decision" to mean "a final decision of a court from which no appeal can or has been taken" (see 54 FR 28872 at 28895). Beginning the 180-day exclusivity period before the resolution of the appeals process would render the exclusivity valueless to a prudent applicant who delayed marketing until the issues were resolved on appeal.

FDA has, however, revised § 314.107(b)(3)(iii) and (b)(3)(iv) to refer to an "order or judgment" because both terms are sometimes used to refer to actions that terminate an action or decide a matter in litigation.

71. Proposed § 314.107(b)(4) concerned applicants who made multiple patent certifications. In essence, the proposed provision would consider the approval of a 505(b)(2) application or an ANDA to be effective on the last applicable date. One comment would amend proposed § 314.107(b)(4) by adding a new sentence stating:

> If the applicant has submitted certifications under § 314.50(i) or § 314.94(a)(12) and has submitted notice to the owner of the patent pursuant to § 314.95, and FDA subsequently receives a stipulation or order by the district court notifying it that the applicant has amended its answer to add new arguments, not included in that notice, in any ensuing suit for patent infringement, the date of approval will be calculated based on a 30-month period starting at the date of receipt by FDA of each such stipulation or order, and the approval will become effective on the last applicable date.

Alternatively, the comment suggested that an ANDA applicant who amended its answer to a patent infringement suit to include arguments that were not in the notice to the patent owner under § 314.95 would be considered to have been uncooperative in expediting the lawsuit. The comment explained that these revisions would prevent generic drug companies from amending their answers during patent infringement litigation to delay completion of a trial and also delay the start of the 30-month period.

FDA declines to adopt the comment's suggestion. As stated above, FDA has revised the notice requirements in §§ 314.52(c) and 314.95(c) to parallel the statutory language rather than specify notice requirements. The agency has neither the resources nor the expertise to engage in patent disputes or questions regarding sufficiency of notice. The statute leaves the issue of extending the 30-month period (based on a lack of cooperation between the parties in patent litigation) to the discretion of the trial court. The agency believes that the trial court should make determinations of cooperation on a case-by-case basis. Accordingly, the agency declines to amend the rule to consider an applicant to be uncooperative and to extend the 30-month period if the applicant amends an answer to a complaint in patent litigation to include an argument not reflected in the notice to the patent holder.

72. FDA received several comments on proposed § 314.107(c) and the 180-day exclusivity period against subsequent ANDA's. As proposed, § 314.107(c) would provide 180-day exclusivity to the first ANDA applicant that made a paragraph IV patent certification (that the patent was invalid or not infringed) and was sued for patent infringement. Seven comments said the language requiring an ANDA applicant to have been sued in order for the 180-day exclusivity period to become effective was contrary to the statute and to a judicial ruling in the

U.S. District Court for the District of Columbia.

Section 505(j)(4)(B)(iv) of the act can be applied straightforwardly only when an applicant who seeks the 180-day period of exclusive marketing has been involved in a patent infringement lawsuit. To apply the section where there has been no lawsuit would require that the agency ignore the textual relationship between section 505(j)(4)(B)(iii) and (j)(4)(B)(iv) of the act and assume that Congress intended, contrary to the goals it stated in the legislative history, to create an incentive for delay in generic competition, without any countervailing benefit to society. Moreover, it would provide a windfall to an applicant who has not devoted the considerable time and money necessary for patent litigation. Thus, consistent with the agency's longstanding interpretation of the act, § 314.107(c) applies only when the first applicant has been sued. Although, as the comments state, one Federal district court reached a contrary conclusion, the agency appealed that decision and, on appeal, the decision was vacated as moot (*Inwood Laboratories, Inc.* v. *Young*, 723 F.Supp. 1523 (D.D.C. 1989), *vacated as moot*, no. 89–5209 (D.C. Cir., November 13, 1989). The agency has not altered its interpretation of the act.

FDA has, however, revised § 314.107(c) to clarify other issues, such as the start and end of the 180-day exclusivity period, and to make minor editorial changes.

73. One comment suggested revising proposed § 314.107(c) to state that the 180-day exclusivity period does not apply to delay the effective date of approval of licensees to the NDA holder.

As stated above, FDA does not believe that an ANDA applicant who has made a paragraph IV certification and obtained a patent license should be able to circumvent a 180-day exclusivity period. Consequently, the agency declines to amend the provision as requested by the comment.

74. Two comments would revise proposed § 314.107(c) to extend the 45-day period in which patent owners have to file suit against an ANDA applicant. The proposal referred to the statutory 45-day period in which a patent owner would have to file suit against an ANDA applicant. The comments would extend the 45-day period upon request or when the ANDA applicant and the patent owner agree to an extension.

FDA declines to accept the comments' suggestion. The 45-day period for filing a lawsuit against an ANDA applicant is fully consistent with section 505(j)(4)(B)(iii) of the act, and the agency finds that there are sound policy reasons that outweigh extensions of the 45-day period. For example, if an ANDA applicant has provided notice to a patent owner stating that the ANDA applicant believes that the patent is invalid or would not be infringed (a paragraph IV certification), the patent owner may elect to bring suit against the ANDA applicant for patent infringement. If the suit is brought within 45 days from the date the ANDA applicant provided the notice, section 505(j)(4)(B)(iii) of the act precludes the agency from granting a final approval of the ANDA. If suit is not brought within 45 days, FDA could grant a final approval of the ANDA upon expiration of this time period, assuming that the ANDA met all applicable requirements for approval. Thus, amending the rule to provide the patent owner an extension to file suit beyond the 45-day period would not prevent the agency from approving ANDA's during the extension (because the statutory restriction against making an approval effective would no longer apply), even if the patent owner later decided to bring suit against the ANDA applicant and prevailed in that lawsuit. Such a result would waste agency and industry resources.

FDA also notes that, in situations where an ANDA applicant has amended its notification to the patent owner and approved NDA holder to make it more complete, the agency may, under § 314.95(f), consider the 45-day period to begin on the day after the date of receipt of the amended notification.

75. One comment would revise proposed § 314.107(c) to begin the 180-day exclusivity period "on the first day that a court would allow non-infringing marketing (unless that decision were stayed)" or "30 months from receipt of notice."

The agency declines to revise the rule as suggested. The rule, which paraphrases the statutory language at section 505(j)(4)(B)(iv) of the act, better reflects the plain meaning of the act. Revising the rule as requested by the comment would begin the 180-day exclusivity period at the end of the 30-month period without regard to whether the applicant had commenced marketing on that date.

76. Proposed § 314.107(c)(1)(i) would provide 180-day exclusivity to the first ANDA applicant to submit a complete ANDA with a paragraph IV patent certification and "to be sued within 45 days of the patent owner's receipt of notice." One comment said the rule, as drafted, created an incentive for frivolous claims of patent invalidity or noninfringement because it would give ANDA applicants exclusivity even if the applicant was unsuccessful in defending against the patent owner's lawsuit. The comment would replace the phrase "to be sued within 45 days" with "and to successfully defend a suit brought within 45 days."

FDA agrees and has amended § 314.107(c) accordingly.

77. FDA received several comments regarding proposed § 314.107(c)(1)(i) and (c)(1)(ii). These provisions concerned the start of the 180-day exclusivity period. Proposed § 314.107(c)(1)(i) would begin the 180-day exclusivity period on the date of the first commercial marketing of the drug product by the first ANDA applicant who submitted a substantially complete ANDA containing a certification that the patent was invalid or not infringed and who was sued for patent infringement within 45 days after providing notice to the patent owner. Alternatively, proposed § 314.107(c)(1)(ii) would begin the 180-day exclusivity period on the "date a decision of the court holding the relevant patent invalid or not infringed" if that date was earlier than the date of the first commercial marketing. One comment would revise proposed § 314.107(c)(1)(ii) to include a cross-reference to the language in § 314.107(b)(3) on patent litigation.

FDA declines to adopt the suggested revision. The agency believes that the meaning of § 314.107(c)(1)(ii) is sufficiently clear so that the court referred to in § 314.107(c)(1)(ii) is the court deciding the patent infringement suit. However, for reasons stated elsewhere in this document, the agency has amended this provision to include a reference to unenforceable patents.

78. One comment would amend § 314.107(c), (c)(1)(i), and (c)(1)(ii) to permit an ANDA applicant to decide whether to start the 180-day exclusivity period on the date it notifies the agency that the applicant has begun commercial marketing of the drug product or to wait to see whether the court decision is appealed. If an appeal did result, the comment would permit the ANDA applicant to have the 180-day period begin when a court issues a decision on the appeal.

FDA declines to amend the provision as suggested by the comment. The provision is consistent with section 505(j)(4)(B)(iv) of the act by beginning the 180-day period on the date the first ANDA applicant has notified the agency that it has begun commercial marketing of the drug product or the date of a court decision holding the patent to be invalid or not infringed, "whichever is earlier" (see section 505(j)(4)(B)(iv) of the act.) Allowing an applicant to begin marketing before the commencement of the 180-day exclusivity period would,

in effect, extend the exclusivity period in a manner that is inconsistent with the plain meaning of the act. FDA also notes that the court decision must be a final decision from which no appeal can be or has been taken (see 54 FR 28872 at 28895).

79. FDA received four comments regarding "substantially complete" applications under proposed § 314.107(c)(2). Proposed § 314.107(c)(2) would consider an ANDA to have been "previously submitted" with respect to another application for the same listed drug "if the date on which the first application was both substantially complete and contained a certification that the patent was invalid or not infringed is earlier than the date on which the second application was both substantially complete and contained the same certification." The proposal also stated that a "substantially complete" application "must contain the results of any required bioequivalence studies, or, if applicable, a request for a waiver of such studies."

One comment asked FDA to provide information as to which ANDA was the first "substantially complete" ANDA. The comment suggested that disclosing such information did not present any confidentiality problems because the ANDA applicant would have revealed the existence of the ANDA when it provided notice of certification of invalidity or noninfringement of the patent to the patent owner and NDA holder.

FDA agrees, in part, with the comment. Disclosing whether an ANDA had been received for a specific listed drug would enable manufacturers to decide whether to develop a generic version of that drug and perhaps conserve the manufacturer's resources. Such knowledge could, in turn, effectively reduce the number of applications for the same product and thus also conserve agency resources. The agency, therefore, will disclose whether an ANDA has been received for a particular drug, but, in order to preserve the confidentiality of the applicant, will not disclose when the application had been received or the applicant's identity. Potential applicants who wish to inquire whether an ANDA for a specific drug has been received can contact the Regulatory Support Branch (HFD–615), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0315.

80. Two comments disagreed with the language regarding "substantially complete" applications. One comment said FDA should only determine whether an ANDA contains a bioequivalence test or waiver request and not focus on the results of any required bioequivalence studies. The second comment suggested that a "substantially complete" ANDA be one that contained a paragraph IV patent certification and a bioequivalence study that is ultimately approved. The comment said this change would deter ANDA applicants from submitting "superficial" bioequivalence tests. The comment also suggested that the agency establish criteria as to whether changes to an ANDA were so substantial that the ANDA could no longer be considered as the first to be filed.

Since publication of the proposed rule, FDA has clarified its policies regarding the submission of incomplete ANDA's. Under the earlier policy, ANDA applicants could submit ANDA's with bioequivalence study protocols and could provide bioequivalence study data at a later date. This policy resulted in a significant and unwarranted expenditure of resources in reviewing applications that had little potential for approval. Thus, in the Federal Register of April 28, 1992, FDA announced that it would no longer accept an ANDA that does not contain complete bioequivalence study data if such data are required for approval (see 57 FR 17950 at 17959). A "substantially complete" application, therefore, should have a complete bioequivalence study, or other information to show bioequivalence that could support approval of the application. FDA will examine the bioequivalence information upon submission and, if the agency determines that the bioequivalence information is facially insufficient to support a finding of bioequivalence, the agency will not review the application under § 314.101(d). A decision by the agency after receipt of an application that the bioequivalence information is inadequate for approval does not necessarily mean that the application was not substantially complete at the time of submission.

FDA also declines to establish criteria to establish whether changes to an ANDA were so substantial that it could not be considered to have been filed. While certain changes in an ANDA (e.g., a change in the listed drug) would amount to a new filing for purposes of § 314.107(c)(2), other changes (e.g., minor labeling changes) would not. The agency believes a case-by-case approach is preferable because many products and manufacturers may be unique.

81. The agency, on its own initiative, has revised the provisions in § 314.107 (c)(2) and (c)(3) to clarify their intent. These provisions address the issues of the "applicant submitting the first application" for exclusivity purposes, what constitutes a "substantially complete" application, and the effective dates of approval for subsequently submitted applications if the first applicant is not "actively pursuing" approval. FDA has made similar editorial changes at § 314.107(c)(4).

82. Four comments addressed proposed § 314.107(c)(3). The proposed provision would make an ANDA that had been received after FDA had already received an ANDA for the same drug immediately effective if the agency concluded that the first ANDA applicant "is not actively pursuing approval of its abbreviated application." Three comments asked FDA to define the phrase "actively pursuing approval."

For purposes of this rule, the phrase "actively pursuing approval" is intended to encompass a drug sponsor's good faith effort to pursue marketing approval in a timely manner. In determining whether a sponsor is actively pursuing marketing approval, FDA will consider all relevant factors, such as the sponsor's compliance with regulations and the timeliness of its responses to FDA's questions or application deficiencies during the review period.

83. One comment would revise proposed § 314.107(c)(3) to make a subsequently received ANDA immediately effective upon a finding that the first applicant is not actively pursuing approval "if [the subsequent application is] otherwise eligible for an immediately effective approval."

The agency agrees and has amended the provision accordingly. This change will remind applicants that FDA will make approval of a subsequent abbreviated application immediately effective if it satisfies all applicable requirements and FDA has concluded that the first applicant is not actively pursuing approval of its abbreviated application.

84. FDA received five comments regarding the interpretation of "the court" and court judgments in proposed § 314.107(e)(1). Proposed § 314.107(e)(1) stated that "the court" in § 314.107(b) and (c) referred to "the court that enters final judgment from which no appeal can be or has been taken." Three comments supported the proposal, but two comments argued that FDA had misconstrued the 1984 amendments. One comment argued that the court finding a patent to be invalid or not infringed should be "the court of first instance" or district court because a decision that a patent was invalid or not infringed or a decision to issue an injunction would be done by a district court. Another comment argued that interpreting "the court" to mean the

court that enters final judgment "effectively gives a patent owner an additional extension of the patent * * * for the duration of the appeal" and delay generic competition. The comment would revise the rule to permit an ANDA applicant to market its drug product after it had prevailed at the trial court level.

FDA declines to amend § 314.107(e)(1) as suggested by the comments. To construe "the court" as a district court, regardless of any appeal of the district court decision, would deny the benefits of exclusivity to a prudent applicant that delayed marketing its product until resolution of an appeal by the patent holder (see 54 FR 28872 at 28894). Moreover, if the patent holder appealed the district court decision and were able to obtain a stay or an injunction against the marketing of the applicant's product, the applicant could lose the entire 180-day exclusivity period before the stay or injunction were lifted.

Given these considerations, FDA believes that any reference to "the court" must be the court that enters final judgment from which no appeal can be or has been taken. (The reference to "appeals" does not include the certiorari process. The likelihood of an appellate court decision being heard and overruled by the Supreme Court is too remote to warrant delaying marketing and exclusivity pending resolution of a petition for writ of certiorari.) This interpretation avoids potentially premature decisions on the effective date of ANDA approval and the loss of 180-day exclusivity. FDA has, however, also revised § 314.107(e)(2) to clarify which court decisions will represent the "final" judgment.

85. One comment would revise proposed § 314.107(e)(2) to refer to a court order or judgment rather than simply a court judgment.

As amended, § 314.107(e)(2) refers to a court "decision," which could be in the form of either an order or a judgment. The agency has also made minor changes to § 314.107(e)(2) to clarify that the court decisions involve patent issues and that a higher court can hold or affirm a lower court decision that a patent is invalid, unenforceable, or not infringed.

86. A second comment would revise proposed § 314.107(e)(2) to require applicants to submit copies of a court order or judgment to the Division of Generic Drugs or "New Drug Evaluation Division (where applicable)."

FDA agrees with the comment, and has added § 314.107(e)(2)(iv) to require applicants to send a copy of a final decision to the Office of Generic Drugs, or to the appropriate division in the Office of Drug Evaluation I or the Office of Drug Evaluation II, whichever is applicable.

87. Proposed § 314.107(f) described how the 45-day period for filing a patent infringement suit would be determined. In brief, under proposed § 314.107(f)(1), the 45-day period would begin on the day after the date the patent owner or approved application holder, if an exclusive patent licensee, received a notice of certification of invalidity or noninfringement of the patent. Proposed § 314.107(f)(2) would require the 505(b)(2) applicant or ANDA applicant to notify FDA whether an action for patent infringement had been filed. Several comments objected to language in proposed § 314.107(f) that would consider notice to or actions by exclusive licensees to be equivalent to notice to or actions by a patent owner. The comments said that exclusive licensees do not always share the patent owner's interests.

FDA agrees and has revised the rule to remove language that would consider exclusive licensees to be equivalent to patent owners.

88. One comment objected to proposed § 314.107(f)(1) because it would start the 45-day period on the day after the date the patent owner or the approved application holder, if an exclusive patent licensee, received notice of invalidity or noninfringement of a patent. The comment argued that the 45-day period should begin on the day after the date that the patent owner and the approved application holder received notice and, if these dates differed, the latest date should mark the start of the 45-day period.

The agency agrees with the comment and has revised § 314.107(f)(1) to begin the 45-day period on the day after the date the patent owner and the approved application holder have received the applicant's notice of certification of invalidity or noninfringement of a patent.

89. FDA received several comments on proposed § 314.107(f)(2). Absent a notice of an action for patent infringement, the proposal would make the approval of an ANDA or 505(b)(2) application effective immediately upon the expiration of the 45-day period for filing a patent infringement suit or upon FDA's completion of the review and approval process, whichever is later. The comments noted that the regulation would have ANDA or 505(b)(2) applicants notify FDA whether a patent infringement suit had been filed and asked FDA to permit, by regulation, patent owners to notify FDA whether it had brought suit. Alternatively, some comments would require the ANDA or 505(b)(2) applicant certify that it had not been sued. The comments explained that these changes were necessary because ANDA and 505(b)(2) applicants would have no interest in notifying FDA whether suit had been filed because, without such notice, they could immediately secure effective approval of an application.

The agency has amended § 314.107(f)(2) to permit patent owners or their representatives to notify FDA whether a patent infringement suit has been filed. The statute does not require applicants to certify that they have not been sued, and the agency does not believe such a burden to be necessary.

The agency has also made minor revisions to § 314.107(f)(2) to place more emphasis on an applicant's obligation to notify FDA immediately of the filing of any legal action within 45 days of receipt of a notice of certification.

Additionally, the agency has made a grammatical change in § 314.107(f)(2) to clarify that applicants must send the notification to the Office of Generic Drugs or to the appropriate division in the Center for Drug Evaluation and Research reviewing the application.

90. One comment addressed the requirement in proposed § 314.107(f)(2) that a 505(b)(2) applicant or ANDA applicant notify FDA whether an action for patent infringement had been filed "before the expiration of the 45-day time period or the completion of the agency's review of the application, whichever occurs later." The comment argued that a patent owner had 45 days to file a lawsuit after receiving a notice of certification of invalidity or noninfringement of a patent and, therefore, a party should have an additional time period beyond the 45-day period for filing an action for patent infringement for notifying the agency whether an action had been filed. The comment would revise the rule to give a party an additional 15 days beyond the 45-day period to notify FDA whether an action for patent infringement had been filed.

The agency declines to revise the rule as suggested. FDA believes it is important to learn immediately if an action for patent infringement is filed before the completion of the 45-day period to avoid an erroneous approval with an immediate effective date.

FDA has, therefore, amended § 314.107(f)(2) to require applicants to notify FDA immediately whether any legal action has been filed. The agency has also amended this subsection to clarify the identity of the "applicant."

91. FDA has, on its own initiative, clarified its notification requirements in

§ 314.107(f)(2)(iii). As proposed, § 314.107(f)(2)(iii) would have required parties to identify a drug by its established name, but would not have expressly required any identification of the drug if no established name existed. The agency has amended this provision to require identification of the drug product by its established name or, if no established name exists, its active ingredient(s).

92. One comment asked FDA to publish information regarding the status and progress of patent infringement suits so other ANDA applicants could decide whether to intervene in the suit "and ask that the 30-month period be shortened or lengthened in the event that it feels that one or both of the litigants are not reasonably cooperating in expediting the action." Alternatively, the comment asked FDA to permit any interested party to petition the agency "to remove an ANDA from exclusivity considerations if it has not proceeded with due diligence—either in prosecution of its ANDA or defense of an infringement suit."

FDA believes that ANDA applicants are capable of monitoring the progress of patent litigation without imposing the additional burden of acquiring and publishing information on patent litigation on FDA. The agency, therefore, declines to adopt the comment.

FDA also declines to amend the rule to permit third parties to petition the agency to deny exclusivity to an ANDA due to the ANDA applicant's actions during litigation. Under the statute, the reduction or enlargement of the 30-month period is left to the trial court's discretion. Intervention by the agency is unwarranted.

93. One comment suggested replacing the words, "action to defend," in proposed § 314.107(f)(2)(iv) with the words, "action for patent infringement." The comment said that "action to defend" was not a term of art.

FDA agrees and has adopted the comment.

94. FDA, on its own initiative, has modified the language regarding waivers in § 314.107(f)(3). The change is intended to clarify that the patent owner does not object to FDA's approval of an ANDA or 505(b)(2) application with an immediate effective date and to account for those situations where the ANDA applicant or 505(b)(2) applicant and the patent owner have agreed to extend the 45-day period.

*J. Section 314.108—New Drug Product Exclusivity*

Proposed § 314.108 was intended to implement the new drug exclusivity provisions under section 505(c)(3)(D) and (j)(4)(D) of the act. This section of the act provides specific time periods, known as new drug product exclusivity or market exclusivity, during which the effective date of approval for a 505(b)(2) application or an ANDA must be delayed or, in some cases, a 505(b)(2) application or an ANDA cannot be submitted. For example, section 505(c)(3)(D)(i) and (j)(4)(D)(i) of the act grant a 10-year period of exclusivity to new chemical entities that were approved during January 1, 1982, to September 24, 1984. Section 505(c)(3)(D)(ii) and (j)(4)(D)(ii) of the act grant a 5-year period of exclusivity to new chemical entities approved after September 24, 1984. These sections of the act expressly state that no 505(b)(2) application or ANDA may be submitted during the exclusivity period except that such applications may be submitted after 4 years if they contain a certification of patent invalidity or noninfringement. Section 505(c)(3)(D)(iii), (c)(3)(D)(iv), (j)(4)(D)(iii), and (j)(4)(D)(iv) of the act grant a 3-year period of exclusivity to an application or supplemental application that is approved after September 24, 1984, and contains "reports of new clinical investigations (other than bioavailability studies) essential to the approval" of the application or supplemental application and "conducted or sponsored by" the person submitting the application or supplemental application.

Section 505(c)(3)(D)(v) and (j)(4)(D)(v) of the act granted a 2-year period of exclusivity to drugs that are not chemical entities or for certain changes to already approved products that were approved during January 1, 1982, to September 24, 1984. FDA did not propose any regulations for this 2-year period because it expired on September 24, 1986.

The exclusivity provisions of the act do not provide any protection from the marketing of a generic version of the same drug product if the generic version is the subject of a full NDA submitted under section 505(b)(1) of the act.

95. Proposed § 314.108(b)(4) would provide 3 years of exclusivity to an application that was submitted under section 505(b) of the act, was approved after September 24, 1984, was for a drug product containing an active moiety that had been previously approved in another application under section 505(b) of the act, and contained reports of new clinical investigations (other than bioavailability studies) conducted or sponsored by the applicant that were essential to approval of the application. Proposed § 314.108(b)(5) would provide 3 years of exclusivity to a supplemental application that was approved after September 24, 1984, and contained reports of new clinical investigations (other than bioavailability studies) conducted or sponsored by the applicant that were essential to approval of the application.

Several comments addressed the scope of new drug exclusivity. Two comments said FDA should grant exclusivity for any change to an approved drug product or, alternatively, should grant exclusivity based on specific types of studies, such as studies intended to reduce drug dosing or drug efficacy study implementation (DESI) upgrade studies. One comment disagreed with the preamble to the proposed rule, which stated, "FDA expects that only those changes in an approved drug product that affect its active ingredient(s), strength, dosage form, route of administration or conditions of use would be granted exclusivity" (54 FR 28872 at 28899). Two comments asked FDA to clarify whether a clinical investigation establishing new risks could be eligible for exclusivity. The preamble to the proposed rule had indicated that such studies would not qualify for exclusivity because "protection of the public health demands that all products' labeling contain all relevant warnings" (see 54 FR 28872 at 28899). One comment said FDA should accept an applicant's claim of exclusivity alone.

Two other comments sought to limit exclusivity or clarify its scope. One comment argued that the rule was too broad, would confer "an unearned windfall," and stifle generic competition. The comment explained that some variations, such as reductions in dosage, require little effort but would nevertheless qualify for exclusivity. The comment suggested that the rule define what types of changes would qualify for exclusivity. The second comment agreed with the preamble that DESI upgrades should not qualify for exclusivity but asked FDA to create a procedure whereby parties could contact FDA to determine whether exclusivity information was accurate. The comment said this would enable third parties to decide whether to challenge decisions to grant or deny exclusivity.

FDA disagrees with those comments that would grant exclusivity for any change to an approved drug product or accept, without question, an applicant's claim that it is entitled to exclusivity. Under the statute and this final rule, certain drugs or changes to drugs can receive 3 years of exclusivity if the application or supplement to an

application "contains reports of new clinical investigations (other than bioavailability studies) essential to the approval * * *" (see section 505(j)(4)(D)(iii) and (j)(4)(D)(iv) of the act). The phrase "essential to the approval" suggests that the clinical investigations that warrant exclusivity must be vital to the application or supplement. As stated in the preamble to the proposed rule, "to qualify for exclusivity, there must not be published reports of studies other than those conducted or sponsored by the applicant, or other information available to the agency sufficient for FDA to conclude that a proposed drug product or change to an already approved drug product is safe and effective" (see 54 FR 28872 at 28900). For example, the agency would not consider studies to support a switch from prescription to over-the-counter (OTC) status to be "essential to approval" if the agency already had sufficient information to conclude that the OTC product would be safe and effective. (In OTC switch situations, FDA encourages applicants to consult FDA to determine whether clinical investigations or any other actions are necessary to permit FDA to approve a switch in a product's status.)

FDA declines to define in the regulation the kinds of supplemental applications that, if supported by clinical investigations, would warrant 3-year exclusivity. Although the preamble to the proposed rule identified certain types of changes in a product that would normally warrant exclusivity (changes in active ingredient, strength, dosage form, route of administration, or conditions of use), the agency did not intend to suggest that other types of changes would not qualify. For example, changes in dosing regimen have resulted in grants of 3-year exclusivity. Changes that would not warrant exclusivity are, as discussed in the preamble to the proposed rule, changes in labeling that involve warnings or other similar risk information that must be included in the labeling of generic competitors. Applicants obtaining approval for such changes in labeling would, in any event, have no valid interest in precluding such information from the labeling of other products. Furthermore, FDA does not consider a study to be "essential to approval" simply because the applicant conducted it and submitted the study for agency review (Ref. 1).

FDA's interpretation is supported by statements that were made during the congressional debates surrounding the 3-year exclusivity provisions. Senator Orrin Hatch described the 3-year exclusivity provisions upon approval of certain supplemental applications as protecting "some changes in strength, indications, and so forth, which require considerable time and expense in FDA required clinical testing" (130 Congressional Record S10505, August 10, 1984) (statement of Senator Hatch)). Representative Henry Waxman said 3-year exclusivity was intended to "encourage drugmakers to obtain FDA approval for significant therapeutic uses of previously approved drugs" (130 Congressional Record H9114, (September 6, 1984)). Thus, an applicant is not entitled to 3-year exclusivity merely because it supplements an approved application based in part on a clinical investigation or because it certifies to FDA that the clinical investigation is essential to approval of the application or supplement.

FDA also declines to create a new procedure whereby a party could contact FDA to determine whether exclusivity information is accurate. Interested parties can obtain information on exclusivity decisions through the Freedom of Information Act process (21 CFR part 20). Parties who wish to challenge an exclusivity decision can utilize the citizen petition procedures (21 CFR 10.30).

96. One comment suggested that products whose labeling may not include certain therapeutic indications (due to exclusivity or patent protection) be listed in the Orange Book as not being therapeutically equivalent to the innovator product.

FDA addressed this comment in its response to a citizen petition submitted by the Pharmaceutical Manufacturers Association (PMA). The response stated, in pertinent part:

> In drafting the 1984 Amendments, the only mechanism that Congress provided for enforcing the exclusivity accorded a new indication is the requirement that ANDA's and 505(b)(2) applications be given delayed effective approval for the exclusive indication. During the period that ANDA's and 505(b)(2) applications may not be made effective, pioneers thus have the exclusive right to promote and label their products for the exclusive indication. Nothing in the language of the amended statute or its legislative history, however, suggests that Congress intended the granting of exclusivity for a new indication to alter therapeutic equivalence ratings. Moreover, it would be inconsistent with the established standards for making therapeutic equivalence determinations to rate two products as not therapeutically equivalent simply because one is labeled with fewer than all the approved indications.
>
> FDA's standards for therapeutic equivalence determinations * * * have always been based upon scientific considerations relevant to predicting the comparative pharmacological behavior of two products in or on the human body. There is no scientific basis for concluding that differences in recommended indications are relevant to this prediction. For example, the fact that a particular brand of drug is recommended in a medical journal article for an unlabeled use, does not, from a scientific standpoint, render other brands of the same drug therapeutically or biologically inequivalent. Similarly, the fact that a pioneer drug is labeled with a protected indication does not mean that generic copies of the same drug are not therapeutically equivalent to the pioneer.
>
> In absence of any suggestion in the statute or legislative history that Congress intended FDA to alter the scientific basis of therapeutic equivalence ratings to enforce exclusivity, FDA declines to consider non-scientific criteria, i.e., the existence of exclusive indications, in making therapeutic equivalence decisions.
>
> (Ref. 2)

FDA has not changed this position and, therefore, declines to adopt the comment.

97. Many comments objected to the definition of "active moiety" and the references to active moieties and new chemical entities throughout proposed § 314.108. The comments said the definitions lacked statutory support and were contrary to two court decisions, *Abbott Laboratories* v. *Young*, 691 F.Supp. 462 (D. D.C. 1988), *remanded*, 920 F.2d 984 (D.C. Cir. 1990), and *Glaxo Operations UK Ltd.* v. *Quigg*, 706 F.Supp. 1224 (E.D. Va. 1989), *aff'd*, 894 F.2d 392 (Fed. Cir. 1990). Two comments added that the definition of "active moiety" was also too restrictive because it excluded chelates, clathrates, and other noncovalent derivatives. The comments, in general, would delete all references to "active moiety" and "new chemical entity" and refer only to "active ingredients." Some comments would also define "active ingredient" as the active ingredient found in the finished dosage form before the drug is administered to the patient.

Subsequent to the close of the comment period, the interpretation of the act urged by the comments and adopted by the district court in *Abbott Laboratories* v. *Young* (providing 10 years of exclusivity under section 505(j)(4)(D)(i) of the act for products offering the same therapeutic moiety in different active ingredient forms if the salt or ester form was approved subsequent to the pure therapeutic moiety form) was rejected by the United States Court of Appeals for the District of Columbia. Noting that such an interpretation would award exclusivity to both an active moiety and a salt if the application containing the active moiety were submitted first, but would award exclusivity only to the salt if the salt

were submitted first, the court of appeals rejected the interpretation as "farfetched because it is not consistent with any legislative goal" (see *Abbott Laboratories* v. *Young*, 920 F.2d 984, 989).

Although the court of appeals appeared to agree with the agency's conclusion that exclusivity should be limited to the first approved product containing the active moiety, the court found the agency's parsing of the operative statutory phrase "active ingredient (including any salt or ester of the active ingredient)" to be linguistically impermissible as set forth in the agency's administrative decision denying 10-year exclusivity to Abbott. Rather than interpret the term "active ingredient" broadly to include the concept of active moiety, the agency interpreted the term narrowly to refer to the form of the moiety in the product, but interpreted the parenthetical phrase "(including any salt or ester of the active ingredient)" broadly to include all active ingredients that are different but contain the same active moiety. Although the court noted that the agency had, subsequent to the administrative decision, voiced the more linguistically permissible construction (interpreting the term "active ingredient" to refer to active moiety), the court found that it could not consider this construction because it was not relied upon in the administrative decision. The court thus remanded the case to the district court with instructions to remand the issue to the agency for further consideration.

The agency has concluded that the term "active ingredient," as used in the phrase "active ingredient (including any salt or ester of the active ingredient)," means active moiety. Thus, the agency declines to adopt the comments suggesting removal of the definition of, and references to, "active moiety" from § 314.108.

FDA disagrees with the assertion that the definition of "active moiety" should not exclude chelates, clathrates, and other noncovalent derivatives. As stated in the preamble to the proposed rule, exclusivity is intended to provide incentives for innovation (see 54 FR 28872 at 28898 and 28899). The addition of a chelate, clathrate, or other noncovalent derivative generally does not affect the active moiety of a drug product. The agency, therefore, does not believe that providing exclusivity for chelates, clathrates, and other noncovalent derivatives of a previously approved active moiety would be consistent with the statutory intent.

98. FDA received a number of comments regarding the term "substantial support" in the definition of "conducted or sponsored by the applicant" in proposed § 314.108(a). The proposed rule stated, "Ordinarily, substantial support will mean providing 50 percent or more of the cost of conducting the study" (see 54 FR 28872 at 28930). The comments said the 50 percent figure was unrealistic, unnecessary, or unauthorized by law and argued that cost should not be a controlling factor in determining new drug exclusivity. Other comments said the rule should permit firms to buy studies because there is no basis to grant exclusivity to a firm that purchases an NDA and to deny exclusivity to a firm that purchases a study. One comment asked how FDA would treat a publicly funded study.

The 50-percent contribution requirement reflects a reasonable interpretation of section 505 (j)(4)(D)(iii) and (j)(4)(D)(iv) of the act. A study can be conducted by or for only one applicant. Exclusivity based on less than 50-percent funding would allow multiple parties to claim exclusivity against ANDA applicants as well as each other. Moreover, the legislative history indicates that Congress created 3-year exclusivity to protect products whose development required a significant time commitment and "an investment of some magnitude" (see 130 Congressional Record S10504 (August 10, 1984) (statement of Senator Hatch); 130 Congressional Record H9124–H9125 (September 6, 1984) (statement of Representative Waxman)). Obviously, if a sponsor provided 50 percent or more funding to a study, its investment represents a substantial portion of the study's funding.

FDA acknowledges that there may be some rare circumstance in which less than 50-percent funding could constitute "substantial support" and merit exclusivity. FDA has, therefore, revised the rule to require: (1) A certified statement from a Certified Public Accountant that the applicant provided 50 percent or more of the cost of conducting the study; or (2) an explanation from the applicant why FDA should consider the applicant to have conducted or sponsored the study if the applicant's financial contribution to the study is less than 50 percent if the applicant did not sponsor the investigational new drug application. The agency has made a corresponding change to § 314.50(j)(4)(iii).

With regard to studies that the applicant has purchased and publicly funded studies, FDA agrees that an applicant who has purchased exclusive rights to a study should be able to obtain new drug exclusivity. FDA, therefore, has revised the definition of "conducted or sponsored by the applicant" to state that the purchase of nonexclusive rights to an investigation does not satisfy the definition. FDA emphasizes that the applicant must have exclusive rights to the purchased study in order to be deemed to have sponsored a study. The purchase of nonexclusive rights by different parties could result in multiple claims of exclusivity for the same study. For these reasons, FDA also believes that most, if not all, publicly funded studies will not qualify for exclusivity. These studies are usually publicly available, so FDA will not give one applicant exclusive rights based on a study that, by virtue of its funding, belongs to the general public and is publicly available.

99. The agency, on its own initiative, has amended the definition of "date of approval" to note that the date of approval "refers only to a final approval and not to a tentative approval that may become effective at a later date." This change reflects FDA's position that drug products with delayed effective dates of approval are not listed drugs and that an "approval with a delayed effective date is tentative and does not become final until the effective date" (see 57 FR 17950 at 17953).

100. One comment said proposed § 314.108(a) failed to correspond to proposed § 314.50(j)(4)(i), which states that § 314.108(a) defines "new" and "clinical investigations." Proposed § 314.50(j)(4)(i) contained an error. The proposed rule does not contain separate definitions for "new" and "clinical investigations"; it does, however, define "new clinical investigations" at § 314.108(a). FDA has corrected § 314.50(j)(4)(i) accordingly.

101. One comment objected to the last sentence in the definition of "new clinical investigation." The comment claimed that the definition would "unnecessarily, and contrary to the Statute, "expand and award an exclusivity for a previously submitted study; and it unjustifiably distinguishes between safety and effectiveness."

Under the statute, 3-year exclusivity is awarded if the application or supplemental application contained reports of new clinical investigations that were conducted or sponsored by the applicant and were essential to the approval of the application or supplemental application (see section 505(j)(4)(D)(iii) and (j)(4)(D)(iv) of the act). The legislative history indicates that 3-year exclusivity is for investigations requiring a considerable investment of time and money and that are necessary for approval of important innovations (see 54 FR 28872 at 28899).

Thus, FDA interprets "new clinical investigation" as a clinical investigation whose data have not been relied upon by FDA to demonstrate substantial evidence of effectiveness of a previously approved drug for any indication or safety in a new patient population and do not duplicate the results of another investigation relied upon by FDA to demonstrate a previously approved drug's effectiveness or safety in a new patient population. An applicant is not limited to recently conducted clinical investigations; a clinical investigation that provides a "new" basis for drug approval can qualify for exclusivity.

102. Two comments recommended revising the rule to address transfers of new drug exclusivity between an applicant and all predecessors in interest, including licensors, assignors, joint venture partners, or other parties.

New drug exclusivity is not a property right, but is rather a statutory obligation on the agency. This statutory obligation is based on data and information in an approved application. Although an applicant may purchase an application or rights to data and information in an application (i.e., exclusive rights to a new clinical investigation), from which exclusivity would flow, there is no property right to exclusivity itself that can be transferred separately and apart from the application or data upon which exclusivity is based. The agency does, however, permit the submission or approval of an ANDA when the holder of the exclusivity permits FDA to receive or approve the ANDA.

FDA notes that joint venture partners differ from licensees, assignors, etc., because joint venture partners share in developing a drug product. Consequently, FDA suggests that joint venture partners carefully consider how they will seek approval of an application and define their rights and interests in the application to avoid questions regarding applicability of the exclusivity provisions of the act.

As stated above, FDA has revised the definition of the phrase, "conducted or sponsored by the applicant," to construe a party who has purchased exclusive rights to a study to have "conducted or sponsored" the study. This change will enable a party who has acquired exclusive rights to a study to seek exclusivity.

103. Four comments asked FDA to create a mechanism that would determine whether a study was "essential for approval" either before an application would be submitted or before the study began. Proposed § 314.108(a) stated that "essential to approval" with regard to an investigation "means that the application could not be approved by FDA without that investigation, even with a delayed effective date." The proposal, however, did not discuss the procedure by which FDA would determine a study to be "essential to approval."

FDA declines to accept the comments. FDA cannot determine whether a study is essential for approval until the application is approved. Research goals and objectives often change during clinical investigations. For example, the results from a study designed to support a new indication could generate interest in a completely different indication. The product ultimately approved may be a different product from that characterized in the original application. It is also possible that newly available data in the public domain will obviate the need for the study prior to approval. Thus, FDA will decide whether a study is essential for approval at the time of approval.

The agency has, however, amended the definition of "essential to approval" to delete the reference to a delayed effective date. This change is necessary because the agency no longer regards an application with a delayed effective date as being approved. Instead, FDA considers such applications as being tentatively approved (see 57 FR 17950 at 17953).

104. Proposed § 314.108(b)(2) would provide 5 years of exclusivity for a new chemical entity if a drug product containing the new chemical entity was approved after September 24, 1984, in an application submitted under section 505(b) of the act. One comment said FDA should deny 5-year exclusivity to any section "505(b)(2) application for a new chemical entity that relies upon one or more investigations that are essential for approval of the application but which were not conducted or sponsored by the applicant * * *." The comment explained that a 505(b)(2) applicant could assemble literature demonstrating the safety and effectiveness of a drug product marketed before 1962 (when the Federal Food, Drug, and Cosmetic Act was amended to require new drugs to be safe and effective for their intended uses) or 1938 (when the Food and Drugs Act was amended to require new drugs to be safe for the conditions of their intended use) and, under the rule, seek 5 years of new drug exclusivity. The comment said granting exclusivity to such drugs would be inconsistent with statutory intent and the legislative history.

Under the statute, a drug product may qualify for 5 years of exclusivity if its active moiety has not been previously approved in any other application (see section 505(c)(3)(D)(ii) and (j)(4)(D)(ii) of the act). For some drug products marketed before 1938 or 1962, the active moiety will have been the subject of an approved application (under prior versions of the act or as part of a combination product approved under the act), so the active moiety will be ineligible for 5-year exclusivity.

FDA also notes that the statute provides 5-year exclusivity for applications approved under section 505(b) of the act and that such applications are submitted by persons who wish to introduce or deliver for introduction into interstate commerce "any new drug." (See section 505(a) and (c)(3)(D)(ii).) The term "new drug" is defined in section 201(p) of the act (21 U.S.C. 321(p)). Drug products with active ingredients marketed before 1938 or 1962 may be "new drugs," especially where there has been a change in the product's labeling, composition, or manufacturer.

Products falling within the definition of a "new drug" must be approved under section 505(b) of the act and, as a result, may qualify for 5-year exclusivity under the language of the act and consistent with legislative history.

105. One comment said that FDA should provide 5 years of exclusivity for a single enantiomer of a previously approved racemate. The comment asserted that FDA approval of a racemic drug mixture covers the mixture rather than the enantiomers that compose the mixture.

The agency declines to revise the rule as requested by the comment. As stated in the preamble to the proposed rule, the agency's position is that "a single enantiomer of a previously approved racemate contains a previously approved active moiety and is therefore not considered a new chemical entity" (see 54 FR 28872 at 28898).

106. One comment asked FDA to interpret the phrase "conditions of approval" in proposed § 314.108(b)(4)(iv) narrowly to limit exclusivity to studies conducted by the original applicant. Proposed § 314.108(b)(4) stated that if an application: (i) Was submitted under section 505(b) of the act; (ii) was approved after September 24, 1984; (iii) was for a drug product that contains an active moiety that has been previously approved in another application under section 505(b) of the act; and (iv) contained reports of new clinical investigations (other than bioavailability studies) conducted or sponsored by the applicant that were essential to approval of the application, the agency will not make effective for a period of 3 years after the date of approval of the

application the approval of a 505(b)(2) application, or an ANDA for the conditions of approval of the original application, or an ANDA submitted pursuant to an approved petition under section 505(j)(2)(C) of the act that relies on the information supporting the conditions of approval of an original NDA. The comment said subsequent applicants who conduct their own studies to obtain approval should not be subject to the original applicant's exclusivity.

FDA believes that the comment misinterprets the scope of exclusivity. As stated in the preamble to the proposed rule and the preamble to this final rule, market exclusivity does not provide any protection from the marketing of a generic version of the same drug product if the generic version is the subject of a full NDA submitted under section 505(b)(1) of the act (see 54 FR 28872 at 28896). As discussed earlier, the statute does not require that the original applicant "conduct" the study to obtain exclusivity. FDA interprets the act to allow for exclusivity where the applicant has supported the study by providing more than 50 percent of the funding or by purchasing exclusive rights to the study.

## IV. Analysis of Impacts

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

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact on small entities. Title I of Pub. L. 98–417 eliminated unnecessary regulatory barriers for generic drug products and has resulted in generic competition on many important post-1962 drugs. Generic drug sales account for a significant portion of total prescription drug sales, and many of these sales would not have occurred in the absence of Pub. L. 98–417. This competition has saved consumers hundreds of millions of dollars per year, and FDA concludes that this impact is directly attributable to the statute. This rule will not affect the pace or magnitude of this economic impact. The rule simply clarifies and facilitates implementation of the act. Thus, FDA certifies that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

## V. Environmental Impact

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

## VI. Paperwork Reduction Act of 1980

This final rule contains information collections which have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*Title:* Abbreviated New Drug Application Regulations; Patent and Exclusivity Provisions.

*Description:* The information requirements collect information from persons who must obtain FDA approval before marketing new human drug products or generic versions of previously approved drug products. These persons must submit information to FDA in the form of applications, notices, and certifications. FDA will use this information to determine whether patent information for a drug product has been submitted and whether an applicant is seeking market exclusivity for a particular drug product.

*Description of Respondents:* Businesses.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

| Section | No. of respondents | No. of responses per respondent | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|---|
| 314.50(i) | 8 | 1 | 8 | 2 | 16 |
| 314.50(j) | 50 | 1 | 50 | 2 | 100 |
| 314.52 | 30 | 1 | 30 | 8 | 240 |
| 314.53 | 200 | 1 | 200 | 1 | 200 |
| 314.94(a)(12) | 215 | 1 | 215 | 2 | 430 |
| 314.95 | 30 | 1 | 30 | 16 | 480 |
| 314.107 | 10 | 1 | 10 | 10 | 10 |
| Total | | | | | 1,476 |

There were no comments received on the Paperwork Reduction Act clearance submission or on the burden estimates. The agency has, however, revised the estimate for ANDA's under § 314.94 based on its latest figures for the number of ANDA's received.

## VII. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Letter dated September 28, 1992, from Jane E. Henney, Deputy Commissioner for Operations, to Alan H. Kaplan and Richard S. Morey, Kleinfeld, Kaplan and Becker (FDA Docket No. 90P–0455).

2. Letter dated December 8, 1987, from John M. Taylor, Associate Commissioner for Regulatory Affairs, to Bruce J. Brennan, Senior Vice President and General Counsel (FDA Docket No. 86P–0235/CP).

**List of Subjects in 21 CFR Part 314**

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 314 is amended as follows:

## PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

1. The authority citation for 21 CFR part 314 continues to read as follows:

**Authority:** Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701, 704, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 374, 379e).

2. Section 314.50 is amended by redesignating existing paragraph (h) as paragraph (k) and by adding new paragraphs (h), (i), and (j) to read as follows:

**§ 314.50 Content and format of an application.**

* * * * *

(h) *Patent information.* The application is required to contain the patent information described under § 314.53.

(i) *Patent certification*—(1) *Contents.* A 505(b)(2) application is required to contain the following:

(i) *Patents claiming drug, drug product, or method of use.* (A) Except as provided in paragraph (i)(2) of this section, a certification with respect to each patent issued by the United States Patent and Trademark Office that, in the opinion of the applicant and to the best of its knowledge, claims a drug (the drug product or drug substance that is a component of the drug product) on which investigations that are relied upon by the applicant for approval of its application were conducted or that claims an approved use for such drug and for which information is required to be filed under section 505 (b) and (c) of the act and § 314.53. For each such patent, the applicant shall provide the patent number and certify, in its opinion and to the best of its knowledge, one of the following circumstances:

(*1*) That the patent information has not been submitted to FDA. The applicant shall entitle such a certification "Paragraph I Certification";

(*2*) That the patent has expired. The applicant shall entitle such a certification "Paragraph II Certification";

(*3*) The date on which the patent will expire. The applicant shall entitle such a certification "Paragraph III Certification"; or

(*4*) That the patent is invalid, unenforceable, or will not be infringed by the manufacture, use, or sale of the drug product for which the application is submitted. The applicant shall entitle such a certification "Paragraph IV Certification". This certification shall be submitted in the following form:

I, (*name of applicant*), certify that Patent No. _____ (*is invalid, unenforceable, or will not be infringed by the manufacture, use, or sale of*) (*name of proposed drug product*) for which this application is submitted.

The certification shall be accompanied by a statement that the applicant will comply with the requirements under § 314.52(a) with respect to providing a notice to each owner of the patent or their representatives and to the holder of the approved application for the drug product which is claimed by the patent or a use of which is claimed by the patent and with the requirements under § 314.52(c) with respect to the content of the notice.

(B) If the drug on which investigations that are relied upon by the applicant were conducted is itself a licensed generic drug of a patented drug first approved under section 505(b) of the act, the appropriate patent certification under this section with respect to each patent that claims the first-approved patented drug or that claims an approved use for such a drug.

(ii) *No relevant patents.* If, in the opinion of the applicant and to the best of its knowledge, there are no patents described in paragraph (i)(1)(i) of this section, a certification in the following form:

In the opinion and to the best knowledge of (*name of applicant*), there are no patents that claim the drug or drugs on which investigations that are relied upon in this application were conducted or that claim a use of such drug or drugs.

(iii) *Method of use patent.* (A) If information that is submitted under section 505 (b) or (c) of the act and § 314.53 is for a method of use patent, and the labeling for the drug product for which the applicant is seeking approval does not include any indications that are covered by the use patent, a statement explaining that the method of use patent does not claim any of the proposed indications.

(B) If the labeling of the drug product for which the applicant is seeking approval includes an indication that, according to the patent information submitted under section 505 (b) or (c) of the act and § 314.53 or in the opinion of the applicant, is claimed by a use patent, the applicant shall submit an applicable certification under paragraph (i)(1)(i) of this section.

(2) *Method of manufacturing patent.* An applicant is not required to make a certification with respect to any patent that claims only a method of manufacturing the drug product for which the applicant is seeking approval.

(3) *Licensing agreements.* If a 505(b)(2) application is for a drug or method of using a drug claimed by a patent and the applicant has a licensing agreement with the patent owner, the applicant shall submit a certification under paragraph (i)(1)(i)(A)(*4*) of this section ("Paragraph IV Certification") as to that patent and a statement that it has been granted a patent license. If the patent owner consents to an immediate effective date upon approval of the 505(b)(2) application, the application shall contain a written statement from the patent owner that it has a licensing agreement with the applicant and that it consents to an immediate effective date.

(4) *Late submission of patent information.* If a patent described in paragraph (i)(1)(i)(A) of this section is issued and the holder of the approved application for the patented drug does not submit the required information on the patent within 30 days of issuance of the patent, an applicant who submitted a 505(b)(2) application that, before the submission of the patent information, contained an appropriate patent certification is not required to submit an amended certification. An applicant whose 505(b)(2) application is filed after a late submission of patent information or whose 505(b)(2) application was previously filed but did not contain an appropriate patent certification at the time of the patent submission shall submit a certification under paragraph (i)(1)(i) or (i)(1)(ii) of this section or a statement under paragraph (i)(1)(iii) of this section as to that patent.

(5) *Disputed patent information.* If an applicant disputes the accuracy or relevance of patent information submitted to FDA, the applicant may seek a confirmation of the correctness of the patent information in accordance with the procedures under § 314.53(f). Unless the patent information is withdrawn or changed, the applicant must submit an appropriate certification for each relevant patent.

(6) *Amended certifications.* A certification submitted under paragraphs (i)(1)(i) through (i)(1)(iii) of this section may be amended at any time before the effective date of the approval of the application. An applicant shall submit an amended certification as an amendment to a

pending application or by letter to an approved application. If an applicant with a pending application voluntarily makes a patent certification for an untimely filed patent, the applicant may withdraw the patent certification for the untimely filed patent. Once an amendment or letter for the change in certification has been submitted, the application will no longer be considered to be one containing the prior certification.

(i) *After finding of infringement.* An applicant who has submitted a certification under paragraph (i)(1)(i)(A)(*4*) of this section and is sued for patent infringement within 45 days of the receipt of notice sent under § 314.52 shall amend the certification if a final judgment in the action is entered finding the patent to be infringed unless the final judgment also finds the patent to be invalid. In the amended certification, the applicant shall certify under paragraph (i)(1)(i)(A)(*3*) of this section that the patent will expire on a specific date.

(ii) *After removal of a patent from the list.* If a patent is removed from the list, any applicant with a pending application (including a tentatively approved application with a delayed effective date) who has made a certification with respect to such patent shall amend its certification. The applicant shall certify under paragraph (i)(1)(ii) of this section that no patents described in paragraph (i)(1)(i) of this section claim the drug or, if other relevant patents claim the drug, shall amend the certification to refer only to those relevant patents. In the amendment, the applicant shall state the reason for the change in certification (that the patent is or has been removed from the list). A patent that is the subject of a lawsuit under § 314.107(c) shall not be removed from the list until FDA determines either that no delay in effective dates of approval is required under that section as a result of the lawsuit, that the patent has expired, or that any such period of delay in effective dates of approval is ended. An applicant shall submit an amended certification as an amendment to a pending application. Once an amendment for the change has been submitted, the application will no longer be considered to be one containing a certification under paragraph (i)(1)(i)(A)(*4*) of this section.

(iii) *Other amendments.* (A) Except as provided in paragraphs (i)(4) and (i)(6)(iii)(B) of this section, an applicant shall amend a submitted certification if, at any time before the effective date of the approval of the application, the applicant learns that the submitted certification is no longer accurate.

(B) An applicant is not required to amend a submitted certification when information on an otherwise applicable patent is submitted after the effective date of approval for the 505(b)(2) application.

(j) *Claimed exclusivity.* A new drug product, upon approval, may be entitled to a period of marketing exclusivity under the provisions of § 314.108. If an applicant believes its drug product is entitled to a period of exclusivity, it shall submit with the new drug application prior to approval the following information:

(1) A statement that the applicant is claiming exclusivity.

(2) A reference to the appropriate paragraph under § 314.108 that supports its claim.

(3) If the applicant claims exclusivity under § 314.108(b)(2), information to show that, to the best of its knowledge or belief, a drug has not previously been approved under section 505(b) of the act containing any active moiety in the drug for which the applicant is seeking approval.

(4) If the applicant claims exclusivity under § 314.108(b)(4) or (b)(5), the following information to show that the application contains "new clinical investigations" that are "essential to approval of the application or supplement" and were "conducted or sponsored by the applicant:"

(i) *"New clinical investigations."* A certification that to the best of the applicant's knowledge each of the clinical investigations included in the application meets the definition of "new clinical investigation" set forth in § 314.108(a).

(ii) *"Essential to approval."* A list of all published studies or publicly available reports of clinical investigations known to the applicant through a literature search that are relevant to the conditions for which the applicant is seeking approval, a certification that the applicant has thoroughly searched the scientific literature and, to the best of the applicant's knowledge, the list is complete and accurate and, in the applicant's opinion, such published studies or publicly available reports do not provide a sufficient basis for the approval of the conditions for which the applicant is seeking approval without reference to the new clinical investigation(s) in the application, and an explanation as to why the studies or reports are insufficient.

(iii) *"Conducted or sponsored by."* If the applicant was the sponsor named in the Form FDA–1571 for an investigational new drug application (IND) under which the new clinical investigation(s) that is essential to the approval of its application was conducted, identification of the IND by number. If the applicant was not the sponsor of the IND under which the clinical investigation(s) was conducted, a certification that the applicant or its predecessor in interest provided substantial support for the clinical investigation(s) that is essential to the approval of its application, and information supporting the certification. To demonstrate "substantial support," an applicant must either provide a certified statement from a certified public accountant that the applicant provided 50 percent or more of the cost of conducting the study or provide an explanation of why FDA should consider the applicant to have conducted or sponsored the study if the applicant's financial contribution to the study is less than 50 percent or the applicant did not sponsor the investigational new drug. A predecessor in interest is an entity, e.g., a corporation, that the applicant has taken over, merged with, or purchased, or from which the applicant has purchased all rights to the drug. Purchase of nonexclusive rights to a clinical investigation after it is completed is not sufficient to satisfy this definition.

* * * * *

3. New sections 314.52 and 314.53 are added to subpart B to read as follows:

**§ 314.52 Notice of certification of invalidity or noninfringement of a patent.**

(a) *Notice of certification.* For each patent which claims the drug or drugs on which investigations that are relied upon by the applicant for approval of its application were conducted or which claims a use for such drug or drugs and which the applicant certifies under § 314.50(i)(1)(i)(A)(*4*) that a patent is invalid, unenforceable, or will not be infringed, the applicant shall send notice of such certification by registered or certified mail, return receipt requested to each of the following persons:

(1) Each owner of the patent that is the subject of the certification or the representative designated by the owner to receive the notice. The name and address of the patent owner or its representative may be obtained from the United States Patent and Trademark Office; and

(2) The holder of the approved application under section 505(b) of the act for each drug product which is claimed by the patent or a use of which is claimed by the patent and for which the applicant is seeking approval, or, if

the application holder does not reside or maintain a place of business within the United States, the application holder's attorney, agent, or other authorized official. The name and address of the application holder or its attorney, agent, or authorized official may be obtained from the Division of Drug Information Resources (HFD–80), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

(3) This paragraph does not apply to a use patent that claims no uses for which the applicant is seeking approval.

(b) *Sending the notice.* The applicant shall send the notice required by paragraph (a) of this section when it receives from FDA an acknowledgment letter stating that its application has been filed. At the same time, the applicant shall amend its application to include a statement certifying that the notice has been provided to each person identified under paragraph (a) of this section and that the notice met the content requirement under paragraph (c) of this section.

(c) *Content of a notice.* In the notice, the applicant shall cite section 505(b)(3)(B) of the act and shall include, but not be limited to, the following information:

(1) A statement that a 505(b)(2) application submitted by the applicant has been filed by FDA.

(2) The application number.

(3) The established name, if any, as defined in section 502(e)(3) of the act, of the proposed drug product.

(4) The active ingredient, strength, and dosage form of the proposed drug product.

(5) The patent number and expiration date, as submitted to the agency or as known to the applicant, of each patent alleged to be invalid, unenforceable, or not infringed.

(6) A detailed statement of the factual and legal basis of the applicant's opinion that the patent is not valid, unenforceable, or will not be infringed. The applicant shall include in the detailed statement:

(i) For each claim of a patent alleged not to be infringed, a full and detailed explanation of why the claim is not infringed.

(ii) For each claim of a patent alleged to be invalid or unenforceable, a full and detailed explanation of the grounds supporting the allegation.

(7) If the applicant does not reside or have a place of business in the United States, the name and address of an agent in the United States authorized to accept service of process for the applicant.

(d) *Amendment to an application.* If an application is amended to include the certification described in § 314.50(i), the applicant shall send the notice required by paragraph (a) of this section at the same time that the amendment to the application is submitted to FDA.

(e) *Documentation of receipt of notice.* The applicant shall amend its application to document receipt of the notice required under paragraph (a) of this section by each person provided the notice. The applicant shall include a copy of the return receipt or other similar evidence of the date the notification was received. FDA will accept as adequate documentation of the date of receipt a return receipt or a letter acknowledging receipt by the person provided the notice. An applicant may rely on another form of documentation only if FDA has agreed to such documentation in advance. A copy of the notice itself need not be submitted to the agency.

(f) *Approval.* If the requirements of this section are met, the agency will presume the notice to be complete and sufficient, and it will count the day following the date of receipt of the notice by the patent owner or its representative and by the approved application holder as the first day of the 45-day period provided for in section 505(c)(3)(C) of the act. FDA may, if the applicant amends its application with a written statement that a later date should be used, count from such later date.

**§ 314.53 Submission of patent information.**

(a) *Who must submit patent information.* This section applies to any applicant who submits to FDA a new drug application or an amendment to it under section 505(b) of the act and § 314.50 or a supplement to an approved application under § 314.70, except as provided in paragraph (d)(2) of this section.

(b) *Patents for which information must be submitted.* An applicant described in paragraph (a) of this section shall submit information on each patent that claims the drug or a method of using the drug that is the subject of the new drug application or amendment or supplement to it and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product. For purposes of this part, such patents consist of drug substance (ingredient) patents, drug product (formulation and composition) patents, and method of use patents. Process patents are not covered by this section and information on process patents may not be submitted to FDA. For patents that claim a drug substance or drug product, the applicant shall submit information only on those patents that claim a drug product that is the subject of a pending or approved application, or that claim a drug substance that is a component of such a product. For patents that claim a method of use, the applicant shall submit information only on those patents that claim indications or other conditions of use of a pending or approved application.

(c) *Reporting requirements*—(1) *General requirements.* An applicant described in paragraph (a) of this section shall submit the following information for each patent described in paragraph (b) of this section:

(i) Patent number and the date on which the patent will expire.

(ii) Type of patent, i.e., drug, drug product, or method of use.

(iii) Name of the patent owner.

(iv) If the patent owner or applicant does not reside or have a place of business within the United States, the name of an agent (representative) of the patent owner or applicant who resides or maintains a place of business within the United States authorized to receive notice of patent certification under section 505(b)(3) and (j)(2)(B) of the act and §§ 314.52 and 314.95.

(2) *Formulation, composition, or method of use patents*—(i) *Original declaration.* For each formulation, composition, or method of use patent, in addition to the patent information described in paragraph (c)(1) of this section the applicant shall submit the following declaration:

The undersigned declares that Patent No. _____ covers the formulation, composition, and/or method of use of (*name of drug product*). This product is (*currently approved under section 505 of the Federal Food, Drug, and Cosmetic Act*) [or] (*the subject of this application for which approval is being sought*):

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(ii) *Amendment of patent information upon approval.* Within 30 days after the date of approval of its application, if the application contained a declaration required under paragraph (c)(2)(i) of this section, the applicant shall by letter amend the declaration to identify each patent that claims the formulation, composition, or the specific indications or other conditions of use that have been approved.

(3) *No relevant patents.* If the applicant believes that there are no patents which claim the drug or the drug product or which claim a method of using the drug product and with

respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner of the patent engaged in the manufacture, use, or sale of the drug product, it shall so declare.

(4) *Authorized signature.* The declarations required by this section shall be signed by the applicant or patent owner, or the applicant's or patent owner's attorney, agent (representative), or other authorized official.

(d) *When and where to submit patent information*—(1) *Original application.* An applicant shall submit with its original application submitted under this part, including an application described in section 505(b)(2) of the act, the information described in paragraph (c) of this section on each drug (ingredient), drug product (formulation and composition), and method of use patent issued before the application is filed with FDA and for which patent information is required to be submitted under this section. If a patent is issued after the application is filed with FDA but before the application is approved, the applicant shall, within 30 days of the date of issuance of the patent, submit the required patent information in an amendment to the application under § 314.60.

(2) *Supplements.* (i) An applicant shall submit patent information required under paragraph (c) of this section for a patent that claims the drug, drug product, or method of use for which approval is sought in any of the following supplements:

(A) To change the formulation;

(B) To add a new indication or other condition of use, including a change in route of administration;

(C) To change the strength;

(D) To make any other patented change regarding the drug, drug product, or any method of use.

(ii) If the applicant submits a supplement for one of the changes listed under paragraph (d)(2)(i) of this section and existing patents for which information has already been submitted to FDA claim the changed product, the applicant shall submit a certification with the supplement identifying the patents that claim the changed product.

(iii) If the applicant submits a supplement for one of the changes listed under paragraph (d)(2)(i) of this section and no patents, including previously submitted patents, claim the changed product, it shall so certify.

(iv) The applicant shall comply with the requirements for amendment of formulation or composition and method of use patent information under paragraphs (c)(2)(ii) and (d)(3) of this section.

(3) *Patent information deadline.* If a patent is issued for a drug, drug product, or method of use after an application is approved, the applicant shall submit to FDA the required patent information within 30 days of the date of issuance of the patent.

(4) *Copies.* The applicant shall submit two copies of each submission of patent information, an archival copy and a copy for the chemistry, manufacturing, and controls section of the review copy, to the Central Document Room, Center for Drug Evaluation and Research, Food and Drug Administration, Park Bldg., rm. 2–14, 12420 Parklawn Dr., Rockville, MD 20857. The applicant shall submit the patent information by letter separate from, but at the same time as, submission of the supplement.

(5) *Submission date.* Patent information shall be considered to be submitted to FDA as of the date the information is received by the Central Document Room.

(6) *Identification.* Each submission of patent information, except information submitted with an original application, and its mailing cover shall bear prominent identification as to its contents, i.e., "Patent Information," or, if submitted after approval of an application, "Time Sensitive Patent Information."

(e) *Public disclosure of patent information.* FDA will publish in the list the patent number and expiration date of each patent that is required to be, and is, submitted to FDA by an applicant, and for each use patent, the approved indications or other conditions of use covered by a patent. FDA will publish such patent information upon approval of the application, or, if the patent information is submitted by the applicant after approval of an application as provided under paragraph (d)(2) of this section, as soon as possible after the submission to the agency of the patent information. Patent information submitted by the last working day of a month will be published in that month's supplement to the list. Patent information received by the agency between monthly publication of supplements to the list will be placed on public display in FDA's Freedom of Information Staff. A request for copies of the file shall be sent in writing to the Freedom of Information Staff (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857.

(f) *Correction of patent information errors.* If any person disputes the accuracy or relevance of patent information submitted to the agency under this section and published by FDA in the list, or believes that an applicant has failed to submit required patent information, that person must first notify the agency in writing stating the grounds for disagreement. Such notification should be directed to the Drug Information Services Branch (HFD–84), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. The agency will then request of the applicable new drug application holder that the correctness of the patent information or omission of patent information be confirmed. Unless the application holder withdraws or amends its patent information in response to FDA's request, the agency will not change the patent information in the list. If the new drug application holder does not change the patent information submitted to FDA, a 505(b)(2) application or an abbreviated new drug application under section 505(j) of the act submitted for a drug that is claimed by a patent for which information has been submitted must, despite any disagreement as to the correctness of the patent information, contain an appropriate certification for each listed patent.

4. Section 314.54 is amended by adding new paragraph (a)(1)(vii) to read as follows:

**§ 314.54 Procedure for submission of an application requiring investigations for approval of a new indication for, or other change from, a listed drug.**

(a) * * *

(1) * * *

(vii) If the applicant believes the change for which it is seeking approval is entitled to a period of exclusivity, the information required under § 314.50(j).

* * * * *

5. Section 314.70 is amended by adding new paragraph (f) to read as follows:

**§ 314.70 Supplements and other changes to an approved application.**

* * * * *

(f) *Claimed exclusivity.* If an applicant claims exclusivity under § 314.108 upon approval of a supplemental application for a change to its previously approved drug product, the applicant shall include with its supplemental application the information required under § 314.50(j).

6. Section 314.94 is amended by adding a new paragraph (a)(12) to read as follows:

**§ 314.94 Content and format of an abbreviated application.**

(a) * * *

(12) *Patent certification*—(i) *Patents claiming drug, drug product, or method of use.* (A) Except as provided in paragraph (a)(12)(iv) of this section, a certification with respect to each patent issued by the United States Patent and Trademark Office that, in the opinion of the applicant and to the best of its knowledge, claims the reference listed drug or that claims a use of such listed drug for which the applicant is seeking approval under section 505(j) of the act and for which information is required to be filed under section 505(b) and (c) of the act and § 314.53. For each such patent, the applicant shall provide the patent number and certify, in its opinion and to the best of its knowledge, one of the following circumstances:

(*1*) That the patent information has not been submitted to FDA. The applicant shall entitle such a certification "Paragraph I Certification";

(*2*) That the patent has expired. The applicant shall entitle such a certification "Paragraph II Certification";

(*3*) The date on which the patent will expire. The applicant shall entitle such a certification "Paragraph III Certification"; or

(*4*) That the patent is invalid, unenforceable, or will not be infringed by the manufacture, use, or sale of the drug product for which the abbreviated application is submitted. The applicant shall entitle such a certification "Paragraph IV Certification". This certification shall be submitted in the following form:

I, (*name of applicant*), certify that Patent No. _____ (*is invalid, unenforceable, or will not be infringed by the manufacture, use, or sale of*) (*name of proposed drug product*) for which this application is submitted.

The certification shall be accompanied by a statement that the applicant will comply with the requirements under § 314.95(a) with respect to providing a notice to each owner of the patent or their representatives and to the holder of the approved application for the listed drug, and with the requirements under § 314.95(c) with respect to the content of the notice.

(B) If the abbreviated new drug application refers to a listed drug that is itself a licensed generic product of a patented drug first approved under section 505(b) of the act, the appropriate patent certification under paragraph (a)(12)(i) of this section with respect to each patent that claims the first-approved patented drug or that claims a use for such drug.

(ii) *No relevant patents.* If, in the opinion of the applicant and to the best of its knowledge, there are no patents described in paragraph (a)(12)(i) of this section, a certification in the following form:

In the opinion and to the best knowledge of (*name of applicant*), there are no patents that claim the listed drug referred to in this application or that claim a use of the listed drug.

(iii) *Method of use patent.* (A) If patent information is submitted under section 505(b) or (c) of the act and § 314.53 for a patent claiming a method of using the listed drug, and the labeling for the drug product for which the applicant is seeking approval does not include any indications that are covered by the use patent, a statement explaining that the method of use patent does not claim any of the proposed indications.

(B) If the labeling of the drug product for which the applicant is seeking approval includes an indication that, according to the patent information submitted under section 505(b) or (c) of the act and § 314.53 or in the opinion of the applicant, is claimed by a use patent, an applicable certification under paragraph (a)(12)(i) of this section.

(iv) *Method of manufacturing patent.* An applicant is not required to make a certification with respect to any patent that claims only a method of manufacturing the listed drug.

(v) *Licensing agreements.* If the abbreviated new drug application is for a drug or method of using a drug claimed by a patent and the applicant has a licensing agreement with the patent owner, a certification under paragraph (a)(12)(i)(A)(*4*) of this section ("Paragraph IV Certification") as to that patent and a statement that it has been granted a patent license.

(vi) *Late submission of patent information.* If a patent on the listed drug is issued and the holder of the approved application for the listed drug does not submit the required information on the patent within 30 days of issuance of the patent, an applicant who submitted an abbreviated new drug application for that drug that contained an appropriate patent certification before the submission of the patent information is not required to submit an amended certification. An applicant whose abbreviated new drug application is submitted after a late submission of patent information, or whose pending abbreviated application was previously submitted but did not contain an appropriate patent certification at the time of the patent submission, shall submit a certification under paragraph (a)(12)(i) of this section or a statement under paragraph (a)(12)(iii) of this section as to that patent.

(vii) *Disputed patent information.* If an applicant disputes the accuracy or relevance of patent information submitted to FDA, the applicant may seek a confirmation of the correctness of the patent information in accordance with the procedures under § 314.53(f). Unless the patent information is withdrawn or changed, the applicant shall submit an appropriate certification for each relevant patent.

(viii) *Amended certifications.* A certification submitted under paragraphs (a)(12)(i) through (a)(12)(iii) of this section may be amended at any time before the effective date of the approval of the application. However, an applicant who has submitted a paragraph IV patent certification may not change it to a paragraph III certification if a patent infringement suit has been filed against another paragraph IV applicant unless the agency has determined that no applicant is entitled to 180-day exclusivity or the patent expires before the lawsuit is resolved or expires after the suit is resolved but before the end of the 180-day exclusivity period. If an applicant with a pending application voluntarily makes a patent certification for an untimely filed patent, the applicant may withdraw the patent certification for the untimely filed patent. An applicant shall submit an amended certification by letter or as an amendment to a pending application or by letter to an approved application. Once an amendment or letter is submitted, the application will no longer be considered to contain the prior certification.

(A) *After finding of infringement.* An applicant who has submitted a certification under paragraph (a)(12)(i)(A)(*4*) of this section and is sued for patent infringement within 45 days of the receipt of notice sent under § 314.95 shall amend the certification if a final judgment in the action against the applicant is entered finding the patent to be infringed. In the amended certification, the applicant shall certify under paragraph (a)(12)(i)(A)(*3*) of this section that the patent will expire on a specific date. Once an amendment or letter for the change has been submitted, the application will no longer be considered to be one containing a certification under paragraph (a)(12)(i)(A)(*4*) of this section. If a final judgment finds the patent to be invalid and infringed, an amended certification is not required.

(B) *After removal of a patent from the list.* If a patent is removed from the list, any applicant with a pending application (including a tentatively

approved application with a delayed effective date) who has made a certification with respect to such patent shall amend its certification. The applicant shall certify under paragraph (a)(12)(ii) of this section that no patents described in paragraph (a)(12)(i) of this section claim the drug or, if other relevant patents claim the drug, shall amend the certification to refer only to those relevant patents. In the amendment, the applicant shall state the reason for the change in certification (that the patent is or has been removed from the list). A patent that is the subject of a lawsuit under § 314.107(c) shall not be removed from the list until FDA determines either that no delay in effective dates of approval is required under that section as a result of the lawsuit, that the patent has expired, or that any such period of delay in effective dates of approval is ended. An applicant shall submit an amended certification. Once an amendment or letter for the change has been submitted, the application will no longer be considered to be one containing a certification under paragraph (a)(12)(i)(A)(4) of this section.

(C) *Other amendments.* (1) Except as provided in paragraphs (a)(12)(vi) and (a)(12)(viii)(C)(*2*) of this section, an applicant shall amend a submitted certification if, at any time before the effective date of the approval of the application, the applicant learns that the submitted certification is no longer accurate.

(*2*) An applicant is not required to amend a submitted certification when information on a patent on the listed drug is submitted after the effective date of approval of the abbreviated application.

* * * * *

7. New section 314.95 is added to subpart C to read as follows:

**§ 314.95 Notice of certification of invalidity or noninfringement of a patent.**

(a) *Notice of certification.* For each patent that claims the listed drug or that claims a use for such listed drug for which the applicant is seeking approval and that the applicant certifies under § 314.94(a)(12) is invalid, unenforceable, or will not be infringed, the applicant shall send notice of such certification by registered or certified mail, return receipt requested to each of the following persons:

(1) Each owner of the patent which is the subject of the certification or the representative designated by the owner to receive the notice. The name and address of the patent owner or its representative may be obtained from the United States Patent and Trademark Office; and

(2) The holder of the approved application under section 505(b) of the act for the listed drug that is claimed by the patent and for which the applicant is seeking approval, or, if the application holder does not reside or maintain a place of business within the United States, the application holder's attorney, agent, or other authorized official. The name and address of the application holder or its attorney, agent, or authorized official may be obtained from the Division of Drug Information Resources (HFD–80), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

(3) This paragraph does not apply to a use patent that claims no uses for which the applicant is seeking approval.

(b) *Sending the notice.* The applicant shall send the notice required by paragraph (a) of this section when it receives from FDA an acknowledgment letter stating that its abbreviated new drug application is sufficiently complete to permit a substantive review. At the same time, the applicant shall amend its abbreviated new drug application to include a statement certifying that the notice has been provided to each person identified under paragraph (a) of this section and that the notice met the content requirements under paragraph (c) of this section.

(c) *Contents of a notice.* In the notice, the applicant shall cite section 505(j)(2)(B)(ii) of the act and shall include, but not be limited to, the following information:

(1) A statement that FDA has received an abbreviated new drug application submitted by the applicant containing any required bioavailability or bioequivalence data or information.

(2) The abbreviated application number.

(3) The established name, if any, as defined in section 502(e)(3) of the act, of the proposed drug product.

(4) The active ingredient, strength, and dosage form of the proposed drug product.

(5) The patent number and expiration date, as submitted to the agency or as known to the applicant, of each patent alleged to be invalid, unenforceable, or not infringed.

(6) A detailed statement of the factual and legal basis of the applicant's opinion that the patent is not valid, unenforceable, or will not be infringed. The applicant shall include in the detailed statement:

(i) For each claim of a patent alleged not to be infringed, a full and detailed explanation of why the claim is not infringed.

(ii) For each claim of a patent alleged to be invalid or unenforceable, a full and detailed explanation of the grounds supporting the allegation.

(7) If the applicant does not reside or have a place of business in the United States, the name and address of an agent in the United States authorized to accept service of process for the applicant.

(d) *Amendment to an abbreviated application.* If an abbreviated application is amended to include the certification described in § 314.94(a)(12)(i)(A)(*4*), the applicant shall send the notice required by paragraph (a) of this section at the same time that the amendment to the abbreviated application is submitted to FDA.

(e) *Documentation of receipt of notice.* The applicant shall amend its abbreviated application to document receipt of the notice required under paragraph (a) of this section by each person provided the notice. The applicant shall include a copy of the return receipt or other similar evidence of the date the notification was received. FDA will accept as adequate documentation of the date of receipt a return receipt or a letter acknowledging receipt by the person provided the notice. An applicant may rely on another form of documentation only if FDA has agreed to such documentation in advance. A copy of the notice itself need not be submitted to the agency.

(f) *Approval.* If the requirements of this section are met, FDA will presume the notice to be complete and sufficient, and it will count the day following the date of receipt of the notice by the patent owner or its representative and by the approved application holder as the first day of the 45-day period provided for in section 505(j)(4)(B)(iii) of the act. FDA may, if the applicant provides a written statement to FDA that a later date should be used, count from such later date.

8. Section 314.101 is amended by revising paragraph (e) to read as follows:

**§ 314.101 Filing an application and an abbreviated antibiotic application and receiving an abbreviated new drug application.**

* * * * *

(e) The agency will refuse to file an application or abbreviated antibiotic application or will consider an abbreviated new drug application not to have been received if any of the following applies:

(1) The drug product is subject to licensing by FDA under the Public

Health Service Act (42 U.S.C. 201 *et seq.*) and subchapter F of this chapter.

(2) In the case of a 505(b)(2) application or an abbreviated new drug application, the drug product contains the same active moiety as a drug that:

(i) Was approved after September 24, 1984, in an application under section 505(b) of the act, and

(ii) Is entitled to a 5-year period of exclusivity under section 505(c)(3)(D)(ii) and (j)(4)(D)(ii) of the act and § 314.108(b)(2), unless the 5-year exclusivity period has elapsed or unless 4 years of the 5-year period have elapsed and the application or abbreviated application contains a certification of patent invalidity or noninfringement described in § 314.50(i)(1)(i)(A)(*4*) or § 314.94(a)(12)(i)(A)(*4*).

* * * * *

9. New sections 314.107 and 314.108 are added to subpart D to read as follows:

**§ 314.107 Effective date of approval of a 505(b)(2) application or abbreviated new drug application under section 505(j) of the act.**

(a) *General.* A drug product may be introduced or delivered for introduction into interstate commerce when approval of the application or abbreviated application for the drug product becomes effective. Except as provided in this section, approval of an application or abbreviated application for a drug product becomes effective on the date FDA issues an approval letter under § 314.105 for the application or abbreviated application.

(b) *Effect of patent on the listed drug.* If approval of an abbreviated new drug application submitted under section 505(j) of the act or of a 505(b)(2) application is granted, that approval will become effective in accordance with the following:

(1) *Date of approval letter.* Except as provided in paragraphs (b)(3), (b)(4), and (c) of this section, approval will become effective on the date FDA issues an approval letter under § 314.105 if the applicant certifies under § 314.50(i) or § 314.94(a)(12) that:

(i) There are no relevant patents; or

(ii) The applicant is aware of a relevant patent but the patent information required under section 505 (b) or (c) of the act has not been submitted to FDA; or

(iii) The relevant patent has expired; or

(iv) The relevant patent is invalid, unenforceable, or will not be infringed.

(2) *Patent expiration.* If the applicant certifies under § 314.50(i) or § 314.94(a)(12) that the relevant patent will expire on a specified date, approval will become effective on the specified date.

(3) *Disposition of patent litigation.* (i)(A) Except as provided in paragraphs (b)(3)(ii), (b)(3)(iii), and (b)(3)(iv) of this section, if the applicant certifies under § 314.50(i) or § 314.94(a)(12) that the relevant patent is invalid, unenforceable, or will not be infringed, and the patent owner or its representative or the exclusive patent licensee brings suit for patent infringement within 45 days of receipt by the patent owner of the notice of certification from the applicant under § 314.52 or § 314.95, approval may be made effective 30 months after the date of the receipt of the notice of certification by the patent owner or by the exclusive licensee (or their representatives) unless the court has extended or reduced the period because of a failure of either the plaintiff or defendant to cooperate reasonably in expediting the action; or

(B) If the patented drug product qualifies for 5 years of exclusive marketing under § 314.108(b)(2) and the patent owner or its representative or the exclusive patent licensee brings suit for patent infringement during the 1-year period beginning 4 years after the date the patented drug was approved and within 45 days of receipt by the patent owner of the notice of certification, the approval may be made effective at the expiration of the 7½ years from the date of approval of the application for the patented drug product.

(ii) If before the expiration of the 30-month period, or 7½ years where applicable, the court issues a final order that the patent is invalid, unenforceable, or not infringed, approval may be made effective on the date the court enters judgment;

(iii) If before the expiration of the 30-month period, or 7½ years where applicable, the court issues a final order or judgment that the patent has been infringed, approval may be made effective on the date the court determines that the patent will expire or otherwise orders; or

(iv) If before the expiration of the 30-month period, or 7½ years where applicable, the court grants a preliminary injunction prohibiting the applicant from engaging in the commercial manufacture or sale of the drug product until the court decides the issues of patent validity and infringement, and if the court later decides that the patent is invalid, unenforceable, or not infringed, approval may be made effective on the date the court enters a final order or judgment that the patent is invalid, unenforceable, or not infringed.

(v) In order for an approval to be made effective under paragraph (b)(3) of this section, the applicant must receive an approval letter from the agency indicating that the application has received final approval. Tentative approval of an application does not constitute "approval" of an application and cannot, absent a final approval letter from the agency, result in an effective approval under paragraph (b)(3) of this section.

(4) *Multiple certifications.* If the applicant has submitted certifications under § 314.50(i) or § 314.94(a)(12) for more than one patent, the date of approval will be calculated for each certification, and the approval will become effective on the last applicable date.

(c) *Subsequent abbreviated new drug application submission.*

(1) If an abbreviated new drug application contains a certification that a relevant patent is invalid, unenforceable, or will not be infringed and the application is for a generic copy of the same listed drug for which one or more substantially complete abbreviated new drug applications were previously submitted containing a certification that the same patent was invalid, unenforceable, or would not be infringed and the applicant submitting the first application has successfully defended against a suit for patent infringement brought within 45 days of the patent owner's receipt of notice submitted under § 314.95, approval of the subsequent abbreviated new drug application will be made effective no sooner than 180 days from whichever of the following dates is earlier:

(i) The date the applicant submitting the first application first commences commercial marketing of its drug product; or

(ii) The date of a decision of the court holding the relevant patent invalid, unenforceable, or not infringed.

(2) For purposes of paragraph (c)(1) of this section, the "applicant submitting the first application" is the applicant that submits an application that is both substantially complete and contains a certification that the patent was invalid, unenforceable, or not infringed prior to the submission of any other application for the same listed drug that is both substantially complete and contains the same certification. A "substantially complete" application must contain the results of any required bioequivalence studies, or, if applicable, a request for a waiver of such studies.

(3) For purposes of paragraph (c)(1) of this section, if FDA concludes that the

applicant submitting the first application is not actively pursuing approval of its abbreviated application, FDA will make the approval of subsequent abbreviated applications immediately effective if they are otherwise eligible for an immediately effective approval.

(4) For purposes of paragraph (c)(1)(i) of this section, the applicant submitting the first application shall, if sued for patent infringement, notify FDA of the date that it commences commercial marketing of its drug product. Commercial marketing commences with the first date of introduction or delivery for introduction into interstate commerce outside the control of the manufacturer of a drug product, except for investigational use under part 312 of this chapter, but does not include transfer of the drug product for reasons other than sale within the control of the manufacturer or application holder. If an applicant does not promptly notify FDA of such date, the effective date of approval shall be deemed to be the date of the commencement of first commercial marketing.

(d) *Delay due to exclusivity.* The agency will also delay the effective date of the approval of an abbreviated new drug application under section 505(j) of the act or a 505(b)(2) application if delay is required by the exclusivity provisions in § 314.108. When the effective date of an application is delayed under both this section and § 314.108, the effective date will be the later of the 2 days specified under this section and § 314.108.

(e) *Court actions.* (1) References to actions of "the court" in paragraphs (b) and (c) of this section are to the court that enters final judgment from which no appeal can be or has been taken.

(2) For purposes of establishing the effective date of approval based on a court judgment, the following dates shall be deemed to be the date of the final decision of the court on the patent issues:

(i) If the district court enters a decision that the patent is invalid, unenforceable, or not infringed, and the decision is not appealed, the date on which the right to appeal lapses.

(ii) If the district court enters a decision that the patent is invalid, unenforceable, or not infringed, and the decision is appealed, the date of the first decision or order by a higher court holding or affirming the decision of the district court that the patent is invalid, unenforceable, or not infringed.

(iii) If the district court enters a decision that the patent is infringed, and the decision is appealed, the date on which the district court enters a judgment that the patent is invalid, unenforceable, or not infringed pursuant to a mandate issued by a court of appeals.

(iv) The applicant shall submit a copy of the entry of the order or judgment to the Office of Generic Drugs (HFD–600), or to the appropriate division in the Office of Drug Evaluation I (HFD–100) or Office of Drug Evaluation II (HFD–500), whichever is applicable, within 10 working days of a final judgment.

(f) *Computation of 45-day time clock.* (1) The 45-day clock described in paragraph (b)(3) of this section begins on the day after the date of receipt of the applicant's notice of certification by the patent owner or its representative, and by the approved application holder. When the 45th day falls on Saturday, Sunday, or a Federal holiday, the 45th day will be the next day that is not a Saturday, Sunday, or a Federal holiday.

(2) The abbreviated new drug applicant or the 505(b)(2) applicant shall notify FDA immediately of the filing of any legal action filed within 45 days of receipt of the notice of certification. If the applicant submitting the abbreviated new drug application or the 505(b)(2) application or patent owner or its representative does not notify FDA in writing before the expiration of the 45-day time period or the completion of the agency's review of the application, whichever occurs later, that a legal action for patent infringement was filed within 45 days of receipt of the notice of certification, approval of the abbreviated new drug application or the 505(b)(2) application will be made effective immediately upon expiration of the 45 days or upon completion of the agency's review and approval of the application, whichever is later. The notification to FDA of the legal action shall include:

(i) The abbreviated new drug application or 505(b)(2) application number.

(ii) The name of the abbreviated new drug or 505(b)(2) application applicant.

(iii) The established name of the drug product or, if no established name exists, the name(s) of the active ingredient(s), the drug product's strength, and dosage form.

(iv) A certification that an action for patent infringement identified by number, has been filed in an appropriate court on a specified date.

The applicant of an abbreviated new drug application shall send the notification to FDA's Office of Generic Drugs (HFD–600). A 505(b)(2) applicant shall send the notification to the appropriate division in the Center for Drug Evaluation and Research reviewing the application. A patent owner or its representative may also notify FDA of the filing of any legal action for patent infringement. The notice should contain the information and be sent to the offices or divisions described in this paragraph.

(3) If the patent owner or approved application holder who is an exclusive patent licensee waives its opportunity to file a legal action for patent infringement within 45 days of a receipt of the notice of certification and the patent owner or approved application holder who is an exclusive patent licensee submits to FDA a valid waiver before the 45 days elapse, approval of the abbreviated new drug application or the 505(b)(2) application will be made effective upon completion of the agency's review and approval of the application. FDA will only accept a waiver in the following form:

(*Name of patent owner or exclusive patent licensee*) has received notice from (*name of applicant*) under (*section 505(b)(3) or 505(j)(2)(B) of the act*) and does not intend to file an action for patent infringement against (*name of applicant*) concerning the drug (*name of drug*) before (*date on which 45 days elapses.* (*Name of patent owner or exclusive patent licensee*) waives the opportunity provided by (*section 505(c)(3)(C) or 505(j)(B)(iii) of the act*) and does not object to FDA's approval of (*name of applicant*)'s (*505(b)(2) or abbreviated new drug application*) for (*name of drug*) with an immediate effective date on or after the date of this letter.

**§ 314.108 New drug product exclusivity.**

(a) *Definitions.* The following definitions of terms apply to this section:

*Active moiety* means the molecule or ion, excluding those appended portions of the molecule that cause the drug to be an ester, salt (including a salt with hydrogen or coordination bonds), or other noncovalent derivative (such as a complex, chelate, or clathrate) of the molecule, responsible for the physiological or pharmacological action of the drug substance.

*Approved under section 505(b)* means an application submitted under section 505(b) and approved on or after October 10, 1962, or an application that was "deemed approved" under section 107(c)(2) of Pub. L. 87–781.

*Clinical investigation* means any experiment other than a bioavailability study in which a drug is administered or dispensed to, or used on, human subjects.

*Conducted or sponsored by the applicant* with regard to an investigation means that before or during the investigation, the applicant was named in Form FDA–1571 filed with FDA as the sponsor of the

investigational new drug application under which the investigation was conducted, or the applicant or the applicant's predecessor in interest, provided substantial support for the investigation. To demonstrate "substantial support," an applicant must either provide a certified statement from a certified public accountant that the applicant provided 50 percent or more of the cost of conducting the study or provide an explanation why FDA should consider the applicant to have conducted or sponsored the study if the applicant's financial contribution to the study is less than 50 percent or the applicant did not sponsor the investigational new drug. A predecessor in interest is an entity, e.g., a corporation, that the applicant has taken over, merged with, or purchased, or from which the applicant has purchased all rights to the drug. Purchase of nonexclusive rights to a clinical investigation after it is completed is not sufficient to satisfy this definition.

*Date of approval* means the date on the letter from FDA stating that the new drug application is approved, whether or not final printed labeling or other materials must yet be submitted as long as approval of such labeling or materials is not expressly required. "Date of approval" refers only to a final approval and not to a tentative approval that may become effective at a later date.

*Essential to approval* means, with regard to an investigation, that there are no other data available that could support approval of the application.

*FDA* means the Food and Drug Administration.

*New chemical entity* means a drug that contains no active moiety that has been approved by FDA in any other application submitted under section 505(b) of the act.

*New clinical investigation* means an investigation in humans the results of which have not been relied on by FDA to demonstrate substantial evidence of effectiveness of a previously approved drug product for any indication or of safety for a new patient population and do not duplicate the results of another investigation that was relied on by the agency to demonstrate the effectiveness or safety in a new patient population of a previously approved drug product. For purposes of this section, data from a clinical investigation previously submitted for use in the comprehensive evaluation of the safety of a drug product but not to support the effectiveness of the drug product would be considered new.

(b) *Submission of and effective date of approval of an abbreviated new drug application submitted under section 505(j) of the act or a 505(b)(2) application.* (1) [Reserved]

(2) If a drug product that contains a new chemical entity was approved after September 24, 1984, in an application submitted under section 505(b) of the act, no person may submit a 505(b)(2) application or abbreviated new drug application under section 505(j) of the act for a drug product that contains the same active moiety as in the new chemical entity for a period of 5 years from the date of approval of the first approved new drug application, except that the 505(b)(2) application or abbreviated application may be submitted after 4 years if it contains a certification of patent invalidity or noninfringement described in § 314.50(i)(1)(i)(A)(*4*) or § 314.94(a)(12)(i)(A)(*4*).

(3) The approval of a 505(b)(2) application or abbreviated application described in paragraph (b)(2) of this section will become effective as provided in § 314.107(b)(1) or (b)(2), unless the owner of a patent that claims the drug, the patent owner's representative, or exclusive licensee brings suit for patent infringement against the applicant during the 1-year period beginning 48 months after the date of approval of the new drug application for the new chemical entity and within 45 days after receipt of the notice described at § 314.52 or § 314.95, in which case, approval of the 505(b)(2) application or abbreviated application will be made effective as provided in § 314.107(b)(3).

(4) If an application:

(i) Was submitted under section 505(b) of the act;

(ii) Was approved after September 24, 1984;

(iii) Was for a drug product that contains an active moiety that has been previously approved in another application under section 505(b) of the act; and

(iv) Contained reports of new clinical investigations (other than bioavailability studies) conducted or sponsored by the applicant that were essential to approval of the application, the agency will not make effective for a period of 3 years after the date of approval of the application the approval of a 505(b)(2) application or an abbreviated new drug application for the conditions of approval of the original application, or an abbreviated new drug application submitted pursuant to an approved petition under section 505(j)(2)(C) of the act that relies on the information supporting the conditions of approval of an original new drug application.

(5) If a supplemental application:

(i) Was approved after September 24, 1984; and

(ii) Contained reports of new clinical investigations (other than bioavailability studies) that were conducted or sponsored by the applicant that were essential to approval of the supplemental application, the agency will not make effective for a period of 3 years after the date of approval of the supplemental application the approval of a 505(b)(2) application or an abbreviated new drug application for a change, or an abbreviated new drug application submitted pursuant to an approved petition under section 505(j)(2)(C) of the act that relies on the information supporting a change approved in the supplemental new drug application.

Dated: September 23, 1994.

**William K. Hubbard,**

*Interim Deputy Commissioner for Policy.*

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Part III

# Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 215 and 216
General Authorization for Scientific Research; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 215 and 216

[Docket No. 940840–4262; I.D. 081694C]

RIN 0648–AH20

# General Authorization for Scientific Research

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

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

**SUMMARY:** This interim final rule implements recent amendments to the Marine Mammal Protection Act of 1972 (MMPA) by amending the regulations implementing the MMPA to authorize, pursuant to a General Authorization for Scientific Research, the harassment of marine mammals in the wild for purposes of bona fide scientific research, that does not have the potential to injure marine mammals (Level B harassment).

**DATES:** The interim rule is effective on October 3, 1994. Comments must be postmarked or received by November 17, 1994.

**ADDRESSES:** Comments or requests for the Environmental Assessment (EA) prepared for this action should be sent to Chief, Permits Division, F/PR1, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910–3226. Comments regarding the burden-hour estimate or any other aspect of the collection-of-information requirement contained in this rule should be sent to Ann D. Terbush at the above address and to the Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Ann D. Terbush, (301) 713–2289.

**SUPPLEMENTARY INFORMATION:**

## General Background and Statutory Information

*Marine Mammal Protection Act*

The MMPA (16 U.S.C. 1361 *et seq.*) places a moratorium on the taking and importing of marine mammals by persons subject to U.S. jurisdiction with limited exceptions. One exception is for the taking or importing of marine mammals for purposes of scientific research. The MMPA Amendments of 1994 (1994 Amendments), enacted on April 30, 1994 (P.L. 103–238), among other things, require that, within 120 days of enactment, NMFS issue a General Authorization for Scientific Research and implementing regulations allowing takings of marine mammals in the wild for purposes of bona fide scientific research by no more than Level B harassment (pursuit, torment, or annoyance of marine mammals that does not have the potential to injure marine mammals).

The 120-day deadline requires that this General Authorization be issued by interim final rule without prior notice and opportunity for prior public comment. Comments on the General Authorization and implementing regulations are invited and will be considered in issuing a final rule.

Level B harassment is defined as any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering but does not have the potential to injure a marine mammal or marine mammal stock in the wild. Level A harassment is defined as any act which has the potential to injure a marine mammal or marine mammal stock in the wild. In general, except for small take authorizations for harassment under section 101(a)(5)(D) of the MMPA, a permit is required to take by Level A harassment. And, a permit is also required to hunt, capture, or kill marine mammals for the purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock, or to take by Level B harassment for photography for educational or commercial purposes.

*Fur Seal Act*

In proposed revised permit regulations published on October 14, 1993 (58 FR 53320), NMFS proposed consolidating three sets of permit regulations that have been implemented under the MMPA, the Fur Seal Act of 1966 (FSA) (16 U.S.C. 1151 *et seq.*), and the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531 *et seq.*). This interim final rule revises the permit sections of the implementing regulations of the FSA (50 CFR part 215) to reference MMPA permit regulations (50 CFR part 216, subpart D) as the applicable regulations for the taking of North Pacific fur seals for scientific research or exhibition purposes. The FSA permit regulations are also revised to allow the taking of North Pacific fur seals involving only Level B harassment for the purpose of scientific research under this interim final rule. (Note: North Pacific fur seals (Pribilof Island population) have been designated as depleted under the MMPA.)

*Collection of Certain Marine Mammal Parts*

In enacting the 1994 Amendments it was the apparent intent of Congress to allow under a General Authorization the conduct of scientific research activities involving certain low-impact types of taking of marine mammals in the wild, with the goal of making a permit unnecessary for scientific research involving types of taking that do not have the potential to injure marine mammals or marine mammal stocks. NMFS believes that such types of low-impact taking include the collection of tissues, fluids, or other marine mammal parts sloughed, excreted, or otherwise discharged naturally by marine mammals in the wild, where such collection may not necessarily involve the harassment of living marine mammals in the wild. Accordingly, NMFS is amending § 216.26 of the implementing regulations (50 CFR part 216) to allow for purposes of bona fide scientific research, without issuance of a permit, the collection of any tissues, fluids or other marine mammal parts naturally sloughed, excreted or otherwise discharged by a living marine mammal in the wild. Section 216.26 is also amended to: (1) Ensure that requirements for the registration, identification, transfer, or other possession of such marine mammal parts are consistent with those already established for parts salvaged from beached or stranded marine mammals (§ 216.22(c)); (2) require that, in registering such marine mammal parts, the person collecting the part must also state the scientific research purpose for which the part was collected; and (3) prohibit the sale or trade of any such marine mammal part for commercial purposes.

*Discussion of General Authorization and Implementing Regulations*

The implementing regulations for the General Authorization are organized into five parts: (1) The General Authorization and the types of activities covered; (2) letter of intent requirements; (3) procedures for confirming that the General Authorization applies or notifying the applicant that a permit is required; (4) the terms and conditions applicable to activities conducted under the General Authorization, including reporting requirements; and (5) the circumstances under which NMFS may suspend, revoke, or modify the authority to

conduct scientific research under the General Authorization.

**Scope**

*Activities Included Under the General Authorization*

Research activities that are likely to involve only Level B harassment of marine mammals, and therefore that may be conducted under the General Authorization consistent with the requirements of these regulations, include: Photo-identification studies; behavioral observations; vessel surveys; and aerial surveys over water or land, and over pinniped rookeries if flown at altitudes greater than 1,000 ft (305 meters (m)). These activities are listed in § 216.45(a)(3). This list may be expanded as new information becomes available and NMFS determines that other types of research activities are likely to involve only Level B harassment. Comment is requested regarding what other types of research activities are likely to involve only Level B harassment (i.e., no potential to injure) and can be clearly and uniquely categorized as such in the final rule.

The General Authorization also applies to persons issued a scientific research permit under the ESA that authorizes the taking by Level B harassment of marine mammals listed as threatened or endangered. An ESA permit holder authorized to conduct Level B harassment is not required to submit a separate letter of intent. Such Level B activities are included under the MMPA General Authorization for Scientific Research and no letter of confirmation is needed.

*Activities Not Included Under the General Authorization*

As stated in section 2(b) of the 1994 Amendments, "Except as otherwise expressly provided, nothing in this Act is intended to amend, repeal, or otherwise affect any other provision of law." Thus, marine mammals listed as endangered or threatened under the ESA may be taken for purposes of scientific research only after issuance of a permit for such activities pursuant to the ESA (50 CFR part 222). And, except for Level B harassment, other types of taking of marine mammals listed as threatened or endangered that are authorized under an ESA permit for scientific research are not authorized under the General Authorization.

Research activities involving the harassment of marine mammals in the wild that have the potential to injure a marine mammal (Level A harassment) are not covered by the General Authorization. They may be conducted only pursuant to a scientific research permit. Likewise, activities that involve the hunting, capturing, or killing of marine mammals for the purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock, or taking by Level B harassment for photography for educational or commercial purposes, are not covered by the General Authorization and require a permit.

Although most population surveys are likely to involve only Level B harassment or no harassment at all, pinniped rookeries are an area of concern because many pinniped species stampede into the water when startled or otherwise threatened by a potential predator or by human activity. When a stampede occurs in a haulout area (in the non-reproductive season), it generally does not involve a potential injury, but in a rookery situation, a stampede has the potential to injure pups. The 1,000 ft (305 m) threshold for aerial surveys over pinniped rookeries serves as an objective standard that may be used to determine whether such research may be conducted under the General Authorization or may involve potential injury to marine mammals (i.e., Level A harassment) and, therefore, require a permit. In this regard, NMFS is interested in comments on whether different species-specific aerial survey altitudes or methods associated with minimal disturbance have been established definitively in the scientific literature.

In the interest of simplicity and predictability, the interim final rule limits research activities that may be conducted under the General Authorization to only those types listed in § 216.45(a)(3). In preparing this interim final rule, however, NMFS considered including provisions that would have allowed research activities other than those types listed in § 216.45(a)(3) to be included under the General Authorization; *Provided*, That in the letter of intent the applicant described the activity and furnished supporting documentation sufficient for NMFS to determine that the activity likely would involve only Level B harassment. For example, although bleach marking of pinnipeds in the wild is a type of research that could injure marine mammals (Level A harassment), if the activity is being conducted by an experienced researcher using only non-toxic bleaching agents and proven direct application methods on a species for which there is an established record of tolerance of such methods without any disturbance with potential to injure (e.g., Northern elephant seals, *Mirounga angustirostris*), NMFS, upon receipt of a letter of intent containing sufficient documentation, could determine such activity likely would involve only Level B harassment and that the activity could be conducted under the General Authorization. NMFS is requesting comment on whether the final rule should include such flexibility; i.e., allow persons to conduct, under the General Authorization, a research activity that has not been listed in the regulations as a type of research likely to involve only Level B harassment, if sufficient documentation is submitted to NMFS to make a determination that the activity is bona fide scientific research and does not involve the potential to injure marine mammals or marine mammal stocks.

*Applicants*

An applicant submitting a letter of intent to conduct scientific research under the General Authorization must be the principal investigator, or the appropriate institution, government entity, or corporation responsible for the supervision of the principal investigator. If the research involves co-investigators, a single principal investigator, who will be primarily responsible for the research to be conducted under the General Authorization, must submit the letter of intent, with all co-investigators identified as such. Identification of both principal and co-investigators ensures accountability for activities conducted under the General Authorization.

All persons conducting an activity under the authority of the General Authorization must possess qualifications (e.g., education or experience) commensurate with their duties and responsibilities, or must be under the direct supervision of a person with such qualifications. Applicants must enclose with the letter of intent, curricula vitae for themselves and any co-investigators that may conduct research activities under the General Authorization. NMFS will consider this information in determining whether the research as described in the letter of intent can be expected to be conducted in a manner involving no more than Level B harassment of marine mammals or marine mammal stocks.

*Letter of Intent*

Persons intending to conduct a scientific research activity of the type listed in § 216.45 (a)(3) under the General Authorization must submit, at least 60 days before commencement of such research, a letter of intent by certified return/receipt mail to the Chief, Permits Division, F/PR1, Office of Protected Resources, NMFS, 1335 East-

West Highway, Silver Spring, MD 20910–3226. Persons issued an ESA scientific research permit authorizing the take of marine mammals in the wild by Level B harassment, however, need not submit a letter of intent. Those Level B activities are covered by the General Authorization, and no letter of confirmation is needed.

All letters of intent must include the name, address, telephone number, qualifications, and experience of the applicant (i.e., principal investigator) and any co-investigator(s). Curricula vitae must be provided for each, including a list of publications by such investigator relevant to the objectives, methodology, or other aspects of the proposed research. Each letter of intent must be signed, dated, and include the certification statement specified at § 216.45(b)(3).

Each letter of intent must include brief statements responsive to the information requirements of section 104(c)(3)(C) of the MMPA: The species or stocks of marine mammals (common and scientific names) that are the subject of the scientific research and any other species or stock of marine mammals that may be harassed during the conduct of the research; the geographic location(s) in which the research is to be conducted, e.g., geographic name or lat./long.; the period(s) of time over which the research will be conducted (up to 5 years), including the field season(s) for the research, if applicable; the purpose of the research, including a description of how the proposed research qualifies as bona fide research; and the methods to be used to conduct the research.

*Confirmation Letter or Notification of Permit Requirement*

No later than 30 days after receipt of a letter of intent, NMFS will issue a letter to the applicant either: Confirming that the General Authorization applies, notifying the applicant that all or part of the proposed research does not qualify for the General Authorization and that a scientific research permit is required, or notifying the applicant that the letter of intent was insufficient to determine whether the General Authorization applies and identifying the deficiencies to enable the applicant to revise and resubmit the letter.

The Marine Mammal Commission (MMC) and Committee of Scientific Advisors were established under Title II of the MMPA to, among other things, review applications for permits for the taking or import of marine mammals and provide comment and recommendations to NMFS. Although the 1994 Amendments do not provide for the involvement of either the MMC or the Committee of Scientific Advisors in the General Authorization for Scientific Research, a copy of each letter of intent and NMFS' response will be forwarded to the MMC. This will allow the MMC to review all research activities involving marine mammals, including research conducted under the General Authorization.

Any suspension, revocation, or modification of the authorization under the General Authorization will be conducted in accordance with 15 CFR part 904.

**Terms and Conditions**

*Monitoring and Coordination*

In order to ensure that research activities conducted under the General Authorization do not either individually or cumulatively result in takes other than by Level B harassment, NMFS plans to coordinate and monitor research activities. Monitoring will be accomplished, in part, through NMFS and MMC review of required annual reports. Coordination of research activities will be accomplished, in part, by requiring persons conducting research under the General Authorization to notify the appropriate NMFS Regional Office(s) at least 2 weeks before initiation of on-site activities. The Regional Office(s) will review these notifications and coordinate upcoming research to minimize adverse impacts on marine mammals in the wild. Where appropriate, Regional Offices may convene meetings to coordinate research under the General Authorization. In the event of any circumstance where research activities result in a taking which exceeds Level B harassment, for example, in the case of potential or actual injury to or death of a marine mammal or marine mammal stocks in the wild, research activities must be immediately discontinued and the principal investigator must notify NMFS. NMFS will determine whether: The research activity in question may continue under the General Authorization; revision of the research methodology is necessary to remove any potential to injure marine mammals or marine mammal stocks; or, a permit is necessary to continue the research. The reporting of such incidents is a condition of conducting research under the General Authorization. Similarly, in certain instances (e.g., reports of abuse of the General Authorization), it may be necessary for a NMFS observer to monitor research activities directly. Therefore, a condition of conducting research under the General Authorization is that, upon notification, the principal investigator must allow a NMFS observer to observe research activities.

*Reporting Requirements*

Persons conducting research under the General Authorization must submit annual reports of activity. This information will be used to monitor the effects of the activities on individual animals and their populations, to assess possible cumulative impacts, and to determine whether the activity is being conducted as described in the letter of intent. Annual reports will also be used to track the progress of the research, to determine whether the research continues to meet the bona fide requirement, and to allow for coordination with similar research in the same area.

Photography (e.g., still photography, videotaping, and motion picture filming) often will be one of the methodologies employed by researchers engaged in scientific research under the General Authorization. Such photography does not require a photography permit issued under the MMPA provided the primary use of the resulting images will be for the conduct of the research or presenting or publishing the results. In such case, such images may be incidentally used for other scientific, educational, or commercial purposes provided the names of all photographers are disclosed in the annual report and any photographs, videotape, or film obtained during the conduct of research under the General Authorization are identified by a statement that refers to the General Authorization and includes the file number provided by NMFS in the confirmation letter, the name of the photographer, and the date the image was taken. This statement must accompany the image(s) in all subsequent uses or sales. The annual report must note incidental scientific, educational, or commercial uses of the images. However, if the primary use of the images will be for educational or commercial use, a separate photography permit must first be obtained.

*Classification*

NMFS prepared an EA for this action and concluded that this interim final rule will not significantly affect the human environment. As a result, preparation of an Environmental Impact Statement on this action is not required by section 102(2) of the National Environmental Policy Act or its implementing regulations. Copies of the EA are available on request (see **ADDRESSES**).

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

Pursuant to section 553(b)(3)(B) of the Administrative Procedure Act (APA), the Assistant Administrator for Fisheries, NOAA, (AA) finds there is a good cause to waive prior notice and opportunity to comment on this rule. It is contrary to public interest to provide prior notice and opportunity for comment because of the deadline for implementation mandated by the 1994 Amendments.

Pursuant to section 553(d) of the APA, the AA finds there is good cause to waive the required 30-day delay in the effective date. Any delay in this action would deny timely coverage by the General Authorization to qualified persons. This General Authorization grants an exception from the MMPA requirement to obtain a scientific research permit for the taking of marine mammals.

This interim final rule involves an existing collection-of-information requirement subject to the Paperwork Reduction Act that has been approved by OMB (control number 0648–0084). The burden for collection of that information was estimated to average 43 hours per response, including the time to complete permit applications, complete reporting requirements, and request subsequent modifications or authorizations. The public reporting burden for the collection-of-information associated with the General Authorization established under the current rule is estimated to average 17 hours per response. Send any comments regarding these burden estimates or any other aspect of these requirements, including suggestions for reducing the burden to NMFS and OMB (see **ADDRESSES**).

**List of Subjects**

*50 CFR Part 215*

Administrative practice and procedure, Marine mammals, Penalties, Pribilof Islands, Reporting and recordkeeping requirements.

*50 CFR Part 216*

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: September 27, 1994.

**Gary Matlock,**

*Program Management Officer, National Marine Fisheries Service.*

For reasons set out in the preamble, 50 CFR parts 215 and 216 are amended as follows:

## PART 215—PRIBILOF ISLANDS

1. The authority citation for part 215 is revised to read as follows:

**Authority:** 16 U.S.C. 1151–1175, and 1361 *et seq.*

2. Section 215.1 is revised to read as follows:

**§ 215.1 Purpose and scope.**

The purpose of these regulations is to implement the provisions of the Fur Seal Act of 1966, as amended. These regulations apply to the administration of the Pribilof Islands; the take of fur seals; and permits for the take, transportation, importation, exportation, or possession of fur seals or their parts for educational, scientific, or exhibition purposes.

3. Subpart B is revised to read as follows:

## Subpart B—Permits for Scientific Research and Public Display

**§ 215.11 Permits for scientific research and public display purposes.**

In accordance with the provisions of part 216, subpart D, of this chapter, the Director, Office of Protected Resources, NMFS, may issue permits for the taking, transportation, importation, exportation, or possession of fur seals or their parts for scientific research or public display purposes, and may authorize Level B harassment (defined at § 216.3) of fur seals for scientific research purposes under the General Authorization for Scientific Research set forth at § 216.45.

## PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

4. The authority citation for part 216 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

5. In § 216.3, the definition of "Act" is revised, and new definitions "Bona fide scientific research," "ESA," "FSA," "Level A harassment," "Level B harassment," and "MMPA" are added, in alphabetical order, to read as follows:

**§ 216.3 Definitions.**

* * * * *

*Acts* means, collectively, the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. 1361 *et seq.*, the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*, and the Fur Seal Act of 1966, as amended, 16 U.S.C. 1151 *et seq.*

* * * * *

*Bona fide scientific research:* (1) Means scientific research on marine mammals conducted by qualified personnel, the results of which:

(i) Likely would be accepted for publication in a refereed scientific journal;

(ii) Are likely to contribute to the basic knowledge of marine mammal biology or ecology. (Note: This includes, for example, marine mammal parts in a properly curated, professionally accredited scientific collection); or

(iii) Are likely to identify, evaluate, or resolve conservation problems.

(2) Research that is not on marine mammals, but that may incidentally take marine mammals, is not included in this definition (see sections 101(a)(3)(A), 101(a)(5)(A), and 101(a)(5)(D) of the MMPA, and sections 7(b)(4) and 10(a)(1)(B) of the ESA).

* * * * *

*ESA* means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

* * * * *

*FSA* means the Fur Seal Act of 1966, as amended, 16 U.S.C. 1151 *et seq.*

* * * * *

*Level A Harassment* means any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild.

*Level B Harassment* means any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering but which does not have the potential to injure a marine mammal or marine mammal stock in the wild.

* * * * *

*MMPA* means the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. 1361 *et seq.*

* * * * *

6. In part 216, all references to "the Act" are revised to read "MMPA" in the following places only.

| Part/Sec. | Paragraph | Frequency |
|---|---|---|
| 216 | Table of Contents entry for § 216.14. | |
| 216.2 | | 1 |
| 216.3 | Introductory text | 1 |
| 216.6 | (a) | 1 |
| | (b) | 1 |
| | (d) | 1 |
| | (e) | 3 |
| 216.7 | (a) | 1 |
| | (b) | 1 |
| 216.8 | | 5 |
| 216.12 | (b)(1)(i) | 1 |
| 216.13 | (b) | 1 |

| Part/Sec. | Paragraph | Frequency |
|---|---|---|
| | (c) | 1 |
| 216.14 | Heading | 1 |
| | (a) Introductory text | 2 |
| | (b)(1) | 1 |
| 216.15 | Introductory text | 1 |
| 216.21 | | 2 |
| 216.23 | (d) | 2 |
| 216.24 | (b)(2)(vii) | 2 |
| | (b)(2)(viii) | 1 |
| | (b)(4) | 1 |
| | (c)(8) | 1 |
| | (d)(2)(i)(D) | 3 |
| | (d)(2)(vi) | 2 |
| | (e)(7) introductory text | 1 |
| | (e)(7)(ii) | 1 |
| | (g) | 1 |
| 216.25 | (a) introductory text | 1 |
| 216.31 | (a)(10) | 1 |
| | (c) | 2 |
| 216.70 | (a) introductory text | 1 |
| | (a)(3) | 1 |
| 216.72 | | 2 |
| 216.73 | (b)(4) | 1 |

7. In subpart B, § 216.16 is added to read as follows:

**§ 216.16 Prohibitions under the General Authorization for Level B harassment for scientific research.**

It shall be unlawful for any person to:

(a) Provide false information in a letter of intent submitted pursuant to § 216.45(b);

(b) Violate any term or condition imposed pursuant to § 216.45(d).

8. In subpart C, paragraphs (b), (c), and (d) of § 216.26 are revised to read as follows:

**§ 216.26 Collection of certain marine mammal parts.**

* * * * *

(b) Any tissues, fluids or other marine mammal parts sloughed, excreted, or otherwise discharged naturally by a living marine mammal in the wild may be collected for purposes of bona fide scientific research, *Provided*, That such parts are not substances of significant commercial value, such as ambergris, and any such collection does not otherwise involve the taking of a living marine mammal in the wild except as authorized under other provisions of this part.

(c) Any marine mammal part collected under paragraphs (a) and (b) of this section must be registered and identified, and may be transferred or otherwise possessed, in accordance with § 216.22(c). In registering a marine mammal part collected under paragraph (b) of this section, the person who collected the part must also state the scientific research purpose for which the part was collected.

(d) *No sale or commercial trade.* No person may sell or trade for commercial purposes any marine mammal part collected under this section.

**§ 216.40 [Redesignated as § 216.50]**

9. Section 216.40 is redesignated as § 216.50 of subpart E.

10. In subpart D, § 216.45 is added to read as follows:

**§ 216.45 General Authorization for Level B harassment for scientific research.**

(a) *General Authorization.* (1) Persons are authorized under section 104(c)(3)(C) of the MMPA to take marine mammals in the wild by Level B harassment, as defined in § 216.3, for purposes of bona fide scientific research *Provided*, That:

(i) They submit a letter of intent in accordance with the requirements of paragraph (b) of this section, receive confirmation that the General Authorization applies in accordance with paragraph (c) of this section, and comply with the terms and conditions of paragraph (d) of this section; or

(ii) If such marine mammals are listed as endangered or threatened under the ESA, they have been issued a permit under Section 10(a)(1)(A) of the ESA and implementing regulations at 50 CFR parts 217–227, particularly at § 222.23 through § 222.28, to take marine mammals in the wild for the purpose of scientific research, the taking authorized under the permit involves such Level B harassment of marine mammals or marine mammal stocks, and they comply with the terms and conditions of that permit.

(2) Except as provided under paragraph (a)(1)(ii) of this section, no taking, including harassment, of marine mammals listed as threatened or endangered under the ESA is authorized under the General Authorization. Marine mammals listed as endangered or threatened under the ESA may be taken for purposes of scientific research only after issuance of a permit for such activities pursuant to the ESA.

(3) The following types of research activities will likely qualify for inclusion under the General Authorization: Photo-identification studies, behavioral observations, and vessel and aerial population surveys (except aerial surveys over pinniped rookeries at altitudes of less than 1,000 ft).

(b) *Letter of intent.* Except as provided under paragraph (a)(1)(ii) of this section, any person intending to take marine mammals in the wild by Level B harassment for purposes of bona fide scientific research under the General Authorization must submit, at least 60 days before commencement of such research, a letter of intent by certified return/receipt mail to the Chief, Permits Division, F/PR1, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910–3226.

(1) The letter of intent must be submitted by the principal investigator (who shall be deemed the applicant). For purposes of this section, the principal investigator is the individual who is responsible for the overall research project, or the institution, governmental entity, or corporation responsible for supervision of the principal investigator.

(2) The letter of intent must include the following information:

(i) The name, address, telephone number, qualifications and experience of the applicant and any co-investigator(s) to be conducting the proposed research, and a curriculum vitae for each, including a list of publications by each such investigator relevant to the objectives, methodology, or other aspects of the proposed research;

(ii) The species or stocks of marine mammals (common and scientific names) that are the subject of the scientific research and any other species or stock of marine mammals that may be harassed during the conduct of the research;

(iii) The geographic location(s) in which the research is to be conducted, e.g., geographic name or lat./long.;

(iv) The period(s) of time over which the research will be conducted (up to five years), including the field season(s) for the research, if applicable;

(v) The purpose of the research, including a description of how the proposed research qualifies as bona fide research as defined in § 216.3; and

(vi) The methods to be used to conduct the research.

(3) The letter of intent must be signed, dated, and certified by the applicant as follows:

In accordance with section 104(c)(3)(C) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and implementing regulations (50 CFR part 216), I hereby notify the National Marine Fisheries Service of my intent to conduct research involving only Level B harassment on marine mammals in the wild, and request confirmation that the General Authorization for Level B Harassment for Scientific Research applies to the proposed research as described herein. I certify that the information in this letter of intent is complete, true, and correct to the best of my knowledge and belief, and I understand that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or penalties under the MMPA and implementing regulations. I acknowledge and accept that authority to conduct scientific

research on marine mammals in the wild under the General Authorization is a limited conditional authority restricted to Level B harassment only, and that any other take of marine mammals, including the conduct of any activity that has the potential to injure marine mammals (i.e., Level A harassment), may subject me to penalties under the MMPA and implementing regulations.

(c) *Confirmation that the General Authorization applies or notification of permit requirement.*

(1) Not later than 30 days after receipt of a letter of intent as described in paragraph (b) of this section, the Chief, Permits Division, NMFS will issue a letter to the applicant either:

(i) Confirming that the General Authorization applies to the proposed scientific research as described in the letter of intent;

(ii) Notifying the applicant that all or part of the research described in the letter of intent is likely to result in a taking of a marine mammal in the wild involving other than Level B harassment and, as a result, cannot be conducted under the General Authorization, and that a scientific research permit is required to conduct all or part of the subject research; or

(iii) Notifying the applicant that the letter of intent fails to provide sufficient information and providing a description of the deficiencies, or notifying the applicant that the proposed research as described in the letter of intent is not bona fide research as defined in § 216.3.

(2) A copy of each letter of intent and letter confirming that the General Authorization applies or notifying the applicant that it does not apply will be forwarded to the Marine Mammal Commission.

(3) Periodically, NMFS will publish a summary document in the **Federal Register** notifying the public of letters of confirmation issued.

(d) *Terms and conditions.* Persons issued letters of confirmation in accordance with paragraph (c) of this section are responsible for complying with the following terms and conditions:

(1) Activities are limited to those conducted for the purposes, by the means, in the locations, and during the periods of time described in the letter of intent and acknowledged as authorized under the General Authorization in the confirmation letter sent pursuant to paragraph (c) of this section;

(2) Annual reports of activities conducted under the General Authorization must be submitted to the Chief, Permits Division (address listed in paragraph (b) of this section) within 90 days of completion of the last field season(s) during the calendar year or, if the research is not conducted during a defined field season, no later than 90 days after the anniversary date of the letter of confirmation issued under paragraph (c) of this section. Annual reports must include:

(i) A summary of research activities conducted;

(ii) Identification of the species and number of each species taken by Level B harassment;

(iii) An evaluation of the progress made in meeting the objectives of the research as described in the letter of intent; and

(iv) Any incidental scientific, educational, or commercial uses of photographs, videotape, and film obtained as a result of or incidental to the research and if so, names of all photographers.

(3) Authorization to conduct research under the General Authorization is for the period(s) of time identified in the letter of intent or for a period of 5 years from the date of the letter of confirmation issued under paragraph (c) of this section, whichever is less, unless extended by the Director or modified, suspended, or revoked in accordance with paragraph (e) of this section;

(4) Activities conducted under the General Authorization may only be conducted under the on-site supervision of the principal investigator or co-investigator(s) named in the letter of intent. All personnel involved in the conduct of activities under the General Authorization must perform a function directly supportive of and necessary for the research being conducted, or be one of a reasonable number of support personnel included for the purpose of training or as back-up personnel;

(5) The principal investigator must notify the appropriate Regional Director, NMFS, (Regional Director) in writing at least 2 weeks before initiation of on-site activities. The Regional Director shall consider this information in efforts to coordinate field research activities to minimize adverse impacts on marine mammals in the wild. The principal investigator must cooperate with coordination efforts by the Regional Director in this regard;

(6) If research activities result in a taking which exceeds Level B harassment, the applicant shall:

(i) Report the taking within 12 hours to the Director, Office of Protected Resources, or his designee as set forth in the letter authorizing research; and

(ii) Temporarily discontinue for 72 hours all field research activities that resulted in the taking. During this time period, the applicant shall consult with NMFS as to the circumstances surrounding the taking and any precautions necessary to prevent future taking, and may agree to amend the research protocol, as deemed necessary by NMFS.

(7) NMFS may review scientific research conducted pursuant to the General Authorization. If requested by NMFS, the applicant must cooperate with any such review and shall:

(i) Allow any employee of NOAA or any other person designated by the Director, Office of Protected Resources to observe research activities; and

(ii) Provide any documents or other information relating to the scientific research;

(8) Any photographs, videotape, or film obtained during the conduct of research under the General Authorization must be identified by a statement that refers to the General Authorization or ESA permit number, and includes the file number provided by NMFS in the confirmation letter, the name of the photographer, and the date the image was taken. This statement must accompany the image(s) in all subsequent uses or sales. The annual report must note incidental scientific, educational, or commercial uses of the images, and if there are any such uses, the names of all photographers; and

(9) Persons conducting scientific research under authority of the General Authorization may not transfer or assign any authority granted thereunder to any other person.

(e) *Suspension, revocation, or modification.* (1) NMFS may suspend, revoke, or modify the authority to conduct scientific research under the General Authorization if:

(i) The letter of intent included false information or statements of a material nature;

(ii) The research does not constitute bona fide scientific research;

(iii) Research activities result in takings of marine mammals other than by Level B harassment;

(iv) Research activities differ from those described in the letter of intent submitted by the applicant and letter of confirmation issued by NMFS; or

(v) The applicant violates any term or condition set forth in this section.

(2) Any suspension, revocation, or modification is subject to the requirements of 15 CFR part 904.

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Part IV

# Department of Transportation

Federal Aviation Administration

14 CFR Parts 27 and 29
Airworthiness Standards; Crash Resistant Fuel Systems in Normal and Transport Category Rotorcraft; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

[Docket No. 26352 Amdts. 27–30, 29–35]

RIN 2120–AC68

# Airworthiness Standards; Crash Resistant Fuel Systems in Normal and Transport Category Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments add comprehensive crash resistant fuel system design and test criteria to the airworthiness standards for normal and transport category rotorcraft. Application of these standards will minimize fuel spillage near ignition sources and potential ignition sources and, therefore, will improve the evacuation time needed for crew and passengers to escape a post-crash fire (PCF). Implementation of these amendments will minimize the PCF hazard saving lives and substantially reducing the severity of physiological injuries sustained from PCF's in otherwise survivable accidents.

EFFECTIVE DATE: November 2, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, Regulations Group, ASW–111, Rotorcraft Directorate, Aircraft Certification Office, FAA, Fort Worth, Texas 76193–0111, telephone number (817) 624–5123.

SUPPLEMENTARY INFORMATION:

## Background

These amendments are based on a Notice of Proposed Rulemaking (NPRM) No. 90–24, issued September 27, 1990 (55 FR 41000, October 5, 1990). A correction to the NPRM was published on December 11, 1990 (55 FR 50931).

Post-crash fires (PCF's) are the primary cause of fatalities and injuries in otherwise survivable impacts resulting from rotorcraft accidents. It is estimated that 5 percent of the occupants in survivable rotorcraft accidents are killed or injured by PCF's annually. These types of fatalities and traumatic injuries will be substantially reduced by the implementation of the design and test criteria of this amendment. Nearly all PCF's are caused by crash-induced fuel leaks that quickly come in contact with ignition sources during or after impact. The fuel containment and hazard elimination provisions contained in this amendment will, in the majority of cases, give occupants the time necessary to escape a survivable crash before a post-crash fire (PCF) could become life threatening. A crash resistant fuel system (CRFS) would not be expected to prevent all fires; however, a CRFS would, in the majority of survivable accidents, either prevent a PCF or delay the massive fire, or fireball, long enough to allow the occupants to escape. These standards have been validated by military safety statistics as significantly minimizing the PCF hazard and its associated fatalities and injuries.

## Discussion of Comments

*General*

Thirteen commenters, including representatives from small and large U.S. helicopter manufacturers, foreign airworthiness authorities, and foreign helicopter manufacturers, commented on the NPRM. All commenters agree with the FAA that CFRS installations will improve occupant survivability in parts 27 and 29 rotorcraft.

The majority of commenters fully support all of the proposals. No commenter opposes adoption of the proposed amendments. One commenter proposes adoption of more stringent standards, and several commenters offer other counterproposals and recommendations for specific proposals.

*General Comments on the Proposals*

Unless specifically noted otherwise, the comments and responses apply to both proposed §§ 27.952 and 29.952, since the requirements in both are identical.

*The Use of the Term "Flammable Fluid"*

Flammable fluids other than fuel should not be included in the amendments, since all on-board light and heavy oil systems are affected. Accordingly, the commenter proposes that "flammable fluid" be changed to "fuel." The FAA agrees with this comment, and appropriate changes have been made.

*Accuracy of the Economic Analysis*

One commenter questions the accuracy of the economic analysis but offers no specific recommendations or corrections. The FAA has reevaluated the analysis and found no changes were necessary based on this comment.

*Rigidity of the Proposals*

A commenter states that the proposed amendments are "too rigid" in their approach and limit the designers' choices. The FAA disagrees. Although the 50-foot drop height and certain strength requirements are specific, these and most of the other requirements do not mandate specific designs. Objective rules allow flexibility in showing compliance. An example of this flexibility is that bladders are not mandated; the rule specifies only freedom from leakage after impact. The amendments are intended to be as flexible as possible to allow design innovation while at the same time requiring a specific safety standard for a CRFS.

*Level of Detail in the Proposals*

A commenter states that the amendments include some very detailed requirements that are more appropriate for a Technical Standard Order (TSO). The FAA agrees that some of the details proposed for paragraphs 27.952 (e) and (f) and 29.952 (e) and (f) should not be regulatory requirements, are more appropriate for an advisory circular, and should not be part of the proposed standard. Therefore, those details have been removed and placed in the draft advisory material. However, the FAA disagrees with the commenter that the level of detail either in the proposals or in the advisory material would necessitate a CRFS TSO.

*The Standardized Approach of the Proposals*

A commenter believes that the standardized design and test approach of these amendments to CRFS certification, while acceptable, is not as valid as the establishment of individual design criteria on a case-by-case basis followed by a design review and a test program. However, the commenter offered no specific data or case histories to substantiate this position. Since all past successful civil and military experience has been with a standardized design and test approach, the FAA finds no historical or technical basis to support the commenter. Moreover, the FAA has determined that a standardized design and test approach, when properly applied, still allows for adequate use of individual design features that meet the specific safety standards.

*Military Standards*

A commenter expresses concern that the proposals are less stringent than the corresponding military standard because of perceived differences in the military and civil environments. The commenter is especially concerned that fuel tank bladders are not mandated. The commenter proposes verbatim adoption of the military standards. The FAA disagrees. Based on independent studies, the General Aviation Safety Panel (GASP) committee recommendations, and past civil CRFS service experience, the FAA has

determined that the proposals, while less stringent than the military standard, provide an equivalent level of safety considering the differences (such as violent atypical flight maneuvers, landing maneuvers, and gunfire hazards) in the civil and military environments. While it is anticipated that most successful fuel cell designs will involve the use of bladders, bladderless rigid designs (that provide the same level of safety as designs with bladders) may be approved under the new standard.

*Comment Concerning Performance Criteria Specification*

One commenter applauds the fact that the proposal specified performance standards (i.e., a minimum level of safety) in lieu of unnecessarily mandating certain specific design features such as flexible liners.

*Comments on Specific Proposals*

Comments on Section 27.561(d)

A commenter questions the need for the specification of load factors in proposed § 27.516(d), since similar load factors are specified in proposed § 27.952(b)(3). The FAA has determined that load factors are needed in both §§ 27.561(d) and 27.952(b)(3). Section 27.561(d) applies to fuselage structure, and § 27.952(b)(3) applies to fuel tanks. Although the load factors are identical, they are specified for different parts of the rotorcraft.

Another commenter correctly states that the load factors are clearly specified for fuel cells by their location on the rotorcraft but asks which load factors are to be used for other major fuel system components. The load factors used for each fuel cell location should be used for fuel cell components of significant mass in the same locations. Therefore, this amendment is adopted as proposed.

Comments on Sections 27.952(a) and 29.952(a)

A commenter states that identification of a critical fuel tank (if such exists) should not be allowed in certification. The FAA does not agree. The use of critical conditions, systems, etc., is a well-established technique for substantiating similar design features. Therefore, these amendments are adopted as proposed.

Comments on Sections 27.952(a)(1) and 29.952(a)(1)

All commenters support the proposed drop test, and most commenters favor the 50-foot drop height. However, two commenters propose a reduction in the drop height for a bare fuel cell from 50 to 25 feet. Another commenter proposed a reduction in drop height of a fuel cell test article configuration (i.e., a fuel cell installed in its representative airframe structure) from 50 to 15 feet. Another commenter contends that since the military fuel cell drop test (and nearly 20 years of associated, successful safety experience) is at a 65-foot drop height, the proposed drop height should be 65 feet, not 50 feet. The proposed 50-foot drop height is based, in part, on an analysis of nearly 20 years of combined military and civilian design and operational data. (The 15-foot reduction in drop height from the military standard to the proposed civil standard equates their level of safety because of the elimination of the additional risks associated with the military environment.) A significant part of this 20 years of data is based on approximately 1,500 civil rotorcraft that have been certificated (on a voluntary, nonhazard basis) to design standards (including a 50-foot drop test) analogous to these proposals. This 20 years of data and experience (from both the military and voluntary civil unit installations) have resulted in a good operational safety record. This good safety record indicates that fuel tank installations designed to these proposals (including the practical standard of a 50-foot drop height) successfully minimize the post-crash fire hazard. Therefore, no change to the 50-foot drop height is warranted.

Another commenter proposes deletion of the requirement to drop the fuel cell in its surrounding structure. The same commenter asks if the bare tank drop test will follow the procedure of MIL–T–27422B when the surrounding structure is free of projections or design features likely to contribute to tank ruptures. Another commenter states that the requirement to drop a representative structure should be fully defined. The same commenter states that no mention is made of production drop test requirements that would be made necessary by postproduction design changes to either the fuel system or its surrounding structure. The FAA considers these suggested changes unnecessary because (under Part 21) a design review (precipitated by a proposed design modification that affects the fuel cell-airframe interface) would automatically require a review of the interface with regard to these proposed standards. If that design review shows the surrounding structure is free of projections and hazards, the fuel cell may be dropped alone. Additionally, MIL–T–27422B procedures may be used, except that the drop height is reduced to 50 feet. Further, major post certification design changes, such as major changes to the fuel system cells or their locations, automatically require recertification in accordance with FAR 21.93(a). Therefore, the amendments are adopted as proposed.

Comments on Sections 27.952(a)(3) and 29.952(a)(3)

A commenter notes that the proposed drop test criteria require that the fuel cell test article be filled 80 percent with water with no mention of the contents of the other 20 percent. The commenter states that this is different from part 23 Notice No. 85–7A (55 FR 7280, February 28, 1990) in that the proposed rotorcraft amendments do not require the air to be removed from the fuel cell prior to the drop test. The commenter suggests that the best method of compensating for the difference between the density of fuel and water is to leave the tank 100 percent full of fuel and adjust the drop height to a lower value.

The FAA notes that the drop test criteria proposed in Notice 90–24 are the same as those proposed in part 23 Notice 85–7A and the same as those used to comply with MIL–T–27422B. There are standard, acceptable methods of configuring (i.e., properly removing the air from) a soft flexible fuel cell, and there are standard, acceptable methods of configuring (i.e., properly removing the air from) the vents on a rigid fuel cell. The air removal methods intended by these proposals are the same as those used to comply with MIL–T–27422B and are accepted, industry practice. It is impracticable to remove a significant amount of air from many rigid fuel cell designs by pulling a vacuum without either inducing unacceptable stresses or causing structural failure. Extreme vacuum conditions inside fuel tanks do not exist in practice. However, natural venting (involving partial vacuums) exists for rigid tanks in a pre-crash, falling condition. A natural partial vacuum condition is intended to be duplicated for rigid tanks by allowing normal vent function during the drop test. Flexible fuel cells will have the air removed by hand (i.e., by pushing out the air and resealing the bag) prior to the drop as is currently practiced by the industry.

The method chosen to compensate for the density of water versus that of fuel (i.e., 80 percent full of water) is a standard method. It is used successfully by the civil rotorcraft industry. The commenter's alternate method of reducing the drop height has some merit but is not supported by current, known data.

Therefore, these amendments are adopted as proposed.

Comments on Sections 27.952(a)(4) and 29.952(a)(4)

A commenter notes that the amendments differ from MIL–T–27422B, in that the amendments require that the tank be dropped in its surrounding structure, unless it is clearly shown that the structure is free from projections and other such hazards. The commenter suggests that the FAA not adopt the requirement to drop the tank in the surrounding structure. The FAA disagrees. The FAA concluded that in the interests of safety the tank should be dropped in its surrounding structure. Only when all projections and other puncture hazards have been minimized by design will dropping a bare fuel cell suffice to show compliance. The FAA's approach improves on the MIL–T–27422B criteria in that an FAA-approved, documented certification design review will be required to minimize the surrounding airframe projections and other puncture hazards prior to a bare tank drop test. Therefore, the amendments are adopted as proposed.

Comments on Sections 27.952(b) and 29.952(b)

A commenter states that the load factors proposed in these sections are redundant to those contained in structural §§ 27.561 and 29.561(d), that no procedures to conduct these tests have been defined, and that the cost of this type of testing is not addressed. Two other commenters question the need for specification of separate load factors by rotorcraft zone (i.e., location) for fuel cells that exceed the standard airframe load factors. The FAA disagrees that the proposed load factors are redundant. They are for fuel cells and major mass items in the fuel system only. The load factors are to be used in standard structural analysis to structurally design the fuel cells, other major fuel system mass items, and their attachments. No special tests, other than the required structural substantiation tests are intended. No costs have been added since the required structural analysis and test programs are already conducted during certification for these components to the current load factors. The separate load factor specification by zone is necessary to provide proper crash resistance for occupant safety and PCF prevention for fuel system components located in three selected zones of the rotorcraft. They also provide the designer with specific criteria (i.e., load factors) for proper static analysis of fuel system components in these specific zones. The load factors proposed by §§ 27.952(b) and 29.952(b) are for fuel system components only; whereas, the load factors of current § 29.561(d) are for the airframe only. However, load factors for fuel system components and airframe components are compatible.

Therefore, the amendments are adopted as proposed.

Comments on Sections 27.952(b)(2) and 29.952(b)(2)

A commenter suggests that the words "* * * that if loosened could injure an occupant in an emergency landing * * *." be removed from §§ 27.952(b)(2) and 29.952(b)(2). The commenter believes removal to be necessary because this phrase is intended to minimize a "mechanical" ballistic hazard from fuel system components and not a PCF hazard. The amendments, in the commenter's view, are only intended to minimize a PCF. The commenter's presumption is incorrect. The amendments are intended to provide a CRFS. This includes preventing impact-induced, ballistic hazards to fuel system components as well as PCF hazards. Therefore, the amendments are adopted as proposed.

Comments on Sections 27.952(c) and 29.952(c)

A commenter believes that the proposed amendments mandate self-sealing breakaway couplings and suggests that the amendments be revised to include the words "Where hazardous relative motion of fuel system components is likely to exist during a crash, breakaway self-sealing couplings shall be required." Another commenter suggests that no alternate, equivalent designs to breakaway fuel fittings be allowed by the amendments. A third commenter points out that there is no mention of any pull-out strength requirements for fuel tank fittings as stated in MIL–T–27422B. The amendments already express the intent of the wording suggested by the first commenter concerning hazardous relative motion. Further, the FAA does not agree with the second comment that alternate, equivalent designs to breakaway fuel fittings should not be allowed, since several proven, alternate, equivalent designs have already been approved. Thus, alternate, equivalent designs for breakaway fuel fittings are acceptable. In response to the third commenter, fitting strength and hose pull-out strength requirements of MIL–T–27422B are industry practice and are acceptable as one means of compliance. Therefore, the amendments are adopted as proposed.

Comments on Sections 27.952(c)(1)(iii) and 29.952(c)(1)(iii)

A commenter suggests that §§ 27.952(c)(2)(iii) and 29.952(c)(1)(iii) be changed to specify leakage as one method of detecting an unlocked or otherwise faulty breakaway coupling. The FAA agrees that leakage is one method of detecting an unlocked coupling but finds that the proposed wording of "design provisions to visually ascertain" adequately covers consideration of leakage as a means to verify locking of the couplings. Therefore, the amendments are adopted as proposed.

Comments on Sections 27.952(c)(1)(v) and 29.952(c)(1)(v)

A commenter suggests that §§ 27.952(c)(1)(v) and 29.952(c)(1)(v) be changed to allow "fuel seepage" after a breakaway coupling has performed its intended function. The FAA agrees with the intent of the comment but has determined that this kind of detail is more appropriate in advisory guidance material. It is intended that industry practice, which allows loss of entrapped fuel (up to 8 ounces) and fuel seepage (up to 5 drops per minute), be acceptable after the valve has functioned. Therefore, the amendments are adopted as proposed.

Comments on Sections 27.952(d) and 29.952(d)

A commenter suggests adding a sentence between the second and third sentences of §§ 27.952(d) and 29.952(d) as follows: "For tanks using a flexible tank or flexible liner, all filler caps and tank fittings attached to structure in locations of anticipated structural deformation must be frangibly attached such that the tank fittings and filler caps stay with the fuel tank to preclude tank ruptures after the frangible separation." The FAA agrees with the intent of this comment but finds that no change is necessary in the final rule. The FAA understands the commenter is suggesting that compliance methodology rather than objective substance be included in the rule. Therefore, the amendments are adopted as proposed.

Comments on Sections 27.952(d)(1) and 29.952(d)(1)

A commenter suggests that the FAA remove the second sentence from §§ 27.952(d)(1) and 29.952(d)(1), which reads as follows: "To prevent inadvertent separation or deformation, the load must be 10 times the normal service loads at the frangible or deformable attachment location." The FAA recognizes the large variance in

industry design practice in calculating this particular ratio and in setting its specific value. Accordingly, the FAA agrees with the commenter, and the sentence is removed from the final rule. Therefore, these amendments are adopted as revised.

Comments on Sections 27.952(e)(1) and 29.952(e)(1)

A commenter states that the proposed §§ 27.952(e)(1) and 29.952(e)(1) criteria largely repeat existing criteria. The commenter provides several specific examples of the perceived repetition. Another commenter asks why airframe mounted fuel filters are not acceptable in the engine compartment (i.e., fire zone) if engine mounted filters are acceptable. The FAA maintains that the proposed sections relate to a post-crash configured rotorcraft, that is radically different in terms of ignition sources, fuel leaks, and geometry than a pre-crash configured rotorcraft even though similarities may exist. Prior to these proposed amendments, parts 27 and 29 applied only to pre-crash (or flight) configured rotorcraft. Also, the proposed sections refer to the entire rotorcraft, not just specific zones, such as the pre-crash configured exhaust system regulations that were cited by the commenter in a particular example. However, because of this and other related comments, the FAA has decided to simplify the final rule by deleting the proposed subsections relating to compliance methodology and moving the term "occupiable areas" from proposed paragraphs e(4) to revised paragraphs (e).

With respect to the comment concerning the use of airframe mounted fuel filters, the FAA agree that airframe mounted fuel filters, as well as engine mounted fuel filters inside the engine fire zone, are acceptable. Therefore, §§ 27.952(e) and 29.952(e) are adopted as revised; and §§ 27.952(e)(1), (e)(2), (e)(3), (e)(4); 29.952(e)(1), (e)(2), (e)(3) and (e)(4) are deleted.

Comments on Sections 27.952(e)(4) and 29.952(e)(4)

A commenter states that the existing rules are adequate to ensure sufficient PCF protection for fuel tanks located near occupiable areas. Therefore, from a practical view, sufficient separation cannot be economically achieved to the extent that it would have a significant impact on preventing a PCF. Thus, the commenter suggests that §§ 27.952(e)(4) and 29.952(e)(4) be removed. In contrast, the FAA believes that it is practical to enhance PCF safety through design changes under proposed §§ 27.952(e)(4) and 29.952(e)(4). For example, moving a fuel cell an additional ¼ or more inches aft of an occupied volume (within the maximum practicable extent of a given design envelope) could avoid a major, occupant-drenching, post-crash fuel spill (and potential PCF). This could be accomplished by simply adding ¼ or more inches of crushable, energy absorbing airframe distance between the occupied volume and the fuel cell. Such a design decision would not need to be considered under the current standards. Under these proposals it would have to be considered. As stated previously, §§ 27.952(e)(4) and 29.952(e)(4) have been removed in order to simplify the final rule by deleting the compliance methodology. However, the requirement for separation of fuel tanks from occupiable areas is adopted in §§ 27.952(e) and 29.952(e).

Comments on Sections 27.952(e) and 29.952(e)(5)

Three commenters correctly observe that §§ 27.952(e)(5) and 29.952(e)(5) contained the incorrect reference, "* * * (as defined by paragraph (b) of this section) * * *." The FAA agrees. As stated previously, §§ 27.952(e)(5) and 29.952(e)(5) have been removed in order to simplify the final rule by deleting the compliance methodology.

Comments on Sections 27.952(e)(6) and 29.952(e)(6)

A commenter states that, under his interpretation, proposed §§ 27.952(e)(6) and 29.952(e)(6) would require firewalls to retain their sealing ability under the load factors of §§ 27.952(b)(1) and 29.952(b)(1)). The commenter believes that all large mass items, such as engines and cowlings, in the vicinity of the firewall would have to be restrained to prevent impact-induced firewall ruptures (i.e., preserve postimpact sealing ability). The commenter further believes that, based on other common design requirements such as fuel line penetrations of firewalls, the proposed amendment is impractical. Another commenter concurs with the proposed firewall survivable impact sealing retention requirement, but is concerned that a direct application of the proposed §§ 27.952(b)(1) and 29.952(b)(1) load factors would produce a stiff, heavy firewall that, while able to retain sealing capability, would be heavy, uneconomical, and not have the intended crash-resistant design features.

The commenters misinterpreted the intent of proposed §§ 27.952(e)(6) and 29.952(e)(6). These proposals are based on similar MIL–STD–1290 requirements that have been used in design for many years. The FAA does not intend that a firewall designed to the load factors of §§ 27.952(b)(1) and 29.952(b)(1) would retain its complete sealing ability under all post-crash threats. Thus, some leakage around typical vent and line penetrations and other small post-crash penetrations of the firewall in a survivable impact are acceptable. Unless an obvious, catastrophic hazard would be created in a survivable impact by atypical design features, restraint of the engines and cowling to prevent impact-induced firewall rupture was not intended. The FAA intends that the firewall retain its sealing ability in a survivable impact. The most significant problem addressed during the firewall design is deformation of the firewall induced by fuselage deformations under crash conditions.

Concerning the second comment, the FAA does not agree that the proposed requirement will result in stiff, heavy firewalls. The requirement can be met by a firewall of a low stiffness, ductile design that can withstand the maximum vertical, lateral, and horizontal crushing displacements that are estimated to occur in a survivable impact. A low stiffness, ductile design can efficiently accommodate crash-induced deformations without shearing fuel or electrical lines and without rupturing or otherwise losing its gross sealing ability (i.e., creating a major ignition source or fire path). A displacement based firewall certification test should be conducted that shows that it is capable of performing its intended gross sealing function in a survivable impact. As stated previously, in order to simplify the final rule by deleting the compliance methodology, new §§ 27.952(e) and 29.952(e) are adopted as revised, and proposed §§ 27.952(e)(6) and 29.952(e)(6) are removed.

Comments on Sections 27.952(e)(1)(iv) and 29.952(e)(1)(iv)

A commenter suggests that §§ 27.952(e)(1)(iv) and 29.952(e)(1)(iv) be modified to add the phrase "* * * if it can be considered an ignition source," to the end of the last sentence. The commenter correctly states that not all hot surfaces should be considered as ignition sources. The FAA agrees. As stated previously, §§ 27.952(e)(1)(iv) and 29.952(e)(1)(iv) have been removed; new §§ 27.952(e) and 29.952(e) adequately incorporate the substance of this comment.

Comments on Sections 27.952(e)(1)(v)

A commenter notes that the word "not" was omitted between "must" and "be" in the second sentence of §§ 27.952(e)(1)(v). The FAA agrees. The error was discovered after publication of

the proposed rule, and a correction was published in the **Federal Register** on December 11, 1990 (55 FR 50931).

Comments on Sections 27.952(f) and 29.952(f)

A commenter recommends placing the detailed design criteria proposed by §§ 27.952(f) and 29.952(f) in an advisory circular retaining only a shortened lead-in version of §§ 27.952(f) and 29.952(f). Another commenter believes that §§ 27.952(f) and 29.952(f), while acceptable in principle, duplicate many current FAR requirements and several other sections of 27.952 and 29.952. The commenter cited several examples of perceived duplication. The FAA agrees with the first commenter's proposal to place detailed design criteria in the advisory circular material. Therefore, proposed §§ 27.952(f)(1) through 27.952(f)(9) and 29.952(f)(1) through 29.952(f)(9) are removed. Sections 27.952(f) and 29.952(f) are revised to replace the proposed, detailed design criteria specified after the phrase "as follows:" with a less detailed design criteria indicated by the phrase," * * * to be crash resistant * * *." Therefore, these amendments are adopted as revised. Additionally, this revision answers the second commenter's perceived duplicity concerns.

Another commenter notes that the word 'long' used in line 4 of § 29.952(f)(5) should be 'along'. The FAA agrees but no correction is necessary since this proposed paragraph was removed.

Comments on Sections 27.952(g) and 29.952(g)

A commenter suggests that requirements for impact and tear resistance be included in the amendments. The commenter correctly notes that the GASP report recommends specific impact and tear resistance values for civil rotorcraft based on MIL–T–27422B requirements. The FAA agrees with the comment in general but notes that proposed §§ 27.952(g) and 29.952(g) objectively requires that crash-resistant fuel cells be tear and impact resistant. Further, it is intended that paragraphs 4.6.5.1 through 4.6.5.5 of MIL–T–27422B (modified for the civil environment) may be used to provide one acceptable method of properly assessing impact and tear resistance. Therefore, the amendments are adopted as proposed.

Comments on Sections 27.952(h) and 29.952(h)

Two commenters state that §§ 27.952(h) and 29.952 (h) and (b) are redundant. The FAA agrees. Therefore, proposed §§ 27.952(h) and 29.952(h) are deleted.

Comments on Sections 27.975(b) and 29.975(a)(7)

A commenter states full support for §§ 27.975(b) and 29.975(a)(7), which propose that the venting system be designed to minimize spillage of fuel through the vents to an ignition source in the event of a rollover. However, the comment suggests deletion of the phrase "* * * is shown to be extremely improbable * * *" because, in his view, in practical terms, it would be impossible for an applicant to demonstrate such a low probability. The FAA agrees. The current term "extremely remote" rather than "extremely improbable" was intended. The FAA has determined that "extremely remote" is the correct term. The amendments are adopted as proposed except for replacing the word "improbable" with the word "remote."

**Regulatory Evaluation Summary**

Executive Order 12866 dated September 30, 1993, directs Federal agencies to promulgate new regulations and maintain current regulations only if they are required by law, are necessary to interpret the law, or are made necessary by a "compelling public need." The order also requires that agencies assess all costs and benefits of available regulatory alternatives and select the alternative that maximizes the net benefits and imposes the least burden on society.

Additionally, the order requires agencies to submit a list of all rules, except those specifically exempted by the Office of Information and Regulatory Affairs (OIRA) because they respond to emergency situations or other narrowly defined exigencies, to determine if the rules constitute "significant regulatory action." "Significant regulatory action" means an action that is likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact on entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. "Significant regulatory action" is submitted to centralized regulatory review by OIRA.

OIRA and the FAA have determined that this rule is not "a significant regulatory action." However, a cost-benefit analysis, including evaluation of cost-reducing alternatives to this rule has been prepared. This analysis also contains the regulatory flexibility determination required by the Regulatory Flexibility Act and a Trade Impact Assessment. If more detailed economic information is desired, the reader may refer to the full evaluation contained in the docket.

*Benefits*

Studies have shown that a significant PCF hazards exist in rotorcraft operations. In a study of rotorcraft crashworthiness dynamics, the FAA found that burn fatalities and injuries account for about 14 percent of rotorcraft accident casualties and occur in about 20 percent of the accidents in which there are injuries. In a study comparing rotorcraft equipped with and without a CRFS, the U.S. Army found that average thermal casualty costs per survivable accident were 95.4 percent lower in CRFS-equipped rotorcraft, and that 50 percent of all rotorcraft accidents with a PCF are survivable prior to the onset of fire. An FAA review of NTSB rotorcraft accident data from 1983 through 1987 shows that 295 accidents occurred that involved a crash landing or collision with an object resulting in fatalities, serious injuries, or combinations of fatalities and injuries. Sixty-three of these accidents involved a PCF, in which about 77 percent of the occupants were fatally injured, as compared to 42 percent of the occupants in accidents not involving a PCF.

In the 63 accidents involving a PCF, there were 113 fatalities, 27 serious injuries, 5 minor injuries, and one noninjury. The FAA estimates that the use of CRFS's would have altered these casualty distributions to approximately the following: 83 fatalities, 31 serious injuries, 24 minor injuries, and 8 noninjuries—a difference of 30 fewer fatalities with some of the fatalities being reduced to serious injuries (4) and minor injuries (19).

In order to provide the public and government officials with a benchmark comparison of the expected safety benefits of rulemaking actions with estimated costs over an extended period of time, the FAA currently uses a minimum value of $1.5 million to statistically represent an avoided fatality. Serious injuries are estimated to have an average cost of $640,000, and minor injuries are estimated to have an average cost of $2,300. Applying these

values to the calculated differences yields benefits of about $42 million [(30 fewer fatalities × $1.5 million) − (4 more serious injuries × $640,000) − (19 more minor injuries × $2,300)]. The average benefit per accident involving a PCF is approximately $670,000. Accounting for parts 27 and 29 separately, the average benefits are approximately $464,000 per part 27 rotorcraft accident involving a PCF and approximately $1,638,000 per part 29 rotorcraft accident involving a PCF.

During the 5-year study period, an average of 5,450 part 27 rotorcraft and an average of 1,150 part 29 rotorcraft were in operation in the United States. During this period, the annual probability of a part 27 rotorcraft being involved in a serious survivable accident with a PCF is estimated to be $1.903 \times 10^{-3}$ ((52 accidents / 5,450 part 27 rotorcraft) / 5 years). The corresponding probability for part 29 rotorcraft is $1.913 \times 10^{-3}$ ((11 accidents / 1,150 part 29 rotorcraft) / 5 years). Multiplying these probabilities by an estimated benefits per accident with a PCF yields annual benefits of $885 per part 27 rotorcraft and $3,134 per part 29 rotorcraft. Assuming 15-year operating lives, these benefits when discounted equate to $3,103 per part 27 rotorcraft and $10,985 per part 29 rotorcraft.

*Costs*

This rule will increase costs for both rotorcraft manufacturers and operators. Manufacturers will incur increased development, certification, and production costs; and operators (in addition to absorbing these costs in higher rotorcraft acquisition costs) will incur increased operating costs due to the additional weight of the fuel system.

The FAA estimates the development and certification costs per new rotorcraft certification will be $36,000. Most of these costs are for testing, analysis, and documentation. The primary testing required by the rule is a test of each fuel tank to show no loss of fuel under specified crash conditions. This can be accomplished by a simple, inexpensive drop test.

There will be increased production costs associated with fuel tanks, fittings, and flexible fuel lines. The incremental cost of a fuel tank meeting the requirements of the rule is estimated to be $30 per gallon of tank capacity. Part 27 rotorcraft are assumed to have 50-gallon tanks that will cost $1,500 more as a result of this rule; part 29 rotorcraft are assumed to have 200-gallon tanks costing $6,000 more. The FAA estimates that the cost per frangible, self-sealing fitting is $60; that a typical part 27 rotorcraft will require 8 fittings, totaling $480; and that a typical part 29 rotorcraft will require 10 fittings, totaling $600. Flexible fuel line sections are expected to add about $100 to the cost of a fuel system for a part 27 rotorcraft and about $150 for a part 29 rotorcraft. The estimated total incremental production costs are $2,080 per part 27 rotorcraft and $6,750 per part 29 rotorcraft.

The FAA estimates that the rule will increase the weight of a part 27 rotorcraft by 9.5 pounds and a part 29 rotorcraft by 33 pounds, and that each extra pound of weight increases average annual fuel consumption by 3.8 gallons per part 27 rotorcraft and 6.2 gallons per part 29 rotorcraft. Applying fuel prices of $1.87 per gallon for part 27 rotorcraft and $1.78 for part 29 rotorcraft, the estimated increase in average annual operating costs is $68 ($1.87 × 3.8 gals. × 9.5 lbs.) per part 27 rotorcraft and $364 ($1.78 × 6.2 gals. × 33 lbs.) per part 29 rotorcraft.

Assuming 15 years operating lives, the total incremental development, certification, production, and operating costs when discounted are $1,426 per part 27 rotorcraft and $4,617 per part 29 rotorcraft.

*Benefit/Costs Comparison*

Benefits exceed costs for both parts 27 and 29 rotorcraft. The net present value (discounted benefits minus discounted costs) is $1,677 per part 27 rotorcraft and $6,368 per part 29 rotorcraft. The rule will be cost beneficial even if it is only 50 percent effective in eliminating PCF fatalities and injuries.

**Regulatory Flexibility Determination**

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule is expected to have a "significant economic impact on a substantial number of small entities." FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, prescribes standards for complying with RFA review requirements in FAA rulemaking actions. The FAA does not expect the rule to have a significant economic impact on a substantial number of small manufacturers or operators.

**Trade Impact Assessment**

The rule will have no impact on trade for either U.S. firms doing business in foreign markets or foreign firms doing business in the United States. In the United States, foreign manufacturers must meet U.S. requirements, and thus will gain no competitive advantage. In foreign countries, U.S. manufacturers are not bound by parts 27 and 29 requirements and can choose whether or not to implement the provisions of this rule on the basis of competitive and other considerations. Also, the Joint Airworthiness Authority (JAA) and Transport Canada are both in the process of adopting this rule.

**Federalism Implications**

The regulations herein do 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 amendment does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Conclusion**

For the reasons discussed in the preamble and based on the findings in the Regulatory Flexibility Determination and the Trade Impact Assessment, the FAA has determined that these amendments are not major under Executive Order 12866. In addition, the FAA certifies that these amendments do not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. These amendments are considered nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory evaluation of the amendments, including a Regulatory Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the Rules Docket (AGC–10), Docket No. 26392, 800 Independence Avenue, SW., Washington, D.C. 25890

**List of Subjects in 14 CFR Parts 27 and 29**

Air transportation, Aircraft, Aviation safety, Rotorcraft, Safety.

**The Amendment**

Accordingly, the Federal Aviation Administration amends 14 CFR pats 27 and 29 of the Federal Aviation Regulations as follows:

## PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

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

**Authority:** 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; and 49 U.S.C. 106(g).

2. Section 27.561 is amended by adding a new paragraph (d) to read as follows:

**§ 27.561 General.**

* * * * *

(d) Any fuselage structure in the area of internal fuel tanks below the passenger floor level must be designed to resist the following ultimate inertial factors and loads and to protect the fuel tanks from rupture when those loads are applied to that area:

(i) Upward—1.5g.
(ii) Forward—4.0g.
(iii) Sideward—2.0g.
(iv) Downward—4.0g.

3. A new § 27.952 is added to read as follows:

**§ 27.952 Fuel system crash resistance.**

Unless other means acceptable to the Administrator are employed to minimize the hazard of fuel fires to occupants following an otherwise survivable impact (crash landing), the fuel systems must incorporate the design features of this section. These systems must be shown to be capable of sustaining the static and dynamic deceleration loads of this section, considered as ultimate loads acting alone, measured at the system component's center of gravity, without structural damage to system components, fuel tanks, or their attachments that would leak fuel to an ignition source.

(a) *Drop test requirements.* Each tank, or the most critical tank, must be drop-tested as follows:

(1) The drop height must be at least 50 feet.

(2) The drop impact surface must be nondeforming.

(3) The tank must be filled with water to 80 percent of the normal, full capacity.

(4) The tank must be enclosed in a surrounding structure representative of the installation unless it can be established that the surrounding structure is free of projections or other design features likely to contribute to rupture of the tank.

(5) The tank must drop freely and impact in a horizontal position ±10°.

(6) After the drop test, there must be no leakage.

(b) *Fuel tank load factors.* Except for fuel tanks located so that tank rupture with fuel release to either significant ignition sources, such as engines, heaters, and auxiliary power units, or occupants is extremely remote, each fuel tank must be designed and installed to retain its contents under the following ultimate inertial load factors, acting alone.

(1) For fuel tanks in the cabin:
(i) Upward—4g.
(ii) Forward—16g.
(iii) Sideward—8g.
(iv) Downward—20g.

(2) For fuel tanks located above or behind the crew or passenger compartment that, if loosened, could injure an occupant in an emergency landing:
(i) Upward—1.5g.
(ii) Forward—8g.
(iii) Sideward—2g.
(iv) Downward—4g.

(3) For fuel tanks in other areas:
(i) Upward—1.5g.
(ii) Forward—4g.
(iii) Sideward—2g.
(iv) Downward—4g.

(c) *Fuel line self-sealing breakaway couplings.* Self-sealing breakaway couplings must be installed unless hazardous relative motion of fuel system components to each other or to local rotorcraft structure is demonstrated to be extremely improbable or unless other means are provided. The couplings or equivalent devices must be installed at all fuel tank-to-fuel line connections, tank-to-tank interconnects, and at other points in the fuel system where local structural deformation could lead to the release of fuel.

(1) The design and construction of self-sealing breakaway couplings must incorporate the following design features:

(i) The load necessary to separate a breakaway coupling must be between 25 to 50 percent of the minimum ultimate failure load (ultimate strength) of the weakest component in the fluid-carrying line. The separation load must in no case be less than 300 pounds, regardless of the size of the fluid line.

(ii) A breakaway coupling must separate whenever its ultimate load (as defined in paragraph (c)(1)(i) of this section) is applied in the failure modes most likely to occur.

(iii) All breakaway couplings must incorporate design provisions to visually ascertain that the coupling is locked together (leak-free) and is open during normal installation and service.

(iv) All breakaway couplings must incorporate design provisions to prevent uncoupling or unintended closing due to operational shocks, vibrations, or accelerations.

(v) No breakaway coupling design may allow the release of fuel once the coupling has performed its intended function.

(2) All individual breakaway couplings, coupling fuel feed systems, or equivalent means must be designed, tested, installed, and maintained so that inadvertent fuel shutoff in flight is improbable in accordance with § 27.955(a) and must comply with the fatigue evaluation requirements of § 27.571 without leaking.

(3) Alternate, equivalent means to the use of breakaway couplings must not create a survivable impact-induced load on the fuel line to which it is installed greater than 25 to 50 percent of the ultimate load (strength) of the weakest component in the line and must comply with the fatigue requirements of § 27.571 without leaking.

(d) *Frangible or deformable structural attachments.* Unless hazardous relative motion of fuel tanks and fuel system components to local rotorcraft structure is demonstrated to be extremely improbable in an otherwise survivable impact, frangible or locally deformable attachments of fuel tanks and fuel system components to local rotorcraft structure must be used. The attachment of fuel tanks and fuel system components to local rotorcraft structure, whether frangible or locally deformable, must be designed such that its separation or relative local deformation will occur without rupture or local tear-out of the fuel tank or fuel system components that will cause fuel leakage. The ultimate strength of frangible or deformable attachments must be as follows:

(1) The load required to separate a frangible attachment from its support structure, or deform a locally deformable attachment relative to its support structure, must be between 25 and 50 percent of the minimum ultimate load (ultimate strength) of the weakest component in the attached system. In no case may the load be less than 300 pounds.

(2) A frangible or locally deformable attachment must separate or locally deform as intended whenever its ultimate load (as defined in paragraph (d)(1) of this section) is applied in the modes most likely to occur.

(3) All frangible or locally deformable attachments must comply with the fatigue requirements of § 27.571.

(e) *Separation of fuel and ignition sources.* To provide maximum crash resistance, fuel must be located as far as practicable from all occupiable areas and from all potential ignition sources.

(f) *Other basic mechanical design criteria.* Fuel tanks, fuel lines, electrical wires, and electrical devices must be designed, constructed, and installed, as far as practicable, to be crash resistant.

(g) *Rigid or semirigid fuel tanks.* Rigid or semirigid fuel tank or bladder walls must be impact and tear resistant.

4. Section 27.963 is amended by revising paragraph (f) and by adding new paragraphs (g) and (h) to read as follows:

**§ 27.963 Fuel tanks: general.**

* * * * *

(f) Each fuel tank installed in personnel compartments must be isolated by fume-proof and fuel-proof enclosures that are drained and vented to the exterior of the rotorcraft. The design and construction of the enclosures must provide necessary protection for the tank, must be crash resistant during a survivable impact in accordance with § 27.952, and must be adequate to withstand loads and abrasions to be expected in personnel compartments.

(g) Each flexible fuel tank bladder or liner must be approved or shown to be suitable for the particular application and must be puncture resistant. Puncture resistance must be shown by meeting the TSO–C80, paragraph 16.0, requirements using a minimum puncture force of 370 pounds.

(h) Each integral fuel tank must have provisions for inspection and repair of its interior.

5. A new § 27.967 is added to read as follows:

**§ 27.967 Fuel tank installation.**

(a) Each fuel tank must be supported so that tank loads are not concentrated on unsupported tank surfaces. In addition—

(1) There must be pads, if necessary, to prevent chafing between each tank and its supports;

(2) The padding must be nonabsorbent or treated to prevent the absorption of fuel;

(3) If flexible tank liners are used, they must be supported so that it is not necessary for them to withstand fluid loads; and

(4) Each interior surface of tank compartments must be smooth and free of projections that could cause wear of the liner unless—

(i) There are means for protection of the liner at those points; or

(ii) The construction of the liner itself provides such protection.

(b) Any spaces adjacent to tank surfaces must be adequately ventilated to avoid accumulation of fuel or fumes in those spaces due to minor leakage. If the tank is in a sealed compartment, ventilation may be limited to drain holes that prevent clogging and excessive pressure resulting from altitude changes. If flexible tank liners are installed, the venting arrangement for the spaces between the liner and its container must maintain the proper relationship to tank vent pressures for any expected flight condition.

(c) The location of each tank must meet the requirements of § 27.1185 (a) and (c).

(d) No rotorcraft skin immediately adjacent to a major air outlet from the engine compartment may act as the wall of the integral tank.

6. Section 27.973 is revised to read as follows:

**§ 27.973 Fuel tank filler connection.**

(a) Each fuel tank filler connection must prevent the entrance of fuel into any part of the rotorcraft other than the tank itself during normal operations and must be crash resistant during a survivable impact in accordance with § 27.952(c). In addition—

(1) Each filler must be marked as prescribed in § 27.1557(c)(1);

(2) Each recessed filler connection that can retain any appreciable quantity of fuel must have a drain that discharges clear of the entire rotorcraft; and

(3) Each filler cap must provide a fuel-tight seal under the fluid pressure expected in normal operation and in a survivable impact.

(b) Each filler cap or filler cap cover must warn when the cap is not fully locked or seated on the filler connection.

7. Section 27.975 is amended by revising paragraph (b) to read as follows:

**§ 27.975 Fuel tank vents.**

* * * * *

(b) The venting system must be designed to minimize spillage of fuel through the vents to an ignition source in the event of a rollover during landing, ground operation, or a survivable impact, unless a rollover is shown to be extremely remote.

## PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

8. The authority citation for part 29 continues to read as follows:

**Authority:** 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; and 49 U.S.C. 106(g).

9. A new § 29.952 is added to read as follows:

**§ 29.952 Fuel system crash resistance.**

Unless other means acceptable to the Administrator are employed to minimize the hazard of fuel fires to occupants following an otherwise survivable impact (crash landing), the fuel systems must incorporate the design features of this section. These systems must be shown to be capable of sustaining the static and dynamic deceleration loads of this section, considered as ultimate loads acting alone, measured at the system component's center of gravity without structural damage to the system components, fuel tanks, or their attachments that would leak fuel to an ignition source.

(a) *Drop test requirements.* Each tank, or the most critical tank, must be drop-tested as follows:

(1) The drop height must be at least 50 feet.

(2) The drop impact surface must be nondeforming.

(3) The tanks must be filled with water to 80 percent of the normal, full capacity.

(4) The tank must be enclosed in a surrounding structure representative of the installation unless it can be established that the surrounding structure is free of projections or other design features likely to contribute to rupture of the tank.

(5) The tank must drop freely and impact in a horizontal position ±10°.

(6) After the drop test, there must be no leakage.

(b) *Fuel tank load factors.* Except for fuel tanks located so that tank rupture with fuel release to either significant ignition sources, such as engines, heaters, and auxiliary power units, or occupants is extremely remote, each fuel tank must be designed and installed to retain its contents under the following ultimate inertial load factors, acting alone.

(1) For fuel tanks in the cabin:

(i) Upward—4g.

(ii) Forward—16g.

(iii) Sideward—8g.

(iv) Downward—20g.

(2) For fuel tanks located above or behind the crew or passenger compartment that, if loosened, could injure an occupant in an emergency landing:

(i) Upward—1.5g.

(ii) Forward—8g.

(iii) Sideward—2g.

(iv) Downward—4g.

(3) For fuel tanks in other areas:

(i) Upward—1.5g.

(ii) Forward—4g.

(iii) Sideward—2g.

(iv) Downward—4g.

(c) *Fuel line self-sealing breakaway couplings.* Self-sealing breakaway couplings must be installed unless hazardous relative motion of fuel system components to each other or to local rotorcraft structure is demonstrated to be extremely improbable or unless other means are provided. The couplings or equivalent devices must be installed at all fuel tank-to-fuel line connections, tank-to-tank interconnects, and at other

points in the fuel system where local structural deformation could lead to the release of fuel.

(1) The design and construction of self-sealing breakaway couplings must incorporate the following design features:

(i) The load necessary to separate a breakaway coupling must be between 25 to 50 percent of the minimum ultimate failure load (ultimate strength) of the weakest component in the fluid-carrying line. The separation load must in no case be less than 300 pounds, regardless of the size of the fluid line.

(ii) A breakaway coupling must separate whenever its ultimate load (as defined in paragraph (c)(1)(i) of this section) is applied in the failure modes most likely to occur.

(iii) All breakaway couplings must incorporate design provisions to visually ascertain that the coupling is locked together (leak-free) and is open during normal installation and service.

(iv) All breakaway couplings must incorporate design provisions to prevent uncoupling or unintended closing due to operational shocks, vibrations, or accelerations.

(v) No breakaway coupling design may allow the release of fuel once the coupling has performed its intended function.

(2) All individual breakaway couplings, coupling fuel feed systems, or equivalent means must be designed, tested, installed, and maintained so inadvertent fuel shutoff in flight is improbable in accordance with § 29.955(a) and must comply with the fatigue evaluation requirements of § 29.571 without leaking.

(3) Alternate, equivalent means to the use of breakaway couplings must not create a survivable impact-induced load on the fuel line to which it is installed greater than 25 to 50 percent of the ultimate load (strength) of the weakest component in the line and must comply with the fatigue requirements of § 29.571 without leaking.

(d) *Frangible or deformable structural attachments.* Unless hazardous relative motion of fuel tanks and fuel system components to local rotorcraft structure is demonstrated to be extremely improbable in an otherwise survivable impact, frangible or locally deformable attachments of fuel tanks and fuel system components to local rotorcraft structure must be used. The attachment of fuel tanks and fuel system components to local rotorcraft structure, whether frangible or locally deformable, must be designed such that its separation or relative local deformation will occur without rupture or local tear-out of the fuel tank or fuel system component that will cause fuel leakage. The ultimate strength of frangible or deformable attachments must be as follows:

(1) The load required to separate a frangible attachment from its support structure, or deform a locally deformable attachment relative to its support structure, must be between 25 and 50 percent of the minimum ultimate load (ultimate strength) of the weakest component in the attached system. In no case may the load be less than 300 pounds.

(2) A frangible or locally deformable attachment must separate or locally deform as intended whenever its ultimate load (as defined in paragraph (d)(1) of this section) is applied in the modes most likely to occur.

(3) All frangible or locally deformable attachments must comply with the fatigue requirements of § 29.571.

(e) *Separation of fuel and ignition sources.* To provide maximum crash resistance, fuel must be located as far as practicable from all occupiable areas and from all potential ignition sources.

(f) *Other basic mechanical design criteria.* Fuel tanks, fuel lines, electrical wires, and electrical devices must be designed, constructed, and installed, as far as practicable, to be crash resistant.

(g) *Rigid or semirigid fuel tanks.* Rigid or semirigid fuel tank or bladder walls must be impact and tear resistant.

10. Section 29.963 is amended by removing paragraph (b); by redesignating paragraphs (c), (d), and (e) as (b), (c), and (d) respectively; by revising redesignated paragraph (b); and by adding a new paragraph (e) to read as follows:

**§ 29.963 Fuel tanks: general.**

* * * * *

(b) Each flexible fuel tank bladder or liner must be approved or shown to be suitable for the particular application and must be puncture resistant. Puncture resistance must be shown by meeting the TSO–C80, paragraph 16.0, requirements using a minimum puncture force of 370 pounds.

* * * * *

(e) Each fuel tank installed in personnel compartments must be isolated by fume-proof and fuel-proof enclosures that are drained and vented to the exterior of the rotorcraft. The design and construction of the enclosures must provide necessary protection for the tank, must be crash resistant during a survivable impact in accordance with § 29.952, and must be adequate to withstand loads and abrasions to be expected in personnel compartments.

**§ 29.967 [Amended]**

11. Section 29.967 is amended by removing paragraph (e).

12. Section 29.973 is revised to read as follows:

**§ 29.973 Fuel tank filler connection.**

(a) Each fuel tank filler connection must prevent the entrance of fuel into any part of the rotorcraft other than the tank itself during normal operations and must be crash resistant during a survivable impact in accordance with § 29.952(c). In addition—

(1) Each filler must be marked as prescribed in § 29.1557(c)(1);

(2) Each recessed filler connection that can retain any appreciable quantity of fuel must have a drain that discharges clear of the entire rotorcraft; and

(3) Each filler cap must provide a fuel-tight seal under the fluid pressure expected in normal operation and in a survivable impact.

(b) Each filler cap or filler cap cover must warn when the cap is not fully locked or seated on the filler connection.

13. Section 29.975 is amended by revising paragraph (a)(7) to read as follows:

**§ 29.975 Fuel tank vents and carburetor vapor vents.**

(a) * * *

(7) The venting system must be designed to minimize spillage of fuel through the vents to an ignition source in the event of a rollover during landing, ground operations, or a survivable impact, unless a rollover is shown to be extremely remote.

* * * * *

Issued in Washington, D.C., on September 26, 1994.

**David R. Hinson,**

*Administrator.*

[FR Doc. 94–24218 Filed 9–30–94; 8:45 am]

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Monday
October 3, 1994

Part V

# Department of Transportation

## Federal Aviation Administration

14 CFR Part 101
Model Rocket Operations; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 101

[Docket No. 26965; Amendment No. 101–6]

RIN 2120–AD84

## Model Rocket Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the operational guidelines of the Federal Aviation Regulations (FAR) Part 101 for model rockets that: use not more than 125 grams (4.4 ounces) of propellant; are made of paper, wood, or breakable plastic; contain no substantial metal parts; and weigh not more than 1,500 grams (53 ounces). This amendment is necessary to provide for the operation of the technologically advanced, larger category, model rockets and to ensure that their operation is in concert with the maximum level of safety protection for aircraft, flight crews, and the flying public. The FAA believes that this amendment will foster important aeronautical education and research activities, while retaining appropriate operational safety precautions.

EFFECTIVE DATE: November 2, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. White, Air Traffic Rules Branch, ATP–230, Airspace Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

### Background

On May 28, 1985, the National Association of Rocketry (NAR) and the Hobby Industry Association (HIA) filed a joint petition requesting that the FAA amend 14 CFR 101.1, by raising the upper weight limit on excepted model rockets from 16 ounces to 1,500 grams (approximately 53 ounces) and the allowable propellant mass from 4 ounces to 125 grams (approximately 4.4 ounces). At present, 14 CFR 101.1 exempts "model" rockets having no more than 4.0 ounces of propellant and weighing no more than 16 ounces, including the propellent.

In response to the NAR/HIA joint petition, the FAA published a Notice of Proposed Rulemaking (NPRM), Notice 92–12, 57 FR 41628, Sep. 10, 1992. Notice 92–12 proposed to amend 14 CFR Part 101 by adding § 101.22, Special provisions for larger model rockets, and by amending § 101.25, Notice requirements, to accommodate larger model rockets. In summary, model rockets that use not more than 125 grams of propellant; that weigh not more than 1,500 grams, including the propellant; that are constructed principally of paper, wood, or breakable plastic, and continue to have no substantial metal parts; may be operated in a controlled airspace, within 5 miles of the boundary of any airport, within 1,500 feet of any person or property that is not associated with the operations or at night. These operations may be conducted, provided that persons operating these model rockets give prior notification of launch activities and other pertinent launch information to the FAA Air Traffic Control (ATC) facility nearest the place of intended operation between 24 and 48 hours prior to beginning the operation and the manager of any airport whose landing area or runway is within 5 miles of the model rocket launch site.

### Analysis of Comments

Interested persons were invited to participate in this rulemaking effort by submitting written data, views, or arguments. All comments received during the comment period were considered before making a determination regarding this final rule.

During the comment period, a total of 117 comments were received in response to Notice 92–12. Two comments were received from the NAR, and one comment each, from the Airline Pilots Association (ALPA), the Arizona Pilots Association, the Airport Transport Association (ATA), and the National Fire Protection Association. Ninety-one comments were received from individuals, eight from pilots, six from model rocket associations, three from teachers/professional educators, and one each from a scientist, an aerospace educational organization, and a model rocket manufacturer. A discussion of these comments follows:

One commenter supports the NPRM as written. All other commenters oppose the NPRM and support, instead, either the original NAR petition or the development of regulatory action which proposes fewer model rocket notification requirements. Comments opposing the NPRM are summarized in the following categories, each of which is subsequently discussed more fully:

1. Approximately 95 commenters state there is no need for a separate category of "Large Model Rockets"; they favor adoption of NAR's original petition for rulemaking.

2. Approximately 74 commenters believe the NPRM's proposed notification requirements are burdensome and unnecessary.

3. Approximately 8 commenters state the FAA needs to update its rules to reflect the current technology of model rocketry and to promote the inherent educational value of the hobby.

4. Approximately 3 commenters oppose both the NPRM and NAR's original petition for rulemaking.

5. Approximately 4 commenters suggest regulatory alternatives to the NPRM.

A number of commenters oppose the proposal to establish a separate category of "Large Model Rockets" and instead support the NAR's original petition to broaden the exempt definition of model rockets. Based upon NAR and FAA studies, commenters argue that air traffic will not be adversely affected by the NAR's requested increase in the maximum, unregulated model rocket liftoff and propellant weight. The NAR reiterates that, "not a single documented incident of model rockets interfering with aviation, hitting or harming aircraft on ascent or descent of the rocket, or impairing aircraft flight operations has occurred". Commenters attribute this enviable safety record to rocketeers' voluntary compliance with the *Model Rocket Safety Code*. Accordingly, they consider the code and a rocketeer's own visual and aural check as sufficient launch safety measures. Moreover, several commenters assert that increasing model rocket weight may actually improve model rocket safety as heavier rockets are purported to have larger drag coefficients, achieve lower altitudes, have shorter flight duration, and be more easily seen by aircraft than lighter rockets.

The FAA agrees that the model rocket industry has a long and distinguished record of safety. However, as noted in Notice 92–12, the FAA must acknowledge the remote, yet inherent increase in hazard potential that accompanies greater model rocket propellant/mass weight. This consideration is particularly relevant for general aviation aircraft and rotorcraft, which operate at a lower velocity and flight altitude, making them especially vulnerable to collision with larger, more powerful model rockets. In order to provide a maximum level of safety protection to aircraft passengers and crew members, the FAA has determined that operational safeguards, beyond the *Model Rocket Safety Code* and rocketeers' own diligence, are needed for larger rockets with greater propellant/mass weight. Therefore, a

regulatory category that segregates larger rockets from smaller rockets is required.

A number of commenters believe that the proposed notification requirements for "Large Model Rocket" launches are unnecessary and burdensome. Commenters argue that the FAA has cited "no cases where notification would have increased air safety above and beyond . . . current regulations which require no notification." Several commenters also mention the potential for conflict to occur between lawful rocketeers and airport/ATC officials who are unfamiliar with model rocketry and with 14 CFR Part 101 entitlement. Two commenters detail occasions where misinformation was believed to have resulted in the denial of waiver applications or the interruption of model rocket launch competitions. Commenters are equally troubled by the requirement to notify air traffic officials within 24 to 48 hours of "Large Model Rocket" launches, regardless of where these launches occur.

The proposed notification requirements assist the FAA and airport officials in determining how model rocket launch activities may affect flight operations in a given area. The proposed requirements are not intended to hinder or minimize model rocket activity, but merely to ensure that airspace is mutually accommodating of both model rocket operations and aircraft operations. To this end, FAA or airport officials review model rocket launch information and make it available to pilots, as necessary, via air traffic control or through Notice to Airmen (NOTAM) publications. NOTAMs highlight events that may result in airspace restrictions and give time frames in which restrictions will be in effect. Review of NOTAMs offers pilots an opportunity to adjust or reschedule their flight plans in light of planned aerial activity. Because a pilot's awareness of model rocket launches enhances this safety process, the proposed notification requirements are beneficial. Additionally, to facilitate disclosure of requested model rocket launch data, the NPRM proposed a decrease in the amount and specificity of information currently required from rocketeers. For example, when there are multiple participants at a single event, rather than give names and addresses for every rocketeer, a single person may be designated as the event launch coordinator for the operation. Similarly, rather than provide the specific number, size, weight, and maximum altitude of each rocket to be launched, the appropriate individual may estimate the information. The FAA further concludes that the current level of safety will not be decreased by utilizing the less restrictive reporting requirements as proposed in the NPRM when a single name and address of the person provided is that of the event launch coordinator, and this person is the one who has provided the other required launch data estimates for that event.

Several commenters recommend that notification of the airport manager or FAA tower facility be required only when large model rockets will be launched into controlled airspace or within 5 miles of an airport.

The current prohibition against operating such model rockets in controlled airspace, within 5 miles of an airport, within 1,500 feet of any non-participant, or between sunset and sunrise, will not apply provided the person operating the model rocket complies with the proposed modified provisions of § 101.25. The intent of the notice requirement is not to exclude or hinder model rocket operations, but to provide notification of such operations to afford an adequate level of safety for person and property in the air, as well as on the ground.

Commenters maintain that the notice requirement is unrealistic for several reasons: Model rocket launch times are inherently unpredictable as they are dependent upon favorable cloud cover and weather conditions; many impromptu launches occur at model rocket meets, making it difficult to give prior disclosure of the total number of participants and other launch information; the notification process may prove too complex for novice or youthful rocketeers; and, the notification process is likely to be cost intensive to the FAA, as the agency will be forced to process a presumably high number of waiver applications.

The FAA disagrees that the notification process may prove too complex for novice or youthful rocketeers. Through voluntary compliance with the *Model Rocket Safety Code*, model rocketeers of all ages have proven a ready aptitude and willingness for ensuring launch safety and have demonstrated an awareness of how to knowledgeably operate scientific equipment. The effective handling of these important responsibilities is believed to be an accurate indicator of rocketeers' ability to adhere to the proposed notification requirements. The FAA acknowledges that the agency will incur costs in receiving, recording, and evaluating notification information; but, the agency determines these costs to be minor.

Several commenters believe the FAA needs to update 14 CFR Part 101 to reflect the current technology of model rocketry and to promote the inherent educational value of the hobby. According to the NAR, original model rocket limitations were set in light of what was the only foreseeable type of model rocket propellant at the time, black powder. Over the years, new propellant technologies have emerged that are vastly superior to black powder, both in terms of specific impulse and a capability to accommodate more complex payloads, e.g. cameras, radio control receivers, and computer equipment. One commenter mentions that it is difficult to construct these payloads while remaining within the present 16 ounce total weight limitation. Most commenters agree that the more diverse payloads available with larger-sized rockets present unique opportunities for promoting scientific study. Teachers and rocketry clubs report using larger rockets as educational aids. Science professionals use them in collecting data and conducting analysis. These groups believe their efforts help the United States remain academically and technologically competitive. As such, they assert that the FAA's proposed restrictions on large model rockets are counterproductive to scientific achievement and overall growth of the model rocket industry.

Three major factors form the basis of the proposed amendment: (1) The FAA's support in fostering public interest in aeronautics through model rocketry; (2) the agency's recognition of the importance for model rocketeers to utilize state-of-the-art technology to enhance educational value and international competitiveness; and (3) the agency's responsibility to ensure aircraft flight safety. Accordingly, the proposed amendment reflects the FAA's desire to support the advancement of model rocketry while maintaining an assurance that larger and faster rockets do not jeopardize the safety of aircraft in flight.

Several commenters oppose both the NPRM and NAR's original petition. The Air Line Pilots Association (ALPA) and the Air Transport Association (ATA) believe that the larger and more powerful rockets pose a potential threat to air traffic safety. Both organizations underscore the point that larger model rockets are capable of achieving aircraft cruising altitudes. In this regard, ALPA believes collision with a model rocket can cause aircraft damage beyond that "comparable to the impact of large hailstones" and that penetration of the aircraft wing skin is likely. For this reason, ALPA believes that the current provisions of 14 CFR Part 101 best ensure safety and recommends that the

notification requirements be applied to any rocket firing surpassing 1500 feet above ground level (AGL), regardless of airport proximity. Additionally, ALPA recommends that a safety officer should visually survey rocket firings in controlled areas and manufacturers should provide a copy of applicable FAA regulations relating to launch activities. The ATA favors ensuring safety by permitting no unmanned rockets within a 30-mile radius of regulated airspace.

The FAA acknowledges a minimal risk increase in hazard potential that accompanies the operation of larger, more powerful rockets. This minimal risk increase was confirmed by a March 1991 FAA study, Model Rocketry Hazard Study, conducted as part of the agency's analysis of in-flight collision probability between aircraft and model rockets. In concert with the study's final report recommendation, Notice 92–12 proposed certain guidelines for large model rocket launches. These proposed guidelines, together with rocketeers' proven launch safety vigilance, effectively lessen the minimal risk increase in hazard potential associated with heavier model rockets.

One commenter concurs with the safety concerns raised by ATA and ALPA and alleges that hazardous incidents have occurred with larger model rockets. This commenter believes that present technology offers model rockets sufficient propellant capacity so that the FAA should set a maximum allowable rocket weight of 3 pounds and hold propellant mass to a maximum 62.5 grams. To further ensure safety, this commenter recommends that the FAA establish clear, defined limits for model rocket construction material. The commenter contends that "hi-tech" paper and plastic are being used to construct more durable rockets than 14 CFR 101 intends.

No data was provided by the commenter to support the allegation, and the FAA has no other data which substantiates any occurrence of hazardous instances with larger model rockets. The FAA shares the viewpoint that model rockets only be constructed of paper and other breakable material. To reiterate this agency intent, Notice 92–12 maintains the current language of § 101.1(c), which outlines appropriate material for model rocket construction. However, to issue explicit direction on the manufacture of model rockets, which appears to be the commenter's suggestion, goes beyond the FAA's regulatory purview.

Several commenters asked that the FAA create a uniform set of regulations pertaining specifically to model rockets weighing greater than 53 ounces launch weight.

The FAA acknowledges the commenters' suggestions and concerns. However, since Notice 92–12 conveyed only those proposals contained in the original NAR petition. Recommendations to create an additional set of uniform rules specifically for model rockets would be a separate rulemaking action and is beyond the scope of this particular action.

The NAR and several other commenters assert that an apparent typographical error in Notice 92–12 incorrectly reports the NAR's estimate of model rocket launches as 250,000 since the inception of the sport. Commenters state that the appropriate number, as submitted in NAR's 1985 study, is 250,000,000.

The FAA has investigated the commenters' assertion and noted that Notice 92–12 reference was "250,000 launches of model rockets since the inception of the sport . . ." The estimate, as contained in the NAR report is, "At the time the NAR's petition was submitted in 1985, NAR informed the FAA that more than 250,000,000 launches had been made." Because the number of launches of model rockets since the inception of the sport was not used in any FAA rulemaking calculations, the correct figure is hereby noted in this document and has no further bearing on this rulemaking activity.

**Regulatory Evaluation Summary**

*Cost-Benefit Analysis*

The FAA has determined that this final rule is not a "significant regulatory action", as defined by Executive Order 12866 (Regulatory Planning and Review). The anticipated costs and benefits associated with this final rule are summarized below. (A detailed discussion of costs and benefits is contained in the full evaluation in the docket for this final rule).

*Costs*

The final rule for unmanned rockets consists of provisions that specify what persons operating certain model rockets (rockets using not more than 125 grams of propellant; made of paper, wood, or breakable plastic; containing no substantial metal parts, and weighing not more than 1500 grams including propellant) would be required to do. The final rule is designed to accommodate the advancement of model rocketry with regulations that will also provide an adequate level of assurance that such rockets will not jeopardize the safety of aircraft in flight.

The FAA estimates that the changes in the final rule will have a no cost impact to users of model rockets. In fact, the changes might produce a cost savings. The savings associated with these changes, however are considered negligible and unquantifiable.

Section 101.22(a)(2), however, may impose minor costs on the FAA. Persons operating model rockets will have to provide the information required in existing § 101.25 to the manager of that airport and to the FAA ATC facility that is nearest the place of the intended operation. The FAA would then incur costs associated with receiving, recording, and evaluating the material that has been received. The FAA believes that these costs will be minor.

*Benefits*

The final rule will provide benefits, in that the FAA has determined that the final regulations will accommodate the advancement of model rocketry and simultaneously provide an adequate level of assurance that such rockets will not jeopardize the safety of aircraft in flight.

*Conclusions*

Based upon the fact that there are little or no compliance costs coupled with the potential benefits, the FAA concludes that the final rule is cost beneficial.

**Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules that may have "a significant cost impact on a substantial number of small entities."

With regards to this regulatory evaluation, there is no cost associated with any of the amendments. The FAA has determined that the amendments contained herein will not have a significant economic impact on a substantial number of small entities.

**International Trade Impact Assessment**

The amendments apply to users of model rockets in the United States only There is no economic impact resulting from any of the amendments and the FAA has determined that these regulations will not have an impact on international trade.

**Federalism Determination**

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 proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Paperwork Reduction Act**

The information collection requirements of part 101 were previously approved under OMB Control No. 2120–0027. This amendment makes only minor changes to those requirements.

**International Civil Aviation Organization and Joint Aviation Regulations**

In keeping with the U.S. obligations under the convention on International Civil Aviation (ICAO), it is FAA policy to comply with ICAO Standards and Recommended Practices (SARP) to the maximum extent practicable. The FAA has determined that this regulation complies with the ICAO SARP.

**Conclusion**

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Assessment, the FAA has determined that this regulation is not a "significant regulatory action" under Executive Order 12866. This rule is not considered significant under DOT Order 2100.5, Policies and Procedures (44 FR 11034, February 26, 1979). In addition, the FAA certifies that this rule 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 regulatory evaluation of the final rule, including a Regulatory Flexibility Determination and Trade Impact Assessment, has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

**List of Subjects in 14 CFR Part 101**

Aircraft, Aviation Safety, Federal Aviation Administration, Recreation and recreation areas.

**The Amendment**

In consideration of the foregoing, the Federal Aviation Administration finds that it would be in the public interest to adopt the amendment as proposed. Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 101 of the Federal Aviation Regulations (14 CFR Part 101) as follows:

1. The authority citation for Part 101 continues to read as follows:

**Authority:** 49 U.S.C. App. 1348, 1354, 1372, 1421, 1442, 1443, 1472, 1510, and 1522; E.O. 11514; 49 U.S.C. 106(g).

**Subpart C—Unmanned Rockets**

2. Section 101.22 is added to read as follows:

**§ 101.22 Special provisions for large model rockets.**

Persons operating model rockets that use not more than 125 grams of propellant; that are made of paper, wood, or breakable plastic; that contain no substantial metal parts, and that weigh not more than 1,500 grams, including the propellant, need not comply with § 101.23 (b), (c), (g), and (h), provided:

(a) That person complies with all provisions of § 101.25; and

(b) The operation is not conducted within 5 miles of an airport runway or other landing area unless the information required in § 101.25 is also provided to the manager of that airport.

3. Section 101.25 is amended by revising the introductory text and paragraphs (a), (b), (c), and (d) to read as follows:

**§ 101.25 Notice requirements.**

No person may operate an unmanned rocket unless that person gives the following information to the FAA ATC facility nearest to the place of intended operation no less than 24 hours prior to and no more than 48 hours prior to beginning the operation:

(a) The names and addresses of the operators; except when there are multiple participants at a single event, the name and address of the person so designated as the event launch coordinator, whose duties include coordination of the required launch data estimates and coordinating the launch event;

(b) The estimated number of rockets to be operated;

(c) The estimated size and the estimated weight of each rocket; and

(d) The estimated highest altitude or flight level to which each rocket will be operated.

* * * * *

Issued in Washington, DC, on September 26, 1994.

**David R. Hinson,**

*Administrator.*

[FR Doc. 94–24217 Filed 9–30–94; 8:45 am]

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federal register

Monday
October 3, 1994

Part VI

# Advisory Council on Historic Preservation

36 CFR Part 800
Protection of Historic Properties;
Proposed Rule

## ADVISORY COUNCIL ON HISTORIC PRESERVATION

### 36 CFR Part 800

### Protection of Historic Properties

**AGENCY:** Advisory Council on Historic Preservation.

**ACTION:** Notice of proposed rulemaking; revision of current regulations.

**SUMMARY:** The Advisory Council on Historic Preservation (Council) is proposing changes to its regulations in order to implement the 1992 amendments to the National Historic Preservation Act and to improve the Section 106 process, by which Federal agencies consider the effects of their undertakings on historic properties. The proposed changes seek to balance the interests and concerns of various users of the Section 106 process, including Federal agencies, State Historic Preservation Officers (SHPOs), Native Americans and Native Hawaiians, and the public. The revised regulations also respond to the new Section 110 provisions in the 1992 amendments which require Federal agencies to establish historic preservation programs.

**DATES:** Comments must be received on or before December 2, 1994. In recognition of the unique trust and treaty relationships between the United States Government and Indian tribes, their enhanced role in the Section 106 process as directed by the National Historic Preservation Act amendments of 1992, and the possibility that some tribes will need more than 60 days to provide comments, the Council will provide on request an additional 30 days for an Indian tribe to submit comments. A representative of the tribal government must file such request with the Council no later than December 2, 1994.

**ADDRESSES:** Comments should be addressed to the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, Suite 809, Washington, DC 20004. Fax 202–606–8647.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Woronowicz, Information Assistant, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, Suite 809, Washington, DC 20004 (202) 606–8503.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. § 470f, requires Federal agencies to take into account the effect of their undertakings on properties included in or eligible for inclusion in the National Register of Historic Places and to afford the Council a reasonable opportunity to comment on such undertakings. Public Law 102–575 was enacted in October, 1992, and contains amendments to the National Historic Preservation Act which affect the way Section 106 review is carried out under the Council's regulations. Furthermore, as part of the Administration's National Performance Review, the Council undertook a review of the current regulatory process to identify potential changes that could improve the operation of the Section 106 process and conform it to the principles of this Administration. The Council commenced an information-gathering effort to assess the current Section 106 process and to identify desirable changes.

As a part of this effort, the Council sent a questionnaire to 1,200 users of the Section 106 process, including Federal agencies, SHPOs, State and local governments, applicants for Federal assistance, Native Americans, preservation groups, contractors involved in the process, and members of the public. The questionnaires sought opinions on the current regulatory process and ideas for enhancing the process. The Council received over 400 responses. After analyzing the responses and holding several meetings with Federal Preservation Officers and SHPOs, the Council staff presented its preliminary findings to a special Council member Task Force comprised of the Department of Transportation, the National Conference of State Historic Preservation Officers, the National Trust for Historic Preservation, Native American representative William Tallbull, expert member Jane Davidson, and Council chairman Cathryn Buford Slater.

The key findings presented to and adopted by the Regulations Task Force were the following: (1) Federal agencies and SHPOs should be given greater authority to conclude Section 106 review; (2) the Council should spend more time monitoring program trends and overall performance of Federal agencies and SHPOs and less time reviewing individual cases or participating in case-specific consultation; (3) Section 106 review requirements should be integrated with environmental review required by other statutes; (4) enforcement of Section 106 should be increased and specific remedies should be provided for failure to comply; and (5) there should be expanded opportunities for public involvement in the Section 106 process.

### II. Summary of Regulatory Changes

Consistent with the findings adopted by the Council Regulations Task Force, the Council proposes to revise its regulations as follows:

*Subpart A—Background and Policy*

This Subpart adds a new section describing the goals of the consultation process (Section 800.1(b)) and clarifying the roles of participants in the Section 106 process, particularly those of Native Americans and Native Hawaiians (Section 800.1(e)) as required by the 1992 NHPA amendments. The provision regarding Native American and Native Hawaiian participation provides detailed guidance on how Federal agency officials consult with Native American and Native Hawaiian organizations that attach religious and cultural significance to historic properties that may be affected by an undertaking (Section 800.1(e)(5)). The section on participants in the Section 106 process also elaborates on the role and rights of the public to participate in the process (Section 800.6(e)(6)). In order to encourage consideration of historic properties as early in the planning stages as possible, the regulations specifically set forth a section on timing (Section 800.6(c)).

Subpart A also adds new definitions and revises current definitions to conform to the 1992 NHPA amendments and to clarify terms which have raised questions during the implementation of the Section 106 process (Section 800.2). New definitions include: agency, anticipatory demolition, approval of the expenditure of funds, comment, conditional no adverse effect agreement, consultation, Council membership, foreclosure, head of the agency, memorandum of agreement, Native Hawaiian, Native Hawaiian organization, notice of violation, traditional community, and traditional cultural authority. Revised definitions include: agency official, area of potential effects, historic property, Indian tribe, interested (party) person, Indian (tribal) lands, and undertaking. The definition of undertaking has been changed to accord with the intent of the statutory definition provided in the 1992 NHPA amendments.

*Subpart B—Federal Procedures to Implement Section 106*

The Council has added new provisions to assist agencies in meeting their responsibilities under the statutory requirement in Section 110(a)(2) of the 1992 NHPA amendments which requires agencies to develop preservation programs and to ensure

that the agencies' procedures for compliance with Section 106 are consistent with the Council's procedures (Sections 800.3–800.6). The provisions implement the principle that agency procedures establishing a preservation program must be consistent with the Council's regulations by providing standards for consistency (Section 800.4) and processes through which the Council can evaluate whether these standards have been met (Section 800.5 and 800.6).

*Subpart C—The Section 106 Process*

The heart of the Section 106 process is in Subpart C. The provisions in this Subpart have changed to allow for more agency-SHPO decisionmaking without Council involvement. To offset the Council's removal from routine cases, this Subpart gives the Council the authority to resolve disputes between Federal agencies and SHPOs and to monitor agency performance and provides an expanded opportunity for the public to request the Council to intervene in particular cases.

Section 800.7(a–e) sets forth the steps that an agency official must go through prior to the identification of historic properties. These provisions emphasize the need for early planning and coordination, both with reviews under other authorities and with other individuals and organizations, prior to the initiation of the identification stage. The identification and evaluation stages (Section 800.8) remain essentially the same as the present regulations, except that the regulation adds a provision allowing for Council review of agency decisions made during the identification and evaluation stages (Section 800.8(e)). As a supplement to Section 800.8, a non-binding Appendix has been added to provide additional clarification on the identification process and the establishment of the area of potential effects.

The revised regulations eliminate the determination of effect step (and the existing Criteria of Effect) currently in the Section 106 process and allow an agency to apply the criteria of adverse effect directly after completing the identification stage (Section 800.9(a)). An agency is no longer required to notify the Council of a finding of no adverse effect, but the Council may review such a finding if requested or if the Council deems it appropriate (Section 800.9(d)). The revised regulations also eliminate the exceptions to a finding of adverse effect and incorporate those exceptions into a new provision allowing for conditional no adverse effect agreements (Section 800.9(b)(2)). The intent of the addition of the conditional no adverse effect agreement provision is to allow agencies and SHPOs flexibility in reaching routine agreements while maintaining agency accountability. It formally recognizes a practice that has already become widespread under the current regulations.

In order to resolve adverse effects more efficiently, the revised regulations provide more autonomy to the SHPO and the Federal agency. The revised regulations establish a method for resolution of adverse effects without the Council's participation, changing the current two-party Memorandum of Agreement process (Sections 800.10(a)(1) and 800.10(c)(1)). Under this provision, if the Council elects not to participate in the negotiation, the agency and the SHPO may execute a Memorandum of Agreement which is sent to the Council, but need not be executed by the Council (Section 800.10(c)(1)). The revised regulations also clarify the use, force and effect of a Memorandum of Agreement and its provisions (Section 800.10(d)).

If a Memorandum of Agreement cannot be reached during two-party consultation, the parties must seek the Council's participation and enter three-party consultation before terminating negotiations. If a Memorandum of Agreement cannot be reached, the revised regulations set forth more detailed provisions on termination of negotiations and Council comments (Section 800.11)). With regard to Council comments, the new regulations require that the head of the agency respond to the Council's comments in accordance with Section 110(l) of the NHPA.

In responding to comments made by respondents to the Council's survey of Section 106 users and in order to balance the Council's removal from routine Section 106 cases, the revised regulations establish a new section on agency monitoring and compliance (Section 800.12). This section provides for the review of an agency official's findings, providing more detail than the review procedures contained in the current regulations at Section 800.6(e). The monitoring and compliance section also includes a new provision for the issuance of a notice of violation to an agency which has violated or, in the case of a preliminary notice of violation, is about to violate the requirements of the NHPA. In response to the 1992 amendments which added Section 110(k), the Council has established procedures addressing anticipatory demolition.

*Subpart D—Alternative Procedures*

This Subpart provides options for complying with the requirements of Section 106 other than those set forth in Subpart C. Its purpose is to encourage agencies to integrate the Section 106 process into their internal planning procedures. Section 800.16 of the revised regulations explains that counterpart procedures, as described in Sections 800.4 and 800.5(a), Programmatic Agreements, as described in Section 800.5(b), provide alternative means of compliance. In accordance with Section 101(d)(5) of the NHPA, the Council has added a new provision to establish a process by which an Indian tribe may substitute its tribal historic preservation regulations for the Council's regulations for review of undertakings on tribal lands (Section 800.17). The Council has also attempted to address the unique situations created by disasters or emergencies and has revised its emergency regulations to emphasize the need for the development of agency counterpart procedures which establish a plan for considering historic properties during responses to disasters and emergencies. The revised emergency regulations delete reference to 36 CFR Part 78 in order to encourage agencies to develop their own procedures for dealing with disasters. The Council has limited the applicability of the regulations to natural disasters or emergencies declared by the President or by an Agency Official.

*Subpart E—Coordination With Other Authorities*

As an expansion and revision of the current regulations regarding agency coordination, requested by surveyed users, the revised regulations establish more detailed guidance on coordination with the National Environmental Policy Act and indicate other relevant statutes where coordination is desirable (Section 800.19).

**III. Issues Deserving Special Attention From Commenters**

In the development of these revisions, the Council determined that several issues warranted special attention from commenters. These issues fall into three categories: (1) areas of particular concern to the Council on which the views of users and the public are particularly solicited; (2) provisions that could be drafted in one or more alternative ways and views are sought on the best alternative; and (3) questions about actions that could be taken to improve the functioning of the Section 106 process, but that would not be

specifically included in the regulations. The Council invites commenters to give these issues special consideration and provide views for its use.

1. Agency Implementing Procedures

Section 110(a)(2)(E)(i) of the NHPA requires that each Federal agency have procedures for compliance with Section 106 that are consistent with the Council's regulations. The Secretary of the Interior, acting through the Director of the National Park Service, and the Council share oversight for this provision, since the Secretary is charged with providing guidance on implementing Section 110 responsibilities. The Council wishes to encourage Federal agencies to develop such procedures to adapt the Section 106 process to their particular needs and to better integrate Section 106 into their regular planning processes. Subpart B of the revised regulations sets forth criteria for evaluating consistency; outlines a process for Council review of such procedures; and defines the consequences of a Council finding regarding consistency. Does the proposed process meet the need for agency program oversight? Are there ways the regulations could better encourage Federal agencies to adopt the required procedures in a timely manner? Are there better alternatives to the proposed consistency standards and review process? Are the criteria appropriate to meet the objective on achieving internal Federal agency procedures that effectively implement Section 106?

2. Exemption of Certain Undertakings From the Section 106 Process

As part of the development of agency procedures to implement Section 106, the proposed regulations include a new provision that will allow agencies to waive the Section 106 review for categories of undertakings which generally would not have an effect on historic properties. Since the use of categorical exclusions has been a major component of the NEPA process, there is the potential that this provision may be confusing. Further, approval of such a listing may incorrectly infer that the exemption of a class of undertakings means that an included undertaking could never result in adverse effect to historic properties. Should the procedures for categorical exemptions be included in the revised regulations? Should they be further distinguished from NEPA categorical exclusions to avoid confusion? Are the criteria for categorical exemptions too broad or too narrow? Should parties other than the agency and the Council be able to require individual Section 106 reviews for undertakings previously listed as categorical exclusions?

3. Regulation Versus Guidance

When surveyed, users of the current Section 106 regulations generally requested more specificity and guidance on various provisions of the regulations. The revised regulations respond to that concern. Are the regulatory provisions sufficiently detailed or have they become too specific? Where should any changes be made? Should some existing material or additional material be set forth in appendices to the regulations or in separate, subsequently issued guidance documents?

4. Public Participation

The proposed regulations rely heavily on increased access for the public to the Section 106 process to offset the Council's reduced role in individual cases. These enhanced opportunities for public involvement anticipate both a greater public role in shaping decisions regarding the treatment of effects on historic properties and a more active watchdog function for the public to ensure that procedures are followed and decisions are made properly. Conversely, expanded public participation can impose burdens on Federal planning processes and adequate opportunities for public input often require that extra efforts and time be expended by Federal officials. The revised regulations attempt to strike a balance between these two extremes, with an emphasis on public access to the process. Has this balance been struck effectively? Are there specific places where public notification or participation should be strengthened or reduced? Should the regulations be more specific on public participation or should additional guidance be provided in less formal channels, such as guidance documents?

5. Role of Certain Interested Parties

The proposed regulations seek to clarify and enhance the involvement of individuals and organizations that have significant interests in the negotiating process designed to avoid or minimize adverse effects (See Section 800.10(b)(1)). One such group is owners of properties affected by the undertaking and whose interests may be impacted by decisions made in the Section 106 process regarding the avoidance or mitigation of the undertaking's adverse effects on historic properties. The proposed regulations allow all owners of affected properties to participate in negotiations for a Memorandum of Agreement, provided that the Council can limit participation to a representative if the number of owners desiring to participate becomes unwieldy. Is this a reasonable balance of access and procedural efficiency? Should only owners of historic properties be given this status? How broadly should "affected" be defined?

6. Substitution of State and Local Review Processes for These Regulations

The current regulations allow a Certified Local Government (CLG), as established under Section 101(c)(1) of the NHPA, to assume the role of the State Historic Preservation Officer (SHPO) in the Section 106 review when the Council, SHPO, and local government are in agreement. The proposed regulations delete this provision, in the interest of avoiding too many variations on the Section 106 process and resultant confusion. Should the current role of CLGs be maintained? Should it be expanded to allow review procedures established under local law and administered by a CLG to substitute for the Council's regulations? Should the regulations require Federal agencies to routinely consult with CLGs in addition to or in lieu of consultation with SHPOs? The current regulations allow State review systems to substitute for the Federal process under certain circumstances. The revised regulations delete this. Should it be retained and, if so, should it be modified from its current form?

7. Role of the Federal Preservation Officer

Section 110(c) of the NHPA requires Federal agencies to designate an official to be responsible for coordinating the agency's activities under the NHPA. However, the position and function of the Federal Preservation Officer (FPO) vary widely from agency to agency and the revised regulations are currently silent on the issue. Given the key role the NHPA intends for the FPO to play as a central agency-wide coordinator, should the Section 106 regulations define a role for the FPO? If so, should it be with regard to all individual project review, terminations where Council member comment is sought (Section 800.11), the development of agency procedures (Subpart B) or something else?

8. Disputes Over Application of the Regulations

When surveyed, users reported a serious shortcoming in the current regulations with the lack of any process to resolve disputes over when Section 106 applies and over the various determinations made in the Section 106

process. The proposed regulations authorize the Council to do this at several points. These include whether an action is an "undertaking" (Section 800.7(a)), what the area of potential effects is (Section 800.8(a)), whether historic properties are present (Section 800.8(e)) and whether documentation to support agency determinations is adequate (Section 800.14(f)). Such determinations would be legally binding for purposes of Section 106. Alternatives to Council resolution include giving the Federal agency the authority to make these determinations, referring the matter to a third party such as the Office of Management and Budget or the Justice Department or continuing the current situation where the absence of a recognized administrative decisionmaker leaves resolution to the Federal courts, but only if a formal legal challenge is made. Is the proposed system the best alternative?

9. Reviews and Appeals

There are several points in the current Section 106 regulations which provide an opportunity for Council review of agency decisions and for public appeals to the Council. The proposed regulations expand the right to appeal Federal agency decisions to the Council by giving the public a broad right to request review of an agency decision, although the Council may determine that the request is not timely. (See Section 800.12(a)(1).) This expanded appeal process is intended to serve as a balance for the Council's withdrawal from regular involvement in agency-SHPO decisions in the Section 106 process. While the regulation (Section 800.12(a)(1)) allows an agency to go forward with an undertaking while the Council conducts its review, the open-endedness of the appeals process diminishes the finality of Section 106 compliance for Federal agencies. Is the appeals mechanism as proposed an effective means to balance the Council's reduced role in the review of individual undertakings? Should it be broader or narrower? Could the provision be revised to give a greater degree of finality to the process and also afford the public fair access to the Council?

10. Notice of Violation

The proposed regulations authorize the Council to issue a preliminary or final notice of violation when the Council determines that a Federal agency has acted in violation of Section 106 or the Council's regulations. (See Section 800.12(d).) Under the current regulations, the Council may inform an agency when it finds the agency in violation, or in danger of violation, of Section 106 and the Council's regulations, but such action lacks any official sanction under the regulations and is viewed as purely advisory. The concept of a formal notice of violation, adapted from other Federal environmental protection processes, is in response to widespread concern that the current regulations lack effective means of enforcement. Is the proposed notice of violation an appropriate method? Are there other techniques or actions within the Council's legal authority to achieve this objective? Would the presence of stronger enforcement tools encourage the fulfillment of Section 106 responsibilities?

11. Treatment of Archeological Resources

The revised regulations continue the policy of the current regulations with regard to providing expedited review for undertakings with effects limited to archeological resources. The current process allows such cases to be processed as No Adverse Effect Determinations, provided that the values of the resource are limited to scientific data and that data will be recovered in manner consistent with the Secretary of the Interiors standards and guidelines. The revised regulations would essentially continue this exception, but as a Conditional No Adverse Effect Agreement. The regulations further clarify that such treatment is not available if there is the potential for human remains to be affected or traditional cultural values are present. Should this approach be pursued or should undertakings that threaten to destroy archeological resources, regardless of the presence of human remains or traditional cultural values, be considered to have an adverse effect and processed according to Section 800.10?

12. Coordination With the National Environmental Policy Act

An identified shortcoming in the current Section 106 regulations is the limited guidance provided for coordination between Section 106 reviews and those conducted under the National Environmental Policy Act (NEPA). The revised regulations contain expanded provisions (Section 800.19). Is the content sufficient? Are there specific areas that warrant more or less detail? Should similar guidance be provided for other related laws, such as Section 4(f) of the Department of Transportation Act?

13. Use of Information Technology

The rapid advances in information technology and the widespread access of Federal agencies and other Section 106 participants to it offers opportunities to improve Section 106 case processing. Electronic filing of certain agency notices and determinations with the Council is one example. Are there specific places in the process where this kind of innovation should be encouraged? Do the regulations need to be modified to facilitate the use of contemporary information technology? Should formats for electronic submission of information be specified in the regulations or related guidance documents?

## IV. Impact Analysis

*A. The Regulatory Flexibility Act*

The proposed rules will not have a significant economic impact on a substantial number of small entities. The Council's regulations, in their current and revised form, only impose obligations on Federal agencies. If a Federal agency is legally authorized and chooses to delegate its responsibility to local governments, then that Federal agency must determine whether or not its delegation will have a significant economic impact on a substantial number of small entities.

*B. The Paperwork Reduction Act*

The proposed rules do not impose reporting requirements or the collection of information as defined in the Paperwork Reduction Act.

*C. The National Environmental Policy Act*

Pursuant to 36 CFR Part 805, National Environmental Policy Act Implementation Procedures, the Council has determined that an Environmental Impact Statement is not required.

*D. Executive Order 12866*

The Council is exempt from compliance with Executive Order 12866 pursuant to a memorandum issued by the Office of Information and Regulatory Affairs on October 12, 1993. Although the Council is exempt from compliance, the Council has complied with the principles set forth in the Order by identifying problems in our regulatory process and seeking to modify our regulations in order to establish a more efficient and practical regulatory framework. The Council has sought the views of the public, including State, local and tribal entities, through the use of focus group meetings, questionnaires and solicitation of informal advice. Furthermore, the Council has

voluntarily submitted this regulation to the Office of Management and Budget for review in accordance with the Executive Order.

*E. Executive Order 12875*

The Council is exempt from compliance with the documentation requirements set forth in Executive Order 12875. However, the Council has adhered to the principles embodied in the Order. The proposed regulations, like the current regulations, do not mandate State, local and tribal governments to participate in the Section 106 process, but rather, mandate Federal agencies to inform and request the involvement of such sectors. The State, tribal or local governments have the option of declining to participate in the process. Thus, the regulations do not impose unfunded mandates. Moreover, the Historic Preservation Fund makes monies available to States that participate in the Section 106 process. The Council's proposed regulations impose obligations on Federal agencies and do not delegate responsibilities to the States. If a Federal agency chooses to delegate its responsibilities, then the requirements of the Order must be addressed by that agency. State, local and tribal representatives have been an integral part of the development of the proposed rules as members of the Council's Regulations Task Force, as participants in focus groups, and as respondents to the Council's questionnaire. The proposed regulations provide a flexible process which includes various alternative procedures, including categorical exemptions, programmatic agreements and development of counterpart procedures to comply with the requirements of Section 106.

*F. Executive Order 12898*

The Council is not required to comply with this Order. Nevertheless, the regulations implementing Section 106 do not pose environmental risks, but rather, seek to avoid adverse effects on historic properties in all areas of the United States.

*G. Memorandum Concerning Government-to-Government Relations with Native American Tribal Governments*

The Council has fully complied with this Memorandum. A Native American representative serves as a member of the Council and as a member of the Council's Regulations Task Force. The proposed regulations enhance the opportunity for Native American involvement in the Section 106 process and clarify the obligation of Federal agencies to consult with Native Americans, fulfilling the objectives of the 1992 NHPA amendments.

**List of Subjects in 36 CFR Part 800**

Administrative practice and procedure, Historic preservation, Indians, Intergovernmental relations.

Dated: September 26, 1994

**Robert D. Bush,**

*Executive Director.*

Title 36, Chapter VIII is amended by revising Part 800 to read as follows:

## PART 800—PROTECTION OF HISTORIC AND CULTURAL PROPERTIES

Sec.

**Subpart A—Background and Policy**

800.1 Purposes and participants.
800.2 Definitions.

**Subpart B—Federal Procedures to Implement Section 106**

800.3 Qualifying procedures.
800.4 Standards for evaluating consistency.
800.5 Counterpart procedures, programmatic agreements and exempted categories.
800.6 Council review of agency procedures.

**Subpart C—The Section 106 Process**

800.7 Initiation of the Section 106 process.
800.8 Identification of historic properties.
800.9 Assessment of effects.
800.10 Resolution of adverse effects.
800.11 Failure to resolve adverse effects.
800.12 Monitoring and compliance.
800.13 Special requirements for protecting National Historic Landmarks.
800.14 Documentation requirements.
800.15 Properties discovered after approval or during implementation of an undertaking.

**Subpart D—Alternative Procedures**

800.16 Federal agency program alternatives.
800.17 Tribal program alternatives.
800.18 Emergency situations.

**Subpart E—Coordination With Other Authorities**

800.19 Coordination with other authorities.

Appendix A to Part 800—Identifying Historic Properties in Coordination With Other Planning Needs

**Authority:** 16 U.S.C. 470a(d)(2), 470a(d)(6), 470f, 470h–2(a)(2), 470h–2(f), 470h–2(k), 470h–2(l), 470s and 470w.

### Subpart A—Background and Policy

**§ 800.1 Purposes and participants.**

(a) *Purposes of the Section 106 process.* Section 106 requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings. This part defines the manner in which Federal agencies meet both of these statutory responsibilities through the Section 106 process. The Section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings. It is designed to identify potential conflicts between the two and to resolve such conflicts through consultation among the Agency Official, the State Historic Preservation Officer, the Council, and other interested parties during the early stages of planning. By following the steps set forth in this part to assess the effects of an undertaking on historic properties and either resolving those effects through negotiated agreements or obtaining and considering the formal written comments of the Council membership, Federal agencies evidence that they have taken into account the effects of their undertakings on historic properties and have afforded the Council its reasonable opportunity to comment.

(b) *Consultation under this part.* The fundamental principle of the Section 106 process is the identification and resolution of preservation issues in the planning of a Federal undertaking through an open and ongoing exchange of factual information and opinion between the Agency Official and those agencies, organizations, and individuals with an interest in the undertaking's effects on historic properties. This principle is embodied in the concept of consultation, which means the process of seeking, discussing, and considering in good faith the views of other participants in the Section 106 process. Section 110(a)(2)(E) of the Act requires that agency procedures for compliance with Section 106 provide a process for the identification and evaluation of historic properties for listing in the National Register and the development and implementation of agreements, in consultation with State Historic Preservation Officers, local governments, Indian tribes, Native Hawaiian organizations, and the interested public, as appropriate, regarding the means by which adverse effects on such properties will be considered. The goal of the consultation process is to seek ways to avoid or minimize the adverse effects of an undertaking on historic properties. The agency should first seek ways to avoid the adverse effects of an undertaking, and where avoidance cannot reasonably or practicably be achieved, should seek ways to minimize those effects. Destruction of historic properties should always be a last resort. Consultation commences at the earliest stages of planning between the Agency Official and the State Historic Preservation

Officer and continues through the identification of historic properties, the assessment of the undertaking's effects and negotiation to resolve adverse effects, with the addition of other parties at various points and the ongoing opportunity for participation of the public. Consultation in the Section 106 process normally results in agreed upon outcomes and decisions. In the event that there is disagreement, this part provides that the Council will resolve disputes over the application of these regulations and specific findings under them. In the event that consultation fails to result in resolution of an undertaking's adverse effects, the head of the agency retains final decisionmaking authority for the undertaking after obtaining and considering the formal written comments of the Council membership.

(c) *Timing.* Section 106 requires the Agency Official to complete the Section 106 process prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license or permit. This does not bar an Agency Official from expending funds on, or authorizing, nondestructive project planning activities preparatory to an undertaking before complying with Section 106, provided that such expenditures or activities do not restrict the consideration of alternatives to avoid or mitigate adverse effects on historic properties. The Agency Official shall ensure that the Section 106 process is initiated early in the planning stages of the undertaking, when the widest feasible range of alternatives is open for consideration. The Agency Official shall establish a schedule for completing the Section 106 process that is consistent with the planning schedule for the undertaking, the conduct of reviews required under other authorities (See § 800.20), and the final approval of the undertaking.

(d) *Relation of the Section 106 process to agency preservation programs under Section 110.* Section 110(a) of the Act requires a Federal agency to establish a preservation program for the identification, evaluation, and nomination of historic properties to the National Register and the protection of such properties. Agency procedures for compliance with Section 106 are a required element of such a program. Section 110 further requires that agency Section 106 procedures be consistent with this part. Subpart B of this part sets forth standards and procedures for determining consistency. The Council encourages agencies to develop their Section 110 procedures as soon as possible. Unless or until an agency has formally adopted its procedures and completed the process for substitution, including Council review (§ 800.3(c)), this part governs the actions taken by an agency to take into account the effects of a proposed undertaking on historic properties and afford the Council a reasonable opportunity to comment in accordance with Section 106 of the Act.

(e) *Participants in the Section 106 process.*—(1) *Agency Official.* The Agency Official with jurisdiction over an undertaking has legal responsibility for complying with Section 106. It is the Agency Official's responsibility to determine whether the agency's proposed action is an undertaking; establish an undertaking's area of potential effect; identify and evaluate potentially affected historic properties; assess an undertaking's likely effect upon them; seek and consider alternatives to avoid or reduce any adverse effects upon historic properties; decide upon an appropriate resolution of adverse effects; and afford the Council its comment opportunity.

(i) *Assistance by non-Federal parties.* The Agency Official may use the services of grantees, applicants, consultants, or designees to prepare the necessary information and analyses, but remains legally responsible for Section 106 compliance, including all determinations charged to the Agency Official under this part. If any document or study is prepared by a consultant or contractor for purposes of compliance with Section 106 and this part, the Agency Official shall furnish guidance and shall independently evaluate the document prior to its approval, taking responsibility for its scope and contents.

(ii) *Multiple agencies involved in an undertaking.* If more than one Federal agency is involved in an undertaking, each agency has the responsibility for compliance with Section 106 and this part. The Council and the Federal agencies, in consultation with the Council, may mutually agree to designate a lead Federal agency. The lead Federal agency shall identify the appropriate official to serve as Agency Official for the purposes of this part. Assumption of lead agency status carries with it the responsibility to act on behalf of all participating Federal agencies during Section 106 review, addressing their collective responsibilities under Section 106 and this part. Designation of one agency as lead Federal agency does not abrogate the other Federal agencies' responsibilities to participate in the negotiation process if the Council deems it necessary, and to comply with the requirements of Section 106 and this part.

(2) *State Historic Preservation Officer.* The State Historic Preservation Officer coordinates State participation in the implementation of the National Historic Preservation Act and is a key participant in the Section 106 process. The role of the State Historic Preservation Officer is to consult with and assist the Agency Official in identifying historic properties, assessing effects upon them, and considering and deciding upon the resolution of adverse effects. The State Historic Preservation Officer reflects the interests of the State and its citizens in the preservation of their cultural heritage and helps the Agency Official identify parties interested in an undertaking, effects upon historic properties, and alternatives that may avoid or reduce adverse effects upon historic properties.

(3) *Council.* The Council is responsible for promulgating regulations to implement Section 106 in its entirety, consulting with and commenting to the Agency Official on an undertaking that affects historic properties, interpreting this part, and generally overseeing the operation of the Section 106 process. The Council may participate at any point in the Section 106 process at its own initiative.

(4) *Interested parties.* (i) Interested parties are those individuals and organizations that are identified by the Agency Official or who indicate to the Agency Official, the State Historic Preservation Officer or the Council in accordance with this part their concern with the effects of an undertaking on historic properties. If the State Historic Preservation Officer or the Council receive notification from interested parties, they shall notify the Agency Official. This part requires that particular interested parties be invited to participate in the Section 106 process under certain circumstances. In addition, whenever the Agency Official, the State Historic Preservation Officer, and the Council, if participating, agree that active participation of an interested party will advance the objectives of Section 106, they may invite that party to participate. Anyone who wishes to participate in the Section 106 process as an interested party should notify the Agency Official in writing and make the State Historic Preservation Officer and the Council aware of that request.

(ii) Interested parties may include:

(A) *Local governments.* Local governments are encouraged to take an active role in the Section 106 process when undertakings affect historic properties within their jurisdiction. When a local government has legal responsibility for Section 106 compliance under programs such as the

Community Development Block Grant Program, participation as the Agency Official is required. When no such legal responsibility exists, units of local government may request to participate in the Section 106 process.

(B) *Applicants for Federal assistance, permits, and licenses.* When the undertaking is proposed by an applicant for Federal assistance or for a Federal permit or license, the applicant may participate in the Section 106 process in the manner prescribed in this part.

(C) *Owners of affected properties.* Individuals or organizations that own property that may be affected by an undertaking may request to participate. Qualifying property is not limited to historic property, but may include any real property affected directly or indirectly by the undertaking.

(D) *Other individuals and organizations* that have notified the Agency Official of their concern about the effects of the undertaking on historic properties.

(5) *Indian tribes and Native Hawaiian organizations.* (i) Section 101(d)(6)(B) of the Act requires the Agency Official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. To meet this responsibility, the Agency Official, at the outset of the Section 106 process, shall identify Indian tribes and Native Hawaiian organizations likely to have such interests and notify them of their opportunity to participate in the Section 106 process. The Agency Official shall provide for Indian tribe and Native Hawaiian participation in accordance with guidance issued by the National Park Service and the following principles:

(A) Consultation shall be designed to identify the Indian tribe's or Native Hawaiian organization's general concerns and interests regarding historic properties, and to seek their assistance in identifying historic properties and assessing effects on such properties. The Agency Official shall commence consultation through the Indian tribe's or Native Hawaiian organization's governing body and also include traditional cultural authorities and members of traditional communities where appropriate.

(B) To the extent feasible, consultation shall be initiated prior to any other public involvement procedures, in order to identify and resolve possible concerns about the confidentiality of information on historic properties. If the Indian tribe or the Native Hawaiian organization requests confidentiality, the Agency Official shall use the authority of Section 304 of the Act to protect the confidentiality of information about historic properties.

(C) Consultation shall be carried out in a manner that respects the cultural values, modes of communication, and systems of interaction used by the Indian tribe or Native Hawaiian organization. The Agency Official shall be sensitive both in choosing a culturally appropriate manner of communication and in timing a request for views from Indian tribes and Native Hawaiian organizations. The Agency Official shall initiate efforts to obtain such views early enough in the planning process, if necessary prior to other public involvement, to allow adequate time for responses and discussion of relevant preservation and traditional cultural issues.

(D) Consultation shall include an Indian tribe that does not reside in the vicinity of the undertaking when the Indian tribe has an interest in historic properties affected by the undertaking and has notified the Agency Official of that interest.

(ii) When an Indian tribe has assumed the functions of a State Historic Preservation Officer in the Section 106 process with respect to tribal lands under Section 101(d)(2)(C) of the Act, the Agency Official shall consult with the Indian tribe in accordance with the plan prepared by the tribe pursuant to that section. The Agency Official need not consult with the State Historic Preservation Officer except:

(A) To the extent such consultation is stipulated in the plan pursuant to Section 101(d)(2)(D)(ii) of the Act;

(B) With regard to effects on historic properties located on non-tribal lands; or

(C) When the State Historic Preservation Officer requests to participate in consultation as an interested party.

(6) *The public.* The Council values the views of the public on historic preservation questions and encourages maximum public participation in the Section 106 process. This part defines specific points in the process where the Agency Official is required to provide the public with information concerning an undertaking and its effects on historic properties and to provide opportunities for public comment and input. The public may also provide its views at other points in the process and the Agency Official should consider those views in decisionmaking. This part also identifies specific opportunities for the public to seek Council review of an Agency Official's findings under this part. Members of the public should become familiar with these points for involvement in order to maximize their participation in the Section 106 process. The Agency Official's efforts to seek and consider the views of the public shall reflect the nature and complexity of the undertaking and its effects on historic properties.

(i) The public may provide its views to the Agency Official, the State Historic Preservation Officer, the Council, and interested parties during the determination of the area of potential effects (§ 800.8(a)(1)), the assessment of the need for specific actions to identify historic properties (§ 800.8 (b)), the evaluation of historic significance (§ 800.8(c)), the assessment of effects (§ 800.9(a)), the resolution of adverse effects (§ 800.10), and the preparation of Council comments (§ 800.11(b)). The relevant sections of this part provide details on how the public participates.

(ii) The public may examine findings made by an Agency Official during the Section 106 process along with the documentation supporting such findings and responses provided by the State Historic Preservation Officer or the Council. These include the Agency Official's decision regarding whether an action is an undertaking (§ 800.7(a)), the Agency Official's finding as to the area of potential effects (§ 800.8(a)(1)), the Agency Official's evaluation of a property's historic significance (§ 800.8(c)), the Agency Official's finding regarding the presence of historic properties (§ 800.8(d)), the Agency Official's finding regarding the undertaking's effect on historic properties (§ 800.9), and any Memorandum of Agreement executed to resolve adverse effects (§ 800.10(c)). Any member of the public may request the Council to review any of the preceding findings.

(iii) Members of the public may request to participate in the Section 106 process as interested parties in accordance with § 800.1(e)(4)(iv). The request should be made early in the Section 106 process and in writing to the Agency Official. Copies of the request should be provided to the appropriate State Historic Preservation Officer and the Council.

(iv) When issuing notice to the public in accordance with this part, an Agency Official shall adequately inform the public of historic preservation issues in order to elicit public views on such issues that can then be considered and resolved in decisionmaking. The Agency Official shall determine appropriate channels for providing notice, considering the nature of the

affected public and culturally appropriate communication.

(v) Agencies should use their established public participation procedures when they meet the public involvement requirements set forth in this part.

**§ 800.2 Definitions.**

(a) *Act* means the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470–470w–6.

(b) *Agency* means agency as defined in 5 U.S.C. 551.

(c) *Agency Official* means the Federal agency head or a designee with legal authority over a specific undertaking, including any State, local, or tribal government official who has been delegated legal responsibility for compliance with Section 106 in accordance with law.

(d) *Anticipatory Demolition* means an action of an applicant who, with intent to avoid the requirements of Section 106, has intentionally significantly adversely affected a historic property to which an agency grant of a loan, loan guarantee, permit, license, or other assistance relates, or an inaction of an applicant who, having the legal power to prevent it, allowed such a significant adverse effect to occur.

(e) *Approval of the expenditure of funds* means any final agency decision approving the eligibility of an undertaking for Federal funds or financial assistance, including any agency decision that may be subject to an administrative appeal or rehearing procedure and conditional decisions subject to reevaluation by the agency.

(f) *Area of potential effects* means the geographic area or areas within which an undertaking may directly or indirectly cause changes, whether beneficial or adverse, to the character or use of historic properties, if any such properties exist. The area of potential effects is not limited to land under Federal jurisdiction or control or land within a Federal construction, right-of-way, or permit area. (See Appendix A of this part for further discussion).

(g) *Comment* means the findings and recommendations of the Council membership formally provided in writing to the head of a Federal agency under Section 106.

(h) *Conditional No Adverse Effect Agreement* means an agreement between an Agency Official and a State Historic Preservation Officer that an undertaking will have no adverse effect, because the undertaking is being conducted in accordance with specified conditions.

(i) *Consultation* means the good faith process of seeking, discussing, and considering the views of other participants in the Section 106 process as set forth in § 800.1(b).

(j) *Council* means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

(k) *Council membership* means the full membership of the Council or a subgroup of members, numbering not less than three, appointed by the Chairman to carry out specific responsibilities under this part.

(l) *Foreclosure* means the action or inaction of a Federal agency which precludes the Agency Official from obtaining, considering and acting on the Council's comments on the full range of measures to avoid or minimize the adverse effects in accordance with § 800.12(b).

(m) *Head of the agency* means the chief official of the agency responsible for all aspects of the agency's actions. If a State, local or tribal government has been delegated responsibility for compliance with Section 106, the head of that unit of government shall be considered the head of the agency.

(n) *Historic property* means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. For the purposes of this part, this term includes but is not limited to, artifacts, records, and remains that are related to and located within such properties. The term further includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization which meet the criteria for inclusion in the National Register of Historic Places. The term "eligible for inclusion in the National Register" includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet National Register listing criteria.

(o) *Indian tribe* means an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in Section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(p) *Interested party* means any individual or organization that has indicated to the Agency Official, State Historic Preservation Officer or Council its concern with the effects of an undertaking on historic properties.

(q) *Local government* means a city, county, parish, township, municipality, borough, or other general purpose political subdivision of a State.

(r) *Memorandum of Agreement* means the document that records the terms and conditions which have been agreed upon to resolve the adverse effects of an undertaking upon historic properties.

(s) *National Historic Landmark* means a historic property that the Secretary of the Interior has designated a National Historic Landmark.

(t) *National Register* means the National Register of Historic Places maintained by the Secretary of the Interior.

(u) *National Register Criteria* means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR Part 60).

(v) *Native Hawaiian* means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(w) *Native Hawaiian organization* means any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians.

(x) *Notice of Violation* means a notification from the Council of its finding in accordance with § 800.12(d) that an Agency Official has failed to comply with Section 106 and this part.

(y) *Secretary* means the Secretary of the Interior.

(z) *State Historic Preservation Officer* means the official appointed or designated pursuant to Section 101(b)(1) of the Act to administer the State historic preservation program or a representative designated to act for the State Historic Preservation Officer.

(aa) *Traditional community* means the members of a recognizable ethnic group who continue to live according to beliefs and traditions passed down from previous generations.

(bb) *Traditional cultural authority* means an individual or a group of individuals in an Indian tribe, Native Hawaiian organization, or other social or ethnic group who is recognized by members of the group as knowledgeable in the group's traditional history and cultural practices.

(cc) *Tribal lands* means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

(dd) *Undertaking* means any project, activity, or program under the direct or indirect jurisdiction of a Federal agency that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects. It includes any project, activity, or program that is carried out by or on behalf of the agency; is financed in whole or in part with Federal financial assistance; requires a Federal permit, license or approval, including agency authority to disapprove or veto the project, activity, or program; or is subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency. Undertakings include new and continuing projects, technical assistance pertaining to a specific site and related to the provision of Federal financial assistance, activities, or programs, renewals or reapprovals of such assistance, activities, or programs, and any of their elements not previously considered under Section 106.

## Subpart B—Federal Procedures to Implement Section 106

### § 800.3 Qualifying procedures.

(a) *Purpose.* Section 110(a)(2) of the Act directs each Federal agency to establish a preservation program for the identification of historic properties, their evaluation and nomination to the National Register, and their protection. Section 110(a)(2)(E) of the Act requires that each Federal agency preservation program ensures that the agency's procedures for compliance with Section 106 are consistent with the Council's regulations; provides a process for the identification and evaluation of historic properties for listing in the National Register and for developing and implementing of agreements, in consultation with State Historic Preservation Officers, local governments, Indian tribes, Native Hawaiian organizations, and the interested public, as appropriate, regarding the means by which adverse effects on such properties will be considered; and provides for the disposition of Native American cultural items from Federal or tribal land in a manner consistent with Section 3(c) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001–3013). This subpart sets forth standards for making agency procedures consistent with the Council's regulations and establishes the process by which the Council will evaluate such procedures. This subpart sets forth standards for evaluating

(b) *Definition of procedure.* For the purposes of this subpart, any formal statement of agency policy or process that deals with the implementation of Section 106 shall be considered a procedure. Included are formal regulations and other procedures that are agency-wide in scope or pertain to a specific program, organizational unit, or geographical area.

(c) *Substitution of agency procedures for Council regulations.* An agency procedure may substitute for the Council's regulations or any part thereof if it is formally approved by the Council membership as a counterpart procedure or executed through a Programmatic Agreement in accordance with § 800.5. Agency procedures to augment, explain, or an agency without Council membership approval, but the Council membership reserves the right to determine that such a procedure, or any part thereof, is inconsistent with the Council's regulations. If an agency develops a procedure that is not proposed as a counterpart procedure, the agency may follow such procedure to adapt the specific requirements of Subpart C of this part to its programs, provided that the agency's procedure is consistent with the Council's regulations. Agency procedures found by the Council membership to be inconsistent with the Council's regulations are invalid for compliance with Section 106 of the Act to the extent that they are found inconsistent.

### § 800.4 Standards for evaluating consistency.

(a) *Consistency with the Council's regulations.* The Council membership will consider agency procedures to be consistent with the Council's regulations for Section 106 when the agency procedures include the following provisions:

(1) Initiation of the Section 106 process early in the planning and development of the agency's undertakings, coordinated with specific reference to the particular requirements of each agency program, so that identification and evaluation of historic properties, assessment of effects, and resolution of adverse effects occurs before irreversible commitments are made to preferred alternatives that limit the consideration of options which can avoid or reduce such effects;

(2) Use of threshold terms, such as "undertaking" and "area of potential effects," that conform to the definitions and standards set forth in the Council's regulations;

(3) Provision for timely and informed consultation involving State Historic Preservation Officers, the Council, and interested parties in the identification and evaluation of historic properties, assessment of effects, and resolution of adverse effects;

(4) Adequate opportunity for State Historic Preservation Officers, the Council, interested parties, and the public to obtain information on proposed undertakings and to make their views known to Agency Officials so that those views can be effectively considered in the planning of undertakings;

(5) Access to and use of appropriate professional expertise at each step of the Section 106 process, consistent with standards and guidelines promulgated by the Secretary under Section 112 of the Act;

(6) Integration of planning and decisionmaking with normal agency administrative processes and other government-wide requirements to the maximum extent possible, including provisions for considering the needs of State, local, and tribal environmental and historic preservation laws and regulations, with appropriate timing of decision points and actions;

(7) Identification of appropriate officers of the agency to fulfill the duties of the Agency Official in the Section 106 process and proper delineation and communication of the roles and responsibilities of applicants, grantees, and permittees;

(8) Use of culturally appropriate means of communication with Native American and Native Hawaiian communities and individuals, with sensitivity to the confidentiality of information related to historic properties significant to those parties;

(9) A review and reporting system for Section 106 compliance that is integrated into established internal agency environmental audit systems to ensure adequate quality control and promote procedural efficiency;

(10) Provision for adequate safeguards against foreclosure and anticipatory demolition;

(11) Use of procedures that place no greater burden of consultation, coordination, or record keeping on State Historic Preservation Officers, Indian tribes, and Native Hawaiian organizations and interested parties than this part;

(12) Mechanisms to ensure that agency staff, cooperating agencies and organizations, contractors, applicants, permit holders, and others are trained in the use of the procedures; and

(13) Provision for State Historic Preservation Officers, Indian Tribes, and Native Hawaiian organizations, and potentially interested parties to be

notified of the procedures and kept informed about their implementation.

(b) *Consistency with Section 3(c) of Native American Graves Protection and Repatriation Act.* The Council membership will consider agency procedures for compliance with Section 106 to also meet the requirement that they provide for disposition of Native American cultural items in a manner consistent with Section 3(c) of the Native American Graves Protection and Repatriation Act when the agency procedures include the following provisions:

(1) A policy encouraging coordination between actions taken subject to Section 106 and the Native American Graves Protection and Repatriation Act compliance;

(2) Early consultation with appropriate Indian tribes or Native Hawaiian organizations when planning undertakings subject to Section 106 on Federal or tribal lands, which may result in the intentional excavation and removal of Native American cultural items subject to the Native American Graves Protection and Repatriation Act;

(3) Mechanisms to obtain and evidence the consent of the appropriate Indian tribe or Native Hawaiian organization to the intentional excavation and removal of such items from tribal lands when proposed as part of an undertaking or as a mitigation measure pursuant to Section 106; and

(4) Mechanisms to ensure appropriate disposition of any such items intentionally excavated and removed from Federal or tribal lands consistent with the ownership and right of control provisions in Sections 3(a) and 3(b) of the Native American Graves Protection and Repatriation Act.

**§ 800.5 Counterpart procedures, programmatic agreements and exempted categories.**

(a) *Counterpart procedures.* An agency, in consultation with the Council, may develop counterpart procedures to substitute for all of Subpart C of this part. To qualify as counterpart procedures the Council must determine that the procedures are consistent with the Council's regulations in accordance with § 800.4 and approve the procedures prior to publication in the **Federal Register**. Counterpart procedures substitute for the Council's regulations for the purposes of the agency's compliance with Section 106, except that where an Indian tribe has entered into an agreement with the Council pursuant to § 800.17, the agency shall follow tribal historic preservation regulations in lieu of the agency's procedures.

(b) *Programmatic Agreements.* At the request of the appropriate Agency Official, the Council and the Agency Official may negotiate a Programmatic Agreement to govern the implementation of a particular program.

(1) The negotiation shall involve State Historic Preservation Officers, Indian tribes and Native Hawaiian organizations, other Federal agencies, and other interested parties as appropriate.

(2) The Agency Official shall arrange for public notice and involvement appropriate to the subject matter and the scope of the program. Views from the public will be invited and considered during the negotiation of the Programmatic Agreement.

(3) A Programmatic Agreement shall meet the requirements for consistency with the Council's regulations as set forth in § 800.4. The Programmatic Agreement shall result in specific internal agency procedures that shall be issued in accordance with the agency's procedures and policies.

(4) Compliance with the procedures established by an approved Programmatic Agreement satisfies the agency's Section 106 responsibilities for all individual undertakings covered by the agreement until it expires or is terminated.

(5) The Agency Official shall publish notice of an approved Programmatic Agreement in the **Federal Register** and make the agency procedures implementing the Programmatic Agreement readily available to the Council, State Historic Preservation Officers, and the public.

(6) If the Council determines that the terms of a Programmatic Agreement are not carried out, or if such an agreement is terminated, the Agency Official shall comply with Subpart C of this part with regard to individual undertakings covered by the agreement.

(c) *Exempted categories*—(1) *Criteria for establishing.* When an agency has in place a preservation program meeting the requirements of Section 110(a) of the Act, or when an agency is developing a procedure to implement Section 106 in accordance with this subpart, an Agency Official may propose a category of agency undertakings that may be exempted from review under the provisions of this part, if the category meets all of the following criteria:

(i) The action would otherwise qualify as an undertaking in accordance with § 800.2(dd);

(ii) The potential effects of the undertakings within the category upon historic properties are foreseeable and do not by their nature have the potential to result in changes to the character or use of historic properties;

(iii) The agency's procedures establish the category of undertakings as a categorical exclusion under the National Environmental Policy Act, if applicable, consistent with the provisions of 40 CFR 1508.4;

(iv) The agency's procedures provide that the exempted category will not be applicable if the Agency Official, the SHPO, the Tribal Preservation Officer, if participating, or the Council determines that the normally exempted excluded undertaking may have an adverse effect.

(2) *Council review of proposed exempted categories.* The Council membership shall review a request for an exemption that is supported by documentation demonstrating that the criteria of § 800.5(c)(1) have been met. Unless further information is requested by the Council, it shall approve or reject the proposed exemption within 30 days of its submission. If the Council fails to respond within 30 days of a request for an exemption which is supported by adequate documentation, then the requested exemption becomes effective.

(3) *Effect.* Any undertaking that falls within the exempted category approved by the Council shall require no further review pursuant to this part, unless the Agency Official, Council, State Historic Preservation Officer, or Tribal Preservation Officer, if participating, determines that there are circumstances under which the normally excluded undertaking may have an adverse effect upon historic properties.

**§ 800.6 Council review of agency procedures.**

(a) *Initiation of review.* When requested by the appropriate officer of a Federal agency or the Secretary pursuant to Section 110(a)(2)(E) of the Act, the Council shall review a procedure for consistency with the Council's regulations. An agency request shall be accompanied by the full text of the procedure and the information necessary to evaluate the programs and organizational structure of the agency as they are affected by the procedure.

(1) The Council may request additional information necessary to complete its review of the procedure. The Council may also undertake review of an agency's procedures under this section upon its own initiative. The agency shall provide such procedures to the Council when requested.

(2) When reviewing a procedure to evaluate consistency with the Council's regulations, the Council shall also consult with the Secretary, and may provide the agency head and the

Secretary with its views on the consistency of the procedure with the disposition requirements of Section 3(c) of the Native American Graves Protection and Repatriation Act.

(b) *Council finding of consistency.* The Council membership shall make a finding as to the consistency of the procedure with the Council's regulations based on the criteria set forth in § 800.4. The Council shall provide its finding in writing to the officer of the agency who made the request and the head of the agency.

(c) *Approval of counterpart procedures.* If the Council membership finds the procedure consistent, the agency may request the Council membership to approve the procedure as a counterpart procedure to substitute for the provisions of Subpart C of this part. Counterpart procedures must meet the requirements of §§ 800.4 and 800.5.

(d) *Council finding of inconsistency.* If the Council membership finds the procedure inconsistent with the Council's regulations, the Council shall notify the officer of the agency who made the request, the head of the agency, and the Secretary. The notice shall identify the specific provisions that are inconsistent and include any recommendations that the Council may have to make the procedure consistent and suitable for approval as a counterpart procedure.

(1) In the event that an agency procedure is found to be inconsistent with the Council's regulations, the agency shall follow the provisions of the Council's regulations with regard to the inconsistent provisions.

(2) The Council membership's decision as to the consistency of an agency's procedures shall be determinative, in accordance with Section 211 of the Act.

## Subpart C—The Section 106 Process

### § 800.7 Initiation of the section 106 process.

The procedure in this subpart guides Agency Officials, State Historic Preservation Officers, and the Council in the conduct of the Section 106 process. Alternative methods of meeting Section 106 obligations are found in Subpart B of this part, "Federal Procedures to Implement Section 106," and Subpart D of this part, "Alternative Procedures." These include Counterpart Procedures, Programmatic Agreements, and Exempted Categories (§ 800.5) and Tribal Program Alternatives (§ 800.17).

(a) *Establish undertaking.* In accordance with the definition set forth in § 800.2(dd) and with consideration for any categorical exclusions previously established pursuant to § 800.11, the Agency Official shall decide whether an undertaking exists for the purposes of Section 106. If anyone disagrees with the Agency Official's decision and notifies the Council, the Council shall review the decision in accordance with § 800.12(a).

(b) *Coordinate with other reviews.* The Agency Official shall establish a schedule for carrying out the steps of the Section 106 process that considers the overall planning and approval schedule for the undertaking and effective coordination with reviews required under other authorities including, but not limited to, the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act and agency specific legislation, such as Section 4(f) of the Department of Transportation Act. Further information regarding coordination of the Section 106 process with those authorities is found in Subpart E of this part.

(c) *Plan for public participation.* The Agency Official shall commence planning for informing and involving the public in the conduct of the specific steps of the Section 106 process. The Agency Official should seek to identify parties who may be concerned about the effects on historic properties, and to determine the issues that may be involved in dealing with such properties. The Agency Official should consider the likely complexity of preservation issues and the possible extent of public controversy, the nature of the potential effects of the undertaking upon historic properties, the suitability of using established public involvement procedures used by the agency to comply with the National Environmental Policy Act and related authorities, and the overall planning and approval schedule for the undertaking. Where an Agency Official determines that it is appropriate, or the State Historic Preservation Officer or the Council so request, the Agency Official shall establish a specific plan for public involvement and make it available to the State Historic Preservation Officer, the Council, interested parties, and the public at large. The Agency Official must reconsider the needs for public participation as the Section 106 process proceeds.

(d) *Initiate consultation with the State Historic Preservation Officer.* The Agency Official shall determine the appropriate State Historic Preservation Officer or Officers to be involved in the Section 106 process and proceed to consult in accordance with §§ 800.8–800.10.

(1) If the State Historic Preservation Officer declines in writing to participate in the Section 106 process, the Agency Official shall consult with the Council, without the State Historic Preservation Officer, to complete the Section 106 process.

(2) If the State Historic Preservation Officer does not respond within 30 days of receipt to a written request for participation at any step in § 800.8, the Agency Official may assume that the State Historic Preservation Officer concurs in the Agency Official's finding. The Agency Official may consult with the Council to complete the Section 106 process, in lieu of further efforts to obtain a response from the State Historic Preservation Officer.

(3) If the State Historic Preservation Officer does not respond within 30 days of receipt to a written request for participation at any step in §§ 800.9 or 800.10, the Agency Official may not assume such action to indicate the concurrence of the State Historic Preservation Officer with the Agency Official's position. The Agency Official may consult with the Council to complete the Section 106 process, in lieu of further efforts to obtain a response from the State Historic Preservation Officer.

(e) *Identify Indian tribes and Native Hawaiian organizations.* As early as possible in planning the undertaking, the Agency Official shall initiate consultation with any Indian tribe or Native Hawaiian organization that the Agency Official has reason to believe might attach religious and cultural significance to historic properties in the area of potential effects, or cause such contact to be initiated by an applicant for Federal assistance or permission. Such consultation should be designed to identify the tribe's or organization's general concerns and interests regarding historic properties, and to seek the tribe's or organization's assistance in identifying historic properties and assessing effects on such properties. Consultation should be carried out in a manner consistent with § 800.1(e)(5) and continue in the same manner when identifying historic properties, assessing effects, and resolving adverse effects.

### § 800.8 Identification of historic properties.

(a) *Determine scope of identification efforts.* At the earliest feasible stage in planning any undertaking, coordinated with the preparation of any Environmental Assessment or Environmental Impact Statement under the National Environmental Policy Act, and in consultation with the State

Historic Preservation Officer, the Agency Official shall:

(1) Define the area of potential effects, using the definition set forth in § 800.2(f);

(2) Review existing information on historic properties potentially affected by the undertaking, including any data concerning the likelihood that unidentified historic properties exist in the area of potential effects; and

(3) Seek information from local governments, Indian tribes, Native Hawaiian organizations, traditional cultural authorities, other organizations, and interested parties likely to have knowledge of, or concerns with, historic properties in the area and should seek to identify the issues that may be involved in dealing with historic properties in the planning process.

(b) *Locate historic properties.* Based on the information gathered under § 800.8(a) and the State Historic Preservation Officer's opinion on further actions to identify historic properties that may be affected, the Agency Official shall determine the need for further actions, such as field surveys, modeling, informant interviews and ethnographic studies, to identify historic properties. The Agency Official shall make a reasonable and good faith effort to identify historic properties that may be affected by the undertaking and gather sufficient information to evaluate the eligibility of these properties for the National Register. Efforts to identify historic properties shall follow applicable standards and guidelines established by the Secretary and conform to the agency's program to meet the requirements of Section 110(a)(2) of the Act.

(c) *Evaluate historic significance.*—(1) *Apply National Register Criteria.* In consultation with the State Historic Preservation Officer and following the Secretary's Standards and Guidelines for Evaluation, the Agency Official shall apply the National Register Criteria to properties that may be affected by the undertaking and that have not been previously evaluated for National Register eligibility. The passage of time, changing perceptions of significance, or incomplete prior evaluations may require reevaluation of properties previously determined eligible or ineligible.

(2) *Agree that a property is eligible.* If the Agency Official and the State Historic Preservation Officer agree that a property is eligible under the criteria, the property shall be considered eligible for the National Register for Section 106 purposes.

(3) *Agree that a property is not eligible.* If the Agency Official and the State Historic Preservation Officer agree that the criteria are not met, the property shall be considered not eligible for the National Register for Section 106 purposes, subject to any appeal or petition under 36 CFR part 60.

(4) *Resolve questions on eligibility.* If the Agency Official and the State Historic Preservation Officer do not agree, or if the Council or the Secretary so request, the Agency Official shall obtain a determination of eligibility from the Secretary pursuant to the applicable National Park Service regulations.

(d) *Results of identification and evaluation.*—(1) *No historic properties found.* If the Agency Official determines in accordance with § 800.8 (a) through (c) that there are no historic properties within the area of potential effects, the Agency Official shall provide documentation of this finding as set forth in § 800.14(a) to the State Historic Preservation Officer. The Agency Official shall notify known interested parties and make the documentation available for public inspection. Unless the Council determines otherwise in accordance with § 800.12(a), the Agency Official has completed the Section 106 process.

(2) *Historic properties found.* If there are historic properties that the undertaking may affect, the Agency Official shall notify known interested parties and assess effects in accordance with § 800.9.

(e) *Council review of agency findings.* If anyone disagrees with the Agency Official's finding regarding the presence of historic properties, including the determination of the area of potential effects, the Agency Official's efforts to locate historic properties, or the evaluation of historic significance, and notifies the Council, the Council shall review the finding in accordance with § 800.12(a). The Council shall refer questions relating to National Register eligibility to the Secretary for resolution and the Agency Official shall provide relevant documentation to assist the Secretary's review.

**§ 800.9 Assessment of effects.**

(a) *Apply criteria of adverse effect.* In consultation with the State Historic Preservation Officer, the Agency Official shall apply the criteria of adverse effect set forth at § 800.9(a)(1) to historic properties within the area of potential effects, giving consideration to the views concerning such effects provided by interested parties and the public, if any. The Agency Official shall also consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties within the area of potential effects.

(1) *Criteria of adverse effect.* An undertaking is considered to have an adverse effect when it may alter characteristics of a historic property that may qualify the property for inclusion in the National Register in a manner that may diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects may be direct or indirect. Direct effects are caused by the undertaking and occur at the same time and place. Indirect effects include those caused by the undertaking that are later in time or farther removed in distance, but are still reasonably foreseeable. For the purpose of determining adverse effect, alteration to features of a property's location, setting, or use may be relevant, depending on the property's significant characteristics, and should be considered.

(2) *Examples of adverse effects.* Adverse effects on historic properties include, but are not limited to:

(i) Physical destruction, damage, or alteration of all or part of the property;

(ii) Isolation of the property, from or alteration of, the character of the property's setting when that character contributes to the property's qualification for the National Register;

(iii) Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting;

(iv) Neglect of a property which may result in its deterioration or destruction; and

(v) Transfer, lease, or sale of property under the jurisdiction or control of a Federal agency.

(b) *Request State Historic Preservation Officer concurrence.* If the Agency Official believes the effect will not be adverse or proposes to carry out the undertaking in accordance with a Conditional No Adverse Effect Agreement that meets the requirements of § 800.9(b)(2), the Agency Official shall submit the proposed finding or agreement with adequate documentation to the State Historic Preservation Officer for review and concurrence.

(1) *State Historic Preservation Officer response to a submitted finding of no adverse effect.* (i) If the State Historic Preservation Officer concurs with the Agency Official's finding, the Agency Official may proceed and shall carry out the undertaking in accordance with § 800.9(c)(1).

(ii) If the State Historic Preservation Officer fails to respond within 30 days of receipt of the finding, the Agency Official may proceed and shall carry out

the undertaking in accordance with § 800.9(c) .

(iii) If the State Historic Preservation Officer objects and does not propose terms for a Conditional No Adverse Effect Agreement, or the Agency Official does not agree to execute such an agreement, than the effect shall be considered adverse. The State Historic Preservation Officer shall specify the its reasons for objecting to a finding of no adverse effect.

(2) *Conditional No Adverse Effect Agreement.* If the Agency Official proposes to carry out the undertaking in accordance with the requirements of paragraph (b)(2), or the State Historic Preservation Officer objects to the Agency Official's finding of no adverse effect but proposes terms for such agreement, the Agency Official and the State Historic Preservation Officer may execute a Conditional No Adverse Effect Agreement that meets the criteria of § 800.9(b)(2)(i).

(i) A Conditional No Adverse Effect Agreement may be executed when:

(A) The historic property is of significance only for its potential contribution to archeological, historical, or architectural research, is not of value for other public uses including onsite interpretation and adaptive use, and when its significance can be substantially preserved through the conduct of appropriate research or recordation, provided that such research or recordation is conducted in accordance with a plan that meets applicable professional standards and guidelines and has been reviewed by the State Historic Preservation Officer prior to implementation of the plan; or

(B) The undertaking is limited to rehabilitation of buildings and structures and will be conducted in a manner that preserves the historical and architectural value of affected historic property in accordance with plans and specifications that conform to the Secretary's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" and that have been reviewed by the State Historic Preservation Officer prior to implementation; or

(C) The undertaking is limited to the transfer, lease, or sale of a historic property, and adequate restrictions or conditions, legally enforceable within the State, are included to ensure preservation of the property's significant historic features; or

(D) The Agency Official agrees to modify the undertaking in such a way as to avoid any adverse effects; or

(E) The undertaking meets other conditions specified by the Council in accordance with a notice that is published in the **Federal Register.**

(ii) Where the potential exists for the discovery of human remains or cultural items, as defined in the Native American Graves Protection and Repatriation Act, during the implementation of the undertaking, the Agency Official shall consult with Indian tribes, Native Hawaiian organizations, or other concerned descendant individuals and communities in developing the Conditional No Adverse Effect Agreement.

(A) If it is known that human remains or cultural items as defined in the Native American Graves Protection and Repatriation Act are present, a Conditional No Adverse Effect Agreement may not be executed.

(B) If it is not known that human remains or cultural items as defined in the Native American Graves Protection and Repatriation Act are present, then a Conditional No Adverse Effect Agreement may be executed, but shall contain adequate provisions for consultation with Indian tribes, Native Hawaiian organizations, or other concerned descendant individuals and communities in the event of discovery.

(iii) The Agency Official and the State Historic Preservation Officer shall execute a Conditional No Adverse Effect Agreement that specifies the conditions which qualify the undertaking for such treatment. The Agency Official shall file the Conditional No Adverse Effect Agreement with the Council prior to approval of the undertaking and carry out the undertaking in accordance with the agreement.

(iv) Unless anyone requests, the Council shall not review individual Conditional No Adverse Effect Agreements, but may elect to review specific ones at its discretion in accordance with § 800.12(e)(1) .

(v) For the purposes of this part, the Conditional No Adverse Effect Agreement shall be considered a Memorandum of Agreement in accordance with § 800.10(d) and shall govern the undertaking and all of its parts in accordance with Section 110(l) of the Act. Effects covered by the Conditional No Adverse Effect Agreement shall be considered not to be adverse under this part.

(c) *Results of assessment.*—(1) *No adverse effect found.* A finding of no adverse effect in which the State Historic Preservation Officer has concurred, failed to respond, or has executed a Conditional No Adverse Effect Agreement in accordance with § 800.9(b) shall be final, unless the Council determines otherwise in accordance with § 800.12(a). Implementation of the undertaking in accordance with the finding as documented, or in accordance with a Conditional No Adverse Effect Agreement, evidences that the Agency Official has complied with Section 106 and this part. The Agency Official shall maintain a record of the finding or the Conditional No Adverse Effect Agreement, notify all known interested parties, and make the record available for public review before approving the undertaking. Failure to carry out the undertaking in accordance with a finding of no adverse effect or a Conditional No Adverse Effect Agreement requires the Agency Official to reopen the Section 106 process.

(2) *Adverse effect found.* If an adverse effect is found in accordance with this section, the Agency Official shall consult further to resolve the adverse effect pursuant to § 800.10.

(d) *Council review of findings.* If anyone requests, the Council shall review in accordance with § 800.12(a) a finding made by an Agency Official under § 800.9(a) or (b).

**§ 800.10 Resolution of adverse effects.**

(a) *Determine method.* If an adverse effect on historic properties is found, the Agency Official shall consult further with the State Historic Preservation Officer to determine the appropriate method for resolving the adverse effect of the undertaking.

(1) *Resolution with the State Historic Preservation Officer.* If the undertaking and its effects on historic properties do not involve National Historic Landmarks, the preservation issues are not complex, and there is no public controversy over preservation issues, the Agency Official may follow § 800.10(c)(1).

(2) *Resolution with the State Historic Preservation Officer and the Council.* If the undertaking and its effects on historic properties involve National Historic Landmarks, the preservation issues are complex, or there is public controversy over preservation issues, the Agency Official shall follow § 800.10(c)(2).

(b) *Initiate negotiation.* The Agency Official shall use the selected method to develop and evaluate acceptable alternatives or modifications to the undertaking, including avoiding and minimizing adverse effects on historic properties. In consultation with the State Historic Preservation Officer, the Agency Official shall initiate negotiation by involving interested parties, providing documentation, and involving the public.

(1) *Involve interested parties.* The Agency Official shall notify interested parties and invite them to participate in the negotiation as follows:

(i) An Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties within the area of potential effects must be invited to participate in any negotiation.

(ii) An Indian tribe with jurisdiction over tribal lands affected by the undertaking must be invited to participate in any negotiation.

(iii) The Agency Official shall notify the following interested parties who may participate in the negotiation by notifying the Agency Official:

(A) The head of a local government when the undertaking may affect historic properties within the local government's jurisdiction;

(B) Units of local government with an interest in the undertaking and its effects on historic properties;

(C) Applicants for, or holders of, grants, permits, or licenses;

(D) Owners of affected properties, provided that participation may be limited to organizations representing the interests of affected property owners if the Council determines it is necessary;

(E) Traditional cultural authorities and traditional communities with an interest in the undertaking and its effects on historic properties of traditional cultural and religious importance; and

(F) Other interested parties as jointly determined appropriate by the Agency Official, the State Historic Preservation Officer, and the Council, if participating.

(2) *Provide documentation.* The Agency Official shall provide each of the parties to the negotiation with the documentation set forth in § 800.14(c) and such other documentation as may be developed in the course of negotiation to resolve adverse effects.

(3) *Involve the public.* The Agency Official shall provide information to the public and an adequate opportunity for members of the public to express their views on resolving adverse effects of the undertaking. The Agency Official shall use appropriate mechanisms to ensure that the full range of the public's views is represented in the negotiation. The Agency Official, the State Historic Preservation Officer, or the Council may meet with members of the public or conduct a public information meeting for this purpose.

(c) *Resolve adverse effects.*—(1) *Resolution with the State Historic Preservation Officer.* (i) When the Agency Official determines that the nature of the undertaking and its effects do not warrant Council participation in the consultation in accordance with § 800.10(a)(2), the Agency Official shall notify the Council by providing the documentation set forth in § 800.14(c).

(ii) The Council shall notify the Agency Official of its intention to participate in the negotiation within 30 days of receiving the notice. If the Council elects to participate, the Agency Official shall proceed in accordance with § 800.10(c)(2). Failure of the Council to notify the Agency Official within the 30 day time period shall not preclude the Council joining the negotiation process at any later point.

(iii) If the Council does not elect to participate, the Agency Official shall negotiate with the State Historic Preservation Officer and interested parties to seek ways to avoid or reduce the adverse effects by negotiating acceptable alternatives or modifications to the undertaking as proposed.

(iv) If the Agency Official and the State Historic Preservation Officer agree on how the adverse effects will be resolved, they shall execute a Memorandum of Agreement. The Agency Official shall submit the Memorandum of Agreement to the Council with the documentation set forth in § 800.14(d) for review.

(v) The Council shall have 30 days from the receipt of an adequately documented Memorandum of Agreement to review it. Unless the Council objects to the Memorandum of Agreement before this review period ends, the Memorandum of Agreement shall become final. The Council may object when it determines that further negotiation is necessary in accordance with § 800.10(c)(2) because the Agency Official failed to notify the Council pursuant to § 800.10(c)(1)(i); interested parties were not adequately involved; the Memorandum of Agreement contains serious technical or substantive flaws; or public controversy exists.

(vi) If the Agency Official and the State Historic Preservation Officer are unable to agree on the terms of a Memorandum of Agreement, the Agency Official or the State Historic Preservation Officer shall request the Council to join the consultation. Consultation shall proceed in accordance with § 800.10(c)(2).

(2) *Resolution with Council participation.* (i) When the Agency Official determines that Council involvement is warranted in accordance with § 800.10(a)(2), when the Council notifies the Agency Official in accordance with § 800.10(c)(1)(ii), or when the Agency Official, the State Historic Preservation Officer, or the Council so requests, the Agency Official shall consult with the State Historic Preservation Officer and the Council to avoid or reduce the adverse effects by negotiating acceptable alternatives or modifications to the undertaking as proposed. The Agency Official shall invite interested parties to participate in the negotiation in accordance with § 800.10(b)(1). If the Agency Official, the State Historic Preservation Officer, and the Council agree on how the adverse effects will be resolved, they shall execute a Memorandum of Agreement.

(ii) When negotiation is being conducted in accordance with § 800.10(c)(1), the Agency Official, the State Historic Preservation Officer, or any interested party may request the Council to participate. The Council shall determine if it will participate and notify the requestor of its decision within 30 days of the request. The Council may participate at any point in the Section 106 process without such a request. If the Council decides to participate, negotiation shall be conducted in accordance with § 800.10(c)(2).

(d) *Memorandum of Agreement*—(1) *Signatories.* The signatories have the sole authority to execute, amend, or terminate the agreement. The Agency Official and the State Historic Preservation Officer are the signatories to a Memorandum of Agreement executed pursuant to § 800.10(c)(1). The Agency Official, the State Historic Preservation Officer, and the Council are the signatories to a Memorandum of Agreement executed pursuant to § 800.10(c)(2). When an Indian tribe or Native Hawaiian organization has participated in the negotiation, the Agency Official shall invite the governing body of the Indian tribe or the Native Hawaiian organization to concur in any Memorandum of Agreement. Other interested parties may be invited by the signatories to concur in the agreement, but their concurrence is not necessary for the Memorandum of Agreement to take effect. When exercising its authorities under § 800.10(c)(1)(v), the Council will consider any objection to execution of such an agreement raised by an Indian tribe, Native Hawaiian organization, or other interested party.

(2) *Use of a Memorandum of Agreement for special situations.* (i) A Memorandum of Agreement may govern more than one individual undertaking, a large or complex project, or certain situations that do not fall within the normal process of individual project review. These include situations:

(A) When effects on historic properties are similar and repetitive or are multi-State or regional in scope;

(B) When effects on historic properties cannot be fully determined prior to approval;

(C) When non-Federal parties are delegated major decisionmaking responsibilities; or

(D) Where routine management activities are undertaken at Federal installations, facilities, or other land-management units.

(ii) Such a Memorandum of Agreement shall be developed in the same manner as other Memoranda of Agreement under § 800.10, except that if negotiation pertains to a large project involving several undertakings and the parties fail to reach agreement, then the Agency Official shall Comply with §§ 800.8–800.10 for each individual undertaking.

(3) *Duration and reports on implementation.* Any Memorandum of Agreement completed in accordance with this part shall include a provision for monitoring of, and reporting on, the implementation of the terms of the agreement. Reports shall be provided to the State Historic Preservation Officer and the Council, and be made available to other interested parties and for public inspection. A Memorandum of Agreement shall also include provisions for termination or reconsideration of terms if the undertaking has not been implemented within a specified period of time.

(4) *Effect.* A Memorandum of Agreement that has been executed pursuant to this part evidences the Agency Official's compliance with Section 106 and this part and shall govern the undertaking and all of its parts, in accordance with Section 110(l) of the Act. The Agency Official must conform to and carry out the terms of the Memorandum of Agreement to satisfy the requirements of Section 106 and this part.

(5) *Amendments.* The Agency Official, the State Historic Preservation Officer, and the Council may agree to amend a Memorandum of Agreement executed in accordance with § 800.10(c)(2) and to execute an amended Memorandum of Agreement. The Agency Official and the State Historic Preservation Officer may agree to amend a Memorandum of Agreement executed in accordance with § 800.10(c)(1) and execute an amended Memorandum of Agreement, which shall be filed with the Council and take effect unless the Council objects within 30 days of receipt. Failure to agree on amendments leaves the existing Memorandum of Agreement in effect, provided that the Council may terminate any Memorandum of Agreement and comment to the head of the agency on the undertaking in accordance with § 800.11(b).

(6) *Termination.* If one of the signatories determines that the terms of a Memorandum of Agreement cannot be carried out, the Agency Official, the State Historic Preservation Officer and the Council, where appropriate, shall consult to seek amendment of the agreement in accordance with § 800.10(c)(5). If the Memorandum of Agreement is not amended, any of the signatories may terminate the agreement. In that event, the Agency Official shall seek the comments of the Council in accordance with § 800.11(b).

### § 800.11 Failure to resolve adverse effects.

(a) *Termination of negotiation*—(1) *Finding negotiation unproductive.* After participating in consultation to avoid or minimize the adverse effects by negotiating acceptable alternatives or modifications to the undertaking as proposed, the Agency Official, the State Historic Preservation Officer, or the Council may determine that further negotiation will not be productive and terminate negotiation. If negotiation is terminated, the head of the agency or an Assistant Secretary or an officer having major department-wide or agency-wide responsibilities shall then request the Council's comments.

(2) *Documentation requirements.* The official requesting Council comment shall submit the documentation set forth in § 800.14(e) with the request for Council comments and notify other participants in the consultation of the request.

(b) *Comments by the Council*—(1) *Preparation.* The Council shall prepare its comments with an adequate opportunity for the Agency Official, the State Historic Preservation Officer, interested parties, and the public to provide their views on the adverse effects of the undertaking and offer any alternatives or modifications to resolve those effects. The Agency Official shall make a good faith effort to provide additional information available concerning the undertaking, its effects, and possible alternatives or modifications, and shall assist the Council in arranging an onsite inspection and an opportunity for public participation when requested by the Council. The Agency Official shall assist the Council to ensure that any Indian tribe or Native Hawaiian organization is afforded a reasonable opportunity to make its views known during the formulation of Council comments.

(2) *Timing.* The Council shall transmit its comments within 45 days of receipt of a properly documented request from the head of the agency, unless otherwise agreed to by the Agency Official.

(3) *Transmittal.* The Council shall provide its comments to the head of the agency requesting comment with copies to the State Historic Preservation Officer, interested parties, and others as appropriate.

(4) *Response to Council comment.* When the Council has commented pursuant to this paragraph (b), the head of the agency shall consider the Council's comments in reaching a final decision on the proposed undertaking. The head of the agency may not delegate his or her responsibilities pursuant to this paragraph. The head of the agency shall document any decision made pursuant to Section 106 by:

(i) Preparing a record of the decision and the rationale for the decision made by the head of the agency, evidencing the consideration given to the Council's comments;

(ii) Providing that record to the Council prior to the approval of the undertaking;

(iii) Notifying known interested parties of the decision;

(iv) Providing a copy of the record of decision to all interested parties who participated in the negotiation process; and

(v) Notifying the public and making the record available for public inspection.

### § 800.12 Monitoring and compliance.

(a) *Review of Agency Official findings*—(1) *Timeliness.* The Council shall consider a request for review of an Agency Official's finding under this part at any time, regardless of the status of the undertaking in the planning and approval process. The Council may determine that a request for review is not timely and decline to consider the substance of the request. The Council shall deem a request for review timely if it determines that an opportunity exists to influence the effects of an undertaking on historic properties, provided that such a determination shall not preclude the Council from subsequently determining that an agency has foreclosed the Council's opportunity to comment pursuant to § 800.12(b).

(2) *Council review.* The Council shall review the substance of a request for review and provide its conclusions to the Agency Official, the State Historic Preservation Officer, and the requesting party within 30 days. The Council shall reach a determination on the finding that is presented for review and may also advise the Agency Official of appropriate steps to take in light of the Council's determination.

(3) *Agency Official responsibilities.* The Agency Official shall take all measures to avoid adverse effects to historic properties while the Council is reviewing the finding. The Agency Official is not required to delay approval of the undertaking prior to a request for review being filed or during the Council's review of such request, but should recognize that a Council determination may require the Agency Official to reconsider actions previously taken in the Section 106 process. In response to the Council's determination, the Agency Official shall take the appropriate steps specified in this part.

(4) *Council initiation of review.* The Council may review any Agency Official finding made under this part on its own initiative. Such review shall proceed as though a request to the Council has been made.

(5) *Effect of the Council's determination.* In accordance with Section 211 of the Act, the Council's determination on the finding shall be conclusive for the purposes of Section 106 and this part.

(b) *Foreclosure of the Council's opportunity to comment.*—(1) *Notice to Agency Official.* The Council membership may inform the head of an agency that an Agency Official has taken an action that has precluded the Agency Official from completing the requirements of Section 106 in accordance with this part and thereby foreclosed the Council's opportunity to comment. The Council shall notify the Agency Official that it is considering a finding of foreclosure and afford the Agency Official 30 days to provide information for the Council's consideration as to whether the agency has foreclosed the Council's opportunity to comment.

(2) *Consideration of foreclosure.* After providing notice to the Agency Official, the Council membership shall make a final determination as to foreclosure. If the Council membership determines that the Agency Official has foreclosed the Council's opportunity to comment, the Council shall transmit its determination to the head of the agency as a Notice of Violation.

(c) *Anticipatory demolition.* Section 110(k) of the Act specifies that an agency shall not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of Section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or to an applicant who allowed such significant adverse effect to occur and had the legal power to prevent its occurrence. If, after consultation with the Council, the agency determines that circumstances justify granting such assistance, despite the adverse effect created or permitted by the applicant, the agency may allow the grant.

(1) *Information for the Council.* If the Council is apprised of or has reason to believe that anticipatory demolition has occurred, it shall request information from the Agency Official regarding the applicant's action, including, but not limited to:

(i) The actual effect on historic properties, evaluated in the context of the Criteria of Adverse Effect set forth in § 800.9(a)(1);

(ii) Any actions, if any, taken by the Agency Official with respect to the applicant, the undertaking, or the historic properties;

(iii) Any notification given to the applicant regarding the Section 106 process and any other information relating to the applicant's knowledge of the requirements of Section 106 and this part;

(iv) The degree of control of the applicant over the action causing adverse effects;

(v) Any other information bearing on the applicant's intent regarding the action causing the adverse effects; and

(vi) Any comments provided by the State Historic Preservation Officer and any interested parties.

(2) *Council views on anticipatory demolition.* Based on the information provided by the Agency Official and any other information provided to the Council, the Council shall advise the Agency Official of its views regarding whether the applicant has engaged in anticipatory demolition.

(3) *Agency determination.* The Agency Official shall consider the views of the Council in reaching its determination regarding anticipatory demolition. The Agency Official may independently determine that anticipatory demolition has occurred, without seeking the views of the Council.

(4) *Denial of assistance.* If the Agency Official determines that anticipatory demolition has occurred, the Agency Official shall not grant a loan, loan guarantee, permit, license, or other assistance to the applicant, unless after consultation with the Council, the Agency Official determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. In that case, the Agency Official may grant the assistance.

(5) *Consideration of circumstances justifying granting assistance.* When consulting with the Council regarding circumstances that would justify granting the assistance, the Agency Official shall provide the Council with:

(i) The basis for its determination that anticipatory demolition had occurred;

(ii) The Agency Official's assessment of the severity of the damage to historic properties, the significance of the historic properties, the opportunities for mitigation, and the availability of other remedial actions;

(iii) Any information regarding mitigating circumstances or other justification for granting the assistance; and

(iv) Any views or information provided to the Agency Official by the applicant.

(6) *Agency determination regarding justifying circumstances.* The Council shall provide the Agency Official with its written views regarding justifying circumstances. If, after consulting with the Council, the Agency Official determines that circumstances justify granting the assistance, despite the adverse effect, the Agency Official shall notify the Council, the State Historic Preservation Officer and interested parties of its decision and provide documentation on the basis of its finding.

(7) *Review of undertaking.* If the Agency Official decides to grant the assistance, the Agency Official shall complete the Section 106 process for the undertaking in accordance with §§ 800.7 through 800.11.

(d) *Notice of Violation.*—(1) *Basis for notice.* If the Council membership determines that the actions of an Agency Official constitute a violation of Section 106 of the Act or this part, the Council may issue a Notice of Violation to the Agency Official and the head of the agency advising that the agency has failed to meet the requirements of Federal law. The Council membership may determine that a violation of Section 106 has occurred under the following circumstances:

(i) An Agency Official has proceeded with the planning and approval of an undertaking without adequate compliance with Section 106 of the Act and this part;

(ii) An Agency Official or an applicant has failed to carry out the terms of a no adverse effect determination, a Conditional No Adverse Effect Agreement, a Memorandum of Agreement, a Programmatic Agreement, or a counterpart regulation, or failed to comply with a process or requirement originating under such document;

(iii) An Agency Official has taken or sanctioned an action that has resulted in adverse effects to a historic property, including demolition by neglect, prior

to completion of the Section 106 process; or

(iv) An Agency Official has foreclosed the Council's opportunity to comment.

(2) *Procedure.* The Council shall issue a preliminary Notice of Violation to an Agency Official when it believes that a violation of Section 106 or this part has occurred or is about to occur. The preliminary Notice of Violation shall apprise the Agency Official of the basis for the Council's action and request the views of the Agency Official on the issue. The Council membership may, at its discretion, decide to issue a final Notice of Violation to the Agency Official. The final Notice of Violation shall indicate the specific reasons for the Council membership's finding and shall also be provided to the head of the agency.

(3) *Effect.* A Notice of Violation issued by the Council constitutes the opinion of the Council membership that an Agency Official has acted in violation of Section 106 of the Act and this part.

(e) *Reporting.*—(1) *Reports of agency performance.* The Council may review the performance of agencies and other parties under this part and report its findings to the agency Federal Preservation Officer, the head of the agency, the Office of Management and Budget, the Department of Justice, and the Congress, as it deems appropriate.

(2) *Remedial actions.* When the Council determines that an agency has failed to meet its Section 106 obligations in a manner consistent with this part, the Council may notify the appropriate Agency Official that the Council will participate in specific steps of the Section 106 process for review of the agency's undertakings.

### § 800.13 Special requirements for protecting National Historic Landmarks.

Section 110(f) of the Act requires that the Agency Official, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking. When commenting on such undertakings, the Council shall use the process set forth in §§ 800.7 through 800.11 and give special consideration to protecting National Historic Landmarks as follows:

(a) *Resolution of adverse effects.* Any negotiation to resolve adverse effects conducted under § 800.10 shall include the Council;

(b) *Involvement of the Secretary.* The Council shall notify the Secretary of negotiations involving National Historic Landmarks and may request a report from the Secretary under Section 213 of the Act to assist in the negotiation; and

(c) *Report of outcome.* The Council shall report the outcome of the Section 106 process, including its comments or any Memoranda of Agreement, to the President, the Congress, the Secretary, and the head of the agency responsible for the undertaking.

### § 800.14 Documentation requirements.

(a) *Finding of no historic properties.* The required documentation is:

(1) A description of the undertaking, including photographs, maps, and drawings, as necessary;

(2) A description of the undertaking's area of potential effects;

(3) A description of the efforts used to identify historic properties; and

(4) The basis for determining that no historic properties are present.

(b) *Finding of no adverse effect.* The purpose of this documentation is to provide sufficient information to explain how the Agency Official reached the finding of no adverse effect, along with the basis for any Conditional No Adverse Effect Agreement. The required documentation is:

(1) A description of the undertaking and its area of potential effects, including photographs, maps, and drawings, as necessary;

(2) A description of historic properties that may be affected by the undertaking;

(3) A description of the efforts used to identify historic properties;

(4) A statement of how and why the Criteria of Adverse Effect were found inapplicable; and

(5) The views of affected local governments, Indian tribes, Native Hawaiian organizations, Federal agencies, and the public, if any were provided, as well as a description of the means employed to solicit those views.

(c) *Finding of adverse effect and notification to the Council of resolution with the State Historic Preservation Officer.* The required documentation is:

(1) A description of the undertaking and its area of potential effects, including photographs, maps, and drawings, as necessary;

(2) A description of the affected historic properties, with information on the significant characteristics of each property;

(3) A description of the efforts to identify historic properties;

(4) A description of the undertaking's effects on historic properties; and

(5) A description of anticipated public interest and measures to ensure public involvement.

(d) *Memorandum of Agreement.* When a memorandum is submitted to the Council for review in accordance with § 800.10(c)(1)(iii), the documentation, in addition to that specified in § 800.14(c), shall also include a description and evaluation of any proposed mitigation measures or alternatives that were considered to avoid or minimize the undertaking's effects and a summary of the views of any interested parties and the public.

(e) *Requests for comment when negotiation is terminated.* The purpose of this documentation is to provide the Council with sufficient information to make an independent review of the undertaking's effects on historic properties as the basis for informed and meaningful comments to the Agency Official. The required documentation is:

(1) A description of the undertaking, with photographs, maps, and drawings, as necessary;

(2) A description of the efforts to identify historic properties;

(3) A description of the affected historic properties, with information on the significant characteristics of each property;

(4) A description of the effects of the undertaking on historic properties and the basis for the determinations;

(5) A description and evaluation of any alternatives or mitigation measures that the Agency Official proposes to resolve the undertaking's adverse effects;

(6) A description of any alternatives or mitigation measures that were considered but not chosen, and the reasons for their rejection;

(7) Documentation of consultation with the State Historic Preservation Officer regarding the identification and evaluation of historic properties, assessment of effect, and any consideration of alternatives or mitigation measures;

(8) A description of the Agency Official's efforts to obtain and consider the views of affected local governments, Indian tribes, Native Hawaiian organizations, and other interested parties;

(9) The planning and approval schedule for the undertaking;

(10) Copies or summaries of any views submitted to the Agency Official concerning the effects of the undertaking on historic properties and alternatives to reduce or avoid those effects; and

(11) Any additional available information specifically requested by the Council.

(f) *Adequacy of documentation.* The Council shall determine the adequacy of documentation prepared to meet the requirements of this part. If the Council determines that documentation is inadequate, the running of the time

period specified at the relevant section of this part shall be suspended until adequate documentation is submitted.

**§ 800.15 Properties discovered after approval or during implementation of an undertaking.**

(a) *Planning for discoveries.* When the Agency Official's identification efforts in accordance with § 800.8 indicate that historic properties are likely to be discovered during implementation of an undertaking, the Agency Official is encouraged to develop a plan for the resolution of any adverse effects upon such properties if discovered. The plan should be incorporated into any Memorandum of Agreement executed for the undertaking.

(b) *When properties are discovered*—(1) If a plan exists. When an Agency Official has completed the Section 106 process and prepared a plan in accordance with § 800.15(a), the Agency Official shall satisfy the requirements of Section 106 concerning properties discovered during implementation of an undertaking by following the plan.

(2) *If no plan exists.* When an Agency Official has completed the Section 106 process without preparing a plan in accordance with § 800.15(a) and finds after beginning to carry out the undertaking that the undertaking will have an adverse effect upon a previously unidentified historic property, or adversely affect a known historic property in an unanticipated manner, the Agency Official shall resolve the adverse effects by:

(i) Consulting pursuant to § 800.10;

(ii) Consulting pursuant to § 800.15(c); or

(iii) Complying with the Archeological and Historic Preservation Act, 16 U.S.C. 469(a)–(c) and implementing regulations, instead of this part, if the property is principally of archeological significance and subject to the requirements of that Act. When the Agency Official elects to follow this paragraph (b)(2)(iii), the Agency Official shall consult with the State Historic Preservation Officer on the actions proposed and provide the Council with a report on the actions after they are completed.

(c) *Expedited consultation.* When an Agency Official elects to follow this paragraph (c), the Agency Official shall notify the State Historic Preservation Officer and the Council at the earliest possible time, describe the actions proposed to resolve the adverse effects, and request the views of the Council and the State Historic Preservation Officer on the proposed actions. The Council and the State Historic Preservation Officer shall provide an interim response to the Agency Official within 48 hours of the request and a final response to the Agency Official within 30 days of the request.

(d) *Other considerations*—(1) *Eligibility of properties.* When a newly discovered property has not previously been included in or determined eligible for the National Register, the Agency Official may assume the property to be eligible for purposes of Section 106.

(2) *Discoveries on tribal or Federal land.* When a discovery occurs and compliance with this section is necessary on tribal or Federal lands, the Agency Official shall consult with the Indian tribe or other appropriate parties during implementation of this section's requirements and comply with the Native American Graves Protection and Repatriation Act as required.

(3) *Agency responsibilities during resolution of issues involving newly discovered properties.* Section 106 and this part do not require the Agency Official to stop work on the undertaking. Depending on the nature of the property and the undertaking's adverse effects on it, the Agency Official shall make reasonable efforts to avoid or minimize harm to the property until the requirements of this section are met. If the provisions of Native American Graves Protection and Repatriation Act are applicable, the Agency Official must comply with requirements of the Native American Graves Protection and Repatriation Act and may be required to cease the activity in the area of the discovery.

## Subpart D—Alternative Procedures

**§ 800.16 Federal agency program alternatives.**

(a) *Counterpart procedures.* An agency may develop counterpart procedures to substitute for Subpart B of this part. Sections 800.4 and 800.5(a) govern the development of counterpart procedures.

(b) *Programmatic Agreements.* A Programmatic Agreement may be used to fulfill an agency's Section 106 responsibilities for certain activities or programs that would otherwise require numerous individual requests for comments. Programmatic Agreements for programs shall be developed in accordance with § 800.5(b).

**§ 800.17 Tribal program alternatives.**

(a) *Application.* An Indian tribe may enter into an agreement with the Council to substitute tribal historic preservation regulations for the Council's regulations for the review of undertakings on tribal lands.

(b) *Request for Council approval.* An Indian tribe shall request the Council to approve the substitution of tribal historic preservation regulations. The request shall be accompanied by a copy of the tribal regulations, a list of potential interested parties and the Indian tribe's comparison of the consideration afforded historic properties under its regulations and the Council's regulations.

(c) *Consultation.* The Council shall consult with the requesting Indian tribe, the appropriate State Historic Preservation Officer or Officers, the Secretary and any interested parties who so request. The requesting Indian tribe shall provide the information submitted in accordance with § 800.17(b) to interested parties as determined by the Council. The Council shall provide notice to Federal agencies and consider any comments received.

(d) *Approval.* If the Council determines that the tribal historic preservation regulations will afford historic properties consideration equivalent to that afforded by the Council's regulations, the Council shall execute an agreement with the requesting Indian tribe to that effect.

(e) *Effect.* After an agreement is executed, an Agency Official with jurisdiction over an undertaking carried out on tribal lands covered by the agreement shall follow the approved tribal historic preservation regulations in lieu of the Council's regulations.

(f) *Amendment and termination.* Either the Indian tribe or the Council may seek an amendment to the agreement, which shall take effect upon agreement of both parties. The agreement may be terminated at any time by the Indian tribe and by the Council after it finds that the operation of the tribal regulations do not afford historic properties consideration equivalent to the Council's regulations.

**§ 800.18 Emergency situations.**

(a) *Counterpart procedures.* Prior to a disaster or emergency, the Agency Official should develop a plan for taking historic properties into account during operations which respond to a disaster or emergency declared by the President or Agency Official. At the request of the Agency Official, the Council will assist in the development of such a plan. The plan shall be submitted to the Council for approval and, if approved, shall govern the agency's historic preservation responsibilities during any disaster or emergency.

(b) *Alternatives to counterpart procedures.* When an Agency Official proposes an emergency undertaking as an essential and immediate response to a disaster or emergency declared by the President, and the agency has not

developed counterpart procedures pursuant to paragraph (a) of this section, the Agency Official may satisfy Section 106 by:

(1) Following a State Disaster Plan which contains a historic preservation component that has been approved by the Council; or

(2) If there is no State Disaster Plan which contains a historic preservation component that has been approved by the Council and if the Agency Official determines that circumstances permit, notifying the Council and the appropriate State Historic Preservation Officer prior to the undertaking and affording them an opportunity to comment within seven days of notification.

(c) *Local governments statutorily delegated responsibility for Section 106 compliance.* For the purposes of activities assisted under Title I of the Housing and Community Development Act of 1974, as amended, or any other statute which delegates Section 106 compliance responsibilities, §§ 800.18 (a) and (b) also apply to an imminent threat to public health or safety as a result of a natural disaster or emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or State Historic Preservation Officer objects within 7 days, the Agency Official shall comply with §§ 800.7 through 800.10.

(d) *Applicability.* Paragraph (b)(2) of this section applies only to undertakings that will be implemented within 30 days after the disaster or emergency has been initially and formally declared by the President. An agency may seek renewals of the 30 day period by requesting a renewal from the Council prior to the completion of the 30 days.

## Subpart E—Coordination With Other Authorities.

### § 800.19 Coordination with other authorities.

(a) *Purpose and scope.* The requirements of Section 106 of the National Historic Preservation Act are independent of other environmental review and protection, historic preservation, and resource management authorities. As such, compliance with one does not substitute for compliance with the other. To promote program effectiveness and efficiency, Agency Officials are encouraged to coordinate and, where appropriate, integrate the requirements of Section 106 and this part with the requirements of other environmental review and protection, historic preservation, and resource management authorities to the maximum extent feasible. Neither Section 106 or this part require that Federal agencies comply with these related authorities, nor do they supersede any regulations that have been issued to govern any related authorities.

(b) *Related authorities.* Authorities that should be considered for coordination with Section 106 compliance include, but are not limited to, the following:

(1) Other authorities that require agencies to identify, evaluate, and consider effects on historic properties through planning processes (e.g., National Environmental Policy Act; American Indian Religious Freedom Act; Federal Land Policy and Management Act; National Forest Management Act; and Department of Transportation Act, Section 4(f)); and

(2) Other authorities that require agencies to establish mechanisms for protection and disposition of historic properties (e.g., Native American Graves Protection and Repatriation Act; Archeological Resources Protection Act; Abandoned Shipwrecks Act; and Archeological and Historic Preservation Act).

(c) *Coordination with specific authorities*—(1) *National Environmental Policy Act (NEPA).*—The Agency Official should coordinate the identification, evaluation, assessment, and resolution of adverse effect steps of Subpart C of this part with NEPA requirements, so that determinations reached under the Section 106 process are accurately reflected in the Agency Official's decision- making process for the proposed undertaking.

(i) During the preparation of preliminary environmental investigations and studies (and the scoping process where applicable), the Agency Official should ensure that information is explicitly sought on the presence of historic properties and the nature of any effects upon them. This information is sought to be consistent with the spirit of NEPA to identify, avoid, minimize, and lastly to mitigate unavoidable adverse environmental effects.

(ii) The Agency Official is encouraged to coordinate the public participation requirements of the EIS process with those of the Section 106 process to eliminate duplication and maximize public knowledge and understanding of the undertaking and its effects upon historic properties, provided that the use of the NEPA public participation process shall not abrogate the public involvement rights afforded in the Council's regulations.

(iii) An undertaking considered to be categorically excluded from review under NEPA in accordance with agency procedures may require review under Section 106 (See § 800.5(c)(3)).

(iv) When the Agency Official prepares an Environmental Assessment (EA) or Draft Environmental Impact Statement (DEIS) to meet NEPA requirements, the EA or DEIS should document the steps taken to comply with Section 106 and reflect the method by which the Agency Official concluded the Section 106 process.

(A) The Agency Official should complete the identification and evaluation of potentially affected historic properties and the assessment of effects on such properties as set forth in Subpart C of this part prior to circulating or making the EA or DEIS available for comment. The Agency Official may include the resolution of adverse effects, if that step has been completed prior to circulation of the Draft EIS.

(B) The Agency Official should complete the Section 106 process for affected historic properties so that the revised EA or Final EIS will document the conclusion of the Section 106 process, including any no adverse effect determinations, Memoranda of Agreement or Council comments.

(C) The Agency Official may use an EA or Draft EIS to meet the information requirements of Subpart C of this part, provided that the document contains the information specified in § 800.14 as appropriate.

(D) The Agency Official should ensure that the Finding of No Significant Impact or Record of Decision incorporates any applicable mitigation measures related to effects on historic properties.

(v) Further guidance on coordination with NEPA is contained in Appendix A of this part.

(2) *American Indian Religious Freedom Act (AIRFA).* An Agency Official planning or reviewing an undertaking which may affect Native Americans' exercise of their religion, including access to religious sites, should initiate consultation with such groups as early as possible in planning. Such consultation should be carried out in a manner that is sensitive to the cultural values of the concerned group, and may be combined with consultation under Section 106. Where the undertaking may affect historic properties that possess traditional religious and cultural importance, Subpart C of this part sets forth the process for consulting with Native Americans to meet the requirements of Section 106.

(3) *Federal Land Policy and Management Act and National Forest*

*Management Act.* Agencies planning or reviewing undertakings on Federal lands should integrate the public notification, identification, evaluation, assessment of effects and resolution of adverse effects under Section 106 with the land-use planning requirements of these authorities.

(4) *Native American Graves Protection and Repatriation Act (NAGPRA).* Agencies planning or reviewing undertakings on Federal or tribal lands which may result in the intentional removal or inadvertent discovery of Native American cultural items as defined in NAGPRA are encouraged to combine necessary consultation and agreement with Indian tribes and Native Hawaiian organizations with the provisions of Subpart C of this part.

(5) *Archeological Resources Protection Act (ARPA).* Agencies planning or reviewing undertakings on public or Indian lands which may involve excavation or removal of archeological resources subject to protection under ARPA should coordinate the permit application and permit review process with consultation under Section 106. The information used for ARPA permit issuance may be used as documentation for review under Section 106. If the only Federal involvement is issuance of an ARPA permit, compliance with Section 106 is not required.

(6) *Section 4(f) of the Department of Transportation Act.* A Department of Transportation agency planning an undertaking that may require the use of a historic site is encouraged to integrate the activities required under this Part with activities that may be performed to support determinations under Section 4(f) of the Department of Transportation Act, with respect to such site.

**Appendix A to Part 800—Identifying Historic Properties in Coordination With Other Planning Needs**

This Appendix offers guidance on implementing 36 CFR Part 800. It is designed to supplement and explain the regulations, but is not binding on Federal agencies.

(a) *Overall timing and coordination.*

(1) The Section 106 process should be used during the planning process to progressively narrow resource concerns and issues requiring resolution about historic properties and historic preservation. Ultimately, the objective is to resolve outstanding conflicts between proposed undertakings and their effects on historic properties, and to make available an appropriate level of information to decisionmakers so that they can "take into account" the effects of those undertakings on historic properties when the conflicts are not completely resolved. Consequently, the process will be most effective when planning, review, consultation, and decisionmaking steps are explicitly linked to the nature and scope of the undertaking as well as to other relevant planning and program requirements to the maximum extent possible.

(2) The Agency Official should establish a procedure and schedule for completing the Section 106 process that is consistent with the planning approach and approval schedule for the undertaking.

(3) The Agency Official should begin the Section 106 process and integrate it with other planning needs at the earliest possible time, when the widest feasible range of alternatives is open for consideration. The process should be fully coordinated with actions and preparation of documents necessary to comply with the National Environmental Policy Act (NEPA) and other environmental and planning requirements. This will help to ensure that planning and decisions fully reflect historic preservation issues and cultural values and concerns, maximize program and budgetary efficiency, and head off potential conflicts later in the process that could lead to delays and litigation.

(b) *Early planning.* At the earliest feasible stage in planning any undertaking, in conjunction with the preparation of any Environmental Assessment (EA) or Draft Environmental Impact Statement (DEIS) under the National Environmental Policy Act (NEPA), and in consultation with the State Historic Preservation Officer where appropriate, the Agency Official should:

(1) *Establish the nature of the proposed undertaking.* Does it deal principally with operation of a program with a variety of public policy objectives, management or maintenance of resources and resource types, or planning and approval of a specific project? What is the extent of public investment in the undertaking? Will the effects of the undertaking be widespread or localized?

(2) *Determine what decisions need to be made about the proposed undertaking, and who needs to make them.* Does the Agency Official for a single agency have jurisdiction and control over the undertaking, or is that jurisdiction shared with other agencies? At what level will decisions be made within the agency? If there are other Federal agencies involved, who will be the lead Federal agency, and how will responsibilities be apportioned? Is all or part of the undertaking on tribal or State lands, and subject to other legal requirements?

(3) *Determine the range of likely historic preservation issues that may need to be considered.* What is the extent of knowledge of historic properties that may be affected? Are effects likely to be detrimental or beneficial? Is public interest or controversy likely? What are the program and fiscal consequences of these issues in relation to the planning, approval, and implementation of the undertaking?

(4) *Decide what legal responsibilities, policy objectives, and performance standards need to be satisfied in the planning and execution of the proposed undertaking.* What other statutory, policy, fiscal, or timing requirements apply that may affect consultation and decisions under Section 106? What legal or practical constraints may affect the planning and execution of the proposed undertaking, such as access for identification of historic properties?

(5) *Establish how to identify and consult with others who may have a legal responsibility or a likely interest in the proposed undertaking, and what those responsibilities or interests might be.* To what extent should other branches within the lead Federal agency be consulted? Other Federal, State, or local government agencies and organizations? Can the State Historic Preservation Officer help identify other parties with an interest in or information about local historic preservation values and concerns?

(6) *Establish the area of potential effects of each alternative under consideration, including the likelihood of direct, indirect, and cumulative effects on historic properties.*

(i) The area of potential effects:

(A) should be broadly and prospectively defined, but with a logical linkage to reasonably foreseeable potential effects that various alternatives for the particular type of undertaking could have;

(B) should consider possible direct, indirect, and cumulative effects on the physical characteristics, contextual environment, use, or long-term preservation of properties that help qualify them for inclusion in the National Register, recognizing that:

(I) direct effects are caused by the undertaking and occur at the same time and place;

(II) indirect effects include those caused by the undertaking that are later in time or farther removed in distance, but are still reasonably foreseeable;

(III) cumulative effects refer to the incremental effect of an action when added to other past, present, and

reasonably foreseeable future actions regardless of what entity (Federal or non-Federal) or person undertake such other actions;

(C) should not be defined on the basis of land ownership or control and may include Federal and non-Federal land;

(D) may include geographic areas subject to indirect effects that are outside of "permit areas" or construction "footprints;"

(E) should include alternative locations for elements of the undertaking, locations where the undertaking may result in disturbance of the ground, locations from which elements of the undertaking may be visible (if that is important in regard to the property's significance), and locations where the undertaking may result in changes in land use, public access, traffic patterns, and similar indirect effects; and

(F) to the extent feasible, should consider potential cumulative effects resulting from incremental impacts of the undertaking which, when added to other past, present, and reasonably foreseeable future actions, may result in adverse effects on historic properties.

(ii) *Programmatic actions.* For undertakings involving the potential effects of a program on historic properties and historic and cultural values, the area of potential effects should consider the nature of the program as well as the nature of historic property types most likely to be affected by it. Planning information should be developed from knowledge of existing historic resources, interviews with persons with special expertise or knowledge, and modeling to anticipate the full range of historic properties involved and likely effects attributable to the program. For example, a program to replace or rehabilitate bridges throughout a State needs to consider not only likely bridge locations and the direct effects of abandonment in place, demolition or dismantling, relocation, rehabilitation work, on those bridges, but also any associated archaeological sites which could be damaged or destroyed with ground disturbing activities such as construction equipment storage, abutment repair, pavement approach reconstruction, or bank stabilization; any nearby or surrounding historic districts whose character would be altered by replacement, new construction, or changes in historic access patterns; and historic traditional use areas peculiar to the region (such as fish weirs or traps) that may be located in the stream itself at or near a new bridge location.

(iii) *Management and maintenance areas.* For undertakings involving the potential effects of land-use planning or maintenance practices for specific management units, such as a national park, national forest, military installation, Federal office complex, or similar discrete area, the area of potential effects should consider land uses, associated management needs, and the range of potential uses of historic properties, as well as the nature of maintenance requirements on particular historic property types. A planning document should establish procedures to satisfy Section 110 requirements which, among other things, provide for long-term protection, enhancement, management and use of historic properties and early consultation with Native Americans and other interested parties. For example, a military installation resource management plan needs to consider separate use zones (cantonment or built-up area, vehicular or infantry training areas, firing ranges and impact area, airfields, hazardous or toxic materials storage areas, high security vs. public access areas, and other special use areas). The range of uses and possible effects of actions in each zone on historic structures, archaeological sites, traditional cultural properties, and other types of resources will vary considerably, as will the agency's long-term management responsibility for and procedures for dealing with those properties under Section 110 and other statutes.

(iv) *Project areas.* For undertakings involving the potential effects of a specific federally-supported, -assisted, or -permitted action or series of actions such as new construction, rehabilitation, or transfer out of Federal ownership, agencies should at a minimum distinguish between two groups of undertakings. The first includes relatively simple, small-scale undertakings affecting limited land area and a small number of resources. The second includes more complex undertakings affecting large land areas, multiple resources, and involving complex jurisdictional matters or other potential points of controversy. The area of potential effects for an undertaking subject to preparation of an environmental impact statement under NEPA, defined as a "major Federal action significantly affecting the quality of the human environment," may necessarily involve numerous alternative locations or project designs, and will thus affect the level of effort necessary to identify historic properties subject to effect (see 36 CFR Sec. 800.8 and Appendix 1.C. below).

(c) *Scope of identification of historic properties subject to effect.* Following determination of the area of potential effects appropriate to the undertaking, and coordinated with the preparation of any Environmental Assessment (EA) or Draft Environmental Impact Statement (DEIS) under NEPA:

(1) The Agency Official should determine whether the area of potential effects has been surveyed or otherwise inspected to identify historic properties, and review available information to decide:

(i) the likelihood that historic properties exist within areas subject to effect, and their characteristics, numbers, and probable significance;

(ii) the likelihood that such properties retain their historic, cultural, and/or architectural integrity, given what is known about historic and recent modification of land or structures in the area; and

(iii) the nature and severity of effects reasonably expectable as a result of the type of undertaking involved, including both effects that will occur as the immediate result of the undertaking, or near the site of a specific undertaking, and those that may occur at a later time or greater distance, provided the latter are reasonably foreseeable.

(2) The Agency Official should collect available information, determine whether the undertaking involves a programmatic action, a land management area, or a specific project, and carry out further identification by making a reasonable and good faith effort to identify historic properties within the area of potential effects, with reference to the nature of the undertaking, its likely effects, and the extent of available information on historic properties.

(i) In order to provide a reliable basis for a "reasonable and good faith effort" to identify historic properties subject to effect, agencies should:

(A) Consult with the SHPO, local governments, Indian tribes, Native Hawaiian organizations, and other Native American groups and traditional cultural authorities, community organizations, academic institutions, and others with knowledge of or concerns with history, culture, historic preservation issues, and specific historic properties that may be affected;

(B) Consult existing registers of historic properties, including but not limited to the National Register of Historic Places and State and local registers, reports of prior historic property surveys, and knowledgeable projections of historic property distributions;

(C) Review other existing information on historic properties potentially affected by the undertaking, including any data concerning the likelihood that

unidentified historic properties exist in the area of potential effect, and relevant background information sources on each areas history, prehistory, architecture, sociocultural characteristics, and cultural geography as appropriate.

(D) Determine to what extent available information provides a reliable basis for decisionmaking consistent with Section 106 requirements and 36 CFR Part 800, and determine the need for additional investigations given the number of alternatives under consideration, the scale of the undertaking, the nature and severity of likely effects, the accessibility of each area of potential effect, and similar factors.

(ii) *Programmatic actions.* For undertakings involving the potential effects of a program on historic properties and historic and cultural values, the identification of historic preservation issues and historic properties subject to effect should include agreement with other consulting parties on a process for ongoing identification and evaluation of properties. This may include administrative modifications to or adaptation of the standard portions of the Section 106 process contained in the Council's regulations in § 800.8, and may categorize types of resources that will be subject to varying identification and evaluation methodologies. For example, a programmatic undertaking to maintain, modernize, selectively staff, and partially abandon fire observation towers in national forests nationwide could involve a long-term plan to use historic records to identify and evaluate historically significant *types* of towers against agreed-upon criteria.

(iii) *Management and maintenance areas.* For undertakings involving the potential effects of land-use planning or maintenance practices for specific management units, such as a national park, national forest, military installation, Federal office complex, or similar discrete area, the identification of historic properties subject to effect should involve incorporation of the process into a standard operating procedure for a General Management Plan, Historic Preservation Plan, Land Use and Resource Management Plan, or similar comprehensive planning tool with an appropriate national, regional, or statewide context to evaluate the historic significance of identified resources. For example, ongoing management activities for a Bureau of Land Management district should include a continuing program of sample field survey, predictive modelling, and regional evaluation criteria, tied to other resource management needs and operating procedures for mineral exploration, range and timber management, road construction, fire control, and recreation programs. (Such a program is also required under Section 110 of NHPA).

(iv) *Project areas.* For undertakings involving the potential effects of a specific action or series of actions such as new construction, a decision needs to be made whether the project is *large-scale* and complex, or *small-scale* and less complex.

(A) For large-scale projects, particularly those covering a very large area or numerous alternative locations for the undertaking, the purpose of initial identification efforts is to collect and review existing information and records in order to consider the likelihood that historic properties will be adversely affected in choosing a preferred alternative for the undertaking. Draft EAs, DEISs and other environmental and planning documents should, at a minimum, reflect this level of information. A less intensive investigation (which may include development and testing of a "predictive model" to indicate where historic properties exist or are likely to exist) will be sufficient until one or more principal or preferred alternatives is identified.

(B) For small-scale projects, and for the principal or preferred alternatives of large-scale projects, the agency should determine the extent to which available information provides a reliable basis for decisionmaking, and then consult with the SHPO and others to consider the need for more detailed and site-specific identification, including intensive field survey(s). The agency should follow up by completing identification and "gather sufficient information to evaluate the eligibility of [identified] properties for the National Register" (§ 800.8(b)).

(d) *Coordinate identification with NEPA and other land and resource management planning requirements.* (1) The magnitude of effects, both detrimental and beneficial, on historic properties and historic and cultural values should be projected and analyzed in adequate detail so they can be compared to other environmental, economic, and technical analyses and projections for various project alternatives. The projected number and character of historic properties and the likely effects of each alternative on buildings, neighborhoods, land use, socioeconomics, cultural values, and other relevant natural and cultural characteristics of the environment should be taken into account. Historic preservation documents and appropriate analyses, at least of a preliminary nature, should be circulated and reviewed at the same time as other planning documents, such as Eas and DEISs, land management plans, engineering general design memoranda, and transportation Section 4(f) analyses.

(2) Appropriate alternatives to recommended courses of action for any undertaking which involves alternatives that may adversely affect historic properties should be studied, developed, and described.

(3) Situations where actions are planned by private applicants or other non-Federal entities before Federal involvement should be adequately provided for, so that:

(i) Policies are established and staff designated to advise potential applicants of studies or other information foreseeably required for later Federal action and Section 106 compliance, consistent with Section 110(k);

(ii) The Federal Agency consults with appropriate State and local agencies, Indian tribes, Native Hawaiian organizations, and with interested private persons and organizations to ensure that the concerns of other parties can be addressed before any irretrievable or irreversible commitment to the project is made; and

(iii) The Federal Agency commences the Section 106 process at the earliest possible time so that by the time an EA, Finding of No Significant Impact, or Final EIS and Record of Decision under NEPA is issued, historic properties have been identified, effects determined, and this information is incorporated with the consideration of alternatives for any necessary resolution through negotiation with other parties.

[FR Doc. 94–24357 Filed 9–30–94; 8:45 am]
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federal register

Monday
October 3, 1994

Part VII

# Department of the Interior

## Bureau of Indian Affairs

## Program Announcement for Integration of Employment, Training and Related Services Provided by Indian Tribes; Notice

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Program Announcement for Integration of Employment, Training and Related Services Provided by Indian Tribes

**AGENCY** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** The "Indian Employment, Training and Related Services Demonstration Act of 1992" authorizes the integration of employment, training and related services provided by Indian tribes and Alaska Natives. A memorandum of understanding among the Department of the Interior, Department of Health and Human Services and the Department of Labor has been developed which provides for the implementation of the Act.

**DATES:** Tribal resolutions and plans for participation may be submitted at any time.

**ADDRESSES:** Tribal plans must be submitted to: Division of Job Placement and Training, Office of Economic Development, Bureau of Indian Affairs, MS 1458–MIB, 1849 C Street, NW, Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:** Lynn Forcia, Chief, Division of Job Placement and Training, (202) 208–2570.

**SUPPLEMENTARY INFORMATION:** Under Public Law 102–477, "Indian Employment, Training and Related Services Demonstration Act of 1992," tribes and Alaska Natives will be afforded the opportunity to integrate these services in order to improve their effectiveness, reduce unemployment and reach tribally-determined goals. This program announcement invites tribes and Alaska Natives to apply for participation in the demonstration project which may begin on any quarterly basis. Tribes will receive guidance in preparing tribal plans, including a copy of the reporting requirements. The guidance also addresses regulation waivers, training and technical assistance. This program provides a 95% reduction in the instructions and forms previously required for the programs involved.

Dated: September 8, 1994.

**Ada E. Deer,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 94–24338 Filed 9–30–94; 8:45 am]

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federal register

Monday
October 3, 1994

Part VIII

# Department of the Interior

## Bureau of Indian Affairs

## Indian Gaming; Notice

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Indian Gaming

**AGENCY** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of Approved Tribal-State Compact.

**SUMMARY:** Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tribal-State Compact between the Eastern Band of Cherokee Indians and the State of North Carolina, which was executed on August 11, 1994.

**DATES:** This action is effective October 3, 1994.

**FOR FURTHER INFORMATION CONTACT:** Larry Scrivner, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240 (202) 219–4068.

Dated: September 22, 1994.

**Ada E. Deer,**

*Assistant Secretary, Indian Affairs.*

[FR Doc. 94–24337 Filed 9–30–94; 8:45 am]

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federal register

Monday
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Part IX

# Department of the Interior

## Fish and Wildlife Service

50 CFR Part 20

**Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds; Final Rule**

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR PART 20

RIN 1018–AA24

## Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits for general waterfowl seasons and those early seasons for which States previously deferred selection. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule will permit taking of designated species during the 1994–95 season.

EFFECTIVE DATE: September 30, 1994.

ADDRESSES: Comments received will be available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

### Regulations Schedule for 1994

On April 7, 1994, the Service published for public comment in the **Federal Register** (59 FR 16762) a proposal to amend 50 CFR part 20, with comment periods ending July 21 for early-season proposals and September 2 for late-season proposals. The deadline for late-season proposals was subsequently extended to September 9 in the September 7 **Federal Register** (58 FR 46320). These regulations would be proposed for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons), Gruidae (cranes); Rallidae (rails, coots, moorhens, and gallinules); and Scolopacidae (woodcock and snipe). These species are designated as "migratory game birds" in conventions between the United States and several foreign nations for the protection and management of these birds. All other birds designated as migratory (under 10.13 of Subpart B of 50 CFR Part 10) in the aforementioned conventions may not be hunted. On June 8, 1994, the Service published for public comment a second document (59 FR 29700) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks. On June 23, 1994, a public hearing was held in Washington, DC, an announced in the April 7 and June 8 **Federal Register**, to review the status of migratory shore and upland game birds. Proposed hunting regulations were discussed for these species and for other early seasons. On July 12, 1993, the Service published in the **Federal Register** (59 FR 35566) a third document in the series of proposed, supplemental, and final rulemaking documents which dealt specifically with proposed early-season frameworks for the 1994–95 season. On August 4, 1994, a public hearing was held in Washington, DC, as announced in the April 7, June 8, and July 12 **Federal Register**, to review the status of waterfowl. Proposed hunting regulations were discussed for these late seasons. On August 17, 1994, the Service published a fourth document (59 FR 42474) containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits for 1994–95. The fifth document in the series, published August 24, 1994 (59 FR 43684), dealt specifically with proposed frameworks for the 1994–95 late-season migratory bird hunting regulations. On September 1, 1994, the Service published in the **Federal Register** a sixth document consisting of a final rule amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons. On September 7, 1994, the Service published in the **Federal Register** a seventh document announcing an extension of the closing date for the comment period on late-season regulations from September 2 to September 9. On September 27, 1994, the Service published an eighth document in the **Federal Register** consisting of final late-season frameworks for migratory game bird hunting regulations, from which State wildlife conservation agency officials selected late-season hunting dates, hours, areas, and limits for 1994–95. The final rule described here is the ninth in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending subpart K of CFR part 20 to set hunting seasons, hours, areas, and limits for species subject to late-season regulations and those for early seasons that were previously deferred.

### NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). However, this programmatic document does not prescribe year-specific regulations; those are developed annually. The annual regulations and options are being considered in the Environmental Assessment, "Waterfowl Hunting Regulations for 1994," which is available upon request.

### Endangered Species Act Consideration

In August 1994, the Division of Endangered Species concluded that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats. The Service's biological opinions resulting from its consultation under section 7 are considered public documents and are available for inspection in the Division of Endangered Species and the Office of Migratory Bird Management.

### Regulatory Flexibility Act; Executive Order 12866; and the Paperwork Reduction Act

In the **Federal Register** dated April 7, 1994 (59 FR 16762), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing an Analysis of Regulatory Effects and an updated Final Regulatory Impact Analysis, under the Regulatory Flexibility Act (5 U.S.C. 601 et seq), and publication of a summary of the latter. This information is included in the present document by reference. This action was not subject to review by the Office of Management and Budget under E.O. 12866. This rule does not contain any information collection requiring

approval by the Office of Management and Budget under 44 U.S.C. 3504.

**Authorship**

The primary author is Robert J. Blohm, Office of Migratory Bird Management.

**List of Subjects in 50 CFR Part 20**

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: September 26, 1994

**George T. Frampton, Jr.**

*Assistant Secretary for Fish and Wildlife and Parks*

## PART 20—[AMENDED]

For the reasons set out in the preamble, title 50, chapter I, subchapter B, part 20, subpart K is amended as follows.

1. The authority citation for part 20 is revised to read as follows:

**Authority:** Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711); the Fish and Wildlife Improvement Act of 1978 (November 8, 1978), as amended, (16 U.S.C. 712); and the Fish and Wildlife Act of 1956 (August 8, 1956), as amended, (16 U.S.C. 742 a–d and e–j).

BILLING CODE 4310–55–F–M

**Note - The following annual regulations provided for by §§20.104, 20.105, 20.106, 20.107, and 20.109 of 50 CFR part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.**

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

2. Section 20.104 is amended as follows:

**§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.**

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 17 and September 27 Federal Registers.

NOTE: The following seasons are in addition to the seasons published previously in the September 1, 1994, Federal Register (59 FR 45588).

| | Sora & Virginia Rails | Clapper & King Rails | Woodcock | Common Snipe |
|---|---|---|---|---|
| Daily bag limit | 25 (1) | 15 (2) | 5 (3) | 8 |
| Possession limit | 25 (1) | 30 (2) | 10 (3) | 16 |
| ATLANTIC FLYWAY | | | | |
| . . . . . | | | | |
| Massachusetts (4) | Sept. 1-Nov. 9 | Closed | Oct. 15-Nov. 26 | Sept. 1-Dec. 16 |
| . . . . . | | | | |
| MISSISSIPPI FLYWAY | | | | |
| . . . . . | | | | |
| Tennessee | | | | |
| Reelfoot Zone | Nov. 12-Nov. 13 & Dec. 10-Jan. 16 | Closed | Oct. 8-Dec. 11 | Nov. 14-Feb. 28 |
| State Zone | Dec. 3-Dec. 7 & Dec. 17-Jan. 20 | Closed | Oct. 8-Dec. 11 | Nov. 14-Feb. 28 |
| Wisconsin | | | | |
| North Zone | Oct. 1-Nov. 9 | Closed | Sept. 27-Nov. 20 | Oct. 1-Nov. 9 |
| South Zone | Oct. 1-Oct. 9 & Oct. 17-Nov. 16 | Closed | Sept. 27-Nov. 20 | Oct. 1-Oct. 9 & Oct. 17-Nov. 16 |
| CENTRAL FLYWAY | | | | |
| . . . . . | | | | |
| New Mexico (16) | | | | |
| North Zone | Oct. 29-Nov. 18 & Dec. 10-Jan. 18 | Closed | Closed | Oct. 29-Nov. 18 & Dec. 10-Jan. 18 |
| South Zone | Nov. 19-Jan. 18 | Closed | Closed | Nov. 19-Jan. 18 |
| . . . . . | | | | |
| Texas | Sept. 1-Nov. 9 | Sept. 1-Nov. 9 | Nov. 28-Jan. 31 | Oct. 22-Feb. 5 |
| . . . . . | | | | |
| PACIFIC FLYWAY | | | | |
| Arizona (17) | | | | |
| North Zone | Closed | Closed | Closed | Oct. 7-Dec. 14 |
| South Zone | Closed | Closed | Closed | Oct. 7-Oct. 16 & Nov. 18-Jan. 15 |
| California | Closed | Closed | Closed | Oct. 1-Jan. 15 |
| . . . . . | | | | |
| Nevada | | | | |
| Clark County | Closed | Closed | Closed | Nov. 12-Jan. 19 |
| Rest of State | Closed | Closed | Closed | Oct. 1-Oct. 16 & Oct. 29-Dec. 20 |
| New Mexico (16) | Oct. 15-Oct. 30 & Nov. 19-Jan. 10 | Closed | Closed | Oct. 15-Oct. 30 & Nov. 19-Jan. 10 |
| Oregon | Closed | Closed | Closed | Oct. 8-Jan. 1 |

| | Sora & Virginia Rails | Clapper & King Rails | Woodcock | Common Snipe |
|---|---|---|---|---|
| Utah | | | | |
| Zone 1 | Closed | Closed | Closed | Oct. 8-Jan. 8 |
| Washington | | | | |
| East Zone | Closed | Closed | Closed | Oct. 15-Oct. 23 & Nov. 5-Jan. 10 |
| West Zone | Closed | Closed | Closed | Oct. 15-Oct. 23 & Nov. 12-Jan. 10 |

* * * * *

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these species.
(2) All bag and possession limits for clapper and king rails apply singly or in the aggregate of the two species and, unless otherwise specified, the limits are in addition to the limits on sora and Virginia rails in all States.
(3) In States of the Atlantic Flyway, the woodcock bag limit is 3 daily and 6 in possession.
(4) In Massachusetts, the sora bag limit is 5 daily and 10 in possession; the Virginia rail bag limit is 10 daily and 20 in possession.

* * * * *

(16) In New Mexico, the rail limits are 10 daily and 10 in possession.
(17) In Arizona, Ashurst Lake in Unit 5B is closed to common snipe hunting.

3. Section 20.105 paragraph (a) is amended, paragraph (b) is revised, and paragraph (e) is added to read as follows:

§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 17 and September 27 Federal Registers.

(a) Common Moorhens and Purple Gallinules
(Atlantic, Mississippi, and Central Flyways)

NOTE: The following seasons are in addition to the seasons published previously in the September 1, 1994, Federal Register (59 FR 45588). The zones named in this paragraph are the same as those used for setting duck seasons.

| | Season Dates | Limits | |
|---|---|---|---|
| | | Bag | Possession |
| ATLANTIC FLYWAY | | | |
| * * * * * | | | |
| Georgia | Nov. 23-Nov. 27 & | 15 | 30 |
| | Dec. 17-Jan. 20 | 15 | 30 |
| * * * * * | | | |
| Virginia | Oct. 5-Oct. 8 & | 15 | 30 |
| | Nov. 23-Nov. 26 & | 15 | 30 |
| | Dec. 20-Jan. 20 | 15 | 30 |
| West Virginia | | | |
| Zone 1 | Oct. 1-Oct. 8 & | 15 | 30 |
| | Dec. 24-Jan. 14 | 15 | 30 |
| Zone 2 | Oct. 1-Oct. 8 & | 15 | 30 |
| | Oct. 22-Nov. 12 | 15 | 30 |
| MISSISSIPPI FLYWAY | | | |
| * * * * * | | | |
| Michigan | | | |
| North Zone | Oct. 1-Nov. 7 & | 15 | 30 |
| | Nov. 12-Nov. 13 | 15 | 30 |
| Middle Zone | Oct. 1-Nov. 6 & | 15 | 30 |
| | Nov. 11-Nov. 13 | 15 | 30 |
| South Zone | Oct. 8-Nov. 13 & | 15 | 30 |
| | Nov. 25-Nov. 27 | 15 | 30 |
| Minnesota (2) | Oct. 1-Nov. 9 | 15 | 30 |
| * * * * * | | | |
| Tennessee | | | |
| Reelfoot Zone | Nov. 12-Nov. 13 & | 15 | 30 |
| | Dec. 10-Jan. 16 | 15 | 30 |
| State Zone | Dec. 3-Dec. 7 & | 15 | 30 |
| | Dec. 17-Jan. 20 | 15 | 30 |

| | Season Dates | Limits Bag | Possession |
|---|---|---|---|
| Wisconsin | | | |
| North Zone | Oct. 1-Nov. 9 | 15 | 30 |
| South Zone | Oct. 1-Oct. 9 & | 15 | 30 |
| | Oct. 17-Nov. 16 | 15 | 30 |
| CENTRAL FLYWAY | | | |
| * * * * * | | | |
| New Mexico (1) | | | |
| North Zone | Oct. 29-Nov. 18 & | 1 | 2 |
| | Dec. 10-Jan. 18 | 1 | 2 |
| South Zone | Nov. 19-Jan. 18 | 1 | 2 |
| * * * * * | | | |
| PACIFIC FLYWAY | | | |
| All States | Seasons are in aggregate with coots and listed in paragraph (e) | | |

(1) The season applies to common moorhens only.
(2) In Minnesota, the daily bag limit is 15 and the possession limit is 30 coots, moorhens, and gallinules in the aggregate.

(b) Sea Ducks (scoter, eider, and oldsquaw ducks in Atlantic Flyway)

Within the special sea duck areas, the daily bag limit is 7 scoter, eider, and oldsquaw ducks, singly or in the aggregate, of which no more than 4 may be scoters. Possession limits are twice the daily bag limit. These limits may be in addition to regular duck bag limits only during the regular duck season in the special sea duck hunting areas.

| | Season Dates | Limits Bag | Possession |
|---|---|---|---|
| Connecticut | Oct. 1-Jan. 14 | 7 | 14 |
| Delaware | Sept. 24-Jan. 7 | 7 | 14 |
| Georgia | Nov. 23-Jan. 20 | 7 | 14 |
| Maine | Oct. 3-Jan. 17 | 7 | 14 |
| Maryland | Oct. 6-Jan. 20 | 5 | 10 |
| Massachusetts | Oct. 6-Jan. 20 | 7 | 14 |
| New Hampshire | Sept. 15-Dec. 30 | 7 | 14 |
| New Jersey | Oct. 1-Jan. 15 | 7 | 14 |
| New York | Oct. 6-Jan. 20 | 7 | 14 |
| North Carolina | Oct. 6-Jan. 20 | 7 | 14 |
| Rhode Island | Oct. 1-Jan. 15 | 7 | 14 |
| South Carolina | Oct. 6-Jan. 20 | 7 | 14 |
| Virginia | Oct. 6-Jan. 20 | 7 | 14 |

Note: Notwithstanding the provisions of this Part 20, the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia and Maryland in those areas described, delineated, and designated in their respective hunting regulations as special sea duck hunting areas.

(e) Waterfowl, Coots, and Pacific-Flyway Seasons for Common Moorhens and Purple Gallinules

Definitions

**The Atlantic Flyway:** Includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

**The Mississippi Flyway:** Includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

**The Central Flyway:** Includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

**The Pacific Flyway:** Includes the States of Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

**Geese:** Includes all geese (except brant in California, Oregon, Washington, and the entire Atlantic Flyway).

**Light Geese:** Includes lesser snow (including blue) geese, greater snow geese, and Ross' geese.

**Dark Geese:** Includes Canada geese, white-fronted geese, emperor geese, and (except as noted above) brant

ATLANTIC FLYWAY

Flyway-wide Restrictions

**Duck Limits:** For 40-day seasons, the daily bag limit of 3 ducks may include no more than 1 female mallard, 1 pintail, 1 black duck, 1 canvasback, 1 mottled duck, 2 wood ducks, 2 redheads, and 1 fulvous tree duck. For 30-day seasons, the daily bag limit of 4 ducks may include no more than 3 mallards (no more than 1 of which may be female), and the same species restrictions as above. The possession limit is twice the daily bag limit.

**Harlequin Ducks:** All areas of the Flyway are closed to harlequin duck hunting.

**Merganser Limits:** The merganser limits include no more than 1 hooded merganser daily and 2 in possession.

| | Season Dates | Limits | |
|---|---|---|---|
| | | Bag | Possession |
| Connecticut | | | |
| Ducks (1): | | | |
| North Zone | Oct. 15-Oct. 22 & | 3 | 6 |
| | Nov. 23-Dec. 24 | 3 | 6 |
| South Zone | Oct. 15 only & | 3 | 6 |
| | Dec. 7-Jan. 14 | 3 | 6 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese: | | | |
| North Zone | Oct. 15-Oct. 22 & | 1 | 2 |
| | Oct. 24-Oct. 29 & | 2 | 4 |
| | Nov. 23-Dec. 31 & | 2 | 4 |
| | Jan. 2-Jan. 16 | 3 | 6 |
| South Zone | Oct. 15-Oct. 22 & | 1 | 2 |
| | Nov. 23-Dec. 31 & | 2 | 4 |
| | Jan. 2-Jan. 14 | 3 | 6 |
| (special season) | Jan. 16-Feb. 15 | State Permit Only | |
| Light Geese | Oct. 15-Jan. 28 | 5 | 10 |
| Brant: | | | |
| North Zone | Nov. 23-Jan. 11 | 2 | 4 |
| South Zone | Dec. 2-Jan. 20 | 2 | 4 |
| Delaware | | | |
| Ducks | Nov. 1-Nov. 5 & | 3 | 6 |
| | Nov. 21-Nov. 26 & | 3 | 6 |
| | Dec. 10-Jan. 7 | 3 | 6 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese | Nov. 21-Nov. 26 & | 1 | 2 |
| | Dec. 12-Dec. 31 | 1 | 2 |
| Light Geese: | | | |
| Bombay Hook NWR | Nov. 11-Nov. 20 | 5 | 10 |
| Statewide | Oct. 12-Nov. 10 & | 5 | 10 |
| | Nov. 21-Jan. 14 & | 5 | 10 |
| | Jan. 28-Feb. 8 | 5 | 10 |
| Brant | Dec. 1-Jan. 20 | 2 | 4 |
| Florida | | | |
| Ducks | Nov. 23-Nov. 27 & | 4 | 8 |
| | Dec. 22-Jan. 15 | 4 | 8 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Geese | Closed | -- | -- |
| Georgia | | | |
| Ducks | Nov. 23-Nov. 27 & | 3 | 6 |
| | Dec. 17-Jan. 20 | 3 | 6 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese (special season) (2) | Jan. 5-Jan. 8 & | 2 | 4 |
| | Jan. 19-Jan. 22 | 2 | 4 |
| Brant | Closed | -- | -- |
| Maine | | | |
| Ducks: | | | |
| North Zone | Oct. 3-Oct. 26 & | 3 | 6 |
| | Nov. 4-Nov. 19 | 3 | 6 |
| South Zone | Oct. 3-Oct. 15 & | 3 | 6 |
| | Nov. 21-Dec. 17 | 3 | 6 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese: | | | |
| North Zone | Oct. 1-Oct. 15 & | 1 | 2 |
| | Oct. 17-Dec. 10 | 2 | 4 |
| South Zone | Oct. 1-Oct. 15 & | 1 | 2 |
| | Oct. 16-Nov. 12 & | 2 | 4 |
| | Nov. 21-Dec. 17 | 2 | 4 |
| Light Geese | Oct. 1-Jan. 14 | 5 | 10 |
| Brant | Oct. 1-Nov. 19 | 2 | 4 |

| | Season Dates | Limits Bag | Possession |
|---|---|---|---|
| Maryland | | | |
| Ducks (3) | Oct. 13-Oct. 15 & | 3 | 6 |
| | Nov. 22-Nov. 25 & | 3 | 6 |
| | Dec. 13-Jan. 14 | 3 | 6 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese | Nov. 23-Nov. 25 & | 1 | 2 |
| | Dec. 14-Dec. 30 & | 1 | 2 |
| | Dec. 31-Jan. 14 | 2 | 4 |
| Light Geese | Oct. 22-Nov. 25 & | 5 | 10 |
| | Dec. 1-Feb. 10 | 5 | 10 |
| Brant | Nov. 16-Nov. 25 & | 2 | 4 |
| | Dec. 12-Jan. 20 | 2 | 4 |
| Massachusetts | | | |
| Ducks: | | | |
| Western Zone | Oct. 10-Nov. 12 & | 3 | 6 |
| | Nov. 21-Nov. 26 | 3 | 6 |
| Central Zone | Oct. 13-Oct. 22 & | 3 | 6 |
| | Nov. 18-Dec. 17 | 3 | 6 |
| Coastal Zone | Oct. 20-Oct. 29 & | 3 | 6 |
| | Nov. 25-Dec. 24 | 3 | 6 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese: | | | |
| Western Zone | Oct. 10-Oct. 29 & | 1 | 2 |
| | Oct. 30-Nov. 26 & | 2 | 4 |
| | Dec. 12-Jan. 2 | 2 | 4 |
| Central Zone | Oct. 13-Oct. 22 & | 1 | 2 |
| | Nov. 18-Dec. 31 & | 2 | 4 |
| | Jan. 1-Jan. 16 | 3 | 6 |
| (special season) (2) | Jan. 21-Feb. 4 | 5 | 10 |
| Coastal Zone | Oct. 20-Oct. 29 & | 1 | 2 |
| | Nov. 22-Dec. 31 & | 2 | 4 |
| | Jan. 1-Jan. 20 | 3 | 6 |
| (special season) (2) | Jan. 21-Feb. 4 | 5 | 10 |
| Light Geese: | | | |
| Western Zone | Oct. 10-Nov. 26 & | 5 | 10 |
| | Dec. 12-Jan. 2 | 5 | 10 |
| Central Zone | Oct. 13-Oct. 22 & | 5 | 10 |
| | Nov. 18-Jan. 16 | 5 | 10 |
| Coastal Zone | Oct. 20-Oct. 29 & | 5 | 10 |
| | Nov. 22-Jan. 20 | 5 | 10 |
| Brant: | | | |
| Berkshire & Central Zone | Closed | -- | -- |
| Coastal Zone | Nov. 22-Jan. 10 | 2 | 4 |

| | Season Dates | Limits Bag | Possession |
|---|---|---|---|
| New Hampshire | | | |
| Ducks: | | | |
| Inland Zone | Oct. 6-Oct. 29 & | 3 | 6 |
| | Nov. 19-Dec. 4 | 3 | 6 |
| Coastal Zone | Oct. 7-Oct. 10 & | 3 | 6 |
| | Nov. 19-Dec. 24 | 3 | 6 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese: | | | |
| Inland Zone | Oct. 6-Oct. 15 & | 1 | 2 |
| | Oct. 16-Dec. 14 | 2 | 4 |
| Coastal Zone | Oct. 15-Oct. 30 & | 1 | 2 |
| | Nov. 19-Dec. 31 & | 2 | 4 |
| | Jan. 1-Jan. 11 | 3 | 6 |
| Light Geese: | | | |
| Inland Zone | Oct. 6-Dec. 14 | 5 | 10 |
| Coastal Zone | Oct. 15-Oct. 30 & | 5 | 10 |
| | Nov. 19-Jan. 11 | 5 | 10 |
| Brant: | | | |
| Inland Zone | Oct. 6-Nov. 24 | 2 | 4 |
| Coastal Zone | Nov. 19-Jan. 7 | 2 | 4 |
| New Jersey | | | |
| Ducks: | | | |
| North Zone | Oct. 15-Oct. 29 & | 3 | 6 |
| | Nov. 23-Dec. 17 | 3 | 6 |
| South Zone | Oct. 22-Oct. 29 & | 3 | 6 |
| | Nov. 23-Dec. 24 | 3 | 6 |
| Coastal Zone | Nov. 2-Nov. 12 & | 3 | 6 |
| | Dec. 10-Jan. 7 | 3 | 6 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese: | | | |
| North Zone | Oct. 15-Oct. 22 & | 1 | 2 |
| | Nov. 23-Dec. 31 & | 2 | 4 |
| | Jan. 1-Jan. 23 | 3 | 6 |
| South Zone | Oct. 22-Oct. 29 & | 1 | 2 |
| | Nov. 23-Dec. 31 & | 2 | 4 |
| | Jan. 1-Jan. 23 | 3 | 6 |
| Coastal Zone | Nov. 2-Nov. 12 & | 1 | 2 |
| | Dec. 1-Dec. 31 & | 2 | 4 |
| | Jan. 1-Jan. 28 | 3 | 6 |
| (special season) (2) | Jan. 28-Feb. 11 | 5 | 10 |
| Light Geese: | | | |
| North Zone | Oct. 15-Jan. 23 | 5 | 10 |
| South Zone | Oct. 22-Nov. 17 & | 5 | 10 |
| | Nov. 23-Feb. 10 | 5 | 10 |
| Coastal Zone | Oct. 14-Jan. 28 | 5 | 10 |

| | Season Dates | Limits Bag | Possession |
|---|---|---|---|
| New Jersey (cont.) | | | |
| Brant: | | | |
| North Zone | Oct. 15-Nov. 8 & | 2 | 4 |
| | Nov. 23-Dec. 17 | 2 | 4 |
| South Zone | Oct. 22-Nov. 8 & | 2 | 4 |
| | Nov. 23-Dec. 24 | 2 | 4 |
| Coastal Zone | Nov. 2-Nov. 22 & | 2 | 4 |
| | Dec. 10-Jan. 7 | 2 | 4 |
| New York | | | |
| Ducks: | | | |
| Long Island Zone | Nov. 23-Nov. 27 & | 3 | 6 |
| | Dec. 12-Jan. 15 | 3 | 6 |
| Lake Champlain Zone | Oct. 15-Nov. 6 & | 3 | 6 |
| | Nov. 19-Dec. 5 | 3 | 6 |
| Northeastern Zone | Oct. 1-Oct. 16 & | 3 | 6 |
| | Oct. 28-Nov. 20 | 3 | 6 |
| Southeastern Zone | Oct. 8-Oct. 20 & | 3 | 6 |
| | Nov. 16-Dec. 12 | 3 | 6 |
| Western Zone | Oct. 13-Nov. 13 & | 3 | 6 |
| | Dec. 26-Jan. 2 | 3 | 6 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese: | | | |
| Long Island Zone | Nov. 23-Nov. 30 & | 1 | 2 |
| | Dec. 1-Dec. 31 & | 2 | 4 |
| | Jan. 1-Jan. 31 | 3 | 6 |
| Lake Champlain Zone | Oct. 8-Oct. 15 & | 1 | 2 |
| | Oct. 16-Dec. 16 | 2 | 4 |
| Northeastern Zone | Oct. 1-Oct. 15 & | 1 | 2 |
| | Oct. 16-Dec. 9 | 2 | 4 |
| Southeastern Zone | Oct. 16-Oct. 23 & | 1 | 2 |
| | Nov. 16-Dec. 31 & | 2 | 4 |
| | Jan. 1-Jan. 16 | 3 | 6 |
| Western Zone | Nov. 1-Nov. 15 & | 1 | 2 |
| | Nov. 16-Nov. 19 & | 2 | 4 |
| | Dec. 3-Dec. 31 & | 2 | 4 |
| | Jan. 1-Jan. 22 | 3 | 6 |
| Light Geese: | | | |
| Long Island Zone | Oct. 1-Oct. 24 & | 5 | 10 |
| | Nov. 23-Feb. 10 | 5 | 10 |
| Lake Champlain Zone | Oct. 8-Jan. 22 | 5 | 10 |
| Northeastern Zone | Oct. 1-Jan. 15 | 5 | 10 |
| Southeastern Zone | Oct. 16-Jan. 30 | 5 | 10 |
| Western Zone | Nov. 1-Feb. 10 | 5 | 10 |

| | Season Dates | Limits Bag | Possession |
|---|---|---|---|
| New York (cont.) | | | |
| Brant: | | | |
| Long Island Zone | Nov. 23-Nov. 27 & | 2 | 4 |
| | Dec. 2-Jan. 15 | 2 | 4 |
| Lake Champlain Zone | Oct. 8-Nov. 26 | 2 | 4 |
| Northeastern Zone | Oct. 1-Nov. 19 | 2 | 4 |
| Southeastern Zone | Oct. 16-Dec. 4 | 2 | 4 |
| Western Zone | Oct. 13-Dec. 1 | 2 | 4 |
| North Carolina | | | |
| Ducks | Oct. 6-Oct. 8 & | 3 | 6 |
| | Nov. 23-Nov. 26 & | 3 | 6 |
| | Dec. 19-Jan. 20 | 3 | 6 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese | Closed | -- | -- |
| Light Geese | Oct. 27-Feb. 10 | 5 | 10 |
| Brant | Nov. 23-Nov. 26 & | 2 | 4 |
| | Dec. 6-Jan. 20 | 2 | 4 |
| Pennsylvania | | | |
| Ducks: | | | |
| North Zone | Oct. 8-Oct. 22 & | 3 | 6 |
| | Nov. 5-Nov. 29 | 3 | 6 |
| South Zone | Oct. 17-Oct. 22 & | 3 | 6 |
| | Nov. 21-Dec. 24 | 3 | 6 |
| Northwest Zone | Oct. 10-Oct. 15 & | 3 | 6 |
| | Nov. 5-Dec. 8 | 3 | 6 |
| Lake Erie Zone | Nov. 7-Nov. 26 & | 3 | 6 |
| | Dec. 12-Dec. 31 | 3 | 6 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese: | | | |
| North Zone | Oct. 8-Oct. 15 & | 1 | 2 |
| | Oct. 17-Dec. 17 | 2 | 4 |
| South Zone | Oct. 17-Oct. 24 & | 1 | 2 |
| | Nov. 19-Dec. 31 & | 2 | 4 |
| | Jan. 1-Jan. 19 | 3 | 6 |
| (special season) (4) | Jan. 20-Feb. 4 | 5 | 10 |
| Erie, Mercer, and Butler Counties | Oct. 8-Oct. 15 & | 1 | 2 |
| | Nov. 14-Jan. 14 | 2 | 4 |
| Crawford County | Oct. 8-Oct. 15 & | 1 | 2 |
| | Nov. 5-Dec. 1 | 1 | 2 |
| Light Geese | Oct. 17-Jan. 31 | 5 | 10 |
| Brant | Oct. 17-Dec. 5 | 2 | 4 |

| | Season Dates | Limits Bag | Possession |
|---|---|---|---|
| Rhode Island | | | |
| Ducks | Oct. 7-Oct. 10 & | 3 | 6 |
| | Nov. 23-Nov. 27 & | 3 | 6 |
| | Dec. 17-Jan. 16 | 3 | 6 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese | Oct. 7-Oct. 9 & | 1 | 2 |
| | Nov. 26-Nov. 30 & | 1 | 2 |
| | Dec. 1-Dec. 31 & | 2 | 4 |
| | Jan. 1-Jan. 31 | 3 | 6 |
| Light Geese | Oct. 7-Oct. 9 & | 5 | 10 |
| | Nov. 26-Jan. 31 | 5 | 10 |
| Brant | Nov. 28-Jan. 16 | 2 | 4 |
| South Carolina | | | |
| Ducks (5) | Nov. 23-Nov. 26 & | 3 | 6 |
| | Dec. 16-Jan. 20 | 3 | 6 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese (special season) (2) (6) | Dec. 7-Dec. 10 & | 2 | 6 |
| | Jan. 25-Jan. 28 | 2 | 6 |
| Light Geese | Nov. 23-Nov. 26 & | 5 | 10 |
| | Dec. 16-Jan. 20 | 5 | 10 |
| Brant | Nov. 23-Nov. 26 & | 2 | 4 |
| | Dec. 16-Jan. 20 | 2 | 4 |
| Vermont | | | |
| Ducks: | | | |
| Lake Champlain Zone | Oct. 15-Nov. 6 & | 3 | 6 |
| | Nov. 19-Dec. 5 | 3 | 6 |
| Interior Zone | Oct. 8-Nov. 9 & | 3 | 6 |
| | Nov. 21-Nov. 27 | 3 | 6 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese (7) | Oct. 8-Oct. 15 & | 1 | 2 |
| | Oct. 16-Dec. 16 | 2 | 4 |
| Light Geese | Oct. 8-Jan. 22 | 5 | 10 |
| Brant | Oct. 8-Nov. 26 | 2 | 4 |
| Virginia | | | |
| Ducks | Oct. 5-Oct. 8 & | 3 | 6 |
| | Nov. 23-Nov. 26 & | 3 | 6 |
| | Dec. 20-Jan. 20 | 3 | 6 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese: | | | |
| Back Bay Area | Closed | -- | -- |
| Remainder of State | Nov. 21-Dec. 10 & | 1 | 2 |
| | Dec. 12-Jan. 20 | 2 | 4 |
| Light Geese | Oct. 26-Oct. 29 & | 5 | 10 |
| | Oct. 31-Feb. 10 | 5 | 10 |
| Virginia (cont.) | | | |
| Brant | Dec. 1-Dec. 10 & | 2 | 4 |
| | Dec. 12-Jan. 20 | 2 | 4 |
| West Virginia | | | |
| Ducks: | | | |
| Zone 1 | Oct. 1-Oct. 8 & | 4 | 8 |
| | Dec. 24-Jan. 14 | 4 | 8 |
| Zone 2 | Oct. 1-Oct. 8 & | 4 | 8 |
| | Oct. 22-Nov. 12 | 4 | 8 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese: | | | |
| Zone 1 | Oct. 1-Oct. 8 & | 3 | 6 |
| | Nov. 14-Jan. 14 | 3 | 6 |
| Zone 2 | Oct. 1-Nov. 12 & | 3 | 6 |
| | Dec. 19-Jan. 14 | 3 | 6 |
| Light Geese: | | | |
| Zone 1 | Oct. 1-Oct. 8 & | 5 | 10 |
| | Nov. 14-Jan. 14 | 5 | 10 |
| Zone 2 | Oct. 1-Nov. 12 & | 5 | 10 |
| | Dec. 19-Jan. 14 | 5 | 10 |
| Brant | Nov. 26-Jan. 14 | 2 | 4 |

(1) In Connecticut, the season is closed for black ducks during October 15 through October 22 in the North Zone and on October 15 in the South Zone.
(2) State permit required.
(3) Maryland, the daily bag limit may include no more than 1 redhead; the black duck season is closed October 13 through October 15; and the canvasback season is open only January 7 through January 14.
(4) In Pennsylvania, the special season will only be held in the Susquehanna/Juniata Zone.
(5) In South Carolina, the bag limit may not exceed 1 black duck, mottled duck, or female mallard; in the aggregate.
(6) In South Carolina, the bag limits during the special season are 2 per day and 6 per season.
(7) In Vermont, a permit is required for the Dead Creek Goose Management Area in the town of Addison, and the daily bag limit is 4 geese of any species, not to exceed 1 Canada goose daily, October 8 through October 15, or 2 Canada geese daily October 16 through November 30.

MISSISSIPPI FLYWAY

Flyway-wide Restrictions

**Duck Limits:** For 40-day seasons, the daily bag limit of 3 ducks may include no more than 2 mallards (no more than 1 of which may be a female), 1 black duck, 1 pintail, 1 canvasback, 1 redhead, and 2 wood ducks. For 30-day seasons, the daily bag limit of 4 ducks may include no more than 3 mallards (no more than 1 of which may be a female), 3 mottled ducks, 1 black duck, 1 pintail, 1 canvasback, 1 redhead, and 2 wood ducks. The possession limit is twice the daily bag limit.

**Merganser Limits:** The merganser limits include no more than 1 hooded merganser daily and 2 in possession.

| | Season Dates | Limits Bag | Possession |
|---|---|---|---|
| Alabama | | | |
| Ducks: | | | |
| North Zone | Dec. 7-Jan. 1 & | 3 | 6 |
| | Jan. 7-Jan. 20 | 3 | 6 |
| South Zone | Nov. 17-Nov. 20 & | 3 | 6 |
| | Dec. 16-Jan. 20 | 3 | 6 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Geese: | | 5 | 5 |
| Dark Geese: | | | |
| North Zone: | | | |
| SJBP Zone | Dec. 12-Jan. 1 & | 2 | 4 |
| | Jan. 7-Jan. 20 | 2 | 4 |
| Rest of North Zone | Oct. 1-Oct. 14 & | 2 | 4 |
| | Dec. 7-Jan. 1 & | 2 | 4 |
| | Jan. 7-Jan. 31 | | |
| South Zone | Nov. 17-Nov. 20 & | 2 | 4 |
| | Dec. 16-Jan. 31 | 2 | 4 |
| Light Geese | Same as for dark geese | 5 | 5 |
| Arkansas | | | |
| Ducks | Nov. 25-Dec. 4 & | 3 | 6 |
| | Dec. 10-Dec. 18 & | 3 | 6 |
| | Dec. 26-Jan. 15 | 3 | 6 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Geese: | | 7 | 14 |
| Canada: | | | |
| East Zone | Jan. 14-Feb. 5 | 2 | 4 |
| West Zone | Jan. 14-Jan. 27 | 1 | 2 |
| White-fronted | Nov. 25-Jan. 31 | 2 | 4 |
| Brant | Closed | – | – |
| Light Geese | Oct. 29-Nov. 13 & | 7 | 14 |
| | Nov. 25-Feb. 14 | 7 | 14 |
| Illinois | | | |
| Ducks: | | | |
| North Zone | Oct. 20-Nov. 28 | 3 | 6 |
| Central Zone | Oct. 27-Dec. 5 | 3 | 6 |
| South Zone | Nov. 3-Dec. 12 | 3 | 6 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |

| | Season Dates | Limits Bag | Possession |
|---|---|---|---|
| Illinois (cont.) | | | |
| Geese: | | 7 | 14 |
| Canada (1): | | | |
| North Goose Zone: | | | |
| Northern Illinois Quota Zone | Oct. 20-Nov. 13 & | 2 | 4 |
| | Nov. 23-Dec. 18 | 2 | 4 |
| Rest of North Goose Zone | Oct. 20-Nov. 13 & | 2 | 4 |
| | Nov. 23-Dec. 18 | 2 | 4 |
| Central Goose Zone: | | | |
| Central Illinois Quota Zone | Oct. 27-Oct. 30 & | 2 | 4 |
| | Nov. 23-Jan. 8 | 2 | 4 |
| Rest of Central Goose Zone | Oct. 27-Oct. 30 & | 2 | 4 |
| | Nov. 23-Jan. 8 | 2 | 4 |
| South Goose Zone: | | | |
| Southern Illinois Quota Zone (1)(2) | Dec. 3-Jan. 22 | 2 | 10 |
| Rend Lake Quota Zone (1)(2) | Dec. 3-Jan. 22 | 2 | 10 |
| Rest of South Goose Zone | Dec. 3-Jan. 22 | 2 | 4 |
| White-fronted and Brant | Same as for Canada geese | 2 | 4 |
| Light Geese | Same as for Canada geese | 7 | 14 |
| Indiana | | | |
| Ducks: | | | |
| North Zone | Oct. 22-Oct. 30 & | 3 | 6 |
| | Nov. 4-Dec. 4 | 3 | 6 |
| South Zone | Oct. 29-Oct. 30 & | 3 | 6 |
| | Nov. 25-Jan. 1 | 3 | 6 |
| Ohio River Zone | Nov. 25-Nov. 27 & | 3 | 6 |
| | Dec. 10-Jan. 15 | 3 | 6 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Geese: | | 7 | 14 |
| Canada (1): | | | |
| North Zone: | | | |
| SJBP Area | Oct. 22-Oct. 24 & | 2 | 4 |
| | Nov. 24-Dec. 25 | 2 | 4 |
| Rest of North Zone | Oct. 22-Oct. 24 & | 2 | 4 |
| | Nov. 4-Jan. 9 | 2 | 4 |
| South Zone: | | | |
| Posey County (1) | Dec. 10-Jan. 31 | 2 | 4 |
| Rest of South Zone | Oct. 29-Oct. 30 & | 2 | 4 |
| | Nov. 25-Jan. 31 | 2 | 4 |
| Ohio River Zone: | | | |
| Posey County (1) | Dec. 10-Jan. 31 | 2 | 4 |
| Rest of Ohio River Zone | Nov. 23-Jan. 31 | 2 | 4 |
| White-fronted and Brant | Same as for Canada geese | 2 | 4 |
| Light Geese | Same as for Canada geese | 7 | 14 |

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| Louisiana | | | |
| Ducks: | | | |
| West Zone | Nov. 12-Nov. 27 & | 3 | 6 |
| | Dec. 17-Jan. 9 | 3 | 6 |
| East Zone: | | | |
| Catahoula Lake Area | Nov. 19-Nov. 27 & | 3 | 6 |
| | Dec. 10-Jan. 9 | 3 | 6 |
| Rest of East Zone | Nov. 19-Nov. 27 & | 3 | 6 |
| | Dec. 17-Jan. 16 | 3 | 6 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Geese: | | 7 | 14 |
| Canada: | | | |
| Southwest Zone (3) | Jan. 18-Jan. 26 | 1 | 2 |
| Rest of State | Closed | -- | -- |
| White-fronted and Brant (3) | Nov. 12-Dec. 4 & | 2 | 4 |
| | Dec. 17-Feb. 1 | 2 | 4 |
| Light Geese | Nov. 12-Dec. 4 & | 7 | 14 |
| | Dec. 17-Feb. 14 | 7 | 14 |
| Michigan | | | |
| Ducks: | | | |
| North Zone | Oct. 1-Nov. 7 & | 3 | 6 |
| | Nov. 12-Nov. 13 | 3 | 6 |
| Middle Zone | Oct. 1-Nov. 6 & | 3 | 6 |
| | Nov. 11-Nov. 13 | 3 | 6 |
| South Zone | Oct. 8-Nov. 13 & | 3 | 6 |
| | Nov. 25-Nov. 27 | 3 | 6 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Geese: | | 7 | 14 |
| Canada (1): | | | |
| North Zone | Sept. 24-Oct. 16 | 2 | 4 |
| Middle Zone | Oct. 1-Oct. 23 | 2 | 4 |
| South Zone: | | | |
| Muskegon Wastewater Goose Management Unit (GMU) (1) | Oct. 15-Nov. 14 & | 2 | 4 |
| | Dec. 1-Dec. 22 | 2 | 4 |
| Allegan County GMU (1) | Oct. 15-Dec. 4 | 1 | 2 |
| Saginaw County GMU (1) | Oct. 1-Nov. 6 & | 1 | 2 |
| | Nov. 25-Nov. 27 | 1 | 2 |
| Tuscola/Huron GMU (1) | Oct. 1-Nov. 6 & | 1 | 2 |
| | Nov. 25-Nov. 27 | 1 | 2 |
| Southern Michigan GMU (special season) | Oct. 8-Nov. 6 | 1 | 2 |
| | Jan. 7-Feb. 5 | 2 | 4 |
| Rest of South Zone | Oct. 8-Nov. 6 | 1 | 2 |
| White-fronted and Brant | See Footnote 4 | 2 | 4 |
| Light Geese | See Footnote 5 | 7 | 14 |

| | Season Dates | Limits Bag | Limits Possession |
|---|---|---|---|
| Iowa | | | |
| Ducks: | | | |
| North Zone | Sept. 17-Sept. 19 & | 3 | 6 |
| | Oct. 15-Nov. 20 | 3 | 6 |
| South Zone | Oct. 1-Oct. 3 & | 3 | 6 |
| | Oct. 22-Nov. 27 | 3 | 6 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Geese: | | 7 | 14 |
| Dark Geese: | | | |
| North Zone | Oct. 8-Dec. 1 | 2 | 4 |
| South Zone | Oct. 22-Dec. 15 | 2 | 4 |
| Light Geese | Oct. 1-Jan. 10 | 7 | 14 |
| Kentucky | | | |
| Ducks: | | | |
| West Zone | Nov. 24-Nov. 27 & | 3 | 6 |
| | Dec. 10-Jan. 14 | 3 | 6 |
| East Zone | Nov. 24-Nov. 27 & | 3 | 6 |
| | Dec. 16-Jan. 20 | 3 | 6 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Geese: | | 7 | 14 |
| Canada (1): | | | |
| Western Goose Zone (1): | | | |
| Fulton County | Dec. 10-Feb. 13 | 2 | 4 |
| Rest of Western Goose Zone | Dec. 10-Jan. 31 | 2 | 4 |
| Pennyroyal/Coalfield Zone | Dec. 17-Jan. 20 | 2 | 4 |
| Rest of State | Dec. 13-Jan. 31 | 2 | 4 |
| White-fronted: | | | |
| Western Goose Zone | Dec. 10-Jan. 31 | 2 | 4 |
| Pennyroyal/Coalfield Zone | Dec. 17-Jan. 20 | 2 | 4 |
| Rest of State | Dec. 13-Jan. 31 | 2 | 4 |
| Brant | Nov. 24-Jan. 31 | 2 | 4 |
| Light Geese | Same as for Brant | 7 | 14 |

| | Season Dates | Limits Bag | Possession |
|---|---|---|---|
| Minnesota | | | |
| Ducks (6) | Oct. 1-Nov. 9 | 3 | 6 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots (7) | Same as for ducks | 15 | 30 |
| Geese: | | 7 | 14 |
| Canada (1): | | | |
| West Zone: | | | |
| West Central Zone: | | | |
| Lac qui Parle Zone (1) | Oct. 1-Oct. 9 & | 1 | 2 |
| | Oct. 15-Nov. 4 | 1 | 2 |
| Rest of West Central Zone | Oct. 1-Oct. 9 & | 1 | 2 |
| | Oct. 15-Nov. 4 | 1 | 2 |
| Rest of West Zone | Oct. 1-Nov. 9 | 1 | 2 |
| Northwest Zone | Oct. 1-Nov. 9 | 1 | 2 |
| Fergus Falls/Alexandria Zone: | | | |
| West Zone | Oct. 1-Nov. 9 | 1 | 2 |
| (special season) | Dec. 10-Dec. 19 | 2 | 4 |
| Rest of Fergus Falls/ Alexandria Zone | Oct. 1-Nov. 19 | 2 | 4 |
| (special season) | Dec. 10-Dec. 19 | 2 | 4 |
| Southeast Zone: | | | |
| Twin Cities Metro Zone and Olmsted County | Oct. 1-Dec. 9 & | 2 | 4 |
| | Dec. 15-Dec. 24 | 2 | 4 |
| Rest of Southeast Zone | Oct. 1-Dec. 9 | 2 | 4 |
| Rest of State | Oct. 1-Nov. 19 | 2 | 4 |
| White-fronted and Brant: | | | |
| West Zone | Oct. 1-Nov. 9 | 2 | 4 |
| Northwest Zone | Oct. 1-Nov. 9 | 2 | 4 |
| Southeast Zone | Oct. 1-Dec. 9 | 2 | 4 |
| Rest of State | Oct. 1-Nov. 19 | 2 | 4 |
| Light Geese | Oct. 1-Dec. 19 | 7 | 14 |
| Mississippi | | | |
| Ducks | Dec. 17-Dec. 20 & | 4 | 8 |
| | Dec. 26-Jan. 20 | 4 | 8 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Geese: | | 7 | 14 |
| Dark Geese | Nov. 26-Jan. 31 | 2 | 4 |
| Light Geese | Nov. 1-Feb. 14 | 7 | 14 |

| | Season Dates | Limits Bag | Possession |
|---|---|---|---|
| Missouri | | | |
| Ducks and Mergansers: | | | |
| North Zone | Oct. 29-Dec. 7 | 3 | 6 |
| Middle Zone | Nov. 5-Dec. 14 | 3 | 6 |
| South Zone | Nov. 25-Jan. 3 | 3 | 6 |
| Coots | Same as for ducks | 15 | 30 |
| Geese: | | 7 | 14 |
| Canada (1): | | | |
| North Zone: | | | |
| Swan Lake Zone (1) | Oct. 29-Nov. 6 & | 2 | 4 |
| | Nov. 25-Dec. 25 | 2 | 4 |
| Central Missouri Zone | Oct. 29-Nov. 6 & | 2 | 4 |
| | Nov. 25-Jan. 4 | 2 | 4 |
| (special season) | Oct. 1-Oct. 10 | 3 | 6 |
| Rest of North Zone | Oct. 29-Nov. 6 & | 2 | 4 |
| | Nov. 25-Jan. 4 | 2 | 4 |
| Middle Zone: | | | |
| Schell-Osage Zone | Nov. 25-Jan. 3 | 2 | 4 |
| Rest of Middle Zone | Nov. 25-Dec. 4 & | 2 | 4 |
| | Dec. 23-Jan. 31 | 2 | 4 |
| South Zone | Nov. 25-Dec. 4 & | 2 | 4 |
| | Dec. 23-Jan. 31 | 2 | 4 |
| White-fronted and Brant: | | | |
| North Zone | Oct. 29-Jan. 6 | 2 | 4 |
| Middle Zone | Nov. 5-Jan. 13 | 2 | 4 |
| South Zone | Nov. 25-Jan. 31 | 2 | 4 |
| Light Geese: | | | |
| North Zone | Oct. 29-Feb. 12 | 7 | 14 |
| Middle Zone | Nov. 5-Feb. 14 | 7 | 14 |
| South Zone | Nov. 25-Feb. 14 | 7 | 14 |
| Ohio | | | |
| Pymatuning Area: | | | |
| Ducks (8) | Oct. 10-Oct. 15 & | 3 | 6 |
| | Nov. 5-Dec. 8 | 3 | 6 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Canada Geese | Oct. 8-Oct. 15 & | 1 | 2 |
| | Nov. 5-Dec. 1 | 1 | 2 |
| Light Geese | Oct. 17-Jan. 31 | 5 | 10 |
| Brant | Oct. 17-Dec. 5 | 2 | 4 |
| Rest of State: | | | |
| Ducks: | | | |
| North Zone | Oct. 15-Oct. 23 & | 3 | 6 |
| | Nov. 5-Dec. 5 | 3 | 6 |
| South Zone | Oct. 15-Oct. 23 & | 3 | 6 |
| | Dec. 9-Jan. 8 | 3 | 6 |
| Ohio River Zone | Oct. 15-Oct. 23 & | 3 | 6 |
| | Dec. 16-Jan. 15 | 3 | 6 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |

| | Season Dates | Limits Bag | Possession |
|---|---|---|---|
| Ohio (cont.) | | | |
| Geese: | | 7 | 14 |
| Canada: | | | |
| North Zone: | | | |
| Lake Erie SJBP Zone | Nov. 15-Dec. 5 & | 1 | 2 |
| | Dec. 24-Jan. 1 | 1 | 2 |
| Rest of North Zone | Oct. 15-Dec. 5 & | 2 | 4 |
| | Dec. 24-Jan. 10 | 2 | 4 |
| South Zone | Oct. 15-Oct. 23 & | 2 | 4 |
| | Nov. 19-Jan. 18 | 2 | 4 |
| Ohio River Zone | Oct. 15-Oct. 23 & | 2 | 4 |
| | Nov. 19-Jan. 18 | 2 | 4 |
| White-fronted and Brant | Same as for Canada geese | 2 | 4 |
| Light Geese | Same as for Canada geese | 7 | 14 |
| Tennessee | | | |
| Ducks: | | | |
| Reelfoot Zone | Nov. 12-Nov. 13 & | 3 | 6 |
| | Dec. 10-Jan. 16 | 3 | 6 |
| State Zone | Dec. 3-Dec. 7 & | 3 | 6 |
| | Dec. 17-Jan. 20 | 3 | 6 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Geese: | | 7 | 14 |
| Canada (1)(9): | | | |
| Northwest Zone (1) | Dec. 3-Feb. 15 | 2 | 4 |
| Southwest Zone | Dec. 3-Jan. 31 | 2 | 4 |
| Kentucky/Barkley Lakes Zone (1) | Dec. 10-Jan. 28 | 2 | 4 |
| Rest of State (9) | Oct. 1-Oct. 16 & | 2 | 4 |
| | Dec. 3-Jan. 25 | 2 | 4 |
| White-fronted and Brant | Nov. 23-Jan. 31 | 2 | 4 |
| Light Geese | Nov. 23-Jan. 31 | 7 | 14 |
| Wisconsin | | | |
| Ducks (10): | | | |
| North Zone | Oct. 1-Nov. 9 | 3 | 6 |
| South Zone | Oct. 1-Oct. 9 & | 3 | 6 |
| | Oct. 17-Nov. 16 | 3 | 6 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 5 | 10 |
| Geese: | | 7 | 14 |
| Canada (1): | | | |
| Horicon Zone | Sept. 24-Dec. 12 | Tag System--See State Regulations | |
| Collins Zone | Sept. 24-Nov. 18 & | Tag System--See State Regulations | |
| | Nov. 28-Dec. 2 | Tag System--See State Regulations | |
| Exterior Zone: | | | |
| Rock Prairie Subzone | Oct. 1-Dec. 2 | 1 | 2 |
| Mississippi River Subzone: | | | |
| North Duck Zone | Oct. 1-Dec. 9 | 1 | 2 |
| South Duck Zone | Oct. 1-Oct. 9 & | 1 | 2 |
| | Oct. 17-Dec. 16 | 1 | 2 |
| Wisconsin (cont.) | | | |
| Rest of Exterior Zone | Oct. 1-Dec. 9 | 1 | 2 |
| White-fronted and Brant: | | | |
| Horicon Zone | Sept. 24-Dec. 2 | 2 | 4 |
| Collins Zone | Sept. 24-Nov. 18 & | 2 | 4 |
| | Nov. 28-Dec. 2 | 2 | 4 |
| Exterior Zone: | | | |
| Rock Prairie Subzone | Oct. 1-Dec. 2 | 2 | 4 |
| Mississippi River Subzone: | | | |
| North Duck Zone | Oct. 1-Dec. 9 | 2 | 4 |
| South Duck Zone | Oct. 1-Oct. 9 & | 2 | 4 |
| | Oct. 17-Dec. 16 | 2 | 4 |
| Rest of Exterior Zone | Oct. 1-Dec. 9 | 2 | 4 |
| Light Geese: | | | |
| Horicon Zone | Sept. 24-Dec. 9 | 7 | 14 |
| Collins Zone | Sept. 24-Nov. 18 & | 7 | 14 |
| | Nov. 28-Dec. 2 | 7 | 14 |
| Exterior Zone: | | | |
| Rock Prairie Subzone | Oct. 1-Dec. 2 | 7 | 14 |
| Mississippi River Subzone: | | | |
| North Duck Zone | Oct. 1-Dec. 9 | 7 | 14 |
| South Duck Zone | Oct. 1-Oct. 9 & | 7 | 14 |
| | Oct. 17-Dec. 16 | 7 | 14 |
| Rest of Exterior Zone | Oct. 1-Dec. 9 | 7 | 14 |

(1) Harvests of Canada geese will be limited by quotas established in the September 27, 1994, Federal Register. When it has been determined that the quota of Canada geese allotted to the Northern Illinois, Central Illinois, Southern Illinois and Rend Lake Quota Zones in Illinois, Posey County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky, the Allegan County, Muskegon Wastewater, Saginaw County, and Tuscola/Huron Goose Management Units in Michigan, the Lac Qui Parle Zone in Minnesota, the Swan Lake Zone in Missouri, and the northwest and Kentucky/Barkley Lakes Zones in Tennessee will have been filled, the season for taking Canada geese in the respective area will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.
(2) In Illinois, except during the last 3 days of the season, shooting hours for geese in the Southern Illinois Quota Zone and Rend Lake Quota Zone shall close at 3 p.m.
(3) In Louisiana, in the Southwest Zone, during the Canada goose season, the daily bag limit is 2 Canada and white-fronted geese in the aggregate, no more than 1 of which may be a Canada goose. The possession limit is twice the daily bag limit. A special permit is required by the State.
(4) In Michigan, the seasons for white-fronted geese and brant are concurrent with the seasons for Canada geese, except in the Southern Michigan Goose Management Unit, where the January 7 through February 5 special season is for Canada geese only.
(5) In Michigan, the seasons for light geese begin with Canada goose seasons in the respective zones and goose management units and run continuously through December 22, except in the Southern Michigan Goose Management Unit, where the January 7 through February 5 special season is for Canada geese only.
(6) In Minnesota, Lake Christina in Douglas and Grant Counties and North Heron Lake, South Heron Lake, North Marsh, and Duck Lake in Jackson County are closed to the taking of canvasbacks.

(7) In Minnesota, the daily bag limit is 15 and the possession limit is 30, coots, moorhens, and gallinules in the aggregate.
(8) In Ohio, in the Pymatuning Area, the restrictions of the duck bag limit for Pennsylvania apply.
(9) In Tennessee, see State regulations for permit requirements and additional restrictions.
(10) In Wisconsin, the season dates for canvasbacks in the north are Oct. 1-Nov. 9 and in the south are Oct. 22-Nov. 16.

CENTRAL FLYWAY

Flyway-wide Restrictions

**Duck Limits:** For a 49-day season (61 days in the High Plains Mallard Management Unit), the daily bag limit of 3 ducks may include no more than 3 mallards, no more than 1 of which may be a female, 1 mottled duck, 1 pintail, 1 redhead, 1 canvasback, and 2 wood ducks. For a 39-day season (51 days in the High Plains Mallard Management Unit), the daily bag limit of 4 ducks may include no more than 4 mallards (no more than 1 of which may be a female) and the same species restrictions as above. The possession limit is twice the daily bag limit.

**Merganser Limits:** The merganser limits include no more than 1 hooded merganser daily and 2 in possession.

| | Season Dates | Limits Bag | Possession |
|---|---|---|---|
| Colorado | | | |
| Ducks | Oct. 2-Oct. 15 & Oct. 29-Nov. 27 & Dec. 17-Jan. 1 | 3 | 6 |
| Coots | Same as for ducks | 15 | 30 |
| Mergansers | Same as for ducks | 5 | 10 |
| Dark Geese: | | | |
| Northern Front Range Unit | Oct. 1-Oct. 14 & | 3 | 6 |
| | Oct. 29-Jan. 29 | 3 | 6 |
| South Park Unit (1) | Oct. 1-Oct. 14 & | 2 | 4 |
| | Oct. 29-Jan. 1 | 2 | 4 |
| San Luis Valley Unit (1) | Oct. 29-Jan. 1 | 2 | 4 |
| North Park Unit (1) | Oct. 1-Oct. 14 & | 2 | 4 |
| | Oct. 29-Jan. 1 | 2 | 4 |
| Arkansas Valley Unit | Nov. 9-Jan. 29 | 3 | 6 |
| Rest of State in Central Flyway | Oct. 29-Jan. 29 | 3 | 6 |
| Light Geese: | | | |
| Northern Front Range Unit | Oct. 29-Jan. 29 | 5 | 10 |
| South Park Unit (1) | Oct. 29-Jan. 1 | 2 | 4 |
| San Luis Valley Unit (1) | Oct. 29-Jan. 1 | 2 | 4 |
| North Park Unit (1) | Oct. 29-Jan. 1 | 2 | 4 |
| Arkansas Valley Unit | Nov. 9-Feb. 12 | 5 | 10 |
| Rest of State in Central Flyway | Oct. 29-Jan. 29 | 5 | 10 |
| Kansas | | | |
| Ducks and Mergansers: | | | |
| High Plains | Oct. 15-Oct. 31 & | 3 | 6 |
| | Nov. 11-Dec. 11 & | 3 | 6 |
| | Dec. 21-Jan. 2 | 3 | 6 |
| Low Plains | Oct. 22-Oct. 31 & | 3 | 6 |
| | Nov. 11-Dec. 11 & | 3 | 6 |
| | Dec. 26-Jan. 2 | 3 | 6 |
| Coots | Same as for ducks | 15 | 30 |
| Dark Geese (2): | | 2 | 4 |
| Canada | Nov. 5-Nov. 18 & | 1 | 2 |
| | Nov. 19-Jan. 29 | 2 | 4 |
| White-fronted | Nov. 5-Jan. 29 | 1 | 2 |
| Light Geese: | | | |
| Unit 1 | Nov. 11-Feb. 25 | 10 | 20 |
| Unit 2 | Oct. 22-Feb. 5 | 10 | 20 |
| Montana | | | |
| Ducks and Mergansers: | | | |
| Zone 1 | Oct. 1-Nov. 13 & | 3 | 6 |
| | Dec. 10-Dec. 26 | 3 | 6 |
| Zone 2 | Oct. 1-Oct. 9 & | 3 | 6 |
| | Nov. 11-Jan. 1 | 3 | 6 |
| Coots | Same as for ducks | 15 | 30 |
| Geese: | | | |
| Sheridan County: | | | |
| Dark Geese | Oct. 1-Jan. 15 | 2 | 4 |
| Light Geese | Oct. 1-Jan. 15 | 5 | 10 |
| Rest of State in Central Flyway: | | | |
| Dark Geese | Oct. 1-Jan. 15 | 4 | 8 |
| Light Geese | Oct. 1-Jan. 15 | 5 | 10 |
| Nebraska (3) | | | |
| Ducks and Mergansers: | | | |
| High Plains | Oct. 15-Nov. 27 & | 3 | 6 |
| | Dec. 17-Jan. 2 | 3 | 6 |
| Low Plains: | | | |
| Zones 1 and 2 | Oct. 22-Oct. 23 & | 3 | 6 |
| | Oct. 29-Dec. 14 | 3 | 6 |
| Zones 3 and 4 | Oct. 8-Oct. 10 & | 3 | 6 |
| | Oct. 15-Nov. 29 | 3 | 6 |
| Coots | Same as for ducks | 15 | 30 |
| Dark Geese: | | 2 | 4 |
| North Unit: | | | |
| Canada | Oct. 29-Nov. 11 & | 1 | 2 |
| | Nov. 12-Jan. 22 | 2 | 4 |
| White-fronted | Oct. 29-Jan. 22 | 1 | 2 |

| | Season Dates | Limits Bag | Possession |
|---|---|---|---|
| Nebraska (cont.) | | | |
| East Unit: | | | |
| Canada | Oct. 8-Nov. 11 & | 1 | 2 |
| | Nov. 12-Dec. 25 & | 2 | 4 |
| | Dec. 26-Jan. 1 | 1 | 2 |
| White-fronted | Oct. 8-Jan. 1 | 1 | 2 |
| West Unit: | | | |
| Canada | Oct. 8-Oct. 16 & | 1 | 2 |
| | Oct. 24-Nov. 11 & | 1 | 2 |
| | Nov. 12-Dec. 25 & | 2 | 4 |
| | Dec. 26-Jan. 8 | 1 | 2 |
| White-fronted | Oct. 8-Oct. 16 & | 1 | 2 |
| | Oct. 24-Jan. 8 | 1 | 2 |
| Light Geese | Oct. 1-Dec. 30 & | 10 | 20 |
| | Jan. 28-Feb. 12 | 10 | 20 |
| New Mexico | | | |
| Ducks and Mergansers: | | | |
| North Zone | Oct. 29-Nov. 18 & | 3 | 6 |
| | Dec. 10-Jan. 18 | 3 | 6 |
| South Zone | Nov. 19-Jan. 18 | 3 | 6 |
| Coots | Same as for ducks | 15 | 30 |
| Dark Geese (4) | Oct. 15-Jan. 29 | 3 | 6 |
| Light Geese: | | | |
| Middle Rio Grande Valley Unit | Nov. 12-Feb. 26 | 10 | 20 |
| Rest of State | Nov. 12-Feb. 26 | 5 | 10 |
| North Dakota | | | |
| Ducks: | | | |
| Statewide | Oct. 1-Nov. 6 & | 4 | 8 |
| | Nov. 12-Nov. 13 | 4 | 8 |
| High Plains (male mallards only) | Dec. 10-Dec. 21 | 4 | 8 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Dark Geese: | | 2 | 4 |
| Statewide: | | | |
| Canada | Oct. 1-Nov. 13 | 2 | 4 |
| White-fronted | Oct. 1-Nov. 13 | 2 | 4 |
| Missouri River Zone | Nov. 14-Dec. 18 | 2 | 4 |
| Light Geese | Oct. 1-Dec. 11 | 10 | 20 |
| Oklahoma | | | |
| Ducks and Mergansers: | | | |
| High Plains | Oct. 15-Dec. 2 & | 3 | 6 |
| | Dec. 10-Dec. 21 | 3 | 6 |
| Low Plains: | | | |
| Zone 1 | Oct. 22-Nov. 20 & | 3 | 6 |
| | Dec. 10-Dec. 28 | 3 | 6 |
| Zone 2 | Nov. 12-Nov. 30 & | 3 | 6 |
| | Dec. 10-Jan. 8 | 3 | 6 |
| Coots | Same as for ducks | 15 | 30 |
| Dark Geese: | | 2 | 4 |
| Canada | Nov. 5-Jan. 29 | 2 | 4 |
| White-fronted | Nov. 5-Jan. 29 | 1 | 2 |
| Light Geese | Nov. 5-Feb. 19 | 10 | 20 |
| South Dakota | | | |
| Ducks and Mergansers: | | | |
| High Plains | Oct. 1-Nov. 8 & | 4 | 8 |
| | Dec. 10-Dec. 21 | 4 | 8 |
| Low Plains: | | | |
| North Zone | Oct. 1-Nov. 8 | 4 | 8 |
| Middle Zone | Oct. 8-Nov. 15 | 4 | 8 |
| South Zone | Oct. 29-Dec. 6 | 4 | 8 |
| Coots | Same as for ducks | 15 | 30 |
| Dark Geese: | | 2 | 4 |
| Missouri River Unit: | | | |
| Canada | Oct. 1-Dec. 23 | 2 | 4 |
| White-fronted | Oct. 1-Dec. 23 | 1 | 2 |
| Rest of State: | | | |
| Canada | Oct. 1-Oct. 31 | 2 | 4 |
| | Nov. 1-Dec. 23 | 1 | 2 |
| White-fronted | Oct. 1-Dec. 23 | 1 | 2 |
| Light Geese | Oct. 1-Dec. 23 | 10 | 20 |
| Texas | | | |
| Ducks: | | | |
| High Plains | Nov. 19-Jan. 8 | 4 | 8 |
| Low Plains | Nov. 19-Nov. 27 | 4 | 8 |
| | Dec. 17-Jan. 15 | 4 | 8 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Geese: | | | |
| East Tier: | | | |
| Dark Geese: | | | |
| Canada | Nov. 5-Jan. 15 & | 1 | 2 |
| | Jan. 16-Jan. 29 | 2 | 4 |
| White-fronted | Nov. 5-Jan. 15 | 1 | 2 |
| Light Geese | Nov. 5-Feb. 19 | 10 | 20 |
| West Tier: | | | |
| Dark Geese | Oct. 15-Jan. 29 | 3 | 6 |
| Light Geese | Nov. 12-Feb. 26 | 5 | 10 |

| | Season Dates | Limits Bag | Possession |
|---|---|---|---|
| Wyoming | | | |
| Ducks | Oct. 1-Oct. 23 & | 3 | 6 |
| | Nov. 8-Nov. 28 & | 3 | 6 |
| | Dec. 10-Dec. 26 | 3 | 6 |
| Mergansers | Same as for ducks | 5 | 10 |
| Coots | Same as for ducks | 15 | 30 |
| Dark Geese: | | | |
| Area 1 | Oct. 1-Jan. 2 | 3 | 6 |
| Areas 2, 3, & 5 | Oct. 1-Jan. 15 | 3 | 6 |
| Area 4 | Nov. 12-Jan. 15 | 3 | 6 |
| Light Geese | Oct. 1-Dec. 30 | 5 | 10 |

(1) In Colorado, in the North Park, South Park, and San Luis Valley Units, the bag limit for the October 29-January 1 period is 2 geese. The possession limit is twice the daily bag limit.
(2) In Kansas, exceptions to the dark goose season are as follows: (a) Marais des Cygnes Valley Unit, South Flint Hills Unit, Central Flint Hills Unit, and Southeast Unit - season dates are December 17, 1994, through January 15, 1995. Dark goose permits issued by the Kansas Department of Wildlife and Parks are required. Unlimited permits are available in all four units with 2 geese allowed per permit. In the Marais des Cygnes Valley and South Flint Hills Units, there is maximum of two permits per individual. In the Central Flint Hills and Southeast Unit, there is a maximum of one permit per individual. Shooting hours in the Marais des Cygnes Unit shall be one-half hour before sunrise to 1:00 p.m. Shooting hours in all other units shall be one-half hour before sunrise to sunset.
(3) In Nebraska, see State regulations for additional information on daily bag limits.
(4) In New Mexico, the season for dark geese is closed in Bernalillo, Sandoval, Sierra, Sorocco, and Valencia Counties.

PACIFIC FLYWAY

Flyway-wide Restrictions

**Duck and Merganser Limits**: For a 69-day season, the daily bag limit of 4 ducks (including mergansers) may include no more than 3 mallards but only 1 female mallard, 1 pintail, 2 redheads and 1 canvasback. For a 59-day season, the daily bag limit of 5 ducks (including mergansers) may include no more than 4 mallards, only one of which may be a female mallard, with the other species restrictions shown above. The possession limit is twice the daily bag limit.

**Coot and Common Moorhen Limits**: Daily bag and possession limits are in the aggregate for the two species.

**Goose Limits**: Daily bag limits for geese may not exceed 2 white-fronted geese and 3 light geese. The possession limit is twice the daily bag limit.

Aleutian Canada Geese: The season is closed throughout the Flyway.

| | Season Dates | Limits Bag | Possession |
|---|---|---|---|
| Arizona | | | |
| Ducks (1): | | | |
| North Zone | Oct. 7-Dec. 14 | 4 | 8 |
| South Zone | Oct. 7-Oct. 16 & | 4 | 8 |
| | Nov. 18-Jan. 15 | 4 | 8 |
| Coots and moorhens | Same as for ducks | 25 | 25 |
| Geese: | | 5 | 5 |
| Dark (2): | | | |
| GMU 22 & 23 | Nov. 15-Jan. 22 | 2 | 2 |
| Balance of State | Oct. 22-Jan. 22 | 2 | 2 |
| Light (2): | | | |
| GMU 22 & 23 | Nov. 15-Jan. 22 | 3 | 3 |
| Rest of State | Oct. 22-Jan. 22 | 3 | 3 |
| California | | | |
| Ducks: | | | |
| Northeastern Zone | Oct. 8-Dec. 5 | 5 | 10 |
| Colorado River Zone | Oct. 7-Oct. 16 & | 4 | 8 |
| | Nov. 18-Jan. 15 | 4 | 8 |
| Southern Zone | Oct. 22-Nov. 5 & | 5 | 10 |
| | Dec. 3-Jan. 15 | 5 | 10 |
| Southern San Joaquin Valley Zone | Nov. 19-Jan. 15 | 5 | 10 |
| Balance-of-State Zone | Oct. 22-Nov. 5 & | 5 | 10 |
| | Dec. 3-Jan. 15 | 5 | 10 |
| Coots and moorhens: | | | |
| Northeastern Zone | Same as for ducks | 25 | 25 |
| Colorado River Zone | Same as for ducks | 25 | 25 |
| Southern Zone | Oct. 22-Jan. 15 | 25 | 25 |
| Southern San Joaquin Valley Zone | Same as for ducks | 25 | 25 |
| Balance-of-State Zone | Oct. 22-Jan. 15 | 25 | 25 |
| Geese: | | | |
| Northeastern Zone: | | 3 | 6 |
| Canada Geese | Oct. 8-Jan. 8 | 2 | 4 |
| Cackling Geese | Oct. 8-Oct. 30 | 1 | 2 |
| White-fronted Geese | Oct. 8-Oct. 30 | 2 | 4 |
| Light Geese | Oct. 8-Jan. 8 | 3 | 6 |
| Colorado River Zone: | | 5 | 10 |
| Canada Geese | Oct. 22-Jan. 22 | 2 | 4 |
| White-fronted Geese | Oct. 22-Jan. 22 | 2 | 4 |
| Light Geese | Oct. 22-Jan. 22 | 3 | 6 |
| Southern Zone: | | 5 | 5 |
| Dark Geese: | | 2 | 2 |
| Canada | Oct. 22-Jan. 22 | 2 | 2 |
| Cackling Geese | Oct. 22-Jan. 22 | 1 | 1 |
| White-fronted Geese | Oct. 22-Jan. 22 | 2 | 2 |
| Light Geese | Oct. 22-Jan. 22 | 3 | 3 |

| | Season Dates | Limits Bag | Possession |
|---|---|---|---|
| California (cont.) | | | |
| Balance-of-State Zone: | | 3 | 3 |
| Dark Geese (3): | | 2 | 2 |
| Canada: | | | |
| Del Norte & Humboldt | Closed | -- | -- |
| Sacramento Valley Closure | Closed | -- | -- |
| San Joaquin Valley Closure | Oct. 29-Nov. 22 | 2 | 2 |
| Cackling Geese | Oct. 29-Nov. 22 | 1 | 1 |
| Rest of Zone | Oct. 29-Jan. 15 | 2 | 2 |
| Cackling Geese | Oct. 29-Jan. 1 | 1 | 1 |
| White-fronted: | | | |
| Sacramento Valley Closure | Oct. 29-Nov. 30 | 1 | 1 |
| Rest of Zone | Oct. 29-Jan. 1 | 1 | 1 |
| Light Geese | Oct. 29-Jan. 15 | 3 | 3 |
| Brant | Nov. 1-Nov. 30 | 2 | 4 |
| Colorado | | | |
| Ducks | Oct. 1-Oct. 16 & | 4 | 8 |
| | Oct. 29-Nov. 27 & | 4 | 8 |
| | Dec. 17-Jan. 8 | 4 | 8 |
| Coots | Same as for ducks | 25 | 25 |
| Geese: | | | |
| LaPlata County (4) | Nov. 5-Jan. 13 | 2 per season | |
| Delta/Montrose Area | Nov. 5-Jan. 13 | 2 | 4 |
| Gunnison/Saguache Area (4) | Oct. 22-Jan. 13 | 1 per season | |
| Dolores/Montezuma Area (4) | Nov. 5-Jan. 13 | 2 per season | |
| Rest of State | Oct. 1-Oct. 16 & | 2 | 4 |
| | Oct. 22-Jan. 13 | 2 | 4 |
| Idaho | | | |
| Ducks: | | | |
| Zone 1 | Oct. 22-Dec. 19 | 4 | 8 |
| Zone 2 | Oct. 8-Dec. 4 & | 4 | 8 |
| | Dec. 22-Jan. 1 | 4 | 8 |
| Zone 3 | Oct. 8-Oct. 16 & | 4 | 8 |
| | Nov. 12-Jan. 10 | 4 | 8 |
| Coots | Same as for ducks | 25 | 25 |
| Geese: | | | |
| Zone 1: | | 4 | 8 |
| Dark (5) | Oct. 1-Jan. 8 | 4 | 8 |
| Light | Oct. 1-Jan. 8 | 3 | 6 |
| Zone 2 (6): | | 3 | 6 |
| Dark | Oct. 1-Jan. 8 | 2 | 4 |
| Light | Oct. 1-Jan. 8 | 3 | 6 |
| Zone 3: | | 3 | 6 |
| Dark | Oct. 1-Oct. 8 | 1 | 2 |
| Light | Oct. 1-Jan. 8 | 3 | 6 |
| Zone 4 (5) | Oct. 1-Jan. 8 | 3 | 6 |
| Zone 5 (5) | Oct. 8-Jan. 8 | 3 | 6 |

| | Season Dates | Limits Bag | Possession |
|---|---|---|---|
| Montana | | | |
| Ducks | Oct. 1-Oct. 16 & | 4 | 8 |
| | Oct. 22-Nov. 27 & | 4 | 8 |
| | Dec. 7-Jan. 1 | 4 | 8 |
| Coots | Same as for ducks | 25 | 25 |
| Geese (7): | | | |
| Dark | Oct. 1-Jan. 8 | 3 | 6 |
| Light | Oct. 1-Jan. 8 | 3 | 6 |
| Nevada | | | |
| Ducks: | | | |
| Clark County | Nov. 12-Jan. 19 | 4 | 8 |
| Rest of State | Oct. 1-Oct. 16 & | 4 | 8 |
| | Oct. 29-Dec. 20 | 4 | 8 |
| Coots and moorhens | Same as for ducks | 25 | 25 |
| Dark Geese: | | | |
| Clark County | Nov. 19-Jan. 22 | 2 | 4 |
| Rest of State | Oct. 15-Jan. 22 | 3 | 6 |
| Light Geese: | | | |
| Clark County | Nov. 15-Jan. 22 | 3 | 6 |
| Rest of State (7) | Oct. 15-Jan. 22 | 3 | 6 |
| New Mexico | | | |
| Ducks | Oct. 15-Oct. 30 & | 4 | 8 |
| | Nov. 19-Jan. 10 | 4 | 8 |
| Coots | Same as for ducks | 15 | 30 |
| Moorhens (9) | Same as for ducks | 1 | 2 |
| Geese: | | | |
| North Zone: | | | |
| Dark | Dec. 24-Jan. 22 | 2 | 4 |
| Light | Dec. 24-Jan. 22 | 1 | 2 |
| South Zone: | | | |
| Dark | Oct. 29-Jan. 22 | 2 | 4 |
| Light | Oct. 29-Jan. 22 | 1 | 2 |
| Oregon | | | |
| Ducks: | | | |
| Zone 1: | | | |
| Columbia Basin Unit | Oct. 15-Oct. 22 & | 4 | 8 |
| | Nov. 9-Jan. 15 | 4 | 8 |
| Rest of Zone 1 | Oct. 15-Oct. 22 & | 4 | 8 |
| | Nov. 9-Jan. 8 | 4 | 8 |
| Zone 2 | Oct. 8-Dec. 4 & | 4 | 8 |
| | Dec. 21-Dec. 31 | 4 | 8 |
| Coots | Same as for ducks | 25 | 25 |
| Geese: | | | |
| Western Zone (10) (outside of NW permit zone): | | | |
| Dark Geese | Oct. 15-Jan. 15 | 4 | 8 |
| Light Geese | Oct. 15-Jan. 15 | 3 | 6 |

| | Season Dates | Limits Bag | Possession |
|---|---|---|---|
| Oregon (cont.) | | | |
| (Coos, Curry, Josephine, and Jackson): | | | |
| Dark Geese | Oct. 15-Jan. 22 | 4 | 8 |
| Light Geese | Oct. 15-Jan. 22 | 3 | 6 |
| Eastern Zone: | | | |
| Columbia Basin: | | | |
| Dark Geese | Oct. 15-Jan. 22 | 4 | 8 |
| Light Geese | Oct. 15-Jan. 22 | 3 | 6 |
| Klamath, Harney, Lake and Malheur Counties (11): | | | |
| Dark Geese | Oct. 8-Jan. 15 | 4 | 8 |
| Light Geese | Oct. 8-Jan. 15 | 3 | 6 |
| Rest of Eastern Zone: | | | |
| Dark Geese | Oct. 15-Jan. 22 | 4 | 8 |
| Light Geese | Oct. 15-Jan. 22 | 3 | 6 |
| Brant (4) | Jan. 7-Jan. 22 | 2 | 4 |
| Utah | | | |
| Ducks: | | | |
| Zone 1 | Oct. 8-Dec. 5 & Dec. 23-Jan. 1 | 4 | 8 |
| Zone 2 | Oct. 15-Nov. 27 & Dec. 17-Jan. 10 | 4 | 8 |
| Coots | Same as for ducks | 25 | 25 |
| Geese: | | 5 | 6 |
| Light | Oct. 8-Jan. 8 | 3 | 6 |
| Dark: | | | |
| Washington County (12) | Oct. 22-Jan. 22 | 2 | 4 |
| Rest of State | Oct. 8-Jan. 8 | 2 | 4 |
| Washington | | | |
| Ducks: | | | |
| East Zone | Oct. 15-Oct. 23 & Nov. 5-Jan. 10 | 4 | 8 |
| West Zone | Oct. 15-Oct. 23 & Nov. 12-Jan. 10 | 4 | 8 |
| Coots | Same as for ducks | 25 | 25 |
| Geese (13): | | | |
| East Zone (14): | | | |
| Columbia Basin | Oct. 15-Jan. 22 | 4 | 8 |
| Rest of East Zone | Oct. 15-Jan. 22 | 4 | 8 |
| West Zone: | | | |
| Lower Columbia River Area (15) | Nov. 27-Jan. 22 | 3 | 6 |
| Skagit Area | Oct. 15-Jan. 1 | 3 | 6 |
| Rest of West Zone | Oct. 15-Jan. 22 | 4 | 8 |
| Brant (16) | Dec. 10-Dec. 23 | 2 | 4 |
| Wyoming | | | |
| Ducks | Oct. 1-Nov. 27 | 5 | 10 |
| Coots | Same as for ducks | 25 | 25 |
| Dark Geese | Oct. 1-Jan. 5 | 3 | 6 |

(1) In Arizona, the daily limit may include no more than either 1 female mallard or 1 Mexican-like duck, but not both; and not more than 2 female mallards, 2 Mexican-like ducks, or 1 of each, may be in possession.
(2) In Arizona, in Yuma County, La Paz County, Game Management Units (Units) 13B, 15, and that portion of Unit 16 lying within Mohave County, the bag and possession limit is 2 and 4 for Canada geese and 3 and 6 for light geese, respectively.
(3) In California, the dark goose limits may be expanded to 2 per day and 4 in possession provided they are Canada geese other than cackling geese for which the daily limit is 1. Aleutian geese may not be taken.
(4) State permit is required.
(5) In Idaho, Zones 1, 4, and 5 have a daily limit of 2 whitefronted geese and a possession limit of 4.
(6) In Idaho, the season on light geese is closed in Fremont and Teton Counties.
(7) In Montana, check State regulations for special seasons/exceptions in Freezeout Lake WMA; Canyon Ferry; Flathead; Deer Lodge County; and Missoula County.
(8) In Nevada, there is no open season on light geese in Ruby Valley within Elko and White Pine Counties, White River Valley of Nye County, and Pahranagat Valley of Lincoln County.
(9) In New Mexico, the bag limit is 1 common moorhen daily and 2 in possession; there is no open season on the purple gallinule.
(10) In Oregon, the Northwest Area is closed to all goose hunting, except for the special permit goose season on designated portions of the special permit goose area from November 16 to January 22. See State regulations for specific boundary descriptions, times, days, and other conditions of the special permit season.
(11) In Oregon, in Klamath, Lake, and Harney Counties, the white-fronted goose season does not open until October 17.
(12) In Utah, the Washington County season is for Canada geese only.
(13) In Washington, daily bag and possession limits may include no more than 3 and 6 light geese, respectively.
(14) In Washington, in State Goose Area 1, hunting is only on Saturdays, Sundays, Wednesdays, and certain holidays. In State Goose Area 2, hunting is only on Saturdays, Sundays, Tuesdays, Wednesdays, and certain holidays. See State regulations for details.
(15) In Washington, in the Lower Columbia River Area, bag limits are 4 geese per day and 8 in possession. See State regulations for specific dates and conditions of permit hunts and closures for Canada geese.
(16) In Washington, brant may be hunted in Skagit, Pacific, and Whatcom Counties only; and only on December 10, 11, 12, 14, 16, 17, 18, 21, and 23.

4. Section 20.106 is amended as follows:

**§20.106 Seasons, limits, and shooting hours for sandhill cranes.**

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting and Hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 17, 1994, Federal Register (59 FR 42474).

Note: The following seasons are in addition to the seasons published previously in the September 1, 1994, Federal Register (59 FR 45588).

| | Season Dates | Limits | |
|---|---|---|---|
| | | Bag | Possession |
| CENTRAL FLYWAY | | | |
| * * * * * | | | |
| Kansas (6) | Nov. 5-Jan. 1 | 2 | 4 |
| * * * * * | | | |
| Texas (1) | | | |
| Zone A | Nov. 12-Feb. 12 | 3 | 6 |
| Zone B | Dec. 3-Feb. 12 | 3 | 6 |
| Zone C | Jan. 7-Feb. 12 | 3 | 6 |
| * * * * * | | | |

(1) Each hunter participating in a regular sandhill crane hunting season must obtain and carry in his possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to any authorized law enforcement official upon request.

* * * * *

(6) In Kansas, the season is only open in the portions of southcentral and southwest Kansas bounded by Highways K-4 to K-14, K-14 to K-61, K-61 to US-54, US-54 to US-160, US-160 to US-83, US-83 to K-156, K-156 to US-183, US-183 to K-4. Shooting hours are sunrise to 2:00 p.m. Each hunter participating in a regular sandhill crane hunting season must obtain and carry in his possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit which must be displayed to any authorized law enforcement official upon request. In addition, the Federal sandhill crane hunting permit must be validated by the State of Kansas. No person while hunting cranes shall use or possess shot other than steel or such shot approved as nontoxic shot.

5. Section 20.107 is revised to read as follows:

**§20.107 Seasons, limits, and shooting hours for tundra swans.**

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Hunting is by State permit only.

NOTE: Successful permittees must immediately validate their harvest by that method required in State regulations.

| | Season Dates | Limits | |
|---|---|---|---|
| | | Bag | Possession |
| ATLANTIC FLYWAY | | | |
| North Carolina | Nov. 3-Jan. 31 | 1 per season | |
| Virginia | Dec. 3-Jan. 31 | 1 per season | |
| CENTRAL FLYWAY (1) | | | |
| Montana | Oct. 1-Jan. 1 | 1 per season | |
| North Dakota | Oct. 1-Nov. 27 | 1 per season | |
| South Dakota | Oct. 1-Nov. 27 | 1 per season | |
| PACIFIC FLYWAY (1) | | | |
| Montana | Oct. 15-Jan. 1 | 1 per season | |
| Nevada | Oct. 15-Jan. 22 | 1 per season | |
| Utah | Oct. 8-Dec. 15 | 1 per season | |

(1) See State regulations for description of area open to swan hunting.

8. Section 20.109 is revised to read as follows:

§20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Hawking hours are one-half hour before sunrise until sunset except as otherwise restricted by State regulations. Area descriptions were published in the August 17 and September 27 Federal Registers.

Limits: The daily bag limit may include no more than 3 migratory game birds, singly or in the aggregate. The possession limit is twice the daily bag limit.

These limits apply to falconry during both regular hunting seasons and extended falconry seasons -- unless further restricted by State regulations. The falconry bag and possession limits are not in addition to regular season limits. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas.

Although many States permit falconry during the gun seasons, only extended falconry seasons are shown below. Please consult State regulations for details.

| | Extended Falconry Dates |
|---|---|
| ATLANTIC FLYWAY | |
| Florida | |
| Ducks and coots | Nov. 1-Nov. 19 & Dec. 1-Dec. 14 & Jan. 21-Feb. 28 |
| Georgia | |
| Sea Ducks | Nov. 15-Nov. 22 & Jan. 21-Feb. 28 |
| Ducks, mergansers, gallinules, and coots | Nov. 15-Nov. 22 & Nov. 28-Dec. 16 & Jan. 21-Feb. 28 |
| Maine | |
| Ducks, mergansers, and coots: | |
| North Zone | Oct. 27-Nov. 3 & Nov. 21-Jan. 18 |
| South Zone | Dec. 22-Dec. 31 & Jan. 2-Jan. 28 & Jan. 30-Feb. 28 |
| Maryland | |
| Mourning doves | Oct. 23-Nov. 20 & Dec. 18-Dec. 25 & |
| Rails | Nov. 10-Dec. 16 |
| Woodcock | Oct. 5-Oct. 23 & Nov. 26-Dec. 11 & Dec. 24-Jan. 19 |
| Ducks | Dec. 1-Dec. 12 & Jan. 15-Mar. 10 |
| Canada Geese | Jan. 15-Mar. 10 |
| Brant | Jan. 21-Mar. 10 |
| Massachusetts | |
| Ducks, mergansers, and coots: | |
| Central Zone | Oct. 6-Oct. 12 & Oct. 23-Nov. 17 & Dec. 23-Jan. 20 |
| Coastal Zone | Oct. 6-Oct. 19 & Oct. 30-Nov. 24 & Dec. 25-Jan. 20 |
| Berkshire Zone | Oct. 6-Oct. 9 & Nov. 13-Nov. 20 & Nov. 27-Jan. 20 |
| New Hampshire | |
| Ducks, mergansers, and coots: | |
| Inland Zone | Oct. 30-Nov. 18 & Dec. 5-Jan. 20 |
| Coastal Zone | Oct. 6 only & Oct. 11-Nov. 18 & Dec. 25-Jan. 20 |

| | Extended Falconry Dates |
|---|---|
| New Jersey | |
| Woodcock | |
| North Zone | Oct. 1-Oct. 14 & Nov. 19-Jan. 15 |
| South Zone | Oct. 1-Nov. 6 & Dec. 4-Dec. 16 & Dec. 25-Jan. 15 |
| Ducks: | |
| North Zone | Oct. 1-Oct. 14 & Oct. 30-Nov. 22 & Dec. 18-Jan. 15 |
| South Zone | Oct. 1-Oct. 21 & Oct. 30-Nov. 22 & Dec. 25-Jan. 15 |
| Coastal Zone | Oct. 1-Nov. 1 & Nov. 13-Dec. 9 & Jan. 8-Jan. 15 |
| New York | |
| Ducks and coots: | |
| Long Island Zone | Nov. 1-Nov. 22 & Nov. 28-Nov. 30 |
| Northeastern Zone | Oct. 17-Oct. 27 |
| Southeastern Zon | Oct. 1-Oct. 7 & Oct. 21-Oct. 31 |
| Western Zone | Oct. 1-Oct. 12 |
| Pennsylvania | |
| Mourning doves | Oct. 9-Oct. 28 & Nov 27-Dec. 13 |
| Ducks: | |
| North Zone | Oct. 23-Nov. 4 & Nov. 30-Jan. 22 |
| Soutr Zone | Oct. 23-Nov. 20 & Dec. 25-Jan. 31 |

| | Extended Falconry Dates |
|---|---|
| Pennsylvania (cont.) | |
| Northwest Zone | Oct. 16-Nov. 4 & Dec. 9-Jan. 24 |
| Lake Erie Zone | Nov. 27-Dec. 11 & Jan. 1-Feb. 21 |
| Canada Geese: | |
| North Zone | Dec. 18-Jan. 23 |
| South Zone | Oct. 25-Oct. 30 |
| Erie, Mercer, and Butler | Oct. 16-Nov. 11 |
| Crawford | Oct. 16-Nov. 4 & Dec. 2-Jan. 12 |
| Brant | Dec. 6-Jan. 31 |
| South Carolina | |
| Ducks, mergansers, and coots | Oct. 6-Nov. 22 & Nov. 27-Dec. 15 |
| Virginia | |
| Ducks, mergansers, coots, moorhens, and galfinules | Nov. 18-Nov. 22 & Nov. 27-Dec. 19 & Jan. 21-Feb. 28 |
| Canada Geese | Nov. 16-Nov. 20 & Dec. 11 only & Jan. 21-Feb. 20 |
| Brant | Nov. 16-Nov. 30 & Dec. 11 only & Jan. 21-Feb. 20 |
| Swan | Nov. 16-Dec. 2 & Feb. 1-Feb. 20 |

| | Extended Falconry Dates |
|---|---|
| MISSISSIPPI FLYWAY | |
| Arkansas | |
| Mourning doves | Oct. 22-Dec. 4 & Dec. 31-Jan. 2 |
| Ducks, mergansers, and coots | Nov. 12-Nov. 23 & Dec. 19-Dec 25 & Jan. 19-Feb 26 |
| Illinois | |
| Mourning doves | Oct. 31-Dec. 16 |
| Rails | Nov. 19-Dec. 25 |
| Woodcock | Sept. 1-Sept. 30 & Dec. 5-Dec. 16 |
| Ducks, mergansers, and coots: | |
| North Zone | Oct. 15-Oct. 19 & Nov. 29-Dec. 13 & Feb. 1-Mar. 10 |
| Central Zone | Oct. 15-Oct. 26 & Dec. 6-Dec. 13 & Feb. 1-Mar. 10 |
| South Zone | Oct. 15-Nov. 2 & Dec. 13 & Feb. 1-Mar. 10 |
| Geese: | |
| North Goose Zone | Oct. 15-Oct. 19 & Nov. 14-Nov. 22 & Feb. 1-Mar. 10 |
| Central Goose Zone | Nov. 5-Nov. 22 & Feb. 1-Mar. 10 |
| South Goose Zone | Nov. 24-Dec. 2 & Jan. 23-Mar. 10 |

| | Extended Falconry Dates |
|---|---|
| Indiana | |
| Mourning doves | Oct. 17-Nov. 3 & Jan. 1-Jan. 29 |
| Woodcock | Sept. 1-Sept. 23 & Nov. 28-Dec. 16 |
| Ducks, mergansers, and coots: | |
| North Zone | Sept. 25-Oct. 21 & Oct. 31-Nov. 3 & Dec. 5-Dec. 31 |
| South Zone | Oct. 1-Oct. 28 & Oct. 31-Nov. 24 & Jan. 2-Jan. 6 |
| Ohio River Zone | Oct. 8-Nov. 24 & Nov. 28-Dec. 7 |
| Iowa | |
| Ducks, mergansers, and coots: | |
| North Zone | Sept. 20-Oct. 14 & Nov. 21-Jan. 1 |
| South Zone | Sept. 20-Sept. 30 & Oct. 4-Oct. 21 & Nov. 28-Jan. 1 |
| Dark Geese: | |
| North Zone | Dec. 2-Jan. 22 |
| South Zone | Dec. 16-Feb. 5 |
| Light Geese | Jan. 11-Jan. 15 |

| | Extended Falconry Dates |
|---|---|
| Kentucky | |
| Ducks, mergansers, and coots: | |
| West Zone | Nov. 5-Nov. 23 & Nov. 28-Dec. 9 & Jan. 15-Jan. 31 |
| East Zone | Nov. 5-Nov. 23 & Nov. 28-Dec. 15 & Jan. 21-Jan. 31 |
| Canada and White-fronted Geese: | |
| Western Goose Zone | Nov. 5-Dec. 9 |
| Pennyroyal/Coalfield Zone | Nov. 5-Dec. 16 & Jan. 21-Jan. 31 |
| Rest of State | Nov. 5-Dec. 12 |
| Light Geese and Brant | Nov. 5-Nov. 23 |
| Michigan | |
| Rails, snipe, and woodcock | Sept. 7-Sept. 14 & Nov. 15-Dec. 22 |
| Ducks, mergansers, coots, and moorhens: | |
| North Zone | Sept. 7-Sept. 30 & Nov. 8-Nov. 11 & Nov. 14-Dec. 22 |
| Middle Zone | Sept. 7-Sept. 30 & Nov. 7-Nov. 10 & Nov. 14-Dec. 22 |
| South Zone | Sept. 7-Oct. 7 & Nov. 14-Nov. 24 & Nov. 28-Dec. 22 |

| | Extended Falconry Dates |
|---|---|
| Minnesota | |
| Rails, snipe, and woodcock | Nov. 5-Dec. 16 |
| Ducks, mergansers, coots, and moorhens | Sept. 1-Sept. 30 & Nov. 10-Dec. 16 |
| Canada Geese: | |
| West Zone: | |
| West Central Zone | Oct. 10-Oct. 14 & Nov. 5-Dec. 16 |
| Rest of West Zone | Nov. 10-Dec. 16 |
| Northwest Zone | Nov. 10-Dec. 16 |
| Fergus Falls/Alexandria Zone: | |
| West Zone | Nov. 10-Dec. 9 |
| Rest of Fergus Falls/Alexandria Zone | Nov. 20-Dec. 9 |
| Southeast Zone: | |
| Twin Cities Metro Zone and Olmstead County | Dec. 10-Dec. 14 |
| Rest of Southeast Zone | Dec. 10-Dec. 16 |
| Rest of State | Nov. 20-Dec. 16 |
| White-fronted Geese | |
| West Zone | Nov. 10-Dec. 16 |
| Northwest Zone | Nov. 10-Dec. 16 |
| Southeast Zone | Dec. 10-Dec. 16 |
| Rest of State | Nov. 20-Dec. 16 |
| Mississippi | |
| Mourning doves | Nov. 14-Nov. 18 & Jan. 18-Feb. 28 |
| Ducks, mergansers, and coots | Nov. 26-Dec. 16 & Jan. 21-Mar. 8 |

| | Extended Falconry Dates |
|---|---|
| Wisconsin | |
| Rails, snipe, moorhens, and gallinules: | |
| North Zone | Sept. 1-Sept. 30 & Nov. 10-Dec. 16 |
| South Zone | Sept. 15-Sept. 30 & Oct. 10-Oct. 16 & Jan. 26-Mar. 10 |
| Woodcock | Sept. 1-Sept. 16 & Nov. 21-Dec. 16 |
| Ducks, mergansers, and coots: | |
| North Zone | Sept. 1-Sept. 30 & Nov. 10-Dec. 16 |
| South Zone | Sept. 15-Sept. 30 & Oct. 10-Oct. 16 & Jan. 26-Mar. 10 |
| CENTRAL FLYWAY | |
| Colorado | |
| Ducks, mergansers, and coots | Sept. 1-Sept. 2 & Sept. 12-Sept. 30 & Oct. 16-Oct. 28 |
| Montana (1) | |
| Ducks, mergansers, and coots: | |
| Zone 1 | Sept. 17-Sept. 30 & Nov. 14-Dec. 9 & Dec. 27-Jan. 1 |
| Zone 2 | Sept. 17-Sept. 30 & Oct. 10-Nov. 10 |

| | Extended Falconry Dates |
|---|---|
| Missouri | |
| Mourning doves | Oct. 31-Dec. 16 |
| Ducks, mergansers, and coots: | |
| North Zone | Sept. 10-Sept. 18 & Oct. 1-Oct. 28 & Dec. 8-Jan. 6 |
| Middle Zone | Sept. 10-Sept. 18 & Oct. 1-Nov. 4 & Dec. 15-Jan. 6 |
| South Zone | Sept. 10-Sept. 18 & Oct. 1-Nov. 24 & Jan. 4-Jan. 6 |
| Ohio | |
| Ducks, mergansers, and coots: | |
| Pymatuning Area | Oct. 16-Nov. 4 & Dec. 9-Jan. 15 |
| Rest of State: North Zone | Oct. 24-Nov. 4 & Dec. 6-Jan. 15 |
| South Zone | Oct. 24-Dec. 8 & Jan. 9-Jan. 15 |
| Ohio River Zone | Oct. 24-Dec. 15 |
| Tennessee | |
| Ducks, mergansers, and coots: | |
| Reelfoot Zone | Nov. 6-Nov. 11 & Nov. 14-Dec. 9 & Jan. 17-Feb. 15 |
| State Zone | Nov. 6-Dec. 2 & Dec. 8-Dec. 16 & Jan. 21-Feb. 15 |

| | Extended Falconry Dates |
|---|---|
| Nebraska (2) | |
| Ducks, mergansers, and coots: | |
| High Plains | Sept. 28-Oct. 14 & Nov. 28-Dec. 16 & Jan. 3-Jan. 12 |
| Low Plains: | |
| Zones 1 and 2 | Sept. 28-Oct. 21 & Oct. 24-Oct. 28 & Dec. 15-Jan. 12 |
| Zones 3 & 4 | Sept. 28-Oct. 7 & Oct. 11-Oct. 14 & Nov. 30-Jan. 12 |
| New Mexico (1) | |
| Ducks, coots, moorhens, snipe, sora and Virginia rail: | |
| North Zone | Oct. 13-Oct. 28 & Nov. 19-Dec. 9 |
| South Zone | Oct. 25-Nov. 18 & Jan. 19-Jan. 30 |
| Oklahoma | |
| Ducks, mergansers, and coots | |
| High Plains | Sept. 19-Oct. 14 & Dec. 3-Dec. 9 & Dec. 22-Dec. 25 |
| Low Plains: | |
| Zone 1 | Nov. 21-Dec. 9 & Dec. 29-Jan. 27 |
| Zone 2 | Dec. 1-Dec. 9 & Jan. 9-Feb. 17 |
| South Dakota | |
| Ducks, mergansers, and coots | |
| High Plains | Sept. 4-Sept. 30 & Nov. 9-Dec. 7 |
| Low Plains: | |
| North Zone | Sept. 4-Sept. 30 & Nov. 9-Dec. 19 |
| Middle Zone | Sept. 4-Oct. 7 & Nov. 16-Dec. 19 |
| South Zone | Sept. 4-Oct. 28 & Dec. 7-Dec. 19 |
| Texas | |
| Mourning and white-winged doves | Nov. 14-Dec. 20 |
| Rails and gallinules | Nov. 14-Dec. 20 |
| Ducks, mergansers, and coots: | |
| High Plains | Jan. 9-Feb. 24 |
| Low Plains | Nov. 28-Dec. 16 & Jan. 16-Feb. 24 |
| Woodcock | Feb. 1-Feb. 26 |
| Wyoming | |
| Rails | Sept. 1-Sept. 14 |
| Ducks, mergansers, and coots | Sept. 1-Sept. 30 & Oct. 24-Nov. 7 |
| PACIFIC FLYWAY | |
| Arizona | |
| Doves | Sept. 12-Oct. 28 |
| Ducks and mergansers: | |
| North Zone | Sept. 1-Oct. 6 |
| South Zone | Jan. 16-Feb. 22 |

| | Extended Falconry Dates |
|---|---|
| California (cont.) | |
| Balance-of-State Zone: Sacramento Valley | Oct. 22-Oct. 28 & Dec. 1-Feb. 5 |
| Rest of Zone | Oct. 22-Oct. 28 & Jan. 2-Feb. 5 |
| Colorado River Zone | Oct. 7-Oct. 16 & Jan. 23-Jan. 26 |
| Southern San Joaquin Zone | Oct. 22-Oct. 28 & Jan. 2-Feb. 5 |
| Brant: | |
| Northeastern Zone | Oct. 8-Oct. 31 & Dec. 1-Jan. 22 |
| Southern Zone | Oct. 22-Oct. 31 & Dec. 1-Feb. 5 |
| Balance-of-State Zone | Oct. 22-Oct. 31 & Dec. 1-Feb. 5 |
| Southern San Joaquin Zone | Oct. 22-Oct. 31 & Dec. 1-Feb. 5 |
| Light Geese: | |
| Northeastern Zone | Jan. 9-Jan. 22 |
| Southern Zone | Jan. 23-Feb. 5 |
| Balance-of-State Zone | Oct. 22-Oct. 28 & Jan. 16-Feb. 5 |
| Southern San Joaquin Zone | Oct. 22-Oct. 28 & Jan. 16-Feb. 5 |
| Colorado River Zone | Oct. 7-Oct. 16 & Jan. 23-Jan. 26 |

| | Extended Falconry Dates |
|---|---|
| California | |
| Ducks and mergansers: | |
| Northeastern Zone | Dec. 6-Jan. 22 |
| Colorado River Zone | Jan. 16-Feb. 22 |
| Southern Zone | Nov. 6-Dec. 2 & Jan. 16-Feb. 5 |
| Balance-of-State Zone | Nov. 6-Dec. 2 & Jan. 16-Feb. 5 |
| Southern San Joaquin Zone | Oct. 22-Nov. 18 & Jan. 16-Feb. 5 |
| Coots: | |
| Northeastern Zone | Dec. 6-Jan. 22 |
| Southern Zone | Jan. 16-Feb. 5 |
| Balance-of-State Zone | Jan. 16-Feb. 5 |
| Colorado River Zone | Jan. 16-Feb. 22 |
| Southern San Joaquin Zone | Jan. 16-Feb. 5 |
| Canada Geese: | |
| Northeastern Zone | Jan. 9-Jan. 22 |
| Southern Zone | Jan. 23-Feb. 5 |
| Colorado River Zone | Jan. 23-Feb. 5 |
| Balance-of-State Zone (3) | Jan. 16-Feb. 5 |
| Southern San Joaquin Zone | Jan. 16-Feb. 5 |
| White-fronted Geese: | |
| Northeastern Zone | Oct. 31-Jan. 22 |
| Southern Zone | Jan. 23-Feb. 5 |

| | Extended Falconry Dates |
|---|---|
| Colorado | |
| Ducks, mergansers, and coots | Sept. 17-Sept. 30 & Oct. 17-Oct. 28 & Nov. 28-Dec. 9 |
| Idaho | |
| Mourning doves | Oct. 1-Nov. 30 & Feb. 23-Mar. 10 |
| Ducks, mergansers, and coots: | |
| Zone 1 | Sept. 1-Oct. 2 & Feb. 23-Mar. 10 |
| Zones 2 and 3 | Sept. 1-Oct. 2 & Mar. 5-Mar. 10 |
| Geese: | |
| Zones 1 through 4 | Sept. 1-Sept. 7 |
| Zone 5 | Sept. 1-Sept. 14 |
| Montana (1) | |
| Ducks and coots | Oct. 17-Oct. 21 & Nov. 28-Dec. 15 & Feb. 25-Mar. 10 |
| Geese | Jan. 9-Jan. 15 |
| Nevada (4) | |
| Ducks, mergansers, coots, moorhens, and snipe: | |
| Clark County | Jan. 20-Feb. 26 |
| Rest of State | Dec. 21-Jan. 22 |
| New Mexico (1) | |
| Ducks, coots, moorhens, snipe, sora and Virginia rail | Jan. 11-Feb. 17 |
| New Mexico (cont.) | |
| Geese: | |
| North Zone | Oct. 15-Dec. 23 & Jan. 23-Jan. 29 |
| South Zone | Oct. 15-Oct. 28 & Jan. 23-Jan. 29 |
| Oregon | |
| Mourning doves | Oct. 1-Dec. 16 |
| Band-tailed pigeons (5) | Sept. 1-Sept. 14 & Sept. 24-Dec. 16 |
| Ducks, mergansers, and coots: | |
| Zone 1: | |
| Columbia Basin | Oct. 1-Oct. 14 & Jan. 16-Feb. 1 |
| Rest of Zone 1 | Oct. 1-Oct. 14 & Jan. 9-Feb. 1 |
| Zone 2 | Oct. 1-Oct. 7 & Jan. 1-Jan. 7 |
| Snipe | Oct. 1-Oct. 7 |
| Utah | |
| Mourning doves and band-tailed pigeons | Oct. 1-Dec. 16 |
| Ducks, mergansers, and coots: | |
| Zone 1 | Oct. 1-Oct. 7 & Dec. 17-Dec. 22 & Jan. 2-Jan. 26 |
| Zone 2 | Jan. 13-Feb. 19 |
| Light Geese | Jan. 9-Jan. 22 |
| Dark Geese: | |
| Washington County | Oct. 8-Oct. 21 |
| Rest | Jan. 9-Jan. 22 |

| Extended Falconry Dates | |
|---|---|
| Washington | |
| Mourning doves | Sept. 1-Sept. 15 & Oct. 1-Dec. 31 |
| Ducks, mergansers, coots, and snipe: | |
| West Zone | Jan. 11-Feb. 17 |
| East Zone | Feb. 8-Mar. 10 |
| Geese | Jan. 23-Jan. 29 |
| Snipe: | |
| West Zone | Oct. 1-Oct. 14 & Oct. 24-Nov. 11 & Jan. 11-Jan. 15 |
| East Zone | Oct. 1-Oct. 14 & Oct. 24-Nov. 11 & Jan. 11-Jan. 15 |
| Wyoming | |
| Rails and snipe | Sept. 1-Sept. 14 |
| Ducks, mergansers, and coots | Sept. 1-Oct. 4 & Oct. 22-Nov. 8 |

(1) The daily bag limit is 2 and the possession limit is 6.
(2) In Nebraska, the bag limit is 3, see State regulations for additional information on daily bag limits.
(3) In California, the falconry season for Canada geese is closed in Del Norte and Humbolt Area, the Sacramento Valley Area, and in the San Joaquin Valley Area.
(4) In Nevada, the bag limit is 2 and the possession limit is 4.
(5) In Oregon, no more than 1 pigeon daily in bag or possession.

[FR Doc. 94-24261 Filed 9-30-94; 8:45 am]
BILLING CODE 4310-55-C

federal register

Monday
October 3, 1994

Part X

# Department of Commerce

## National Telecommunications and Information Administration

## Advisory Council on the National Information Infrastructure; Open Meeting; Notice

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

### Advisory Council on the National Information Infrastructure; Open Meeting

**AGENCY:** National Telecommunications and Information Administration (NTIA).

**ACTION:** Notice is hereby given of a meeting of the United States Advisory Council on the National Information Infrastructure, created pursuant to Executive Order 12864, as amended.

**SUMMARY:** The President established the Advisory Council on the National Information Infrastructure (NII) to advise the Secretary of Commerce on matters related to the development of the NII. In addition, the Council shall advise the Secretary on a national strategy for promoting the development of the NII. The NII will result from the integration of hardware, software, and skills that will make it easy and affordable to connect people, through the use of communication and information technology, with each other and with a vast array of services and information resources. Within the Department of Commerce, the National Telecommunications and Information Administration has been designated to provide secretariat services to the Council.

**Authority:** Executive Order 12864, signed by President Clinton on September 15, 1993, and amended on December 30, 1993 and June 13, 1994.

**DATES:** The NII Advisory Council meeting will be held on Wednesday, October 19, 1994 from 8:30 a.m. until 4:30 p.m.

**ADDRESSES:** The NII Advisory Council meeting will take place at the Mountain View Center for the Performing Arts, City of Mountain View, Post Office Box 7540, Mountain View, California 94039 (corner of Castro and Mercy Streets).

**FOR FURTHER INFORMATION CONTACT:** Ms. Celia Nogales (or Ms. Meggan Griggs, alternate), Designated Federal Officer for the Advisory Council on the National Information Infrastructure, National Telecommunications and Information Administration (NTIA); U.S. Department of Commerce, Room 4892; 14th Street and Constitution Avenue, N.W.; Washington, D.C. 20230. Telephone: 202–482–1835; Fax: 202–482–0979; E-mail: nii@ntia.doc.gov.

**Agenda**

1. *Opening Remarks by the Co-Chairs (Delano Lewis, Ed McCracken)*
2. *Review of Progress on Mega-Projects*
3. *Education and the NII Principles*
4. *Intellectual Property Principles*
5. *Remarks by the Deputy Secretary of Commerce*
6. *Discussion of Critical Issues*
   Personal Privacy
   Rules and Responsibilities of NII Use
   Ensuring Access to the NII
   Global Uses of the NII
7. *Public Discussion, Questions and Answers*
8. *Next Meeting Date and Agenda Items*

**PUBLIC PARTICIPATION:** The meeting will be open to the public, with limited seating available on a first-come, first-served basis. Any member of the public requiring special services, such as sign language interpretation, should contact Meggan Griggs at 202–482–1835.

Any member of the public may submit written comments concerning the Council's affairs at any time before or after the meetings. Comments should be submitted through electronic mail to nii@ntia.doc.gov or to the Designated Federal Officer at the address listed above.

Within thirty (30) days following the meeting, copies of the minutes of the Advisory Council meeting may be obtained through Bulletin Board Services at 202–501–1920, 202–482–1199, over the Internet at iitf.doc.gov, or from the U.S. Department of Commerce, National Telecommunications and Information Administration, Room 4892, 14th Street and Constitution Avenue, N.W.; Washington, D.C. 20230, Telephone 202–482–1835.

**Larry Irving,**

*Assistant Secretary for Communications and Information.*

[FR Doc. 94–24336 Filed 9–30–94; 8:45 am]

BILLING CODE 3510–60–P

federal register

Monday
October 3, 1994

Part XI

# Department of Housing and Urban Development

**Office of the Assistant Secretary for Housing—Federal Housing Commissioner**

**24 Part 200 et al.**

**Appraisals and Property Valuation; Final Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Housing—Federal Housing Commissioner**

**24 CFR Parts 200, 203, 204, 206 and 267**

**[Docket No. R–94–1626; FR–3027–F–02]**

**RIN 2502–AF25**

## Appraisals and Property Valuation

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

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes minimum standards for real estate appraisals made by staff, fee panel and contract appraisers in determining the maximum insurable mortgage amount in most HUD/FHA single family (one-to-four family) and multifamily transactions; and establishes criteria for the selection of appraisers by mortgagees. The rule also distinguishes those appraisals that may be performed by state licensed appraisers from those that must be performed by state certified appraisers.

**DATES:** Effective Date: December 2, 1994.

Applicability date: Section 267.10 is applicable to HUD employees who qualify as certified general appraisers not later than December 31, 1996, unless the Assistant Secretary-Commissioner specifies otherwise in a specific case.

**FOR FURTHER INFORMATION CONTACT:** For single family programs: Morris Carter, Director of the Single Family Development Division, Room 9270, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000, telephone, voice: (202) 708–2720; (TDD) (202) 708–4594. (These are not toll-free numbers.) For multifamily programs: Linda Cheatham, Director, Office of Insured Multifamily Development, Room 6134, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000, telephone, voice: (202) 708–3000; (TDD) 708–4594. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:**

### I. Information Collection

The information collection requirements contained in this final rule have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**. See the "Other Matters" section of this preamble for further information on the information collection requirements.

### II. Publication of the Proposed Rule

On September 16, 1993, the Department published in the above Docket, at 58 FR 48556, a proposed rule entitled "Appraisals and Property Valuation". The proposal, among other things, would promulgate a new part 267 to title 24 of the Code of Federal Regulations containing minimum standards for HUD real estate appraisals and criteria for the selection of appraisers by mortgagees. The preamble to the proposed rule describes, in greater detail than below, the legislative background for this rulemaking and set the rulemaking in the context of certain administrative changes that the Department had been considering on its own initiative. The preamble also explains the significant provisions of proposed part 267 as well as certain conforming amendments to other parts of HUD regulations.

Interested persons were invited to submit comments in Docket No. FR–3027 on or before Nov. 15, 1993.

### III. Description of this Final Rule

*Background*

This rule implements two statutory provisions. Section 142 of the Department of Housing and Urban Development Reform Act of 1989 (Reform Act) requires that the appraisal of all property securing an FHA-insured mortgage be performed in accordance with generally approved appraisal standards.[1] Section 322 of the Cranston-Gonzalez National Affordable Housing Act (Cranston-Gonzalez) provides that single family Direct Endorsement (DE) mortgagees may choose the appraisers who evaluate properties securing FHA-insured mortgages and states that those appraisers may be legal entities as well as natural persons.[2] Furthermore, as explained in the proposed rule, HUD, on its own initiative, has been revising its procedures for qualifying appraisers and for requiring their use in various FHA programs. The objective is to identify under each program the particular method of determining who is qualified to perform the appraisal, consultancy or other type of evaluation, based on differences inherent in the broad range of insurance programs that comprise Titles I and II of the National Housing Act (Act, NHA).

As a consequence of the Congressional mandates and its own initiatives, the Department published the proposed rule which elicited 384 written public comments. Some of these comments raised a single issue, while others expressed multiple questions or concerns. Many were repetitive. In this rule, a number of changes are the direct consequence of, or are easily traceable to, public comments, as explained below. Also being adopted are changes originated by the Department as a result of having further considered its proposal. Mainly, these modifications are designed to simplify the rule in its final form and to address comments which objected to the burdensomeness of several proposed requirements. In addition, there are a number of editorial revisions that were needed to correct errors and improve readability; they are self-explanatory and are not discussed.

*Differences Between the Proposed and Final Rules*

This rule differs from the proposal in two general respects. The first difference is in response to a view expressed by several commenters that the proposed rule was difficult to follow and should be split into separate rules covering single family and multifamily programs, respectively. HUD does not believe that such radical restructuring is necessary but does recognize that FHA's single and multifamily programs differ enough that a division of the proposed rule's content along those lines would be helpful. Consequently, the final rule has reorganized the new part 267 into three subparts. Subpart A includes material common to both single and multifamily programs, subpart B relates exclusively to single family programs and subpart C relates only to multifamily programs. This revision has necessitated a technical, non-substantive redrafting of various proposed sections, e.g., the definition of "appraisal" has been tailored to fit subparts B and C, but these changes do not affect meaning.

Not as obvious is a shift in the final rule toward a less incursive regulatory posture that gives greater recognition to accepted industry standards and practices. Several HUD standards contained in the proposal are being deleted and the Departure Provision of the Uniform Standards of Professional Appraisal Practice (USPAP) is being acknowledged with respect to single family programs. Regarding this latter change, FHA currently requires that all

[1] Section 142 of the Reform Act added section 202(e) to the National Housing Act (NHA, Act), 12 U.S.C. 1708(e).

[2] Section 322 of Cranston-Gonzalez amended section 202(e).

single family appraisals be "complete appraisals", as that term is defined under Standard 1 of USPAP, but instances may arise when the Departure Provision will be invoked to authorize "limited appraisals" under specific circumstances and on a case-by-case basis. In general, we are increasingly convinced that, with legislative prompting, the appraisal profession is moving in the direction of effective self-regulation and that HUD should limit its role to adapting industry requirements and practices to particular FHA needs rather than competing with broader ongoing efforts to improve the reliability of residential appraisals and the overall performance of the appraisal industry.

Set forth below is a discussion of significant changes from the proposed rule contained in each of the three subparts of new part 267.

### Subpart A—General

In § 267.1 (applicability), paragraph (b)(2) has been changed to add a reference to § 201.23(b)(3) regarding the "trade-in" of a borrower's equity in a manufactured home. As a result, part 267 now excludes appraisals used in determining the borrower's equity in an existing manufactured home traded for a new manufactured home to be purchased with a Title I loan. This reference was inadvertently omitted from the proposed rule. Also, in paragraph (b)(3) of § 267.1, the exception for property improvement loans has been broadened by changing the phrase "one- to-four family dwellings" to "property" since the exception should cover Title I commercial and multifamily property improvement loans as well as one-to-four family dwellings. The paragraph has also been revised to reflect a recent decision by the Department to enhance the Title I program.[3] Specifically, the $15,000 threshold of borrower equity in the property undergoing improvement, below which no mortgage is required, has been eliminated.

"FIRREA" (Title XI of the Financial Institutions Reform, Recovery and Enforcement Act 1989) has been included as definition (d) under § 267.2 to aid the reader.

A broad description of "Single family program" has been included as definition (j) under § 267.2.

"USPAP" has been included as definition (l) under § 267.2 and to it has been added the provision of former § 267.4(c)(4). That provision states the Department's policy of recognizing any changes or additions to USPAP which the Appraisal Standards Board may from time to time adopt, unless HUD publishes in the **Federal Register** its decision not to recognize a change or addition.

In § 267.3, paragraph (b)(1) [formerly § 267.6(b)(1)] prohibits certain discriminatory acts. It has been extensively revised in response to numerous comments about the burdensomeness for mortgagees of reporting on the relative frequency with which they use women and minority status appraisers. At the same time, we have been careful to ensure the public availability of the data which would have been provided by those reports and which for single family programs the Department will now obtain elsewhere in accordance with paragraph (b)(2) of § 267.3. The Department will be scrutinizing that data carefully. We will not countenance discrimination by lenders against female and minority status appraisers.

For single family programs, HUD will compile an annual report directly from information which the Department will maintain for each appraiser listed on the Roster. Information with respect to gender and minority status will be furnished by the appraiser at the time he or she applies for listing. This is permitted by the newly-added reference to "such further information as HUD may require" in § 267.8(d)(2). When the mortgagee accesses the Computerized Homes Underwriting Management System (CHUMS), giving the appraiser's certification or license number, the information on the appraiser will be recorded from the Roster data bank. For fee panel appraisers, HUD will record the information from the Roster data at the time the panelist is assigned. The Department will be able to prepare the annual report directly from this information and will make it available to members of the public upon request. See § 267.3(c).

With respect to multifamily programs, there do not exist systems analogous to CHUMS and the Roster, and consequently the data must be furnished by Delegated Processors, contract appraisers and consultants, and each housing finance agency (HFA) participating in the Department's HFA Risk-Sharing Program. Since the number of multifamily cases processed is considerably less than single family activity during a given time span, this burden should not be unreasonable. Details of this reporting requirement will be specified in one of the terms of the contract/agreements which HUD executes with its Delegated Processors, contract appraisers and consultants and HFAs. Because reporting under multifamily programs is being implemented by contractual obligation, and because that obligation is not set forth under existing contracts, the data will not become immediately available when this rule takes effect. As of the effective date provided at the beginning of this preamble, however, all new contractual agreements and all renewals or renegotiations of existing agreements will provide for the data to be furnished thereafter. See § 267.3(c)(5).

Proposed § 267.6(c) relating to competency is now paragraph § 267.3(d).

A new § 267.4, entitled " waiver", has been added at the end of subpart A. The section authorizes the Assistant Secretary-Commissioner to waive any requirement in part 267 not mandated by statute when enforcement of that requirement would adversely affect the purposes of the NHA. It is unlikely that this waiver authority would be invoked often under part 267. However, HUD has been including a similar waiver provision in many recently adopted rules because it does permit administrative flexibility in unusual circumstances when invariable application of a rule would be unfair or contrary to program objectives.

### Subpart B—Single Family Programs

In § 267.5, entitled "Definitions applicable to single family programs", paragraph (a), defining "Appraisal", no longer includes the phrase "as estimated by HUD staff or an appraiser under contract with HUD" which appeared in proposed § 267.2(b)(2). The effect of this change is that the DE lender, not HUD, will be responsible for estimating replacement cost under the section 220 single family program.

In customary usage, the term "single family" is well established. However, there are FHA programs that do not fit the usual concept of one-to-four family dwellings, yet are governed by one-to-four family appraisal standards and procedures, specifically, Title I multifamily and non-residential property improvement loans. The revised definition (c) under § 267.5, "one-to-four family residential property", covers this anomaly. Note that there is no parallel definition of multifamily programs, which simply include all other FHA mortgage origination transactions.

Section 267.6 follows proposed § 267.3, but with minor editing to improve readability and clarity.

Section 267.7, Appraisal standards, represents an extensive revision of

[3] See News Release issued by the Department on June 28, 1994.

proposed § 267.4 on this subject. Specifically:

(1) The proposed rule stated that the USPAP Departure Provision would not apply to FHA single family appraisals. The preamble to the proposed rule stated a concern that the Provision might be used to dispense with important information gathering. (See 58 FR 48560). After considering the matter more fully, we have decided that this concern is unjustified. Each of the appraisal forms permitted by HUD makes clear what information is required and any deficiency should be readily noticed by the review appraiser or underwriter. Also, the Provision will only be invoked under unusual circumstances, subject to mutual agreement of the mortgagee and appraiser, after obtaining consent from the local HUD office. Should appropriate circumstances arise and a complete appraisal not be required, the Provision gives HUD the administrative flexibility to save the parties needless expense. The Department expects that eventually, as experience is gained, a handbook addition or other directive will be issued with respect to Departure situations in single family programs. In view of the foregoing, the Provision is being given recognition for single family programs and reference to it (as being inapplicable) has been dropped from former § 267.4(a)(1), now § 267.7(a)(1).

(2) Section 267.4(a)(3) of the proposed rule is being deleted as unnecessary and somewhat redundant since § 267.7(a)(8) of the final rule covers the question of property valuation methods in greater detail.

(3) Section 267.4(a)(4)(i) of the proposed rule described the appraisal report forms. That section has been revised in § 267.7(a) of the final rule to extract the language pertinent to single family programs. Two Federal National Mortgage Association forms are also being added as acceptable for FHA single family purposes; these are somewhat more detailed than the Uniform Residential Appraisal Report and offer an alternative means of presenting the data. In addition, former § 267.4(a)(4)(iii) required sufficient "depth of analysis" to reflect the complexity of the property. HUD has concluded that the data necessary for an appraisal which satisfies the other FHA standards will necessarily reveal whether the property is complex so as to require a certified rather than a licensed appraiser. Therefore, the need for this separate and rather vague standard is avoided and the language of proposed § 267.4(a)(4)(iii) has been dropped from this final rule.

(4) Proposed § 267.4(a)(7) is being deleted as not really pertinent for single family programs.

(5) Proposed § 267.4(a)(11) is being deleted to simplify the appraiser's responsibilities. We agree with several commenters that the added burden of requiring the appraiser to check the property's legal description is not justified by the remote likelihood of a mistake in the address.

(6) Section 267.7(a)(8) still requires the appraiser to certify that the racial/ethnic composition of the neighborhood has in no way affected the appraisal determination. However, the phrase "or socioeconomic" has been dropped as part of this certification. The term was not susceptible to a clear understanding. It was, in fact, misleading, since the economic composition of the surrounding neighborhood, e.g., level of property maintenance, is a valid consideration in determining value, whereas any consideration of the social mix and demographics is precluded by the rule's explicit warning that the appraiser must not give weight to racial and ethnic aspects of the neighborhood [4]. A similar change has been made with respect to the certification for multifamily programs in § 267.11(a)(9).

(7) Proposed § 267.4(a)(12), now § 267.7(a)(9), describing valuation methods, has been revised to extract the relevant single family provisions.

Section 267.8(a)(1)(i)(A) of the rule contains a parenthetical phrase to make clear that a mortgagee selecting an appraisal organization may also select a particular employee within that organization to perform the appraisal.

Section 267.8(c)(1) embodies the prohibitions of proposed § 267.5(c), but has been simplified in one respect. Proposed § 267.5(c)(1) addressed contracts between the mortgagee and the appraiser if the two were affiliated. While this relationship is still prohibited in multifamily cases, in single family programs, where DE mortgagees may employ staff appraisers, it is inconsistent with much of the lending industry's practice. The prohibition has therefore been dropped from § 267.8(c).

In § 267.8(d)(1), the list of legal entities which, together with natural persons, comprise eligible types of appraisers has been expanded from the list in § 267.5(d)(1) of the proposed rule to include joint ventures, limited liability companies and other organizations. In addition, § 267.8(d)(1) has been redrafted to explain the options available to a DE mortgagee in need of an appraiser, i.e., an independent contractor, a staff employee or a fee panelist. Section 267.5(d)(1) of the proposed rule did not cover these options; paragraphs (d)(1)(i), (d)(1)(ii) and (d)(1)(iii) focused instead on appraiser qualifications, which made them somewhat redundant since appraiser qualifications were also set forth in § 267.5(d)(2), now § 267.8(d)(2), describing the Roster.

Proposed § 267.5(d)(1)(iv) has been incorporated into § 267.8 (d)(1) of this rule and revised to make it clear that the mortgagee and appraiser share not only concurrent but also equal responsibility for the accuracy and thoroughness of an appraisal.

In § 267.8(d)(2), the appraiser, rather than providing evidence of compliance with the items listed in proposed § 267.5(d) (2)(i)–(vi), may now certify that he or she satisfies the requirements of that paragraph. Also, two of the proposed requirements have been dropped: there is no obligation to obtain errors and omissions insurance unless the mortgagee requires it and there is no fee for being listed on the Roster.

Section 267.8(f)(1) [proposed § 267.5(h)] no longer requires as a condition to transferring an appraisal that the accepting mortgagee have "adopted appraisal review procedures in accordance with this part". Inclusion of this condition in the proposed rule was an error. There is no appraisal review procedure contained in the rule.

Section 267.5(f) of the proposed rule, regarding the extent to which others may assist the appraiser, has been deleted. As explained above, the thrust of many changes which distinguish this rule from the proposal is to place a greater reliance on USPAP and, wherever possible, to achieve compatibility with generally accepted practices of the appraisal industry. Consistent with this approach, the Department looks to USPAP to set criteria for the "assistance of others".

Finally, mention should be made of the conforming amendment under 24 CFR part 204, Coinsurance, contained in the proposed rule (58 FR 48566). On March 30, 1994 (59 FR 14809, Docket No. R–94–1717), the Department proposed termination of its single family coinsurance program but the proceeding in Docket No. R–94–1717 is still open. Until final action is taken, part 204 remains in effect and is being amended by this rule.

[4] In addition to the certification requirement of § 267.7(a)(8) it should also be noted that the Uniform Residential Appraisal Report Form states in bold type that "[r]ace and the racial composition of the neighborhood are not appraisal factors."

**Subpart C—Multifamily Programs**

Section 267.9, Definitions applicable to multifamily programs, extracts from § 267.2 of the proposed rule those definitions pertinent to multifamily programs. As with § 267.5, some editorial changes have been required to accommodate this separation of the definitions from the format in which they were proposed.

Section 267.10, Qualified appraisers and appraisals, derives from § 267.3 of the proposal. It has been redrafted to fit exclusively multifamily programs. Note also that paragraph (a) provides for HUD employees performing multifamily appraisals to be qualified as certified general appraisers not later than December 31, 1996, unless the Assistant Secretary-Commissioner specifies otherwise in an individual case. It is FHA's goal to qualify its staff appraisers in accordance with the standards of a state as soon as possible. However, the Department is currently undertaking an extensive reorganization and restructuring of its field office functions and jurisdictions. Very likely, a number of HUD Multifamily appraisers, including some who have already attained certified general status, will be retiring in the near future. Time is required to recoup such losses and our current estimate is that we will not be able to achieve comprehensive certification of multifamily appraisers until the end of 1996. Some currently certified employees will remain, of course, and others will become certified before that time, but we cannot set a precise schedule because available training funds for the 1995 and 1996 fiscal years are not known nor is the retirement rate predictable with much accuracy. Moreover, the dispatch with which HUD can accomplish comprehensive certification of its staff appraisers will be directly proportional to the extent of training and experience required by different states so progress will undoubtedly vary from one field office to another. We have set a date of December 31, 1996 for achieving full staff certification in multifamily programs; however, in the event funding and attrition rates differ appreciably from our projections, we will adjust the effective date to make it earlier if possible, later if necessary.

As is the case with § 267.7, which sets standards for single family appraisals, § 267.11 has been extensively revised both to reduce requirements and to extract specific—in this case multifamily—appraisal standards. In most respects, §§ 267.7 and 267.11 are alike, except that in § 267.11: 1) the prescribed appraisal forms are different; 2) the review of historical sales prices covers a three-year (or more), rather than a one-year, time span; 3) proposed rule paragraphs 267.4(a)(7) and (a)(8), concerning marketing period and factors that affect income and the absorption period, are relevant for multifamily sales and are included; and 4) the reference to valuation methods focuses on the greater concern with replacement cost in multifamily programs.

For the reasons cited above in the description of § 267.8, the provision regarding the assistance of others, § 267.5(f) of the proposed rule, has been deleted. However, § 267.12 contains a new paragraph (b)(2), inadvertently omitted from the proposed rule, that outlines the relationship between an appraiser and a Delegated Processor. Paragraph (b)(2) explains that HUD must review and approve each appraiser who works for a Delegated Processor, either as an employee or as an independent contractor. We also review and approve each appraiser employed under a Technical Discipline Contract (TDC).

*Discussion of the Comments Received*

The Two Main Issues

Most of the comments addressed one or both of the principal objectives of the rule: to require the certification or licensing of appraisers for FHA-insured mortgages and to enable DE mortgagees to use appraisers of their own choosing for FHA transactions.[5]

The Certification/Licensure Issue

As was pointed out in the proposed rule, the requirement that FHA appraisers must be certified or licensed, depending upon the nature of the transaction, is based on section 142 of the Reform Act, and parallels a similar Congressional mandate in FIRREA that only certified general, certified residential or licensed persons may perform appraisals involving federally related transactions. Thus, when section 142 was enacted, a system of state certification and licensing was already under development. This was beneficial in two respects. First, it obviated the need for HUD to develop its own regulatory structure with a resultant drain on staff and budgetary resources. Second, by drawing upon the FIRREA system as an established resource, HUD could fulfill its regulatory responsibility with a minimum of added expense to homebuyers. We believe that most appraisers will soon be certified and/or licensed in order to participate in the broad range of federally related transactions and also to enhance their own professional stature. The cost of added training and membership will then be distributed over a wide base of consumers. Moreover, there will probably be a dwindling pool of unlicensed and uncertified appraisers upon which mortgagees can draw so that, quite apart from the mandate of section 142, debate over the need for such accreditation in FHA programs will become academic. In any event, HUD retains its control over appraisal fees permitted for single family programs to make sure that they do not rise disproportionately.

The Appraiser Selection Issue

With respect to the DE mortgagee's right to choose appraisers, we specifically requested comment from the public. It is not possible for HUD to preclude that choice by rulemaking, since the mortgagee's right to choose has been mandated by Congress and is therefore beyond the scope of agency policy. However, we wanted to assess the extent and weight of public opinion in order to ascertain if there were a good case HUD might present to Congress for repealing the provision. We found that public opinion was fairly well balanced between support and opposition. Some commenters argued that lender choice would lead to abuse and distorted valuation; others that it would do no more than serve to simplify and speed the appraisal process. We turned, therefore, to an analogy with experience already gained, inferring that use of the staff appraisers employed by many major lending firms should have the same potential for abuse and the same tendency to encourage lender-dictated property values. Yet increasing experience with this practice has not indicated that the accuracy or thoroughness of lender staff appraisals has been compromised by pressure on the employee. We have concluded that serious concern about the integrity of lender-selected appraisers is not supported by current evidence and we do not plan to pursue the matter legislatively at this time.

*Specific comments.* Some of the public comments raised specific issues that should be addressed.

*Comment on review appraisers:* The Department has not adequately addressed the need for qualifying review appraisers. Furthermore, there is no recognition of the difference between a technical review and an administrative review as those terms are

[5] Several commenters used the rulemaking as an occasion to raise matters outside the scope of this proceeding. It would be inappropriate to dispose of those matters at this time, but to the extent HUD deems appropriate, they may be the subject of subsequent administrative action.

understood within the appraisal industry.

*Response:* HUD has given considerable thought to the general question of appraisal reviews and who performs them. For FHA purposes, reviews are essentially of two types. First are those incidental to the duties of the DE underwriter. In these instances, the appraisal is accepted on its face, while certain factors are weighed into the decision of whether or not to underwrite, and if so, whether to change the loan amount on the basis of an adjustment to value. This is not an appraisal action; it is an underwriting judgment as we explained in the proposed rule. Along with these judgments, the underwriter exercises administrative review responsibilities, checking to see if the appraiser has properly completed the form, noting the comparables used, etc. We see no element of technical review in this role of the underwriter, who is not certified or licensed in most cases.

The second type of review is technical, as compared to administrative. With respect to multifamily transactions, technical reviews are conducted by HUD staff or by a contractor and may result in a revision of the appraisal report. In the case of single family transactions, they are conducted by HUD staff and may provide a basis for administrative sanctions, but they do not materially affect the appraisal report. Whether a technical review is performed by a contractor or by HUD staff, the reviewer must be certified in the case of multifamily programs and either certified or licensed, as is necessary, for single family programs. In order to make HUD's own internal practices consistent with the standard that we apply to private sector appraisers, the Department intends that over the next several years, every FHA multifamily and single family staff appraiser who performs reviews will become either certified or licensed, whichever is appropriate for the nature of the reviews that he or she performs.

Comment on loan correspondents choosing appraisers: The proposed rule does not clarify whether loan correspondents or their sponsors should choose the appraiser.

*Response:* The Department expects sponsors to be responsible for underwriting single family loans submitted by their loan correspondents. Consistent with this approach, the sponsor must select the appraiser.

Comment on limiting market value with replacement cost: It is ill-advised and inconsistent with USPAP for HUD to stipulate that market value shall not exceed replacement cost.

*Response:* The Department agrees with several of the commenters that there are instances when replacement cost does not keep step with market value, and this is precisely why a limitation is needed. We do not agree that a property can adequately secure a debt for any sum greater than is sufficient to replace the property. For purposes of mortgage financing, value must be ascertained prudently. It is not the same, for example, as the value assigned to property when setting a market price. For FHA purposes, it is fair and sensible to limit market value by replacement cost, particularly since it will be supported by an actual construction contract.

We are puzzled by the assertion of one commenter that HUD's policy is inconsistent with USPAP. Standards Rule 1–5 of USPAP states that the appraiser must consider and reconcile the quality and quantity of data available and analyzed within the approaches used and the applicability or suitability of those approaches which are set forth in Standards Rule 1–4. For FHA, the acceptable approach is market value, although replacement cost is recognized as a limit to data acquired from the sales of comparable properties. We see no conflict with USPAP in this regard.

Comment on reporting market conditions and trends: Why require the appraiser to analyze and report on current market conditions and trends if, as stated in the preamble to the proposed rule, such conditions and trends should not be factored into the estimate of value?

*Response:* In the preamble to the proposed rule, we stated that:

* * * while the appraiser should indicate observed market trends as a part of the appraisal report, a trend should not be factored into the estimate of value.

This statement failed to make a basic distinction between what is meant by "trend" in multifamily compared with single family programs, and caused several commenters to question the usefulness of trending in single family appraisal work.

A multifamily appraiser must give consideration to long-term projections of market changes in order to estimate, for example, project income from rents over the life of the mortgage. Trends are therefore of twofold significance in multifamily cases: they address projected changes in both the intrinsic value of the property and in its earning ability. Hence, they are essentially forward-looking.

By comparison, the existence of rapidly rising or declining prices for single family properties can be ascertained by analysis of recent sales data. Looking at sale prices within the preceding six months, the appraiser can estimate the rate of increase or decrease in an area. These rates of change will have an effect on the value of the subject property and must be taken into consideration.[6]

For both single family and multifamily transactions, however, it should be borne in mind that conditions and trends are ephemeral elements in any economy whether viewed from a local or national perspective and they reflect assumptions which may or may not be vindicated by subsequent events.

Comment on reporting the use of minority appraisers: Reporting on the use of minority and female appraisers is burdensome, unnecessary and if nevertheless adopted, should be HUD's responsibility.

*Response:* This is an important initiative. It is intended to address two matters of concern. One is the perceived underutilization of minority and female appraisers in general. Second is a perceived underutilization of minority appraisers in communities where they might be more knowledgeable about trends and conditions and more sensitive to community problems. However, the Department recognizes the burden this reporting requirement places on mortgagees, especially in FHA's high volume single family programs. We have therefore revised the requirement so that HUD will accept virtually all responsibility for compiling and reporting the information for those programs.

Comment on differing appraiser classifications: Why does the proposed rule not distinguish between the different levels of certification, such as a Certified General Appraiser compared with a Certified Residential Appraiser?

*Response:* We do distinguish between certified general and certified residential appraisers in those instances where the distinction must be made. Thus, when the reference is to multifamily programs, "certified general" is intended and the rule will usually so state. When we are referring to single family programs that require the services of a certified appraiser, as described in § 267.5(b), the rule makes no distinction because either a certified

[6] The URAR provides for the appraiser's perception of "Market conditions in the subject neighborhood (including support for the above conclusions [regarding marketability] *related to the trend of market values* * * *)" (Emphasis added.)

general or a certified residential appraiser would be appropriate for the assignment. Some jurisdictions have provided for other variant classifications which this rule does not seek to distinguish. We rely instead on the state accreditation agencies—prompted by the benefits of reciprocity and guided by the Appraiser Qualifications Board—to maintain comparable standards within the different classifications for use by FHA, the Federal Financial Institutions Examination Council members and other interested agencies such as the Department of Veterans Affairs (DVA) and the Farmers Home Administration.

Comment on continuing the use of DVA certificates of reasonable value (CRVs) and HUD conditional commitments: According to HUD's Direct Endorsement regulations, in particular 24 CFR 203.5(e): "In lieu of appraising the property, the mortgagee may utilize a HUD conditional commitment (for proposed construction only), or a Department of Veterans Affairs certificate of reasonable value." Will this continue to be the practice under the Roster system?

*Response:* Lenders may continue to rely on conditional commitments and CRVs. Part 267 will not affect this interchangeability. For some time now, both HUD and DVA, by administrative instructions, have required certified or licensed appraisers for single family appraisals. Moreover, appraisals for veteran housing programs must comply with USPAP. Thus, DVA and FHA requirements are comparable in key respects and are mutually acceptable. Of course this interchangeability could end if either agency were to lessen its standards for appraisers or appraisals. We point out also that HUD requires virtually all applications for mortgage insurance to be processed under the DE program, so very little use is made of HUD conditional commitments. This fact tends to discourage the mutual recognition of CRVs and conditional commitments (or at least DVA's recognition of HUD commitments) since 38 U.S.C. 1831 requires that CRV appraisers be assigned on a rotational basis from a fee panel selected and maintained by DVA—a requirement incompatible with the DE lenders' freedom to select their appraisers.

Comment on the integrity of DE staff appraisers: It is naive and pointless to require that DE lenders separate the appraisal function from their underwriting operations in order to protect the autonomy and integrity of staff appraisers. Policy and decisionmaking for every corporate component coalesce at the top of the business structure and filter downward; a staff appraiser cannot avoid being influenced.

*Response:* We are aware of the potential for pressure on staff appraisers, but short of prohibiting the practice altogether, there is no completely satisfactory solution. We believe that by removing the appraiser from the direct supervision of the loan production department, two advantages accrue.

First, the appraiser is at least free from the everyday case-by-case control of loan officers. An appraiser may sense that too many unfavorable appraisals can impede on his or her career track (of course, a self-employed appraiser under contract with a lender can feel similar pressures), but there will at least not be instances where one's immediate supervisor looks for a specific value in every case assigned.

Second, when the nexus of decisionmaking shifts upward, if undue influence is manifest, it is usually easier to fix accountability. If there is a consistent problem, it will very likely have originated at upper corporate levels. Top management of a maleficent lending institution will find it more difficult to avoid culpability by claiming that fraudulent or misleading appraisals are the result of nothing more than faulty supervision or insensitivity to potential trouble at the loan officer level. Of course none of our precautions, including appraiser independence, can guarantee that a staff (or contract) appraiser will escape undue pressure. Ultimately, we look to the integrity and long-range business judgment of the mortgagees themselves to counter serious abuse and destructive practices. As we have observed previously, there has been a very good overall record on the part of mortgagees and staff appraisers in this regard.

Comment on the advisability of the Roster system: The idea of establishing a Roster for single family appraisers appears to be an offshoot of the fee panel system and is therefore a repudiation of the mortgagee's right to select the appraiser.

*Response:* The Roster and the fee panel are in fact totally different in concept and purpose. The fee panel was initiated as a means of controlling the quality of appraisers in terms of training, diligence, judgment and professionalism. It functioned mainly at a time when there was little other assurance in these respects. It afforded a means of training appraisers in FHA requirements and procedures and it also served to limit the pool of appraisers so that panelists could be kept active in FHA programs and their experience level would benefit accordingly.

Circumstances have now changed completely. First and most importantly, FIRREA has raised and standardized the level of appraiser competence nationwide so that it is no longer a major concern. Second, the law now permits DE mortgagees to select appraisers. This means that a system of assigning panelists, unless the mortgagee requests the assignment or is not DE approved (and most now are) would be illegal—a fact which is overlooked by those commenters who urge HUD to retain the strict panel assignment system. In a practical sense, it also means that there are far more potential FHA single family appraisers than this agency, with its increased budget constraints, could hope to train in the manner that it once did. We must now rely on FIRREA and State accreditation boards to do much of what HUD has done in the past. The fee panel will continue in a diminished role, and only for those lenders who wish to continue using it. This does not mean that HUD will abdicate its responsibility for guarding against poor appraisal work. We are instituting the Roster as a means of monitoring and quickly remedying problems. However, unlike the fee panel system, the Roster will list any applicant who holds current credentials under state certification/licensing law, who has acquainted himself or herself with FHA program requirements, and who has a good professional record, including competency in performing FHA assignments. The Roster will thus provide a rapid means of confirming that the appraiser is in good standing at the time the mortgagee requests an FHA case number and identifies the appraiser selected. That is its purpose—it is a monitoring control, not a system for training and qualifying FHA appraisers.

Comment on the need to list fee panelists on the Roster: The proposed rule does not clarify whether fee panelists must be listed on the Roster.

*Response:* Section 267.8(d)(1) now clarifies that fee panelists must be listed on the HUD Appraiser Roster. Otherwise, minority and female panelists could not be tracked for the report compiled by HUD pursuant to § 267.3(b)(2).

Comments on the scope of the Roster: Must an appraiser apply for listing on the Roster in every state where the appraiser may do business? Also, if an institutional appraiser applies, must the individual employees of that firm apply for listing as well?

*Response:* The appraiser must apply to the HUD Office (or to any one of the state's HUD Offices if there are several) in each state where he or she intends to

perform an appraisal. The reason is that every state has its own numbering system and the only practical means of correlating the Roster data and the record of state accreditation is to maintain a list of all the various certification and/or license numbers pertaining to that appraiser. Individual employees as well as the employing institution must be listed since the performance of both will be monitored.

Comment on removal from the Roster: If HUD needs to remove an appraiser from the Roster for any reason, it should report that fact to the state licensing board. Two commenters, in fact, suggested that HUD "punish" a disqualified appraiser.

*Response:* It is HUD's intention to report cases of fraudulent or incompetent appraisals and other serious violations of appraisal professional conduct to state accrediting boards. However, the commenters who favor "punishment" mistake the purpose of the Roster. As we said previously, it is not a device for applying sanctions; it is simply a quality control measure to assure that appraisers who have not maintained their credentials, or who for some reason have not met FHA standards, are removed from the system where they can cause a problem. Congress did not make HUD a watchdog or enforcer for the appraisal industry when it enacted section 142 of the Reform Act, and it would be inappropriate to base a punitive process on the Roster system. When we discussed the Roster in the Proposed Rule, we explained that 24 CFR part 24 relating to Government debarment and suspension procedures does not apply to the removal of an appraiser from the listing, but we also cautioned that the Department will invoke part 24 whenever circumstances call for remedial action and § 267.8(d)(3) so states.

Comment on training for special HUD programs: How will HUD train non-panelists with regard to special FHA requirements such as lead based paint detection and abatement?

*Response:* This is a matter that has not been resolved. The Department is exploring several means of helping appraisers who have not been through fee panel training to become knowledgeable about specific program requirements. We are expediting this matter and will advise interested members of the public as soon as there is further information. In the meantime, appraisers should bear in mind that it would be a violation of USPAP's Competency Provision to undertake an assignment for which the appraiser has not been adequately trained and is not qualified.

Comment on membership in professional organizations: Even though the Department may not wish to predicate an individual appraiser's competence solely on the basis of his or her membership in a professional organization, such membership should be given weight.

*Response:* We disagree. There is simply no correlation in our view between an appraiser's competence and which professional organizations, or the number of professional organizations, that an appraiser may choose to join. Our conclusion in the proposed rule on this point remains unchanged.

Comment on appraising Secretary-held properties: It is short-sighted and ill-advised for HUD to exempt the sale of Secretary-held properties from part 267.

HUD disposition properties are indeed exempted from the requirements of part 267, but they are nonetheless subject to a valuation process in determining what would be an acceptable return on the disposition sale. Moreover, if FHA mortgage insurance is used to finance that sale, the maximum allowable mortgage is based on the bid amount capped by the FHA mortgage limit applicable to the area. No appraisal is required, and should the mortgagee on its own initiative call for one, this part 267 would not apply.

## IV. Other Matters

### *A Rule Recently Adopted by the Federal Financial Agencies*

On June 7, 1994 (59 FR 29482) the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Office of Thrift Supervision (the Agencies), after publishing a proposed rule for public comment, amended their respective parts of title 12 of the Code of Federal Regulations regarding the appraisal of real property pursuant to FIRREA. These amendments increase from $100,000 to $250,000 the minimum threshold for residential real estate appraisals as provided by that statute and also broaden existing exemptions from various other appraisal requirements. In addition, the amendments revise existing provisions with respect to appraisal content and appraiser independence.

In developing this final rule, HUD took the Agencies' amendments into consideration. However, we do not believe it would be appropriate for the Department to adopt a threshold mortgage amount that triggers the need for an appraisal. HUD is charged with a specific Congressional mandate under section 202(e) of the NHA to assure the quality of each appraisal used in determining the value of the security for an FHA insured mortgage. The Secretary's accountability in this regard is more immediate and direct than that of the Agencies in establishing a system of state accreditation under FIRREA. Moreover, protection of the FHA insurance funds is a duty of the greatest importance to HUD. We do not believe that we could fulfill these responsibilities by accepting as security for FHA insured mortgages properties that have not been thoroughly appraised.

The Department will therefore require appraisals for single family and multifamily programs as set forth in § 267.1, without exception. Various considerations that underlie the Agencies' other amendments with respect to appraisal standards, appraiser independence and miscellaneous related matters are, we believe, comprehensively addressed in this rule. Therefore, specific changes to the Agencies' regulations need not be discussed or included in this rulemaking which alone governs requirements for FHA mortgage insurance transactions.

### Executive Order 12866

This rule was reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review. Any changes made to the rule as a result of that review are clearly identified in the docket file which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

### Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The eligibility and performance requirements contained in this rule are consistent with requirements already established by other government agencies for lender eligibility. Accordingly, the economic impact of this rule would be minimal, and would affect small and large entities equally.

### Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD

regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying Monday through Friday, 7:30 a.m. until 5:30 p.m. in the office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

*HUD's Semiannual Agenda.* This rule was listed under Office of Housing as sequence number 1589 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20448) under Executive Order 12866 and the Regulatory Flexibility Act.

*Executive Order 12612, Federalism.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule do not have federalism implications and thus are not subject to review under the Order. The rule is limited to imposing additional eligibility and performance requirements on private lenders. The only point of policy contained in part 267 with even an indirect implication for federal-state relationships is the decision that a HUD appraiser should be subject to the certification requirements of any one state, but not necessarily other states in which he or she is assigned to perform appraisals. As explained previously, the standards of various jurisdictions developed pursuant to FIRREA should result in a reasonably uniform level of competence, and qualifying HUD employees in every jurisdiction would involve many dollars and staff hours spent on a largely duplicative effort. For purposes of section 142 of the Reform Act, certification by any one state should therefore be sufficient. In reaching this conclusion, HUD parallels OMB's decision with regard to FIRREA that:

> Federal employees who choose to become state-licensed or certified real estate appraisers need only be licensed or certified in one state or territory to perform real estate appraisal duties as Federal employees in all states and territories.[7]

The Department is working toward assuring that its employees who perform appraisals or consultations on multifamily projects become qualified as certified general appraisers as soon as possible.

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

*Paperwork Reduction Act Statement.* The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The form shown in the matrix below has been determined by the Department to contain collection of information requirements:

| Form | Number of Respondents | Number of Responses per Respondents | Hours per Respondents | Total hours |
|---|---|---|---|---|
| Form HUD 92563 | 50,000 | 1 | .5 | 25,000 |
| Total Annual Burden | | | | 25,000 |

**List of Subjects**

*24 CFR Part 200*

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

*24 CFR Part 203*

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

*24 CFR Part 204*

Mortgage insurance.

*24 CFR Part 206*

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

*24 CFR Part 267*

Appraisals, Mortgage insurance, Property valuation, Reporting and recordkeeping requirements.

Accordingly, the Department amends CFR parts 200, 203, 204, and 206, and adds a new part 267, consisting of subparts A through C, as follows:

## PART 200—INTRODUCTION

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

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

2. Section 200.810 is amended by revising paragraph (b), to read as follows:

**§ 200.810 Single family insurance and coinsurance.**

* * * * *

(b) *Appraisal.* The appraiser, who shall be listed on the HUD Appraiser Roster under § 267.8(d)(2) of this chapter, shall, when appraising a dwelling constructed prior to 1978, inspect the dwelling for defective paint surfaces.

* * * * *

## PART 203—SINGLE FAMILY MORTGAGE INSURANCE

3. The authority citation for 24 CFR part 203 is revised to read as follows:

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

4. Section 203.5(e) is revised to read as follows:

**§ 203.5 Direct endorsement process.**

* * * * *

(e) *Appraisal.* A mortgagee shall have the property appraised in accordance with the requirements of part 267 of this chapter.

[7] OMB Bulletin 92–06, March 16, 1992.

## PART 204—COINSURANCE

5. The authority citation for 24 CFR part 204 is revised to read as follows:

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

6. Section 204.3(b) is revised to read as follows:

**§ 204.3 Authority to determine eligibility.**

* * * * *

(b) In making the determination set forth in this section the mortgagee shall utilize an appraiser who meets the requirements of part 267 of this chapter and mortgage credit examiners and inspectors approved by the Commissioner.

## PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

7. The authority citation for 24 CFR part 206 is revised to read as follows:

**Authority:** 12 U.S.C. 1715b, 1715z–20; 42 U.S.C. 3535(d).

8. Section 206.3 is amended by adding at the end of the definition of "Maximum claim amount" the following sentence:

**§ 206.3 Definitions.**

* * * * *

*Maximum claim amount* * * * Appraised value shall be determined by an appraisal performed in accordance with part 267 of this chapter.

* * * * *

9. A new part 267, consisting of subparts A through C, is added to read as follows:

## PART 267—APPRAISAL AND PROPERTY VALUATION

### Subpart A—General

Sec.

267.1 Applicability.
267.2 Definitions applicable to both single family and multifamily programs.
267.3 Professional association membership; nondiscrimination; lender reporting and competency.
267.4 Waiver.

### Subpart B—Single Family Programs

267.5 Definitions applicable to single family programs.
267.6 Transactions requiring a state certified or state licensed appraiser.
267.7 Appraisal standards.
267.8 Selection of appraisers by mortgagees; HUD Appraiser Roster; appraiser independence.

### Subpart C—Multifamily Programs

267.9 Definitions applicable to multifamily programs.
267.10 Qualified appraisers and appraisals.
267.11 Appraisal standards.
267.12 Selection of appraisers; appraiser independence.

**Authority:** 12 U.S.C. 1708(e), 1715b; 42 U.S.C. 3535 (d).

### Subpart A—General

**§ 267.1 Applicability.**

(a) *General rule.* If the maximum insurable amount for a mortgage insured under any National Housing Act program covered by this subchapter is based in whole or in part upon the value of security as determined by an appraisal, the appraisal must comply with this part 267.

(b) *Exceptions.* This part does not apply:

(1) If title to the property is held by the Secretary and a determination of value is needed for disposition of the property or for an insured mortgage to finance the property;

(2) To appraisals of manufactured homes under § 201.10 (b) or (d) of this chapter or § 201.23(b)(3) of this chapter where the manufactured home is classified as personal property;

(3) To appraisals of property for purposes of property improvement loans under Title I of the National Housing Act if the principal balance of the loan is not required to be based on the borrower's equity in the property; or

(4) If the insured mortgage is secured by a hospital.

**§ 267.2 Definitions applicable to both single family and multifamily programs.**

The following definitions apply to subparts A, B and C of this part:

*Appraisal Foundation* means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois.

*Appraisal Subcommittee* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

*FIRREA* means Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989;

*Market analysis* means a study of real estate market conditions for a specific type of property.

*Market value* means: (1) The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, provided that the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(i) Buyer and seller are typically motivated;

(ii) Both parties are well informed or well advised, and acting in what they consider their own best interests;

(iii) A reasonable time is allowed for sales exposure in the open market;

(iv) Payment is made in terms of cash in U.S. dollars or in terms of comparable financial arrangements; and

(v) The price represents the normal consideration for the property sold unaffected by special or creative financing or by a sales concession from anyone associated with the sale.

(2) For purposes of this definition, market value cannot exceed replacement cost, i.e., the reasonable estimated cost of replacing the property.

*Mortgage* means a mortgage as defined in this chapter, or a loan authorized for insurance under the National Housing Act.

*Mortgagee* means the holder of a mortgage and includes a lender holding a Title I contract of insurance and a Title I loan correspondent.

*Replacement cost* means the Secretary's estimate of the construction cost of the property or project when the proposed improvements are completed. The replacement cost may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction, and other miscellaneous charges incident to construction and approved by the Secretary. For substantial rehabilitation proposals, the replacement cost estimate includes the "as is" value of the property before rehabilitation, plus the cost of rehabilitation and appropriate carrying and financing charges.

*Single family program* means a mortgage or loan insurance program authorized by the National Housing Act for one-to-four family residential property as defined in § 267.5(c).

*State* means any state of the United States, any territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

*USPAP* means that edition of the Uniform Standards of Professional Appraisal Practice most recently promulgated by the Appraisal Standards Board of the Appraisal Foundation at the time the Standards are applied. The term also includes such changes and additions to USPAP as the Department shall recognize. In general, HUD will recognize a change or addition to USPAP. If, after opportunity to consider the applicability and consequences of the change for HUD programs, HUD should decide that it will no longer recognize the change or addition, that

decision will be published in the Federal Register.

**§ 267.3 Professional association membership; nondiscrimination; lender reporting and competency.**

(a) *Membership in appraisal organizations.* A state certified general or certified residential appraiser or a state licensed appraiser may not be excluded from consideration for an assignment solely because of membership or lack of membership in a particular appraisal organization.

(b) *Discrimination prohibited.* In the selection of an appraiser, there shall be no discrimination on the basis of race, color, religion, national origin, sex, age or disability.

(c) *Single family report and multifamily information; public availability.* (1) Based upon data compiled pursuant to paragraphs (c)(3) and (c)(4) of this section, HUD will develop gender and minority status information and will publish a report summarizing with respect to each mortgagee the total number of appraisals performed within the applicable reporting period and of that total the number of appraisals performed by female appraisers and the number of appraisals performed by minority status appraisers as defined in paragraph (c)(3)(iii) of this section.

(2) Based on data compiled pursuant to paragraphs (c)(3) and (c)(5) of this section, HUD will develop gender and minority status information with respect to each housing finance agency participating in the Risk-Sharing Program, each Delegated Processor, and each appraisal company and individual appraiser contracting directly with the Department. The information will disclose for each of the parties described above the total number of appraisals performed within the applicable reporting period and of that total the number of appraisals performed by female appraisers and the number of appraisals performed by minority status appraisers as defined in paragraph (c)(3)(iii) of this section.

(3) Each institution or individual who conducts or contracts for appraisals covered by this part will be monitored by HUD with respect to the number of appraisals which it has performed or contracted for during the reporting year by:

(i) Staff appraisers;

(ii) Appraisers assigned from a fee panel;

(iii) Appraisers whose services it has contracted for; in order to determine the number of appraisals conducted for the mortgagee by female and minority persons within the reporting period. A minority appraiser is one who is: Hispanic, Hispanic black, Non-Hispanic black, Asian/Pacific Islander, Asian Indian American, or American Indian/Alaskan Native.

(4) With respect to single family programs, the information contained in the report will be extracted by HUD from data kept on record with respect to each appraiser listed on the HUD Appraiser Roster described in § 267.8(d)(2). The data will be maintained so as to record the identity of the appraiser when the mortgagee requests an appraisal assignment.

(5) With respect to multifamily programs, information will be extracted by HUD from data kept on record for each Review Appraiser and Field Appraiser performing appraisals or consulting for housing finance agencies (HFAs), Delegated Processors, and the Department on a contract basis. The information will be submitted within the following time limits:

(i) HFAs participating in the Risk-Sharing Program will be required to submit data early in the process (generally at the time of the request for HUD-Retained Reviews);

(ii) Delegated Processors will be required to submit data within three business days from receipt of the Task-Delivery Order;

(iii) Contract appraisers (Technical Discipline and Purchase Orders) will be required to submit data within three days from receipt of the Task/Delivery/Purchase Order. Institutions or individuals who are currently under contract to HUD will be required to furnish this additional information when exercising an option to renew or at any other time which involves a change in a negotiated price. HFAs will be required to submit the additional data as soon as possible after the final rule in the Risk-Sharing Program becomes effective.

(6) The single family report and the multifamily information will be available for public inspection during regular business hours at the Office of Insured Single Family Housing, Single Family Development Division, U.S. Department of Housing and Urban Development, 451 7th St., S.W., Washington, D.C. 20410.

(d) *Competency.* Although appraisers performing appraisals covered by this part must be either state licensed or certified, as appropriate, an appraiser shall not be considered competent or suitable solely by reason of having been licensed or certified by a state. Every determination of competency shall be based upon the appraiser's individual qualifications and character and upon his or her experience and educational background as they relate to a particular appraisal assignment.

**§ 267.4 Waiver.**

The Assistant Secretary for Housing-Federal Housing Commissioner, or an official designated to act on behalf of the Assistant Secretary-Commissioner, may waive any requirement of this part not mandated by statute upon a finding that application of such requirement would adversely affect the purposes of the National Housing Act. Each waiver pursuant to this section shall be in writing and shall be supported by a statement of the facts and reasons that are the basis for the waiver. The authority conferred under this section may not be redelegated.

## Subpart B—Single Family Programs

**§ 267.5 Definitions applicable to single family programs.**

In addition to the definitions in § 267.2, the following definitions apply to single family programs:

*Appraisal* means a written report independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of an adequately described property as of a specific date(s), which statement is supported by the presentation and analysis of relevant market information; *except that,* in the case of a property which is not valued on the basis of economic soundness, the appraisal shall be based on replacement cost.

*Complex one-to-four family residential property appraisal* means an appraisal in which the nature of the property, the form of ownership, or the market conditions are atypical.

*One-to-four family residential property* means a manufactured home lot or real property upon which is located a structure containing not less than one, nor more than four, dwelling units (or 11 units for a mortgage to be insured under subpart A of part 220(h) of this chapter), including, for purposes of a mortgage to be insured under § 203.50 of this chapter, a structure that will contain such units after rehabilitation and for purposes of a mortgage to be insured under part 201 of this chapter, any property regardless of size or nature. The term includes a manufactured home and lot classified as real property, or a manufactured home lot which meets the requirements of § 201.2(v) of this chapter.

*State certified appraiser* means any individual who satisfies the requirements for certification in a state which has adopted criteria that currently meet or exceed the minimum certification criteria issued by the

Appraiser Qualifications Board of the Appraisal Foundation. The state criteria must include a requirement that the individual have achieved a satisfactory grade upon a state-administered examination that is consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser Qualifications Board of the Appraisal Foundation. Furthermore, if the Appraisal Subcommittee has issued a finding that the policies, practices, or procedures of the state are inconsistent with FIRREA, an individual must comply with any additional standards for state certified appraisers imposed by HUD under § 267.7(c)(2).

*State licensed appraiser* means any individual who satisfies the requirements for licensing in a state which has adopted criteria that currently meet or exceed the minimum licensing criteria issued by the Appraiser Qualifications Board of the Appraisal Foundation. The state criteria must include a requirement that the individual have achieved a satisfactory grade on a state-administered examination that is consistent with, and equivalent to, the Uniform State Licensing Examination issued or endorsed by the Appraiser Qualifications Board of the Appraisal Foundation. Furthermore, if the Appraisal Subcommittee has issued a finding that the policies, practices, or procedures of the State are inconsistent with Title XI of FIRREA, an individual must comply with any additional standards for state licensed appraisers imposed by HUD under § 267.7(c)(2).

**§ 267.6 Transactions requiring a state certified or state licensed appraiser.**

(a) *Appraisal by either a state certified or state licensed appraiser.* Every appraisal shall be performed by either a state certified appraiser or a state licensed appraiser, except as provided in paragraph (b) of this section. With respect to appraisals performed by HUD employees, this requirement is satisfied whether or not the property is located in the certifying or licensing state.

(b) *Appraisal by a state certified appraiser only.* An appraisal shall be prepared by a state certified appraiser if it is:

(1) Required in connection with a mortgage of $1,000,000 or more; or

(2) A complex one-to-four family residential property appraisal.

(c) *Recognition of appraisals not governed by this part.* An appraisal of a one-to-four family residential property prepared in accordance with standards prescribed under FIRREA, and in response to the requirements of any Federal Financial Institution Regulatory Agency, viz., the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Association or the Office of Thrift Supervision, or with standards of the Resolution Trust Corporation will comply with this section.

**§ 267.7 Appraisal standards.**

(a) *Minimum standards.* Each appraisal shall follow the requirements of this § 267.7. The appraisal shall, at a minimum:

(1) Conform to USPAP, except to the extent that such compliance may conflict with the provisions of this part 267.

(2) Disclose any steps taken that were necessary or appropriate to comply with the Competency Provision of USPAP.

(3) Be written and presented on the Uniform Residential Appraisal Report form, the Federal National Mortgage Association (FNMA) Small Residential Income Property Appraisal Report form, the FNMA Individual Condominium Unit Appraisal Report form or any other format that is acceptable to the Secretary.

(4) Analyze and report in reasonable detail all prior sales of the property being appraised that occurred within one year preceding the date when the appraisal is prepared.

(5) Analyze and report data on current revenues, expenses, and vacancies for the property if it currently is, and will continue to be, income-producing.

(6) Analyze and report on current market conditions and trends that will affect income or the absorption period, to the extent they affect the value of the property.

(7) Contain sufficient supporting documentation with all pertinent information reported so that the appraiser's logic, reasoning, judgment, and analysis in arriving at a conclusion indicate to the reader the reasonableness of the value reported.

(8) Include in the certification required by USPAP a statement that the appraisal is not based on a requested minimum valuation, a specific valuation or range of values, or the approval of the loan. The certification shall also include a statement that the racial/ethnic composition of the neighborhood surrounding the property in no way affected the appraisal determination.

(9) Follow a reasonable valuation method that, except for an appraisal with respect to a mortgage to be insured under part 220 of this chapter, addresses the direct sales comparison, income, and cost approaches to market value required by the Secretary, reconciles or explains any differences those approaches yield in determining the value of the property in question, and gives the reason(s) for rejecting each approach that was not used.

(b) *Unavailable information.* If information required by this section is not available, that fact shall be disclosed and explained in the appraisal report.

(c) *Additional standards.* In addition to the minimum standards set forth in paragraph (a) of this section:

(1) A Direct Endorsement mortgagee may adopt generally, or may impose in specific cases, such supplementary standards as are reasonable, appropriate, and consistent with this part 267.

(2) HUD may, in instances where the Appraisal Subcommittee has determined that the policies, practices, and procedures of a certifying or licensing state are inconsistent with FIRREA, impose such supplementary requirements as may be appropriate.

(3) HUD may, in instances where the Appraisal Subcommittee has determined that the requirements of FIRREA may be waived in accordance with 12 U.S.C. 3348(b), impose such supplementary requirements as may be appropriate.

**§ 267.8 Selection of appraisers by mortgagees; HUD Appraiser Roster; appraiser independence.**

(a) *Selection method.* (1) The method of selecting the appraiser depends upon the program involved.

(i) For a mortgage insured under Title II of the National Housing Act, the appraiser may be:

(A) Employed on the staff of the Direct Endorsement mortgagee or selected by the Direct Endorsement mortgagee (which includes being selected as an individual from the staff of a selected appraisal organization), provided the appraiser is listed on the Appraiser Roster provided under this § 267.8; or

(B) Assigned by HUD from membership on one of its fee panels.

(ii) Reserved.

(2) The criteria in paragraph (d) of this section govern the selection of the appraiser.

(3) For the appraisal of a manufactured home which is to be insured under Title I of the National Housing Act and is classified as personal property, the appraisal shall be carried out under the terms and conditions of a contract between HUD and a contractor selected to perform such appraisals.

(b) *Direct Endorsement staff appraisers.* An appraiser who is a staff employee of a Direct Endorsement

mortgagee shall be independent of the loan officers and the loan production operations of the mortgagee.

(c) *Mortgagees, staff and fee appraisers: conflicts of interests.* (1) A mortgagee must avoid conflicts of interest and other relationships which affect, either in reality or in appearance, the credibility of the appraisal. Accordingly, a mortgagee may not contract with an appraiser or appraisal organization to perform an appraisal of a property if the builder or seller of the property owns, is owned by, is affiliated with, or has a financial interest in the appraiser or appraisal organization.

(2) An appraiser must avoid conflicts of interest and other relationships which affect, either in reality or in appearance, the credibility of the appraisal. Accordingly, a fee appraiser may not have any interest, direct or indirect, in the property being appraised. A staff appraiser of a Direct Endorsement mortgagee may fiot have any direct interest, financial or otherwise, in the property being appraised, and is permitted an indirect interest only by reason of his or her employment by a mortgagee that has its appraisal operations isolated from its other activities in accordance with paragraph (b) of this section.

(d) *Eligible fee appraisers.* (1) *General rule for Direct Endorsement cases.* If a mortgage is to be processed by Direct Endorsement, the mortgagee may:

(i) Contract with a fee appraiser to perform appraisal services. The contract may be with an individual, a corporation, a partnership, a sole proprietorship, a joint venture, a limited liability company, or any other legal entity recognized for the purpose by the state, which the mortgagee has chosen at its sole discretion, provided that the individual appraiser selected to perform the appraisal is listed on the current HUD Appraiser Roster set forth in paragraph (d)(2) of this section. The mortgagee, concurrently and equally with the appraiser whom it has chosen, accepts full responsibility for the accuracy, integrity and thoroughness of the appraisal.

(ii) Use an appraiser employed on its staff, provided that the appraiser is listed on the current HUD Appraiser Roster.

(iii) Request HUD to assign an appraiser from one of its fee panels. Fee panelists must be listed on the HUD Appraiser Roster.

(2) *HUD Appraiser Roster.* (i) HUD will maintain a nationwide listing on an Appraiser Roster of appraisers who are permitted to perform appraisals in connection with HUD's single family programs. Being listed on the Roster does not indicate a warranty or endorsement by HUD of any appraiser or appraisal, and § 200.145(c) of this chapter applies to each appraisal performed in accordance with this part. Each applicant for listing or periodic relisting must certify that he or she:

(A) Holds a current certification or license from a state whose qualification standards are in compliance with FIRREA, as determined by the Appraisal Subcommittee (and must include his or her current certificate or license number);

(B) Has read HUD Handbook 4150.1 and related Mortgagee Letters;

(C) Is not listed on HUD's Credit Alert Interactive Voice Response System; and

(D) Is not debarred, suspended or in any way disqualified from participating in HUD programs.

(ii) In addition, the applicant must submit such additional information as HUD may require. Application to be listed on the Roster must be made at any HUD Office in each state where the applicant will perform appraisals.

(3) *Removal from the Roster.* HUD may at any time remove the appraiser from the Roster for cause. Cause includes, but is not limited to, significant deficiencies in appraisals, failure to maintain standing as a state certified or state licensed appraiser and prosecution for committing or attempting to commit fraud, misrepresentation or other offence that may reflect on the appraiser's character and integrity. Such removal shall not be governed by the procedures of part 24 of this Title. The appraiser shall, however, be subject to other sanctions in accordance with part 24 of this title.

(4) *Fee panels.* If a mortgage is not processed by the Direct Endorsement procedure, the appraiser will be assigned from a fee panel or otherwise designated by HUD. A mortgagee using the Direct Endorsement procedure may also request HUD to assign an appraiser from a fee panel.

(e) *Appraisal fees and charges.* The appraisal fee charged to the borrower or other party shall be reasonable. The fee may be prescribed by rule or other HUD issuance.

(f) *Transfer of appraisals between mortgagees.* A Direct Endorsement lender may accept an appraisal that was prepared by an appraiser engaged directly by another mortgagee, provided that the appraisal was performed in accordance with this part and that the mortgagee accepting the appraisal has:

(1) Reviewed the appraisal report under its review procedures; and

(2) Found the appraisal to be acceptable.

## Subpart C—Multifamily Programs

### § 267.9 Definitions applicable to multifamily programs.

In addition to the definitions in § 267.2, the following definitions apply to multifamily programs:

*Acceptable risk* refers to a program in which the project's net operating income covers the mortgage debt service requirement and provides an appropriate return to the owner's equity. The term assumes that the mortgage does not exceed the appropriate percentage of estimated replacement cost and any other supplemental standards concerning particular programs contained in handbooks and other directives.

*Appraisal* means a written report independently and impartially prepared by a qualified appraiser setting forth an opinion:

(1) In the case of a project requiring economic soundness, as to the market value of an adequately described property as of a specific date(s), which statement is supported by the presentation and analysis of relevant market information, and is in accordance with the supplemental standards as set forth in HUD's appraisal instructions; or

(2) In the case of a project which does not require a determination of economic soundness, that is based on replacement cost, as estimated by HUD staff or by an appraiser who has contracted with HUD to perform a real estate consultation pursuant to § 267.12(b).

*Consultant,* which refers to an appraiser performing a real property consultation for HUD, means the person who provides such information, analysis, recommendations or conclusions.

*Consultation* or *consultancy* means the act or process of providing information, analysis of real estate data, and recommendations or conclusions on diversified problems in real estate, other than estimating value.

*Economic soundness* refers to a program under which a project has had its underwriting risk analyzed on the basis of three approaches to value.

*Multifamily project* or *multifamily property* means a project containing five or more family units (or in the case of a mortgage to be insured under section 220(h) of the National Housing Act, two or more rental units), a nursing home, an intermediate care facility, a board and care home or a project insured under section 232 of the NHA.

*State certified appraiser* means any individual who satisfies the requirements for certification as a certified general appraiser in a state

which has adopted criteria that currently meet or exceed the minimum certification criteria issued by the Appraiser Qualifications Board of the Appraisal Foundation. The state criteria must include a requirement that the individual have achieved a satisfactory grade upon a state-administered examination that is consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser Qualifications Board of the Appraisal Foundation. Furthermore, if the Appraisal Foundation has issued a finding that the policies, practices, or procedures of the state are inconsistent with FIRREA, an individual must comply with any additional standards for state certified appraisers imposed by HUD under § 267.11(c)(1).

**§ 267.10 Qualified appraisers and appraisals.**

(a) *Appraisal by a state certified general appraiser.* Every appraisal shall be performed by a state certified general appraiser. With respect to appraisals performed by HUD employees, this requirement is satisfied whether or not the property being appraised is located in the state which certified the HUD employee. Each HUD employee who performs appraisals or consultations or who reviews appraisals or consultations will be qualified as a certified general appraiser under the laws of one or more states not later than December 31, 1996, unless, in an individual case, the Assistant Secretary for Housing-Federal Housing Commissioner decides that a different date is appropriate. All appraisers shall comply with HUD policies and procedures as set forth in HUD handbooks and other issuances.

(b) *Only appraisals and consultations complying with this part are recognized.* Appraisals or consultations performed in accordance with the requirements of other agencies will not be recognized for HUD multifamily transactions that require appraisals or consultations complying with this part 267 unless those appraisals or consultations so comply.

**§ 267.11 Appraisal standards.**

(a) *Minimum standards.* Each appraisal or real estate consultation shall follow the requirements of this § 267.11 as supplemented from time to time by HUD processing instructions which comprise supplemental standards authorized in accordance with USPAP. The appraisal shall, at a minimum:

(1) Conform to USPAP, except to the extent that such compliance may conflict with the provisions of this part 267.

(2) Disclose any steps taken that were necessary or appropriate to comply with the Competency Provision of the USPAP.

(3) Apply USPAP Standard 2, Real Property Appraisal Reporting; except that under the Supplemental Standards Provision of USPAP, reports by appraisers or consultants shall be in writing using the following forms:

(i) HUD–92264, HUD–92264(RCF) or HUD–92264B, with attachments as required;

(ii) Trial form HUD–92264A.

(4) Analyze and report in reasonable detail all prior sales of the property being appraised within three years preceding the date when the appraisal is prepared, or beyond three years if necessary to include the last arms-length transaction.

(5) Analyze and report data on current revenues, expenses, and vacancies for the property if it currently is, and will continue to be, income-producing.

(6) Analyze and report a reasonable marketing period for the subject property.

(7) Analyze and report on current market conditions and trends that will affect income or the absorption period, to the extent they affect the value of the property.

(8) Contain sufficient supporting documentation with all pertinent information reported so that the appraiser's logic, reasoning, judgment, and analysis in arriving at a conclusion indicate to the reader the reasonableness of the value reported or of the consulting recommendations or conclusions provided.

(9) Include in the certification required by USPAP a statement that the appraisal is not based on a requested minimum valuation, a specific valuation or range of values, or the approval of the loan. The certification shall also include a statement that the racial/ethnic composition of the neighborhood surrounding the property in no way affected the appraisal determination.

(10) Follow a reasonable valuation method that:

(i) With respect to a program based on market value, addresses the direct sales comparison, income, and cost approaches to market value, reconciles or explains any differences those approaches yield in determining the value of the property in question, and gives the reason(s) for rejecting each approach that was not used;

(ii) With respect to a program based on replacement cost, determines the acceptable risk using estimated replacement cost together with supplemental standards set forth in HUD handbooks and other program directives.

(b) *Unavailable information.* If information required by this section is not available, that fact shall be disclosed and explained in the appraisal report.

(c) *Additional standards.* In addition to the minimum standards set forth in paragraph (a) of this section:

(1) HUD may, in instances where the Appraisal Subcommittee has determined that the policies, practices, and procedures of a certifying or licensing state are inconsistent with FIRREA, impose such supplementary requirements as may be appropriate.

(2) HUD may, in instances where the Appraisal Subcommittee has determined that the requirements of FIRREA may be waived in accordance with 12 U.S.C. 3348(b), impose such supplementary requirements as may be appropriate.

**§ 267.12 Selection of appraisers; appraiser independence.**

(a) *Basis for selection.* The appraiser or consultant may be:

(1) A member of HUD's staff;

(2) Selected by the Delegated Processor in accordance with terms and conditions agreed to in writing by HUD and the Delegated Processor;

(3) Selected to perform appraisals in accordance with the terms and conditions of a formal contract between HUD and an institution or individual performing the services, or in accordance with the terms and conditions of a Purchase Order; or

(4) Selected by an HFA which has been approved to participate in the Department's Risk-Sharing Program.

(b) *Qualifications.* HUD exercises contractual control over the qualifications of those individuals and organizations that perform appraisal and consultation services in FHA multifamily programs.

(1) Appraisers and consultants performing services under HUD contracts for Delegated Processing and Technical Discipline assignments will be selected on the basis of criteria and procedures set forth in the solicitation, pursuant to the Federal Acquisition Regulations, 48 CFR Chapter I.

(2) Under the Delegated Processing Program HUD contracts with a HUD-approved processing company to perform mortgage insurance underwriting processing and to make a recommendation to HUD. HUD makes the final underwriting determination. The Delegated Processor must identify the staff or contract review appraiser(s) and consultant(s) and must submit their qualifications, based upon requirements as set forth in the contract between HUD

and the Delegated Processor, for review and approval. The Delegated Processor may subcontract appraiser and consulting functions, but must identify, prior to performing the appraisal or consultation, the appraiser or consultant selected under the subcontract and must provide a resume or qualifications for review and approval by the HUD field office concerned.

(3) Under the Housing Finance Agency Risk-Sharing Program, HUD delegates to state and local housing finance agencies the authority to originate and service loans that are fully insured by FHA. Under this program, participating agencies share in the risk associated with monetary losses that may be incurred as a result of loan defaults. An HFA may use either in-house or contract appraisers who meet certification requirements. The Risk-Sharing Program requires compliance with USPAP and therefore requires that appraisals be performed by certified general appraisers accredited by the state in which the project is located.

(c) *Delegated Processor appraisers: conflicts of interests.* A Delegated Processor or Consultant must avoid conflicts of interest and other relationships which affect, either in reality or in appearance, the credibility of the appraisal. The Delegated Processor or Consultant may not:

(1) Contract with an appraiser or appraisal organization to perform appraisals, if the Delegated Processor or Consultant owns, is owned by, is affiliated with, or has a financial interest in the appraiser or appraisal organization; or

(2) Contract with an appraiser or appraisal organization to perform an appraisal of a property if the builder or seller of the property owns or is owned by, is affiliated with, or has a financial interest in the appraiser or appraisal organization.

(d) *Appraiser independence.* An appraiser may not have any interest, direct or indirect, in the property being appraised.

(e) *Non-transferability of appraisal.* Appraisal materials and reports may not be transferred between mortgagees with respect to a property involved in a multifamily transaction.

Dated: September 16, 1994.

**Jeanne K. Engel,**

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

[FR Doc. 94–24327 Filed 9–30–94; 8:45 am]

BILLING CODE 4210–27–P

federal register

Monday
October 3, 1994

Part XII

# The President

Executive Order 12929—Delegation of Authority Regarding the Naval Petroleum and Oil Shale Reserves

Executive Order 12930—Measures To Restrict the Participation by United States Persons in Weapons Proliferation Activities

Presidential Determination No. 94–52—Delegation of Authority To Modify, Restrict, or Terminate Title VII Trade Action Taken Against Japan

Notice of September 30—Continuation of Emergency With Respect to Haiti

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Monday, October 3, 1994

# Presidential Documents

Title 3—

The President

## Executive Order 12929 of September 29, 1994

## Delegation of Authority Regarding the Naval Petroleum and Oil Shale Reserves

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3 and sections 7427 and 7428 of title 10, United States Code, and in order to meet the goals and requirements of the Naval Petroleum and Oil Shale Reserves, it is hereby ordered as follows:

The functions vested in the President by sections 7427 and 7428 of title 10 of the United States Code are delegated to the Secretary of Energy.

William J. Clinton

THE WHITE HOUSE,
*September 29, 1994.*

[FR Doc. 94–24589
Filed 9–30–94; 10:46 am]
Billing code 3195–01–P

# Presidential Documents

**Executive Order 12930 of September 29, 1994**

## Measures To Restrict the Participation by United States Persons in Weapons Proliferation Activities

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3 of the United States Code,

I, WILLIAM J. CLINTON, President of the United States of America, find that the proliferation of nuclear, biological, and chemical weapons, and of the means of delivering such weapons, constitutes an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, and hereby declare a national emergency to deal with that threat.

Accordingly, in order to limit the participation by United States persons in weapons proliferation activities, it is hereby ordered as follows:

**Section 1.** The Secretary of Commerce, in consultation with the Secretary of State, is hereby authorized and directed to take such actions, including the promulgation of rules, regulations, and amendments thereto, as may be necessary to continue to regulate the activities of United States persons in order to prevent their participation in activities that could contribute to the proliferation of weapons of mass destruction and the means of their delivery, as provided in the Export Administration Regulations, set forth at 15 CFR Parts 768–799 (1994).

**Sec. 2.** Any rules, regulations, orders, licenses, or other forms of administrative action issued, taken, or continued in effect heretofore or hereafter under the authority of the Export Administration Act, or the authorities provided under Executive Order No. 12868 on September 30, 1993, are hereby continued in effect unless altered, modified, or rescinded by the Secretary of Commerce pursuant to section 1 of this order.

**Sec. 3.** Executive Order No. 12868 is revoked and this order shall take effect at 11:59 p.m. on September 29, 1994.

William J. Clinton

THE WHITE HOUSE,
*September 29, 1994.*

[FR Doc. 94–24617
Filed 9–30–94; 12:20 pm]
Billing code 3195–01–P

# Presidential Documents

**Presidential Determination No. 94–52 of September 29, 1994**

## Delegation of Authority To Modify, Restrict, or Terminate Title VII Trade Action Taken Against Japan

**Memorandum for the United States Trade Representative**

By the authority vested in me by the Constitution and laws of the United States, including 3 U.S.C. section 301, I hereby delegate to the United States Trade Representative the powers granted the President in section 305(g)(2) and (3) of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2515(g)(2) and (3)) to modify, restrict, or terminate the sanctions that will take effect on September 30, 1994, as a result of the identification of Japan as a country that discriminates in government procurement of U.S. medical technology and telecommunications goods and services, or to terminate the title VII action against Japan.

This delegation of authority is effective until October 7, 1994. You are authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
*Washington, September 29, 1994.*

[FR Doc. 94–24616
Filed 9–30–94; 12:19 pm]
Billing code 3190–01–P

# Presidential Documents

**Notice of September 30, 1994**

## Continuation of Emergency With Respect to Haiti

On October 4, 1991, by Executive Order No. 12775, President Bush declared a national emergency to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the actions and policies of the *de facto* regime in Haiti, blocking all property and interests in property of the *de facto* regime and the Government of Haiti. President Bush took additional measures to prohibit trade and other transactions with Haiti by Executive Order No. 12779 of October 28, 1991, and to the same end I issued Executive Orders No. 12853 of June 30, 1993, No. 12872 of October 18, 1993, No. 12914 of May 7, 1994, No. 12917 of May 21, 1994, No. 12920 of June 10, 1994, and No. 12922 of June 21, 1994.

Because the *de facto* regime in Haiti has not yet fulfilled its commitments under the Governors Island Agreement of July 3, 1993, by relinquishing power, and therefore continues to obstruct the restoration of democracy in Haiti, the national emergency declared on October 4, 1991, and the measures adopted pursuant thereto to deal with that emergency, must continue in effect beyond October 4, 1994. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Haiti. This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
*September 30, 1994.*

[FR Doc. 94–24618
Filed 9–30–94; 12:02 pm]
Billing code 3195–01–P

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## FEDERAL REGISTER PAGES AND DATES, OCTOBER

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## CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

**H.R. 3841/P.L. 103–328**

Reigle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Sept. 29, 1994; 108 Stat. 2338; 44 pages)

**Last List September 30, 1994**

## 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.

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| 150-189 | (869-019-00148-4) | 24.00 | July 1, 1993 |
| 190-259 | (869-019-00149-2) | 17.00 | July 1, 1993 |
| 260-299 | (869-019-00150-6) | 39.00 | July 1, 1993 |
| *300-399 | (869-022-00151-5) | 18.00 | July 1, 1994 |
| 400-424 | (869-019-00152-2) | 27.00 | July 1, 1993 |
| 425-699 | (869-019-00153-1) | 28.00 | July 1, 1993 |
| 700-789 | (869-019-00154-9) | 26.00 | July 1, 1993 |
| 790-End | (869-019-00155-7) | 26.00 | July 1, 1993 |
| **41 Chapters:** | | | |
| 1, 1-1 to 1-10 | | 13.00 | [3] July 1, 1984 |
| 1, 1-11 to Appendix, 2 (2 Reserved) | | 13.00 | [3] July 1, 1984 |
| 3-6 | | 14.00 | [3] July 1, 1984 |
| 7 | | 6.00 | [3] July 1, 1984 |
| 8 | | 4.50 | [3] July 1, 1984 |
| 9 | | 13.00 | [3] July 1, 1984 |
| 10-17 | | 9.50 | [3] July 1, 1984 |
| 18, Vol. I, Parts 1-5 | | 13.00 | [3] July 1, 1984 |
| 18, Vol. II, Parts 6-19 | | 13.00 | [3] July 1, 1984 |
| 18, Vol. III, Parts 20-52 | | 13.00 | [3] July 1, 1984 |
| 19-100 | | 13.00 | [3] July 1, 1984 |
| 1-100 | (869-019-00156-5) | 10.00 | July 1, 1993 |
| 101 | (869-019-00157-3) | 30.00 | July 1, 1993 |
| *102-200 | (869-022-00158-2) | 15.00 | July 1, 1994 |
| 201-End | (869-019-00159-0) | 12.00 | July 1, 1993 |
| **42 Parts:** | | | |
| 1-399 | (869-019-00160-3) | 24.00 | Oct. 1, 1993 |
| 400-429 | (869-019-00161-1) | 25.00 | Oct. 1, 1993 |
| 430-End | (869-019-00162-0) | 36.00 | Oct. 1, 1993 |
| **43 Parts:** | | | |
| 1-999 | (869-019-00163-8) | 23.00 | Oct. 1, 1993 |
| 1000-3999 | (869-019-00164-6) | 32.00 | Oct. 1, 1993 |
| 4000-End | (869-019-00165-4) | 14.00 | Oct. 1, 1993 |
| 44 | (869-019-00166-2) | 27.00 | Oct. 1, 1993 |
| **45 Parts:** | | | |
| 1-199 | (869-019-00167-1) | 22.00 | Oct. 1, 1993 |
| 200-499 | (869-019-00168-9) | 15.00 | Oct. 1, 1993 |
| 500-1199 | (869-019-00169-7) | 30.00 | Oct. 1, 1993 |
| 1200-End | (869-019-00170-1) | 22.00 | Oct. 1, 1993 |
| **46 Parts:** | | | |
| 1-40 | (869-019-00171-9) | 18.00 | Oct. 1, 1993 |
| 41-69 | (869-019-00172-7) | 16.00 | Oct. 1, 1993 |
| 70-89 | (869-019-00173-5) | 8.50 | Oct. 1, 1993 |
| 90-139 | (869-019-00174-3) | 15.00 | Oct. 1, 1993 |
| 140-155 | (869-019-00175-1) | 12.00 | Oct. 1, 1993 |
| 156-165 | (869-019-00176-0) | 17.00 | Oct. 1, 1993 |
| 166-199 | (869-019-00177-8) | 17.00 | Oct. 1, 1993 |
| 200-499 | (869-019-00178-6) | 20.00 | Oct. 1, 1993 |
| 500-End | (869-019-00179-4) | 15.00 | Oct. 1, 1993 |
| **47 Parts:** | | | |
| 0-19 | (869-019-00180-8) | 24.00 | Oct. 1, 1993 |
| 20-39 | (869-019-00181-6) | 24.00 | Oct. 1, 1993 |
| 40-69 | (869-019-00182-4) | 14.00 | Oct. 1, 1993 |
| 70-79 | (869-019-00183-2) | 23.00 | Oct. 1, 1993 |
| 80-End | (869-019-00184-1) | 26.00 | Oct. 1, 1993 |
| **48 Chapters:** | | | |
| 1 (Parts 1-51) | (869-019-00185-9) | 36.00 | Oct. 1, 1993 |
| 1 (Parts 52-99) | (869-019-00186-7) | 23.00 | Oct. 1, 1993 |
| 2 (Parts 201-251) | (869-019-00187-5) | 16.00 | Oct. 1, 1993 |
| 2 (Parts 252-299) | (869-019-00188-3) | 12.00 | Oct. 1, 1993 |
| 3-6 | (869-019-00189-1) | 23.00 | Oct. 1, 1993 |
| 7-14 | (869-019-00190-5) | 31.00 | Oct. 1, 1993 |
| 15-28 | (869-019-00191-3) | 31.00 | Oct. 1, 1993 |
| 29-End | (869-019-00192-1) | 17.00 | Oct. 1, 1993 |
| **49 Parts:** | | | |
| 1-99 | (869-019-00193-0) | 23.00 | Oct. 1, 1993 |
| 100-177 | (869-019-00194-8) | 30.00 | Oct. 1, 1993 |
| 178-199 | (869-019-00195-6) | 20.00 | Oct. 1, 1993 |
| 200-399 | (869-019-00196-4) | 27.00 | Oct. 1, 1993 |
| 400-999 | (869-019-00197-2) | 33.00 | Oct. 1, 1993 |
| 1000-1199 | (869-019-00198-1) | 18.00 | Oct. 1, 1993 |
| 1200-End | (869-019-00199-9) | 22.00 | Oct. 1, 1993 |
| **50 Parts:** | | | |
| 1-199 | (869-019-00200-6) | 20.00 | Oct. 1, 1993 |
| 200-599 | (869-019-00201-4) | 21.00 | Oct. 1, 1993 |
| 600-End | (869-019-00202-2) | 22.00 | Oct. 1, 1993 |
| CFR Index and Findings Aids | (869-022-00053-5) | 38.00 | Jan. 1, 1994 |

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] 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.

[3] 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.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1994. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1994. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1993. The CFR volume issued January 1, 1993, should be retained.

## CFR ISSUANCES 1994
## January—July 1994 Editions and Projected October, 1994 Editions

This list sets out the CFR issuances for the January—July 1994 editions and projects the publication plans for the **October, 1994** quarter. A projected schedule that will include the **January, 1995** quarter will appear in the first **Federal Register** issue of January.

**For pricing information on available 1993—1994 volumes consult the CFR checklist which appears every Monday in the Federal Register.**

Pricing information is not available on projected issuances. The weekly CFR checklist and the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR titles and parts, revision date and price of each volume.

Normally, CFR volumes are revised according to the following schedule:

Titles 1—16—January 1
Titles 17—27—April 1
Titles 28—41—July 1
Titles 42—50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

### Titles revised as of January 1, 1994:

| Title | |
|---|---|
| CFR Index | 1–199 |
| | 200–End |
| 1–2 | |
| | **10 Parts:** |
| 3 (Compilation) | 0–50 |
| | 51–199 (cover only) |
| 4 | 200–399 |
| | 400–499 |
| 5 Parts: | 500–End |
| 1–699 | |
| 700–1199 | **11** |
| 1200–End | |
| | **12 Parts:** |
| 6 [Reserved] | 1–199 |
| | 200–219 |
| 7 Parts: | 220–299 |
| 0–26 | 300–499 |
| 27–45 | 500–599 |
| 46–51 (cover only) | 600–End |
| 52 | |
| 53–209 | **13** |
| 210–299 | |
| 300–399 | **14 Parts:** |
| 400–699 | 1–59 |
| 700–899 | 60–139 |
| 900–999 | 140–199 |
| 1000–1059 | 200–1199 |
| 1060–1119 | 1200–End |
| 1120–1199 | |
| 1200–1499 | **15 Parts:** |
| 1500–1899 | 0–299 |
| 1900–1939 | 300–799 |
| 1940–1949 | 800–End |
| 1950–1999 | |
| 2000–End | **16 Parts:** |
| | 0–149 |
| 8 | 150–999 |
| | 1000–End |
| 9 Parts: | |

### Titles revised as of April 1, 1994:

| | |
|---|---|
| **17 Parts:** | **23** |
| 1–199 | |
| 200–239 | **24 Parts:** |
| 240–End | 0–199 |
| | 200–499 |
| **18 Parts:** | 500–699 |
| 1–149 | 700–1699 |
| 150–279 | 1700–End |
| 280–399 | |
| 400–End | **25** |
| | |
| **19 Parts:** | **26 Parts:** |
| 1–199 | 1 (§§ 1.0-1–1.60) |
| 200–End | 1 (§§ 1.61–1.169) |
| | 1 (§§ 1.170–1.300) |
| **20 Parts:** | 1 (§§ 1.301–1.400) |
| 1–399 | 1 (§§ 1.401–1.440) |
| 400–499 | 1 (§§ 1.441–1.500) |
| 500–End | 1 (§§ 1.501–1.640) |
| | 1 (§§ 1.641–1.850) |
| **21 Parts:** | 1 (§§ 1.851–1.907) |
| 1–99 | 1 (§§ 1.908–1.1000) |
| 100–169 | 1 (§§ 1.1001–1.1400) |
| 170–199 | 1 (§ 1.1401–End) |
| 200–299 | 2–29 |
| 300–499 | 30–39 |
| 500–599 | 40–49 |
| 600–799 | 50–299 |
| 800–1299 | 300–499 |
| 1300–End | 500–599 (Cover only) |
| | 600–End |
| **22 Parts:** | |
| 1–299 | **27 Parts:** |
| 300–End | 1–199 |
| | 200–End |

### Titles revised as of July 1, 1994:

| Title | |
|---|---|
| **28 Parts:** | 200–End |
| 0–42 | |
| 43–End | **34 Parts:** |
| | 1–299 |
| **29 Parts:** | 300–399* |
| 0–99 | 400–End |
| 100–499 | |
| 500–899 | **35** |
| 900–1899 | |
| 1900–1910 (§§ 1901.1–1910.999) | **36 Parts:** |
| | 1–199 |
| 1910 (§§ 1910.1000–End) | 200–End |
| 1911–1925* | |
| 1926 | **37** |
| 1927–End* | |
| | **38 Parts:** |
| **30 Parts:** | 0–17 |
| 1–199 | 18–End |
| 200–699 | |
| 700–End | **39** |
| | |
| **31 Parts:** | **40 Parts:** |
| 0–199 | 1–51* |
| 200–End | 52* |
| | 53–59* |
| **32 Parts:** | 60* |
| 1–190 | 61–80* |
| 191–399 | 81–85* |
| 400–629 | 86–99* |
| 630–699 (Cover only) | 100–149 |
| 700–799 | 150–189* |
| 800–End | 190–259* |
| | 260–299* |
| **33 Parts:** | 300–399* |
| 1–124* | 400–424* |
| 125–199* | 425–699* |

700–789*
790–End*

**41 Parts:**

Chs. 1–100
Ch. 101
Chs. 102–200 (Cover only)
Ch. 201–End*

**Projected October 1, 1994 editions:**

Title

**42 Parts:**
1–399
400–429
430–End

**43 Parts:**
1–999
1000–3999
4000–End

44

**45 Parts:**
1–199
200–499
500–1199
1200–End

**46 Parts:**
1–40
41–69
70–89
90–139
140–155
156–165 (cover only)
166–199
200–499
500–End

**47 Parts:**
0–19
20–39
40–69
70–79
80–End

**48 Parts:**
Ch. 1 (1–51)
Ch. 1 (52–99)
Ch. 2 (201–251)
Ch. 2 (252–299)
Chs. 3–6
Chs. 7–14
Chs. 15–28
Ch. 29–End

**49 Parts:**
1–99
100–177
178–199
200–399
400–999
1000–1199
1200–End

**50 Parts:**
1–199
200–599
600–End

## TABLE OF EFFECTIVE DATES AND TIME PERIODS—OCTOBER 1994

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

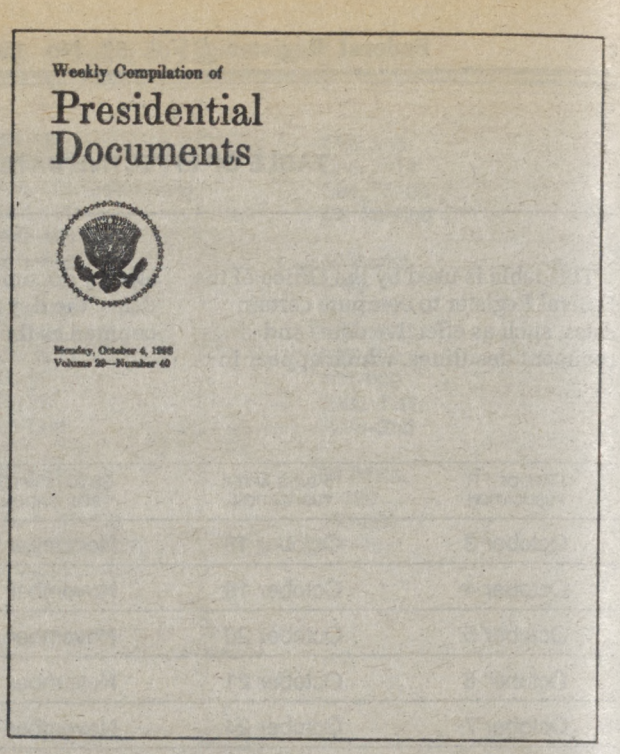
When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

| DATE OF FR PUBLICATION | 15 DAYS AFTER PUBLICATION | 30 DAYS AFTER PUBLICATION | 45 DAYS AFTER PUBLICATION | 60 DAYS AFTER PUBLICATION | 90 DAYS AFTER PUBLICATION |
|---|---|---|---|---|---|
| October 3 | October 18 | November 2 | November 17 | December 2 | January 3 |
| October 4 | October 19 | November 3 | November 18 | December 5 | January 3 |
| October 5 | October 20 | November 4 | November 21 | December 5 | January 3 |
| October 6 | October 21 | November 7 | November 21 | December 5 | January 4 |
| October 7 | October 24 | November 7 | November 21 | December 6 | January 5 |
| October 11 | October 26 | November 10 | November 25 | December 12 | January 9 |
| October 12 | October 27 | November 14 | November 28 | December 12 | January 10 |
| October 13 | October 28 | November 14 | November 28 | December 12 | January 11 |
| October 14 | October 31 | November 14 | November 28 | December 13 | January 12 |
| October 17 | November 1 | November 16 | December 1 | December 16 | January 17 |
| October 18 | November 2 | November 17 | December 2 | December 19 | January 17 |
| October 19 | November 3 | November 18 | December 5 | December 19 | January 17 |
| October 20 | November 4 | November 21 | December 5 | December 19 | January 18 |
| October 21 | November 7 | November 21 | December 5 | December 20 | January 19 |
| October 24 | November 8 | November 23 | December 8 | December 23 | January 23 |
| October 25 | November 9 | November 25 | December 9 | December 27 | January 23 |
| October 26 | November 10 | November 25 | December 12 | December 27 | January 24 |
| October 27 | November 14 | November 28 | December 12 | December 27 | January 25 |
| October 28 | November 14 | November 28 | December 12 | December 27 | January 26 |
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