1–2–96
Vol. 61 No. 1
Pages 1–98

# federal register

Tuesday
January 2, 1996

Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the Federal Register as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the Federal Register shall be judicially noticed.

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the Federal Register is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su__docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to help@eids05.eids gpo.gov; by faxing to (202) 512–1262; or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the Federal Register paper edition is $494, or $544 for a combined Federal Register, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the Federal Register including the Federal Register Index and LSA is $433. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the Federal Register.

How To Cite This Publication: Use the volume number and the page number. Example: 61 FR 12345.

## SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

| | |
|---|---|
| Paper or fiche | 202–512–1800 |
| Assistance with public subscriptions | 512–1806 |
| General online information | 202–512–1530 |

Single copies/back copies:

| | |
|---|---|
| Paper or fiche | 512–1800 |
| Assistance with public single copies | 512–1803 |

FEDERAL AGENCIES

Subscriptions:

| | |
|---|---|
| Paper or fiche | 523–5243 |
| Assistance with Federal agency subscriptions | 523–5243 |

For other telephone numbers, see the Reader Aids section at the end of this issue.

## THE FEDERAL REGISTER

## WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

## WASHINGTON, DC

[Two Sessions]

| | |
|---|---|
| WHEN: | January 9, 1996 at 9:00 am and January 23, 1996 at 9:00 am |
| WHERE: | Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro) |
| RESERVATIONS: | 202–523–4538 |

Printed on recycled paper containing 100% post consumer waste

# Contents

Federal Register

Vol. 61, No. 1

Tuesday, January 2, 1996

**Agricultural Marketing Service**
**PROPOSED RULES**
Cherries, tart, grown in—
Michigan et al., 21

**Agriculture Department**
*See* Agricultural Marketing Service
*See* Cooperative State Research, Education, and Extension Service
*See* Food and Consumer Service
*See* Rural Utilities Service

**Army Department**
*See* Engineers Corps

**Assassination Records Review Board**
**NOTICES**
Formal determinations on records release, 48–52

**Coast Guard**
**RULES**
Federal regulatory review, 8–9

**Commerce Department**
*See* National Oceanic and Atmospheric Administration

**Cooperative State Research, Education, and Extension Service**
**NOTICES**
Grants and cooperative agreements; availability, etc.:
Rangeland research program (FY 1996), 96–98

**Customs Service**
**NOTICES**
Agency information collection activities:
Proposed collection; comment request, 76–77
Women's woven cotton pajama or sleepwear separates; tariff classification, 77–79

**Defense Department**
*See* Engineers Corps
**NOTICES**
Base closure and realignment:
Homeless assistance; local redevelopment authorities; points of contact and addresses, 52–56
Meetings:
Historical Records Declassification Advisory Panel, 57
Military Health Care Advisory Committee, 57

**Energy Department**
*See* Energy Information Administration
*See* Energy Research Office
*See* Federal Energy Regulatory Commission
**NOTICES**
Meetings:
Environmental Management Site-Specific Advisory Board, 58–59
International Energy Agency Industry Advisory Board, 58
Natural gas exportation and importation:
Coastal Gas Marketing Co., 59–60
Enron Capital & Trade Resources Corp., 59

**Energy Information Administration**
**NOTICES**
Forms; availability, etc.:
Residential energy consumption survey, 60–61

**Energy Research Office**
**NOTICES**
Grants and cooperative agreements; availability, etc.:
Experimental program to stimulate competitive research (EPSCoR), 57–58

**Engineers Corps**
**PROPOSED RULES**
Navigation regulations:
St. Marys Falls Canal and Locks, 33–35

**Federal Aviation Administration**
**RULES**
Airworthiness standards:
Special conditions—
Fairchild Aircraft Inc., model SA227-CC and SA227-DC (C-26B) airplanes, 1–3
Class E airspace, 3–4
Restricted areas, 4–5

**Federal Energy Regulatory Commission**
**NOTICES**
Electric rate and corporate regulation filings:
Hainan Meinan Power Co. et al., 64–65
Midwest Energy, Inc., et al., 63–64
Environmental statements; availability, etc.:
CNG Transmission Corp. et al., 65–66
*Applications, hearings, determinations, etc.:*
National Fuel Gas Supply Corp., 62–63
Southern Natural Gas Co., 62
Texas Gas Transmission Corp., 63
Transcontinental Gas Pipe Line Corp., 61–62
Williams Natural Gas Co., 62

**Federal Railroad Administration**
**NOTICES**
Exemption petitions, etc.:
Michigan State Trust for Railway Preservation, Inc. (MSTP), 76

**Federal Trade Commission**
**NOTICES**
Prohibited trade practices:
Johnson & Johnson, 66–72

**Fish and Wildlife Service**
**PROPOSED RULES**
Endangered and threatened species:
California condors, 35–47

**Food and Consumer Service**
**NOTICES**
Agency information collection activities:
Proposed collection; comment request, 48

**Food and Drug Administration**
**RULES**
Food additives:
Menadione nicotinamide bisulfite, 5–6
**NOTICES**
Human drugs:
Patent extension; regulatory review period determinations—
ADENOSCAN, 73–74
PREVACID, 72–73
Meetings:
Advisory committees, panels, etc., 74–75

**General Services Administration**
**RULES**
Federal Information Resources Management Regulation:
Miscellaneous amendments, 10–17

**Health and Human Services Department**
*See* Food and Drug Administration

**Interior Department**
*See* Fish and Wildlife Service
*See* Reclamation Bureau

**Internal Revenue Service**
**RULES**
Income taxes:
Cash reporting by court clerks, 6–8
**PROPOSED RULES**
Income taxes:
Partnerships; distribution of marketable securities, 28–33

**Justice Department**
*See* Prisons Bureau

**Merit Systems Protection Board**
**RULES**
Practices and procedures:
Statutory and regulatory citations for various appealable personnel actions; update, 1

**National Oceanic and Atmospheric Administration**
**RULES**
Endangered and threatened species:
Sea turtles; review of endangered status, 17
Fishery conservation and management:
Gulf of Alaska and Bering Sea and Aleutian Islands groundfish
Correction, 20
Gulf of Mexico reef fish, 17–20
**NOTICES**
Permits:
Marine mammals, 52

**Nuclear Regulatory Commission**
**PROPOSED RULES**
Meetings:
Fitness-for-duty; onsite testing, 27–28

**Prisons Bureau**
**RULES**
Inmate control, custody, care, etc.:
Administrative remedy program, 86–90
Telephone regulations and inmate financial responsibility, 90–91
**PROPOSED RULES**
Inmate control, custody, care, etc.:
Telephone regulations and inmate financial responsibility, 92–93

**Public Health Service**
*See* Food and Drug Administration

**Reclamation Bureau**
**NOTICES**
Meetings:
Yakima River Basin Water Enhancement Project Conservation Advisory Group, 75

**Rural Utilities Service**
**PROPOSED RULES**
Consultants funded by borrowers; use, 21–27

**Sentencing Commission, United States**
*See* United States Sentencing Commission

**Transportation Department**
*See* Coast Guard
*See* Federal Aviation Administration
*See* Federal Railroad Administration

**Treasury Department**
*See* Customs Service
*See* Internal Revenue Service
**NOTICES**
Meetings:
Customs Service Commercial Operations Advisory Committee, 76

**United States Sentencing Commission**
**NOTICES**
Sentencing guidelines and policy statements for Federal courts, 79–83

---

**Separate Parts In This Issue**

**Part II**
Department of Justice, Prisons Bureau, 86–93

**Part III**
Department of Agriculture, Cooperative State Research, Education, and Extension Service, 96–98

---

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

---

**New Feature in the Reader Aids!**
Beginning with the issue of December 4, 1995, a new listing will appear each day in the Reader Aids section of the Federal Register called ''Reminders''. The Reminders will have two sections: ''Rules Going Into Effect Today'' and ''Comments Due Next Week''. Rules Going Into Effect Today will remind readers about Rules documents published in the past which go into effect ''today''. Comments Due Next Week will remind readers about impending closing dates for comments on Proposed Rules documents published in past issues. Only those documents published in the Rules and Proposed Rules sections of the Federal Register will be eligible for inclusion in the Reminders.
The Reminders feature is intended as a reader aid only. Neither inclusion nor exclusion in the listing has any legal significance.

The Office of the Federal Register has been compiling data for the Reminders since the issue of November 1, 1995. No documents published prior to November 1, 1995 will be listed in Reminders.

---

**Electronic Bulletin Board**

Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

## CFR PARTS AFFECTED IN THIS ISSUE

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

**5 CFR**
1201.....1

**7 CFR**

**Proposed Rules:**
930.....21
1789.....21

**10 CFR**

**Proposed Rules:**
26.....27

**14 CFR**
23.....1
71.....3
73.....4

**21 CFR**
573.....5

**26 CFR**
1.....6
602.....6

**Proposed Rules:**
1.....28

**28 CFR**
540.....90
542.....86
545.....90

**Proposed Rules:**
540.....92
545.....92

**33 CFR**
Ch. 1.....8
81.....8

**Proposed Rules:**
207.....33

**41 CFR**
201–1.....10
201–2.....10
201–3.....10
201–4.....10
201–6.....10
201–7.....10
201–17.....10
201–18.....10
201–20.....10
201–21.....10
201–22.....10
201–24.....10
201–39.....10

**50 CFR**
222.....17
227.....17
641.....17
675.....20

**Proposed Rules:**
17.....35

# Rules and Regulations

Federal Register
Vol. 61, No. 1
Tuesday, January 2, 1996

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## MERIT SYSTEMS PROTECTION BOARD

### 5 CFR Part 1201

### Practices and Procedures

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** The Board is amending its rules at 5 CFR part 1201 to update statutory and regulatory citations for various appealable personnel actions and to make a conforming amendment to the regulation describing appealable reduction-in-force actions.

**EFFECTIVE DATE:** January 2, 1996.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Taylor, Clerk of the Board, 202–653–7200.

**SUPPLEMENTARY INFORMATION:** The Merit Systems Protection Board is amending its rules at 5 CFR part 1201 to update the citations for various appealable actions listed at section 1201.3(a) and to make a conforming amendment to the regulation describing appealable reduction-in-force actions. The amendments at paragraphs (a)(7), (a)(12), and (a)(13) reflect changes made by the Office of Personnel Management in its regulations at 5 CFR parts 731, 353, and 330, respectively. The amendment at paragraph (a)(8)(ii) reflects a statutory amendment to title 38 of the United States Code. The amendment at paragraph (a)(10) conforms the language of this regulation to that of Office of Personnel Management regulations at 5 CFR part 351.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1201 as follows:

### PART 1201—[AMENDED]

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204, and 7701 unless otherwise noted.

**§ 1201.3 [Amended]**

2. Section 1201.3 is amended at paragraph (a)(7) by deleting ''731.508'' in the citation and by adding in its place ''731.501.''

3. Section 1201.3 is amended at paragraph (a)(8)(ii) by deleting ''38 U.S.C. 2014(b)(1)(D)'' in the citation and by adding in its place ''38 U.S.C. 4214(b)(1)(E).''

4. Section 1201.3 is amended at paragraph (a)(10) by deleting the phrase ''reduction in grade'' and by adding in its place ''demotion.''

5. Section 1201.3 is amended at paragraph (a)(12) by deleting ''5 CFR 353.401'' in the citation and by adding in its place ''38 U.S.C. 4324, 5 CFR 353.211 and 304.''

6. Section 1201.3 is amended at paragraph (a)(13) by deleting ''5 CFR 330.202'' in the citation and by adding in its place 5 CFR 330.209.''

Dated: December 26, 1995.

Robert E. Taylor,

*Clerk of the Board.*

[FR Doc. 95–31529 Filed 12–29–95; 8:45 am]

BILLING CODE 7400–01–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 23

**[Docket No. 130CE, Special Condition 23–CE–85]**

### Special Conditions; Fairchild Aircraft Incorporated Model SA227–CC and SA227–DC (C–26B) Airplanes

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

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Fairchild Aircraft Incorporated Model SA227–CC and SA227–DC (C–26B) airplanes modified by Rockwell Collins, Cedar Rapids, Iowa. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic displays for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

**DATES:** The effective date of these special conditions is January 2, 1996. Comments must be received on or before February 1, 1996.

**ADDRESSES:** Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 130CE, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 130CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–6941.

**SUPPLEMENTARY INFORMATION:**

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety, and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on these special conditions.

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in

the rules docket for examination by interested parties, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments, submitted in response to this request, must include a self-addressed and stamped postcard on which the following statement is made: ''Comments to Docket No. 130CE.'' The postcard will be date stamped and returned to the commenter.

Background

On November 13, 1995, Rockwell Collins, 400 Collins Road NE, Cedar Rapids, Iowa 52498, made an application to the FAA for a supplemental type certificate (STC) for the Fairchild Aircraft Incorporated Model SA227–CC and SA227–DC (C–26B) airplanes. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an electronic flight instrument system (EFIS), that is vulnerable to HIRF external to the airplane.

Type Certification Basis

The type certification basis for the Fairchild Aircraft Incorporated Model SA227–CC and SA227–DC (C–26B) Airplanes is given in Type Certification Data Sheet No. A18SW, FAR 23 through Amendment 23–34 plus Amendment 23–39; equivalent safety finding per FAA letter dated September 20, 1990: FAR Part 36, SFAR through Amendment 5, plus the following: §§ 23.1309, 23.1311, and 23.1321 of Amendment 23–41 and § 23.1322 of Amendment 23–43; exemptions, if any; and the special conditions adopted by this rulemaking action.

Discussion

The FAA may issue and amend special conditions, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards, designated according to § 21.101(b), do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations. Special conditions are normally issued according to § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become a part of the type certification basis in accordance with § 21.101(b)(2).

Rockwell Collins, plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include electronic systems, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

*Protection of Systems From High Intensity Radiated Fields (HIRF)*

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

FIELD STRENGTH VOLTS/METER

| Frequency | Peak | Average |
|---|---|---|
| 10–100 KHz | 50 | 50 |
| 100–500 | 60 | 60 |
| 500–2000 | 70 | 70 |
| 2–30 MHz | 200 | 200 |
| 30–70 | 30 | 30 |
| 70–100 | 30 | 30 |
| 100–200 | 150 | 33 |
| 200–400 | 70 | 70 |
| 400–700 | 4020 | 935 |
| 700–1000 | 1700 | 170 |
| 1–2 GHz | 5000 | 990 |
| 2–4 | 6680 | 840 |
| 4–6 | 6850 | 310 |
| 6–8 | 3600 | 670 |
| 8–12 | 3500 | 1270 |
| 12–18 | 3500 | 360 |
| 18–40 | 2100 | 750 |

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, peak electrical field strength, from 10 KHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify electrical and/or electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Conclusion

In view of the design features discussed for the Fairchild Aircraft Incorporated Model SA227–CC and SA227–DC (C–26B) Airplanes, the following special conditions are issued. This action is not a rule of general applicability and affects only those applicants who apply to the FAA for approval of these features on these airplanes.

The substance of these special conditions has been subject to the notice and public comment procedure in several prior rulemaking actions. For example, the Dornier 228–200 (53 FR 14782, April 26, 1988), the Cessna Model 525 (56 FR 49396, September 30, 1991), and the Beech models 200, A200, and B200 airplanes (57 FR 1220, January 13, 1992). It is unlikely that additional public comment would result in any significant change from those special conditions already issued and commented on. For these reasons, and because a delay would significantly affect the applicant's installation of the system and certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions without notice. Therefore, these special conditions are being made effective upon publication in the Federal Register. However, as previously indicated, interested persons are invited to comment on these special conditions if they so desire.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g); 40113, 44701, 44702, and 44704; 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the modified Fairchild Aircraft Incorporated Model SA227–CC and SA227–DC (C–26B) Airplanes:

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on December 21, 1995.

Henry A. Armstrong

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

[FR Doc. 95–31573 Filed 12–29–95; 8:45 am]

BILLING CODE 4910–13–M

---

## 14 CFR Part 71

**[Airspace Docket No. 95–AGL–11]**

## Establishment of Class E Airspace; Shell Lake, WI

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

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace to accommodate a Very High Frequency Omnidirectional Range (VOR) and Distance Measuring Equipment (DME) Standard Instrument Approach Procedure (SIAP) for runway 32 at Shell Lake Municipal Airport; Shell Lake, WI. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed for aircraft executing the approach. The intended effect of this action is to provide adequate controlled airspace for aircraft executing the SIAP.

**EFFECTIVE DATE:** 0901 UTC, February 29, 1996.

**FOR FURTHER INFORMATION CONTACT:** Eleanor J. Williams, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

**SUPPLEMENTARY INFORMATION:**

History

On August 4, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Shell Lake Municipal Airport, Shell Lake, WI (60 FR 39894). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL for Instrument Flight Rules (IFR) operations.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Shell Lake Municipal Airport, Shell Lake, WI. Controlled airspace extending upward from 700 to 1200 feet AGL is needed for aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

## PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

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

* * * * *

AGL WI E5 Shell Lake, WI [New]

Shell Lake Municipal Airport, WI
(Lat. 45°43′53″ N, long. 91°55′14″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Shell Lake Municipal Airport and within 2.7 miles either side of the 143-degree bearing from the airport extending from the 6.3-mile radius to 7.4 miles southeast of the airport.

* * * * *

Issued in Des Plaines, Illinois on December 6, 1995.

Jeffrey L. Griffith

*Acting Manager, Air Traffic Division.*

FR Doc. 95–31572 Filed 12–29–95; 8:45 am]

**BILLING CODE 4910–13–M**

## 14 CFR Part 73

**[Airspace Docket No. 93–ASO–8]**

## Expansion of Restricted Area R–2917, De Funiak Springs, FL

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

**ACTION:** Final rule.

**SUMMARY:** This action expands the lateral and vertical dimensions of Restricted Area R–2917, De Funiak Springs, FL, to increase the size of the special use airspace around an existing Space Detection and Tracking Radar (FPS–85) system located at that site. A revision to U.S. Air Force safety regulations increased the size of special use airspace required around such installations to lessen any potential hazard to aircraft which are carrying electroexplosive devices.

**EFFECTIVE DATE:** 0901 UTC, February 29, 1996.

**FOR FURTHER INFORMATION CONTACT:** Paul Gallant, Military Operations Program Office, Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9361.

**SUPPLEMENTARY INFORMATION:**

History

On December 3, 1993, the FAA proposed to increase the lateral and vertical dimensions of R–2917 from a circular area with a 1.25-statute-mile radius, extending from the surface to 5,000 feet mean sea level, to a 2.5-nautical-mile radius circle, extending to, but not including Flight Level 230 (58 FR 63908).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Section 73.29 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8C dated June 29, 1995.

The Rule

This amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) increases the lateral and vertical dimensions of Restricted Area R–2917, De Funiak Springs, FL, in order to expand the special use airspace around an FPS–85 radar facility. The amendment increases the size of R–2917 to a 2.5-nautical-mile radius circle, and raises the designated altitude to, but not including, Flight Level 230. The Radio Frequency (RF) energy transmitted by the FPS–85 radar potentially could ignite electroexplosive devices that may be carried on board certain aircraft. There has been no increase in the power output or change to the emission pattern of the radar. This expansion is necessary because the U.S. Air Force has adopted revised safety criteria which better define the limits of the RF emission pattern of the FPS–85 radar. The expanded R–2917 remains totally within the confines of another existing restricted area, R–2914A, which extends from the surface to unlimited altitude, with a ''continuous'' time of designation. Consequently, since the affected area remains continuously designated restricted airspace, there will be no impact on nonparticipating aircraft operations as a result of this expansion. This amendment replaces a temporary flight restriction which was implemented as an interim safety measure at the site. This amendment also changes the title of the using agency to ''U.S. Air Force, Commander, U.S. Space Command, Peterson AFB, CO,'' and adds a controlling agency for R–2917, with the title ''U.S. Air Force, Eglin Approach Control.''

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

Environmental Review

The U.S. Air Force completed an Environmental Impact Analysis of the proposed expansion action in accordance with Air Force Regulations, and applicable Federal Laws, regulations, and Executive Orders. The Air Force has determined that the action qualified for categorical exclusion 2R under Air Force Regulations: ''Continuation of actions, if there is not substantial, adverse change from previously existing conditions.''

Because the expansion action is a minor adjustment to the internal boundaries of overlapping restricted areas, which does not change the outer limits of the restricted airspace as a whole, and the changes in the title of the using agency and addition of a controlling agency do not have potential environmental consequences, the FAA has determined that this action qualifies for categorical exclusion as a minor adjustment to a special-use airspace action under Paragraph 3(c) of Appendix 3 of FAA Order 1050.1D, ''Policies and Procedures for Considering Environmental Impacts'' and the regulations implementing the National Environmental Policy Act of 1969, 40 CFR part 1500. A documented categorical exclusion has been prepared by the FAA and placed in the Docket for the Final Rule.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

## PART 73—[AMENDED]

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

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

### § 73.29 [Amended]

R–2917 De Funiak Springs, FL [Revised]

Boundaries. A circle with a 2.5 NM radius centered at:
Lat. 30°32′55″ N., long. 86°12′52″ W.

Designated altitudes. Surface to but not including FL 230.

Time of designation. Continuous.

Controlling agency. U.S. Air Force, Eglin Approach Control.

Using agency. U.S. Air Force, Commander, U.S. Space Command, Peterson AFB, CO.

Issued in Washington, DC, on December 21, 1995.

Harold W. Becker,

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 95–31571 Filed 12–29–95; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 573

**[Docket No. 94F–0283]**

## Food Additives Permitted in Feed and Drinking Water of Animals; Menadione Nicotinamide Bisulfite

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of menadione nicotinamide bisulfite as a nutritional supplement for the prevention of vitamin K deficiency and as a source of supplemental niacin in chicken and turkey feed when used at a rate not to exceed 2 grams per ton (g/t) of complete feed. This action is in response to a food additive petition filed by Vanetta (U.S.A.) Inc.

**DATES:** Effective January 2, 1996; written objections and request for hearing by February 1, 1996.

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

**FOR FURTHER INFORMATION CONTACT:** Sharon A. Benz, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1729.

**SUPPLEMENTARY INFORMATION:** In a notice published in the Federal Register of August 15, 1994 (59 FR 41769), FDA announced that a food additive petition (FAP 2228) had been filed by Vanetta (U.S.A.) Inc., 1770 East Market St., York, PA 17402. The petition proposed to amend the food additives regulations in 21 CFR part 573 to provide for the safe use of menadione nicotinamide bisulfite as a nutritional supplement for the prevention of vitamin K deficiency in chickens and turkeys and as a source of supplemental niacin in chicken and turkey diets to be used at a level not to exceed 2 g/t of complete feed.

The notice of filing provided for a 75-day comment period. No comments were received.

FDA has evaluated the data and information in the petition and other relevant material. FDA concludes that the proposed use of the additive in chicken and turkey diets, not to exceed 2 g/t of complete feed, is safe. Therefore, the food additive regulations in part 573 are amended to add new § 573.625 to reflect this approved use.

In accordance with § 571.1(h) (21 CFR 571.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Veterinary Medicine by appointment with the information contact person listed above. As provided in 21 CFR 571.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

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

Any person who will be adversely affected by this regulation may at any time on or before February 1, 1996, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 573

Animal feeds, Food additives.

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

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

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

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

2. New § 573.625 is added to subpart B to read as follows:

### § 573.625 Menadione nicotinamide bisulfite.

The food additive may be safely used as follows:

(a) *Product.* The additive is 1,2,3,4-tetrahydro-2-methyl-1,4-dioxo-2-naphthalene sulfonic acid with 3-pyridine carboxylic acid amine (CAS No. 73581–79–0).

(b) *Conditions of use.* As a nutritional supplement in chicken and turkey feeds for both the prevention of vitamin K deficiency and as a source of supplemental niacin.

(c) *Limitations.* Not to exceed 2 grams per ton of complete feed. To assure safe use, the label and labeling shall bear adequate directions for use.

Dated: December 22, 1995.

Stephen F. Sundlof,

*Director, Center for Veterinary Madicine.*

[FR Doc. 95–31556 Filed 12–29–95; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Parts 1 and 602

**[TD 8652]**

**RIN 1545–AT06**

## Cash Reporting by Court Clerks

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

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations concerning the information reporting requirements of Federal and State court clerks upon receipt of more than $10,000 in cash as bail for any individual charged with a specified criminal offense. The final regulations reflect changes to the law made by the Violent Crime Control and Law Enforcement Act of 1994, and affect court clerks who receive more than $10,000 in cash as bail.

**EFFECTIVE DATE:** These regulations are effective February 13, 1995.

**FOR FURTHER INFORMATION CONTACT:** Susie K. Bird, (202) 622–4960 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1449. Responses to this collection of information are required to implement the statutory requirements of section 6050I(g).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The time estimates for the reporting requirements contained in this regulation are reflected in the burden estimates for Form 8300.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T: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.

Books and records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### Background

This document provides final Income Tax Regulations (26 CFR parts 1 and 602) under section 6050I(g) of the Internal Revenue Code of 1986 (Code). This provision was added by section 20415 of the Violent Crime Control and Law Enforcement Act of 1994 (the Act) (Public Law 103–322).

On December 15, 1994, the IRS published in the Federal Register temporary regulations (TD 8572, 59 FR 64572) with a cross-reference to a notice of proposed rulemaking (IA–57–94, 59 FR 64635).

Written comments responding to the notice were received. No public hearing was requested or held. After consideration of all comments, the proposed regulations are adopted as revised by this Treasury decision, and the corresponding temporary regulations are removed.

### Explanation of Revisions and Summary of Comments

Under the temporary and proposed regulations, reporting may be required when more than $10,000 in cash is received as bail by a clerk of a Federal or State court. The temporary and proposed regulations provide that a clerk is the clerk's office or the office, department, division, branch, or unit of the court that is authorized to receive bail. One commentator suggested that the regulations clarify whether reporting under section 6050I(g) is required by a clerk if an entity that is not a part of the court receives bail. In some jurisdictions, for example, a sheriff receives bail. The final regulations provide that if someone other than a clerk receives bail on behalf of a clerk, the clerk is treated as receiving the bail. Thus, the clerk must make the return of information if the other requirements of section 6050I(g) are satisfied.

Under the temporary and proposed regulations, a statement must be sent to each payor of bail reporting certain information, including the ''aggregate amount of reportable cash received during the calendar year by the clerk who made the information return required by [section 6050I(g)] in all cash transactions relating to the payor of bail.'' The temporary and proposed regulations reflect the statutory requirement in section 6050I(g)(5)(B) that clerks provide the aggregate amount of reportable cash. A commentator asked whether separately reported amounts satisfy this aggregate amount requirement. The final regulations clarify that the aggregate amount requirement can be satisfied either by sending a single written statement with an aggregate amount listed or by furnishing a copy of each Form 8300 relating to that payor of bail.

In addition, the final regulations clarify that, if multiple payments are made to satisfy bail reportable under this section and the initial payment does not exceed $10,000, the initial payment and subsequent payments must be aggregated and the information return required by section 6050I(g) must be filed by the 15th day after receipt of the payment that causes the aggregate amount to exceed $10,000. However, payments made to satisfy separate bail requirements are not required to be aggregated.

### 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 Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

### Drafting Information

The principal author of these regulations is Susie K. Bird, Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and 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 citation for part 1 is amended by removing the entry for § 1.6050I–2T and adding an entry in numerical order to read as follows:

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

Section 1.6050I–2 also issued under 26 U.S.C. 6050I. * * *

**§§ 1.6050I–0T and 1.6050I–2T [Removed]**

Par. 2. Sections 1.6050I–0T and 1.6050I–2T are removed.

Par. 3. Sections 1.6050I–0 and 1.6050I–2 are added to read as follows:

**§ 1.6050I–0 Table of contents.**

This section lists the major captions that appear in §§ 1.6050I–1 and 1.6050I–2.

*§ 1.6050I–1 Returns relating to cash in excess of $10,000 received in a trade or business.*

(a) Reporting requirement.
(1) In general.
(2) Cash received for the account of another.
(3) Cash received by agents.
(i) General rule.
(ii) Exception.
(iii) Example.
(b) Multiple payments.
(1) Initial payment in excess of $10,000.
(2) Initial payment of $10,000 or less.
(3) Subsequent payments.
(4) Example.
(c) Meaning of terms.
(1) Cash.
(i) Amounts received prior to February 3, 1992.
(ii) Amounts received on or after February 3, 1992.
(iii) Designated reporting transaction.
(iv) Exception for certain loans.
(v) Exception for certain installment sales.
(vi) Exception for certain down payment plans.
(vii) Examples.
(2) Consumer durable.
(3) Collectible.
(4) Travel or entertainment activity.
(5) Retail sale.
(6) Trade or business.
(7) Transaction.
(8) Recipient.
(d) Exceptions to the reporting requirements of section 6050I.
(1) Receipt of cash by certain financial institutions.
(2) Receipt of cash by certain casinos having gross annual gaming revenue in excess of $1,000,000.
(i) In general.
(ii) Casinos exempt under 31 CFR 103.45(c).
(iii) Reporting of cash received in a nongaming business.
(iv) Example.
(3) Receipt of cash not in the course of the recipient's trade or business.
(4) Receipt is made with respect to a foreign cash transaction.
(i) In general.
(ii) Example.
(e) Time, manner, and form of reporting.
(1) Time of reporting.
(2) Form of reporting.
(3) Manner of reporting.
(i) Where to file.
(ii) Verification.
(iii) Retention of returns.
(f) Requirement of furnishing statements.
(1) In general.
(2) Form of statement.
(3) When statement is to be furnished.
(g) Cross-reference to penalty provisions.
(1) Failure to file correct information return.
(2) Failure to furnish correct statement.
(3) Criminal penalties.

*§ 1.6050I–2 Returns relating to cash in excess of $10,000 received as bail by court clerks.*

(a) Reporting requirement.
(b) Meaning of terms.
(c) Time, form, and manner of reporting.
(1) Time of reporting.
(i) In general.
(ii) Multiple payments.
(2) Form of reporting.
(3) Manner of reporting.
(i) Where to file.
(ii) Verification of identity.
(d) Requirement to furnish statements.
(1) Information to Federal prosecutors.
(i) In general.
(ii) Form of statement.
(2) Information to payors of bail.
(i) In general.
(ii) Form of statement.
(iii) Aggregate amount.
(e) Cross-reference to penalty provisions.
(f) Effective date.

**§ 1.6050I–2 Returns relating to cash in excess of $10,000 received as bail by court clerks.**

(a) *Reporting requirement.* Any clerk of a Federal or State court who receives more than $10,000 in cash as bail for any individual charged with a specified criminal offense must make a return of information with respect to that cash receipt. For purposes of this section, a clerk is the clerk's office or the office, department, division, branch, or unit of the court that is authorized to receive bail. If someone other than a clerk receives bail on behalf of a clerk, the clerk is treated as receiving the bail for purposes of this paragraph (a).

(b) *Meaning of terms.* The following definitions apply for purposes of this section—

*Cash* means—

(1) The coin and currency of the United States, or of any other country, that circulate in and are customarily used and accepted as money in the country in which issued; and

(2) A cashier's check (by whatever name called, including treasurer's check and bank check), bank draft, traveler's check, or money order having a face amount of not more than $10,000.

*Specified criminal offense* means—

(1) A Federal criminal offense involving a controlled substance (as defined in section 802 of title 21 of the United States Code), provided the offense is described in Part D of Subchapter I or Subchapter II of title 21 of the United States Code;

(2) Racketeering (as defined in section 1951, 1952, or 1955 of title 18 of the United States Code);

(3) Money laundering (as defined in section 1956 or 1957 of title 18 of the United States Code); and

(4) Any State criminal offense substantially similar to an offense described in this paragraph (b).

(c) *Time, form, and manner of reporting*—(1) *Time of reporting*—(i) *In general.* The information return required by this section must be filed with the Internal Revenue Service by the 15th day after the date the cash bail is received.

(ii) *Multiple payments.* If multiple payments are made to satisfy bail reportable under this section and the initial payment does not exceed $10,000, the initial payment and subsequent payments must be aggregated and the information return required by this section must be filed with the Internal Revenue Service by the 15th day after receipt of the payment that causes the aggregate amount to exceed $10,000. However, if payments are made to satisfy separate bail requirements, no aggregation is required. Thus, if in Month 1 a clerk receives $6,000 in bail for an individual charged with a specified criminal offense and later, in Month 2, receives $7,000 in bail for that same individual charged with another specified criminal offense, no aggregation is required.

(2) *Form of reporting.* The return of information required by paragraph (a) of this section must be made on Form 8300 and must contain the following information—

(i) The name, address, and taxpayer identification number (TIN) of the individual charged with the specified criminal offense;

(ii) The name, address, and TIN of each person posting the bail (payor of bail), other than a person posting bail who is licensed as a bail bondsman in the jurisdiction in which the bail is received;

(iii) The amount of cash received;

(iv) The date the cash was received; and

(v) Any other information required by Form 8300 or its instructions.

(3) *Manner of reporting*—(i) *Where to file.* Returns required by this section must be filed with the Internal Revenue Service office designated in the instructions for Form 8300. A copy of the information return required to be filed under this section must be retained for five years from the date of filing.

(ii) *Verification of identity.* A clerk required to make an information return under this section must, in accordance with § 1.6050I–1(e)(3)(ii), verify the identity of each payor of bail listed in the return.

(d) *Requirement to furnish statements*—(1) *Information to Federal prosecutors*—(i) *In general.* A clerk required to make an information return under this section must furnish a written statement to the United States Attorney for the jurisdiction in which the individual charged with the specified crime resides and the United States Attorney for the jurisdiction in which the specified criminal offense occurred (applicable United States Attorney(s)). The written statement must be filed with the applicable United States Attorney(s) by the 15th day after the date the cash bail is received.

(ii) *Form of statement.* The written statement must include the information required by paragraph (c)(2) of this section. The requirement of this paragraph (d)(1)(ii) will be satisfied if the clerk provides to the applicable United States Attorney(s) a copy of the Form 8300 that is filed with the Internal Revenue Service pursuant to this section.

(2) *Information to payors of bail*—(i) *In general.* A clerk required to make an information return under this section must furnish a written statement to each payor of bail whose name is set forth in a return required by this section. A statement required under this paragraph (d)(2) must be furnished to a payor of bail on or before January 31 of the year following the calendar year in which the cash is received. A statement will be considered furnished to a payor of bail if it is mailed to the payor's last known address.

(ii) *Form of statement.* The statement required by this paragraph (d)(2) need not follow any particular format, but must contain the following information—

(A) The name and address of the clerk's office making the return;

(B) The aggregate amount of reportable cash received during the calendar year by the clerk who made the information return required by this section in all cash transactions relating to the payor of bail; and

(C) A legend stating that the information contained in the statement has been reported to the Internal Revenue Service and the applicable United States Attorney(s).

(iii) *Aggregate amount.* The requirement of furnishing the aggregate amount in paragraph (d)(2)(ii)(B) of this section will be satisfied if the clerk provides to the payor of bail either a single written statement listing the aggregate amount, or a copy of each Form 8300 relating to that payor of bail.

(e) *Cross-reference to penalty provisions.* See sections 6721 through 6724 for penalties relating to the failure to comply with the provisions of this section.

(f) *Effective date.* This section applies to cash received by court clerks on or after February 13, 1995.

## 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 [Amended]

Par. 5. In § 602.101, paragraph (c) is amended by removing the entry ''1.6050I–2T'' from the table and adding the entry ''1.6050I–2 .....1545–1449'' in numerical order in the table.

Margaret Milner Richardson,

*Commissioner of Internal Revenue.*

Approved: December 12, 1995.

Leslie Samuels,

*Assistant Secretary of the Treasury.*

[FR Doc. 95–31459 Filed 12–29–95; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Subchapter D and Part 81

**[CGD 95–053]**

**RIN 2115–AF16**

## Removal of 72 COLREGS Text From CFR and Revision of Subchapter D Note

**AGENCY:** Coast Guard, DOT.

**ACTION:** Direct final rule.

**SUMMARY:** In furtherance of the President's Regulatory Reinvention Initiative by this direct final rule, the Coast Guard is removing the text of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) from the CFR. That text merely duplicates text found in the United States Code. This rule also will update the note containing a list of U.S. territories and possessions where the 72 COLREGS apply. This rulemaking represents the Coast Guard's first use of direct final rulemaking as recommended to agencies by the National Performance Review.

**DATES:** This rule is effective on April 1, 1996, unless the Coast Guard receives written adverse comments or written notice of intent to submit adverse comments on or before March 4, 1996.

**ADDRESSES:** Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 95–053), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Diane Schneider Appleby, Project Manager, at (202) 267–0352.

**SUPPLEMENTARY INFORMATION:**

Request for Comments

Any comments must identify the names and address of the person submitting the comment, specify the rulemaking docket (CGD 95–053) and the specific section of this rule to which each comment applies, and give the reason for each specific comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Regulatory Information

The Coast Guard is publishing a direct final rule, the procedures of which are outlined in 33 CFR 1.05–55, because no adverse comments are anticipated. If no adverse comments or any written notice of intent to submit adverse comments are received within the specified comment period, the rule will become effective as stated in the **DATES** section. In that case, prior to the effective date, the Coast Guard will publish a notice in the Federal Register stating that no adverse comment was received and confirming that the rule will become

effective as scheduled. However, if the Coast Guard receives written adverse comment or written notice of intent to submit adverse comment, the Coast Guard will publish a notice in the Federal Register to announce withdrawal of all or part of the direct final rule. If adverse comments apply to only part of this rule, and it is possible to remove that part without defeating the purpose of the rule, the Coast Guard may adopt as final those parts of this rule on which no adverse comment were received. The part of the rule that is the subject of adverse comment will be withdrawn. If the Coast Guard decides to proceed with a rulemaking following receipt of adverse comments, a separate Notice of Proposed Rulemaking (NPRM) will be published and a new opportunity for comment provided.

A comment is considered ''adverse'' if the comment explains why the rule would be inappropriate, including a challenge to the rule's underlying premise or approach or would be ineffective or unacceptable without a change. A comment submitted in support of a rule is not adverse. A comment suggesting that the policy requirements of the rule should or should not be extended to other Coast Guard programs is outside the scope of the rule and is not adverse.

Background and Purpose

This project resulted from a review of the Code of Federal Regulations (CFR) required by the Presidential Regulatory Reinvention Initiative review to rid the CFR of unnecessary regulations. This rule will remove Appendix A or Part 81 of 33 CFR which reprints the text of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) published at 33 U.S.C. § 1602. The 72 COLREGS implement the Convention on the International Regulations for Preventing Collisions at Sea, 1972 which was adopted by Presidential Proclamation in 1972. The text in the CFR which will be eliminated by this rule exactly duplicates the text set out in the United States Code. Therefore, the Coast Guard believes that it is both unnecessary for the text to be reprinted in the Code of Federal Regulations. Additionally, the practical effect of this elimination should be minimal as the text of the 72 COLREGS is also reprinted in Commandant Instruction (COMDTINST M16672.2B) which is available to the public through the Government Printing Office. Since these laws are available in the United States Code (U.S.C.) and can be acquired through the Government Printing Office, the Coast Guard has determined that Appendix A should be eliminated as unnecessary.

Additionally, the list of U.S. territories where the 72 COLREGS apply, contained in the special note to Subchapter D in 33 CFR, is being updated to remove the Trust Territory of the Pacific Islands. This is an administrative update being made because the Trust Territory of the Pacific Islands is no longer a U.S. territory.

The Coast Guard is retaining in 33 CFR the interpretative rulings regarding the 72 COLREGS as well as the demarcation lines delineating the boundaries where the 72 COLREGS apply.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this 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 determined that a full Regulatory Evaluation was unnecessary because this rule is simply an administrative action eliminating unnecessary text from the CFR and will have no significant impact on the maritime community.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

This project will not impose any cost on the marine industry. Mariners have easy access to these laws through Coast Guard publications which are available from the Government Printing Office as well as through the United States Code. This change will serve an indirect benefit to the Federal Government by saving the cost of printing seventeen pages in the Code of Federal Regulations.

Therefore, the Coast Guard finds that this rule will not have a significant economic impact on a substantial number of small entities. Any comments submitted in response to this finding will be evaluated under the criteria described earlier in the preamble for comments.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2.e(34)(a) of The NEPA Implementing Procedures, COMDTINST M16475.1B. (as revised by 59 FR 38654, July 29, 1994), this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 81

Navigation (water), Reporting and recordkeeping requirements, Treaties.

For the reasons set out in the preamble and under the authority of 33 U.S.C. 1602, the Coast Guard amends 33 CFR chapter 1 and part 81 as follows:

*Subchapter D [Amended]*

1. The special note at the beginning of subchapter D is amended by removing ''The Trust Territory of the Pacific Islands'' from the listing in paragraph a.

## PART 81—[AMENDED]

2. The authority for part 81 continues to read as follows:

Authority: 33 U.S.C. 1607; E.O. No. 11964; 44 CFR 1.46.

3. Appendix A to part 81 is removed.

Dated: December 22, 1995.

Rudy K. Peschel,

*Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.*

[FR Doc. 95–31522 Filed 12–29–95; 8:45 am]

BILLING CODE 4910–14–M

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Parts 201–1, 201–2, 201–3, 201–4, 201–6, 201–7, 201–17, 201–18, 201–20, 201–21, 201–22, 201–24 and 201–39

**[FIRMR Amendment 7]**

**RIN 3090–AF31**

### Amendment of FIRMR Provisions To Ensure Currency and Relevancy

**AGENCY:** Information Technology Service, GSA.

**ACTION:** Final rule.

**SUMMARY:** This document amends selected Federal Information Resources Management Regulation (FIRMR) provisions to ensure the currency and relevancy of the FIRMR. It is issued in accordance with Executive Order 12866 of September 30, 1993, which requires agencies to periodically review their significant regulations to determine whether they should be modified or eliminated.

This rule makes a number of changes to the FIRMR. Among the more significant changes, are the following: add, change, or remove FIRMR definitions and acronyms including redefining ''outdated equipment'' to mean Federal information processing equipment over six years old that is no longer in current production; revise provisions pertaining to accessibility by individuals with disabilities to implement the new focus in the Rehabilitation Act Amendment of 1992 on information rather than equipment; permit agency heads to grant exceptions to the mandatory use of a Federal Standard (FED–STD) after notification to GSA; clarify the intent of the FIRMR requirement for agencies to conduct requirements analyses ''commensurate with the size and complexity of the need''; allow agencies to substitute similar documentation prepared in response to programmatic needs for requirements analyses; establish a threshold below which agencies do not have to prepare a requirements analysis or analysis of alternatives; clarify that agencies need only perform an analysis of alternatives for those alternatives most feasible to implement; raise the threshold from $50,000 to $1,000,000 for doing an analysis of alternatives limited to demonstrating that the benefits of the acquisition will outweigh the costs; specify ratification procedures when a delegation of procurement authority (DPA) is required from GSA but has not been obtained; remove the reporting requirements to GSA for listening-in to or recording telephone conversations and toll-free telephone service; clarify procedures for economical capability and performance validation; revise the scope of obsolescence reviews to include equipment that may be obsolescing; expand the exception from $300,000 to $1,000,000 for award based on lowest offered purchase price; clarify that agencies must submit post delegation information to GSA for specific acquisition delegations; clarify procedures for evaluating outdated and obsolete information technology; and remove an antiquated clause concerning warranty exclusion and limitation of damages.

**EFFECTIVE DATE:** This rule is effective February 1, 1996.

**FOR FURTHER INFORMATION CONTACT:** Judy Steele, GSA, Center for Information Technology Policy and Regulations Management (KAR), 18th & F Streets, NW., Room 3224, Washington, DC 20405, telephone FTS/Commercial (202) 501–3194 (v) or (202) 501–0657 (tdd).

**SUPPLEMENTARY INFORMATION:** (1) This amendment incorporates provisions of two notices of proposed rulemaking (NPR's) published in the Federal Register (FR) on December 6, 1994 and January 10, 1995. The December 6, 1994, FR notice proposed various changes to several sections of the FIRMR. The January 10, 1995, FR notice, erroneously published as an amendment to Part 39 of the Federal Acquisition Regulation, provided clarification regarding ratification procedures for contracts that required a delegation of procurement authority (DPA) from GSA when the DPA had not been obtained initially. The following summarizes the changes being made as a result of these notices:

(a) Sections 201–1.003(a), 201–3.000, 201–3.001(a), 201–3.101, 201–3.201(d), 201–3.3 and the title to part 201–3 are amended to discontinue the opportunity for agencies to establish supplements to the FIRMR as part of the Code of Federal Regulations (CFR). GSA has determined that agencies have not issued such regulations in the CFR since the establishment of the FIRMR, and that the provisions are therefore unnecessary.

(b) Section 201–1.003 paragraph (d) is amended by deleting responsibilities of the Archivist of the United States. It is the intent of the FIRMR to only implement GSA's authorities and responsibilities. Including the Archivist's responsibilities in the FIRMR is, therefore, unnecessary.

(c) Section 201–2.001 paragraphs (a)(1) through (6) are removed. The original text was taken from the Paperwork Reduction Act. However, not all provisions were excerpted. This resulted in some confusion. Accordingly, the text is being removed so that agencies will refer to the Paperwork Reduction Act to learn the specific responsibilities of the designated senior official.

(d) Section 201–2.001 paragraph (b) is amended by removing the last sentence which pertained to agencies not subject to the Paperwork Reduction Act. This information is adequately covered in § 201–2.002.

(e) Section 201–2.002 is amended by changing the sequence of paragraphs (a) through (c). The revised sequence more accurately aligns the responsibilities of the agency designated senior official (DSO).

(f) Section 201–3 discusses the organization of the FIRMR, how it is supplemented with other guidance issuances, and its relationship to the Federal Acquisition Regulation (FAR). Section 201–3.001 is amended to remove unnecessary details which pertain to circumstances giving rise to interim rules. This information is more appropriately discussed in § 201–3.203. Section 201–3.203 paragraph (c) replaces the term ''temporary change'' with the words ''interim rule'' to standardize terminology pertaining to revising the FIRMR. Also removed for brevity is a redundant sentence that lists the various types of guidance material already described. For consistency, the enumeration of the types of guidance issuances contained in the FIRMR (§ 201–3.001(b)(1) through (3)) is changed to small roman numerals.

(g) Section 201–3.001 paragraph (b)(i) is amended to reflect the current availability of the FIRMR on CD-ROM.

(h) Section 201–3.204 paragraph (a) is amended to update the phone number for the Government Printing Office (GPO) Bookstore.

(i) In sections 201–4.001 and 201–39.201, the definition for outdated FIP equipment is revised to shorten the period for determining when FIP equipment is outdated. The FIRMR defines outdated FIP equipment as any FIP equipment over eight years old, based on the initial commercial installation date of that model of equipment, and that is no longer in current production. This definition has been in existence since 1986 when the product cycle of computer equipment was four years. Since that time, the product life cycle has decreased to about three years, and industry spokesmen state that this figure is decreasing even more. When microcomputers are upgraded, the

product cycle may be even less since typically they are upgraded by replacing internal components. The ''chip'' life cycle for these components is generally 18 to 24 months. Additionally, after five years most computer equipment has little or no market value. In recognition of these facts, the definition for outdated equipment is being revised to shorten the time interval from eight to six years after the first commercial installation at which point equipment no longer produced is considered to be outdated.

(j) Section 201–4.001 is amended by adding a new definition for ''Records management.'' The FIRMR discusses records management in subpart 201–9.1, but has never included a definition. The definition added is the same as contained in OMB Circular A–130. Also, the existing definitions of ''application software'' and ''common-use software'' are designated as subcategories (a) and (b) respectively of the larger term, ''Software'' for consistency of format.

(k) Section 201–4.002 is revised to include the following new acronyms: CBD, FED-STD, FSTS, GAO, GSBCA, IRPMR, MOL, OAC, and POTS. These acronyms were used in the FIRMR index, but previously were not defined.

(l) Section 201–4.003, Applicable OMB Circulars, is being added. In order to avoid future changes to FIRMR text caused by revisions of OMB Circular titles, this new section is added to include the current titles of all OMB Circulars referenced in the FIRMR.

(m) Section 201–6.001 is revised to add a new item (a)(5) to more closely reflect the provisions of the Paperwork Reduction Act, as well as address matters raised in OMB Circular A–130. These include improving service delivery, dissemination of information, increasing productivity, improving the quality of decision making, reducing fraud and waste, and reducing the information collection burden on the public. Section 201–6.001 is also revised to redesignate the previous item (5) as new item (6).

(n) A series of revisions are being made due to Public Law 102–569 (dated October 29, 1992), which amended the Rehabilitation Act of 1973 by broadening the scope of accessibility for individuals with disabilities. These revisions capture more thoroughly the intent of Pub. L. 102–569. The previous version of the Rehabilitation Act only required that GSA ensure those with disabilities can access ''electronic office equipment.'' The revised statute recognizes that while equipment accessibility is important, that alone is not sufficient because an agency's applications software and user interfaces can impede the functional use of a computer if they do not have features permitting use by individuals with disabilities. The revised statutory provision emphasizes that all individuals must be able to use technology to accomplish the same end objectives.

A new paragraph 201–6.002(g) is added to include as a predominant consideration in the management and use of information and records, the importance of ensuring that individuals with disabilities can produce information and data, and have access to information and data, comparable to the information and data, and access, respectively, of others. Section 201–6.002 is also revised to redesignate the previous item (g) as new item (h).

In addition to the insertion of 201–6.002(g), discussed above, other provisions of the FIRMR pertaining to accessibility by individuals with disabilities are being revised to incorporate the statutory intent of Pub. L. 102–569. These other FIRMR provisions are:

—201–17.001(j)—Predominant Considerations in the Management and Use of Federal Information Processing (FIP) Resources;
—201–18.001(e), which generally describes the Federal Government's statutory responsibility to foster accessibility for individuals with disabilities;
—201–18.002(c), which pertains to adoption of accessibility guidelines in agency IRM plans; and
—201–20.103–7(a), which requires agencies to incorporate accessibility requirements in their acquisitions of FIP resources.

(o) Section 201–7.001 paragraph (b) is revised to delete a reference to canceled OMB Circular A–3.

(p) Section 201–7.002 paragraph (c) is revised to clarify when information needs are determined. The existing text suggested that information needs were to be determined before conducting a requirements analysis. The revised text reflects that determining information needs and analyzing requirements are frequently concurrent activities.

(q) Section 201–9.202–1 paragraph (b)(9) is revised to update the current mailing address for the Supply Management Division.

(r) The existing text in paragraph 201–20.001(d) referenced the specific subjects of requirements analysis and analysis of alternatives in the GSA Acquisition Guide series. The reference to the guide series is unnecessary and is being deleted.

(s) Subpart 201–20.1 is revised to clarify GSA's intent regarding the preparation of requirements analyses. Currently, the FIRMR requires agencies to document their requirements for FIP resources ''by conducting a requirements analysis commensurate with the size and complexity of the need.'' Some agencies have questioned the necessity of conducting a requirements analysis and preparing the required documentation when a similar document has already been prepared in conformance with agency programmatic needs. The FIRMR is being revised to allow agencies to use such similar documents if they address the basic information required in a requirements analysis.

Other agencies have misinterpreted the intent of the phrase ''commensurate with the size and complexity of the need,'' and, in some cases, are over documenting requirements for small dollar acquisitions. These small dollar acquisitions are usually for commercial items readily available in the competitive marketplace. FAR planning provisions and agencies' internal procurement procedures provide sufficient information for requirements to justify small dollar value acquisitions. To ensure more expeditious and efficient acquisitions, this rule establishes a threshold for when agencies must conduct requirements analyses and analyses of alternatives. Sections 201–20.102 and 201–20.202 are revised to eliminate the requirement to perform requirements analyses and analyses of alternatives for acquisitions of FIP resources when the total estimated system life costs of the FIP resources are less than $500,000. Agencies may establish internal documentation procedures when the acquisitions involve FIP resources valued at less than $500,000. However, agencies are encouraged to keep such documentation requirements to a minimum.

Additionally, § 201–20.103 is revised to require that agencies only consider the factors in this section if it is appropriate to do so. This allows agencies to exercise discretion regarding whether or not to include the factors in their requirements analyses.

(t) Subpart 201–20.2 requires agencies to perform an analysis of alternatives based on the requirements analysis to determine the most advantageous alternative that will meet their needs. Like the requirements analysis, the analysis of alternatives must be ''commensurate with the size and complexity of the agency's need''. As indicated in paragraph 201–20.203–1(a)(1), GSA's intention was that agencies only include in the analysis of alternatives those alternatives that are

truly feasible to implement. It has come to our attention, however, that some agencies are analyzing all alternatives, whether or not they are feasible in the specific circumstance. This unnecessarily complicates and lengthens the acquisition process. Accordingly, section 201–20.202, which states the FIRMR policy on performing analyses of alternatives, is being revised to emphasize that agencies should limit the number of alternatives analyzed to those that are most feasible to implement. Other changes are also being made to this subpart. Section 201–20.203–2 is being revised to increase from $50,000 to $1,000,000 the threshold for performing a more detailed analysis of alternatives. Accordingly, agencies must perform an analysis including use of the present value of money if the estimated amount of their proposed acquisition is more than $1,000,000 or an analysis that demonstrates that the benefits of the acquisition will outweigh the costs if the acquisition is less than $1,000,000. This change will help to streamline the acquisition process by reducing documentation requirements for a greater number of smaller acquisitions.

Additionally, paragraph 201–20.203–2(c) is being revised to delete the title of OMB Circular A–94 and to move it to the new section 201–4.003.

(u) Section 201–20.303 paragraph (d)(2) is revised to permit agency heads to grant exceptions to FED–STDS provided GSA is notified at least 30 days prior to any granting of an exception to a FED–STD, e.g., in a solicitation. This change empowers agencies to accomplish their missions more effectively.

(v) Section 201–20.304 paragraphs (a) and b(1) deal with capability and performance validation. They are revised to require use of validation techniques that are more economical to Government and industry than use of a benchmark or an operational capability demonstration (OCD). In the early years of computing, comprehensive benchmarks, stress tests, and OCDs were useful for validating reliability, performance and other requirements. In today's mature industry, the reliability and stability of the marketplace offerings are much higher. Also, there is substantial empirical data available from independent sources to assist agencies in assessing how a proposed system will perform in their environment and with their workloads. As a result, the use of benchmarks or OCDs may not be the most advantageous approach in many acquisitions. This is more likely to be the case for those acquisitions that do not require customized hardware and/or software. Agencies will now be required to select the most economical technique available that will meet their minimum needs. Additionally, paragraph 201–20.304(b)(2) is revised to delete the adjective ''actual'' in front of the word ''requirements''. The word ''actual'' caused some confusion about the meaning of ''When a benchmark is used as part of performance validation, agencies shall ensure, that the FIP software selected for benchmarks is representative of actual requirements . . . '' In fact, agencies acquire systems to accommodate a workload over a life cycle of some years. An agency's definition of its requirements at the time of acquisition is its best estimate of workload that will ultimately occur over the ensuing years.

(w) Section 201–20.305 is being amended to recognize the fact that GSA will, at the request of an agency, grant authority to the agency to ratify a contract awarded without the necessary specific acquisition DPA. The amendment also clarifies that procurement actions taken prior to contract award do not necessarily have to be repeated. It should be noted that the agency designated officials already have the authority to permit ratification of contracts valued at less than the agencies' regulatory or specific agency delegation thresholds.

(x) Section 201–20.305–3 is revised to emphasize the agency requirement for the submission of post delegation information to GSA for specific delegations. With the increased emphasis on results oriented performance, GSA will seek information demonstrating that agencies are obtaining the benefits cited in their agency procurement requests. Also, this section's reference to a specific acquisition DPA under the Trail Boss program is being deleted. Although the Trail Boss approach is being retained and its use encouraged, special DPAs will no longer be required.

(y) Section 201–21.201 paragraph (b) is revised to reflect the current name and symbol of a GSA organization.

(z) Section 201–21.301 paragraphs (a) and (d) are revised to delete references to OMB Circular A–130, Appendix III.

(aa) Section 201–21.401 paragraph (c) is revised to remove references to OMB Circular A–130, Appendix II, which is proposed for revision; and to remove the title of the Circular since it appears in the new section 201–4.003.

(bb) Section 201–21.403 is amended to change the annual report date from November 30 to October 20 for reporting the dollar amount charged to users for the sharing of excess FIP resources. This earlier due date allows for more timely submission of GSA's consolidated Governmentwide report to Congress.

(cc) Section 201–21.601(c)(3) is amended to change the reference from 5 CFR 735.205 to 5 CFR 2635.704, to reflect a change in the regulations covering the use of telephone calls placed over Government provided telephone systems.

(dd) Section 201–21.603 is amended to delete the agency reporting requirement. Agencies that listen-in or record conversations for public safety, public service monitoring or to assist individuals with disabilities must notify GSA in writing at least 30 days before the operational date. This notification provision is being removed because it places an unnecessary burden on agencies. GSA does not have any affirmative enforcement or other function with regard to listening-in that would make this reporting requirement necessary. Such responsibilities rest solely with the reporting agency. Accordingly, in line with placing authority and responsibility at the appropriate level, this reporting requirement will be removed as will the provision that GSA will periodically review agency listening-in activities.

(ee) Section 201–21.604, requires agencies to forward to GSA copies of each order for toll free telephone service. Documentation submitted is to include estimates of monthly costs and usage, and cite the relevant statute, Executive Order, or other regulation directing the toll free service. This provision is being removed because the use of toll-free telephone services is sufficiently routine that close supervision by GSA is no longer needed. Removal of this provision reduces costly and burdensome over-regulation and places authority and responsibility with the agency.

(ff) Section 201–22.303 is revised to expand the scope of the subpart. Currently, this provision requires agencies to review the use of equipment that is already outdated and to determine if continued use is economical. This provision is revised also to expand the scope of the review to include equipment that may be obsolescent. This change is made to encourage agencies to ensure that their FIP equipment always remains economical and efficient. Guidelines are provided to assist agencies in identifying obsolescent equipment. Agencies are encouraged to replace their obsolescent equipment if the cost of continued use exceeds the cost of acquiring and operating newer technology.

(gg) Section 201–39.1001–1 is amended by removing the words ''OMB Bulletin 88–16'' in paragraph (i) and adding in their place ''OMB Bulletin 90–08''.

(hh) Sections 201–39.1402–2 paragraph (c) and 201–39.1501–2 paragraph (c) are revised to increase the thresholds below which certain factors need not be considered in determining the lowest bid or total proposed cost, respectively. In determining the lowest bid in a sealed bidding acquisition, § 201–39.1402–1 requires agencies to factor in costs pertaining to life cycle support and conversion. In determining the total cost of a proposal in a negotiated acquisition, § 201–39.1501–1 requires agencies to factor in costs pertaining to life cycle support and conversion. These thresholds are increased from $300,000 to $1,000,000 in order to give agencies greater discretion in managing their acquisitions. For the same reason, the ''per item'' thresholds are increased from $25,000 to $100,000.

(ii) Subpart 201–39.46 is amended to delete provisions that are more adequately addressed in FAR Subpart 46. This subpart addresses quality assurance and provides guidance limiting contractor liability in contracts for FIP resources. Unless circumstances warrant otherwise, contracting officers are instructed to insert a limitation of liability clause found at § 201–39.5206. FAR Subpart 46 also provides guidance on limitation of contractor liability. The FAR's guidance is more comprehensive and flexible than is the FIRMR's. The FAR provides multiple contractual clauses from which a contracting officer must choose. One clause applies to contracts for the delivery of non-high value end items, a second to the delivery of high-value end items, and a third to the provision of services. Contracting officers are instructed to combine relevant parts of each clause for contracts involving more than one of these categories. Accordingly, the FIRMR provision and clause found at section 201–39.5202–6 are removed so that the corresponding FAR provision will apply.

(2) This rule was submitted to, and reviewed by, the Office of Management and Budget in accordance with Executive Order 12866, Regulatory Planning and Review. This rule will not have a significant economic impact upon a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, et seq.). GSA has determined that this rule is not a significant rule for the purposes of Executive Order 12866 of October 4, 1993, because it is not likely to result in any of the impacts noted in Executive Order 12866, affect the rights of specified individuals, or raise issues arising from the policies of the Administration. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Parts 201–1, 201–2, 201–3, 201–4, 201–6, 201–7, 201–17, 201–18, 201–20, 201–21, 201–22, 201–24, and 201–39

Archives and records, Computer technology, Telecommunications, Government procurement, Property management, Records management, and Federal information processing resources activities.

Accordingly 41 CFR parts 201–1, 201–2, 201–3, 201–4, 201–6, 201–7, 201–17, 201–18, 201–20, 201–21, 201–22, 201–24, and 201–39 are amended as follows:

## PART 201–1—APPLICABILITY AND AUTHORITY

1. The authority citation for part 201–1 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

### § 201–1.003 [Amended]

2. Section 201–1.003 is amended by removing the word ''system'' in paragraph (a) and removing paragraph (d).

## PART 201–2—DESIGNATED SENIOR OFFICIALS

3. The authority citation for part 201–2 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

4. Section 201–2.001 is revised to read as follows:

### § 201–2.001 General.

The PRA requires that the head of each executive agency designate a senior official who shall report directly to the agency head. The designated official is responsible for carrying out the IRM function assigned to the agency by the PRA.

### § 201–2.002 [Amended]

5. Section 201–2.002 is amended by redesignating paragraphs (a), (b), and (c) as paragraphs (c), (a), and (b) respectively.

### § 201–2.003 [Amended]

6. Section 201–2.003 is amended by removing the words ''18th and F Streets, NW.,'' in paragraph (a).

## PART 201–3—THE FIRMR

7. Part 201–3 is amended by revising the heading to read as set forth above.

8. The authority citation for part 201–3 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

9. Section 201–3.000 is revised to read as follows:

### § 201–3.000 Scope of part.

This part describes the Federal Information Resources Management Regulation.

10. Section 201–3.001 is revised to read as follows:

### § 201–3.001 General.

(a) The Federal Information Resources Management Regulation (FIRMR) is codified in the Code of Federal Regulations (CFR) and includes interim rules which have the same effect as final rules.

(b) From time to time, the General Services Administration (GSA) will issue nonregulatory publications to provide guidance and information:

(1) FIRMR bulletins contain guidance and information on various information resources management areas. FIRMR bulletins do not constitute binding authority, but should be used as an aid in understanding GSA programs and the FIRMR. FIRMR bulletins are published in Appendix B of the looseleaf edition of the FIRMR and are available along with the FIRMR from GPO by subscription or on GSA's CD-ROM.

(2) Handbooks and reports address specific program or technical areas where the audience generally will be defined by the subject matter.

(3) Appendix C of the looseleaf edition of the FIRMR contains a listing of current bulletins, handbooks, and reports and information on how to obtain them.

### § 201–3.101 [Amended]

11. Section 201–3.101, is amended by removing the word ''system''.

12. Section 201–3.201 is amended by revising paragraph (d) to read as follows:

### § 201–3.201 Issuance.

* * * * *

(d) The FIRMR is issued as chapter 201 of title 41, CFR.

13. Section 201–3.203 is amended by revising paragraph (c) to read as follows:

### § 201–3.203 Maintenance.

* * * * *

(c) The Administrator of General Services may issue an interim rule to the FIRMR when solicitation of comments is impractical due to urgent and compelling circumstances (e.g., when a new statute must be implemented in a relatively short period of time). However, the interim rule will make provision for a public comment period of at least 30 days for consideration in the formulation of the final change to the FIRMR.

**§ 201–3.204 [Amended]**

14. Section 201–3.204 is amended by removing the phone number ''275–2091'' in paragraph (a) and adding in its place ''512–0132''.

## Subpart 201–3.3—[Removed and Reserved]

15. Subpart 201–3.3 is removed and reserved.

## PART 201–4—DEFINITIONS, ACRONYMS AND OMB CIRCULARS

16. The heading for part 201–4 is revised as set forth above.

17. The authority citation for Part 201–4 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

18. Section 201–4.000 is revised to read as follows:

**§ 201–4.000 Scope of part.**

This part defines words, terms, acronyms, and OMB Circulars used in the FIRMR.

**§ 201–4.001 [Amended]**

19. Section 201–4.001 is amended in the definition *Information resources management* by adding ''(IRM)'' preceding the word ''means''.

20. Section 201–4.001 is amended by removing the word ''eight'' in the definition *Outdated FIP equipment* and adding in its place ''six''.

21. Section 201–4.001 is amended by adding a new definition in alphabetical order to read as follows:

**§ 201–4.001 Definitions.**

* * * * *

*Records management* means the planning, controlling, directing, organizing, training, promoting, and other managerial activities involved with records creation, records maintenance and use, and records disposition in order to achieve adequate and proper documentation of the policies and transactions of the Federal Government and effective and economical management of agency operations (44 U.S.C. 2901(2)).

* * * * *

22. Section 201–4.001 is amended by removing the undesignated center heading ''Software'', adding a definition for *Software* in its place, designating entries *Application software* and *Common-use software* as paragraphs (a) and (b) under the definition for *Software,* to read as follows:

* * * * *

*Software* includes—

(a) *Application software* * * *

(b) *Common-use software* * * *

* * * * *

23. Section 201–4.002 is amended by adding in alphabetical order new acronyms and by placing the acronyms ''GSA'' and ''GPO'' in alphabetical order to read as follows:

**§ 201–4.002 Acronyms.**

* * * * *

CBD means Commerce Business Daily.

* * * * *

FED-STD means Federal Telecommunications Standards.

* * * * *

FSTS means Federal Secure Telephone Service.

* * * * *

GAO means General Accounting Office.

* * * * *

GSBCA means General Services Board of Contract Appeals.

* * * * *

IRPMR means Information Resources Procurement and Management Review.

* * * * *

MOL means Maximum Ordering Limitation.

* * * * *

OAC means Original Acquisition Cost.

* * * * *

POTS means Purchase of Telephones and Services.

* * * * *

24. Section 201–4.003 is added to read as follows:

**§ 201–4.003 Applicable OMB Circulars.**

The following applicable OMB Circulars may be obtained from the OMB Publications office by calling (202) 395–7332:

A–11 Preparation and submission of budget estimates.
A–94 Benefit-cost analysis of Federal programs; guidelines and discounts.
A–109 Major system acquisition.
A–127 Financial management systems.
A–130 Management of Federal information resources.

## PART 201–6—PREDOMINANT CONSIDERATIONS

25. The authority citation for part 201–6 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

26. Section 201–6.001 is amended by revising paragraphs (a)(3) and (a)(5) and adding paragraph (a)(6) to read as follows:

**§ 201–6.001 General.**

(a) * * *

(3) Maximize the usefulness of information collected, maintained, and disseminated by the Federal Government;

* * * * *

(5) Ensure that FIP resources are acquired and used by the Federal Government in a manner which improves service delivery and program management, increases productivity, improves the quality of decisionmaking, reduces waste and fraud, and reduces the information collection burden on the public; and

(6) Ensure that the collection, maintenance, use, and dissemination of information by the Federal Government is consistent with applicable laws, regulations, and executive orders.

* * * * *

27. Section 201–6.002 is amended by redesignating paragraphs (g) through (m) as paragraphs (h) through (n), respectively, and adding a new paragraph (g) to read as follows:

**§ 201–6.002 Predominant considerations.**

* * * * *

(g) Ensure that individuals with disabilities can produce information and data, and have access to information and data, comparable to the information and data, and access, respectively, of other individuals;

* * * * *

## PART 201–7—PLANNING

28. The authority citation for part 201–7 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

29. Section 201–7.001 is amended by revising the first sentence of paragraph (b) to read as follows:

**§ 201–7.001 General.**

* * * * *

(b) The Paperwork Reduction Act (44 U.S.C. Chapter 35) OMB Circular No. A–11, and No. A–130, and the Computer Security Act of 1987 (Public Law 100–235, 101 Stat. 1724 (40 U.S.C. 759 note)) require agencies to conduct various information resources management (IRM) planning activities. * * *

* * * * *

30. Section 201–7.002 is amended by revising paragraph (c) to read as follows:

**§ 201–7.002 Policies.**

* * * * *

(c) Ensure that the agency's information needs are documented on a timely basis, for example when conducting a requirements analysis for FIP resources.

## PART 201–17—PREDOMINANT CONSIDERATIONS

31. The authority citation for part 201–17 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

32. Section 201–17.001 is amended by revising paragraph (j) to read as follows:

**§ 201–17.001 Predominant considerations.**

* * * * *

(j) Provide individuals with disabilities (employees and others who create and/or use the agency's information and data) the ability to produce information and data, and have access to information and data, comparable to the information and data produced and accessed by other individuals;

* * * * *

## PART 201–18—PLANNING AND BUDGETING

33. The authority citation for part 201–18 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

34. Section 201–18.001 is amended by revising paragraph (e) to read as follows:

**§ 201–18.001 General.**

* * * * *

(e) Section 508 of the Rehabilitation Act Amendment of 1992 (Pub L. 102–569, 29 U.S.C. 794d) requires the Federal Government to adopt guidelines for information and data accessibility designed to ensure that individuals with disabilities can produce information and data, and have access to information and data, comparable to information and data, and access, respectively, of other individuals. This Act requires that agencies comply with such guidelines. FIRMR Bulletin C–8, provides guidance on planning for FIP resources to accommodate the needs of individuals with disabilities.

* * * * *

35. Section 201–18.002 is amended by revising paragraph (c) to read as follows:

**§ 201–18.002 Policies.**

* * * * *

(c) Agencies shall adopt information and data accessibility guidelines similar to those described in FIRMR Bulletin C–8 in their planning process.

* * * * *

## PART 201–20—ACQUISITION

36. The authority citation for part 201–20 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

**§ 201–20.001 [Amended]**

37. Section 201–20.001 is amended by removing paragraph (d).

38. Section 201–20.102 is revised to read as follows:

**§ 201–20.102 Policy.**

Agencies shall establish and document requirements for FIP resources by conducting a requirements analysis, or similar study, commensurate with the size and complexity of the need except for those acquisitions when the total dollar value of the FIP resources, including all optional quantities and periods over the life of the contract, does not exceed $500,000. A requirements analysis shall not be performed when the value of the FIP resources does not exceed the $500,000 threshold. An agency may follow its own internal procedure for documenting requirements valued at less than $500,000. Agencies shall justify all requirements for other than full and open competition in accordance with FAR Part 6 whether or not a requirements analysis is performed.

39. Section 201–20.103 is revised to read as follows:

**§ 201–20.103 Procedures.**

Agencies shall consider the factors in §§ 201–20.103–1 through 201–20.103–11 in establishing requirements, as applicable.

40. Section 201–20.103–7 is amended by revising paragraph (a) to read as follows:

**§ 201–20.103–7 Accessibility requirements for individuals with disabilities.**

(a) Agencies shall acquire FIP resources that allow individuals with disabilities to produce information and data, and have access to information and data, comparable to the information and data, and access, respectively, of other individuals. Agency plans shall address both present and future needs.

* * * * *

41. Section 201–20.202 is revised to read as follows:

**§ 201–20.202 Policy.**

Using the results of the requirements analysis as the basis, agencies shall conduct an analysis of alternatives commensurate with the size and complexity of the requirement to identify the most advantageous alternative to the Government. The number of alternatives analyzed should be limited to those considered the most feasible to be implemented. Agencies shall not conduct analyses of alternatives for those acquisitions where the total dollar value of the FIP resources, including all optional quantities and periods over the life of the contract, does not exceed $500,000. Agencies shall instead follow their own internal procedures to identify the most advantageous alternative.

42. Section 201–20.203–2 is revised to read as follows:

**§ 201–20.203–2 Cost for each alternative.**

(a) In the analysis of alternatives, agencies shall calculate the total estimated cost, using the present value of money, for each of the most feasible alternatives unless the anticipated cost of the acquisition is $1,000,000 or less. The total estimated cost for each alternative shall include system life cost for that alternative and any other costs that can be identified with the alternative incurred either before or after the system life period.

(b) When the anticipated cost of the acquisition is $1,000,000 or less, the analysis may be limited to demonstrating that the benefits of the acquisition will outweigh the costs.

(c) Agencies shall follow guidance in OMB Circular No. A–94, when calculating the cost of each alternative.

43. Section 201–20.303 is amended by revising paragraph (d)(2) to read as follows:

**§ 201–20.303 Standards.**

* * * * *

(d) * * *

(2) *Exceptions.* An agency head may grant an exception to the mandatory use of a FED-STD upon receipt of adequate documentation. If an agency head grants an exception to the use of an individual FED-STD, a deviation from the FIRMR is not required. However, GSA must be notified at least 30 days prior to issuing a solicitation for which an exception has been granted. Notification shall be sent to: General Services Administration, Office of Technology Policy and Leadership (KAR), 18th & F Streets, NW., Washington, DC 20405.

44. Section 201–20.304 is amended by removing paragraph (b)(1), redesignating paragraph (b)(2) as paragraph (b)(1), revising paragraph (a) and adding new paragraph (b)(2) to read as follows:

**§ 201–20.304 Capability and performance validation.**

(a) *Policy.* When acquiring FIP resources, an agency shall use the most

economical technique available to provide reasonable assurance that capability and performance requirements are met.

(b) * * *

(2) When a benchmark is used as part of performance validation, agencies shall ensure that the FIP software selected for the benchmark is representative of the requirements and requires the minimum amount of reprogramming or conversion.

45. Section 201–20.305 is amended by adding paragraph (b)(5) to read as follows:

**§ 201–20.305 Delegation of GSA's exclusive procurement authority.**

* * * * *

(b) * * *

(5) If an agency awards a contract that requires a DPA from GSA but a DPA has not been obtained from GSA, the agency may request authority from GSA's Office of Technology Policy and Leadership (KAA) to ratify the contract in accordance with FAR 1.602–3 (48 CFR 1.602–3). Procurement actions taken by the agency prior to receiving the authority do not need to be repeated.

46. Section 201–20.305–3 is revised to read as follows:

**§ 201–20.305–3 Specific acquisition delegations.**

(a) Agencies shall submit an agency procurement request (APR) to GSA and receive a specific acquisition DPA if the acquisition is not covered by a regulatory or specific agency DPA. Procedures for requesting a DPA for a specific acquisition are provided in FIRMR Bulletin C–5.

(b) GSA may require agencies to submit post delegation information such as contract award, milestone schedules, contract costs, program performance measures, and technology costs.

## PART 201–21—OPERATIONS

47. The authority citation for part 201–21 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

**§ 201–21.201 [Amended]**

48. Section 201–21.201 is amended by removing the words ''Federal Equipment Data Center (WKHE)'' in paragraph (b) and adding in their place ''Federal Data Systems Division (WKH)''.

**§ 201–21.301 [Amended]**

49. Section 201–21.301 is amended by removing the words ''Appendix III to'' in paragraph (a).

**§ 201–21.303 [Amended]**

50. Section 201–21.303 is amended by removing the words ''Appendix III'' in paragraph (d).

51. Section 201–21.401 is amended by revising paragraph (c) to read as follows:

**§ 201–21.401 General.**

* * * * *

(c) OMB Circular No. A–130, establishes Governmentwide procedures for cost accounting and recovery for shared resources.

**§ 201–21.403 [Amended]**

52. Section 201–21.403 is amended by removing the date ''November 30'' in paragraph (a)(2)(ii) and adding in its place ''October 20''.

**§ 201–21.601 [Amended]**

53. Section 201–21.601 is amended by removing the CFR cite ''5 CFR 735.205'' in paragraph (c)(3) introductory text and adding in its place ''5 CFR 2635.704''.

54. Section 201–21.603 is amended by revising paragraphs (d)(1) and (d)(2), removing paragraph (d)(3), redesignating paragraphs (d)(4) and (d)(5) as paragraphs (d)(3) and (d)(4), respectively, and removing paragraph (d)(6), to read as follows:

**§ 201–21.603 Listening-in to or recording telephone conversations.**

* * * * *

(d) *Procedures.* (1) Agencies that plan to listen-in to or record telephone conversations under paragraph (c)(2), (3), or (4) of this section shall prepare a determination of need. A determination as used in this section means a written justification signed by the agency head or the agency head's designee, that specifies the operational need for listening-in to or recording telephone conversations; indicates the specific system and location where monitoring is to be performed; lists the number of telephones or recorders involved; and establishes operating times and an expiration date for the monitoring.

(2) Agencies shall review, at least every 2 years, the need for each determination authorizing listening-in or recording. Agency documentation to continue or terminate the program shall be maintained in agency files.

* * * * *

**§ 201–21.604 [Removed]**

55. Section 201–21.604 is removed.

## PART 201–22—REVIEW AND EVALUATION

56. The authority citation for part 201–22 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

57. Section 201–22.303 is revised to read as follows:

**§ 201–22.303 Procedures.**

(a) Agencies shall evaluate their existing outdated and/or obsolescent FIP resources to determine whether the cost of operating them is greater than the cost of acquiring and operating technologically newer resources. FIRMR Bulletin C–27 provides guidance that can be used for identifying obsolescent equipment.

(b) When the cost of operating existing outdated and/or obsolescent FIP resources is greater than the cost of acquiring and operating technologically newer resources, agencies shall replace the existing less cost effective resources.

## PART 201–24—GSA SERVICES AND ASSISTANCE

58. The authority citation for part 201–24 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

**§ 201–24.001 [Amended]**

59. Section 201–24.001 is amended by removing paragraph (g).

## PART 201–39—ACQUISITION OF FEDERAL INFORMATION PROCESSING (FIP) RESOURCES BY CONTRACTING

60. The authority citation for part 201–39 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

61. The heading of subpart 201–39.1 is amended by removing the word ''System''.

62. Section 201–39.001 is revised to read as follows:

**§ 201–39.001 General.**

(a) In addition to this part 201–39, contracting officers should review and be familiar with the policies and procedures contained in the complete FIRMR, for example, parts 201–20 and 201–24 of this chapter.

(b) To assist Federal agencies in preparing solicitations for FIP resources, the General Services Administration (GSA) prepares standard solicitations and other guidance. Federal agencies can obtain copies of the standard solicitations by contacting: U.S. Government Printing Office, Attn: Electronic Products, P.O. Box 37082, Washington, DC 20013–7082, Telephone number: (202) 512–1530, Facsimile number: (202) 512–1262. For information on obtaining acquisition guides contact the Federal IT Reference Center at (202) 501–4860.

**§ 201–39.201 [Amended]**

63. Section 201–39.201 is amended by removing the word ''eight'' in the definition *Outdated FIP equipment*, and adding in its place the word ''six''.

**§ 201–39.1001–1 [Amended]**

64. Section 201–39.1001–1 is amended by removing the numbers ''88–16'' in paragraph (i), and adding in their place ''90–08''.

**§ 201–39.1402–2 [Amended]**

65. Section 201–39.1402–2 is amended by removing the number ''$25,000'' in paragraph (b) and adding in its place ''$100,000'', and also by removing the number ''$300,000'' in paragraph (c) and adding in its place ''$1,000,000''.

**§ 201–39.1501–2 [Amended]**

66. Section 201–39.1501–2 is amended by removing the number ''$25,000'' in paragraph (b) and adding in its place ''$100,000'', and also by removing the number ''$300,000'' in paragraph (c) and adding in its place ''$1,000,000''.

**Subpart 201–39.46—[Removed and Reserved]**

67. Subpart 201–39.46 is removed and reserved.

**§ 201–39.5202–6 [Removed and Reserved]**

68. Section 201–39.5202–6 is removed and reserved.

Dated: October 27, 1995.

Roger W. Johnson,

*Administrator of General Services.*

[FR Doc. 95–31544 Filed 12–29–95; 8:45 am]

BILLING CODE 6820–25–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Parts 222 and 227

**[I.D. 101995A]**

## Endangered and Threatened Wildlife; Status Reviews of Listed Sea Turtles

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

**ACTION:** Notice of availability.

**SUMMARY:** NMFS and the Fish and Wildlife Service (FWS), Department of the Interior (collectively, the Services), announce the availability of the status reviews of endangered and threatened sea turtles, as required by the Endangered Species Act of 1973 (ESA). Based upon these reviews and any written comments received, the Services may consider changes in the listing status for the olive ridley (*Lepidochelys olivacea*) sea turtle. The status review for the green (*Chelonia mydas*) sea turtle is currently under Service evaluation and is not available with this notice. Upon completion of their evaluation, the Services will make the green sea turtle status review available under separate notice in the Federal Register.

**DATES:** February 1, 1996.

**ADDRESSES:** Requests for copies of the status reviews may be submitted to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Phil Williams, 301–713–1401, or Richard Byles, 505–248–6647.

**SUPPLEMENTARY INFORMATION:**

Background

The ESA is administered jointly by the Services. NMFS has jurisdiction over species in the marine system while FWS has jurisdiction elsewhere. Listed endangered and threatened species under NMFS jurisdiction are enumerated in 50 CFR 222.23(a) and 50 CFR 227.4, respectively. The List of Endangered and Threatened Wildlife (List) which contains species under the jurisdiction of both Services, is found in 50 CFR part 17.

Pursuant to a Memorandum of Agreement between the two Services, the jurisdiction over listed sea turtles is shared: FWS has responsibility for sea turtles primarily in the terrestrial environment, while NMFS has responsibility for sea turtles primarily in the marine environment. Presently, all sea turtle species found in the United States are listed as follows: Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered; loggerhead (*Caretta caretta*), green (*Chelonia mydas*), and olive ridley (*Lepidochelys olivacea*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, and breeding populations of olive ridleys on the Pacific coast of Mexico, which are listed as endangered.

Section 4(c)(2) of the ESA requires that, at least once every 5 years, a review of the species on the List be conducted to determine whether any species should be (1) removed from the List, (2) changed in status from an endangered species to a threatened species, or (3) changed in status from a threatened species to an endangered species. Criteria for determining a reclassification are found at 50 CFR 424.11(c).

The status reviews of sea turtles listed under the ESA are available (see **ADDRESSES**). Based upon the status reviews, the Services are considering the following listing change.

*Olive Ridley Turtles.* The western North Atlantic population would be classified as endangered, rather than threatened. This reclassification was first considered in a notice published on November 9, 1984 (49 FR 44775), at which time the western North Atlantic (Surinam and adjacent areas) nesting population was reported to have declined 80 percent since 1967. This rate of decline continues despite over 2 decades of protection by personnel from the Surinam Nature Protection Foundation. This area is heavily trawled for shrimp, and trawlers have been the principal source of returned tags that had been applied to nesting females on the local beaches. Consequently, incidental capture in trawls is a likely cause of the progressive depletion of this population. Pursuant to Public Law 101–162, the importation of shrimp and shrimp products from Surinam and French Guiana was banned in 1993 because those countries failed to demonstrate that they had adopted a regulatory program that governed the incidental taking of sea turtles comparable to that of the United States. During an annual review in May 1995, shrimp imports were again embargoed from both countries due to their lack of turtle excluder device use. The incidental capture of turtles in trawls is a major concern in this area.

Dated: December 22, 1995.

Ann D. Terbush,

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 95–31540 Filed 12–29–95; 8:45 am]

BILLING CODE 3510–22–M

## 50 CFR Part 641

**[Docket No. 951221305–5305–01; I.D. 112995A]**

## Reef Fish Fishery of the Gulf of Mexico; 1996 Red Snapper Season

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

**ACTION:** Emergency interim rule.

**SUMMARY:** NMFS issues this emergency interim rule at the request of the Gulf of Mexico Fishery Management Council

(Council) to delay the opening of the commercial fishery for red snapper until February 1, 1996; to establish a commercial quota for red snapper of 1.00 million lb (0.45 million kg) for the period February 1 through March 31, 1996, with a closure of the commercial fishery during that period when the commercial quota is reached; and to continue the red snapper endorsement regime through March 31, 1996. This rule is intended to avoid a derby style fishery of very short duration, which could result in a quota overrun for the overfished red snapper resource and in negative social and economic impacts on fishery participants.

**EFFECTIVE DATE:** December 29, 1995 through March 31, 1996.

**ADDRESSES:** Copies of documents supporting this action, including an environmental assessment, may be obtained from Robert Sadler, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

**FOR FURTHER INFORMATION CONTACT:** Robert Sadler or Michael Justen, 813–570–5305.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 641 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Delayed Opening of the Commercial Red Snapper Fishery

The 1995 red snapper commercial fishery was closed April 15, 1995, and will remain closed through December 31, 1995. Without further action, the commercial fishery would reopen on January 1, 1996. However, at the September 1995 Council meeting, commercial fishermen testified that they are dependent upon income from red snapper harvest during the Lenten season, which begins in February. Based upon this testimony, the Council requested emergency action to delay the reopening until February 1 to increase the chances of the fishery being open during the Lenten season, when higher prices and more favorable fishing weather (compared to January) are expected.

Interim Commercial Quota for Red Snapper

The Council requested an interim commercial quota of 1.00 million lb (0.45 million kg) for the period February 1, 1996, through March 31, 1996, based upon input from the public, to provide income to industry before the individual transferable quota (ITQ) system, which was approved under Amendment 8 to the FMP, is implemented on April 1, 1996. If the interim quota is not made available before the ITQ system is implemented, the fishery would remain closed for almost 12 months (April 15, 1995, through March 31, 1996). The Council believes that a closure of this duration would result in adverse social and economic impacts to those who depend on red snapper harvest, particularly during the Lenten season.

The Council requested that, when the interim quota is taken or projected to be taken, the fishery be closed until it is reopened under the ITQ system on April 1, 1996. If implementation of the ITQ system is substantially delayed (2 months or more), the Council intends that the balance of the 1996 commercial quota be taken under the endorsement provisions and permit moratorium.

Continue the Red Snapper Endorsement Regime

Management measures in effect for 1995 limit landings of red snapper to 2,000 lb (907 kg) per trip or day for vessels with red snapper endorsements on their reef fish permits. Other permitted vessels are limited to 200 lb (91 kg) per trip or day. The Council requested that these provisions be continued as part of the emergency action, to spread out harvest over a longer period of time and avoid the negative social and economic impacts that would otherwise result from a derby fishery of very short duration. Monitoring of landings under these conditions would be difficult, increasing the likelihood that the quota would be exceeded. The Council is concerned that this could adversely impact stock recovery. Accordingly, by January 20, 1996, NMFS intends to reissue the red snapper endorsements that were in effect on December 31, 1995. Reissued endorsements will be effective for February and March 1996.

Permit Moratorium

The Council requested that the current moratorium on the issuance of new reef fish permits be continued during the effectiveness of this emergency interim rule. However, because a new permit moratorium under Amendment 11 to the FMP will become effective January 1, 1996, there is no need to extend the current moratorium by this emergency rule.

Compliance With NMFS Guidelines for Emergency Rules

The Council and NMFS have concluded that the present situation constitutes an emergency, which is properly addressed by this emergency interim rule, and that the situation meets NMFS's policy guidelines for the use of emergency rules, published on January 6, 1992 (57 FR 375). The situation (1) results from recent, unforeseen events or recently discovered circumstances; (2) presents a serious management problem; and (3) realizes immediate benefits from the emergency interim rule that outweigh the value of prior notice, opportunity for public comment, and deliberative consideration expected under the normal rulemaking process.

Recent, Unforeseen Events or Recently Discovered Circumstances

The Council requested that this action be implemented by emergency rule because of several unforeseen events and unresolved circumstances that disrupted planning of the 1996 fishing season. The first is the unanticipated and unavoidable delays that have adversely affected implementation of the ITQ system under Amendment 8, which was designed to achieve more orderly prosecution of the fishery. The Southeast Regional Office estimates that the appeals process and issuance of shares and coupons cannot be completed before April 1, 1996. Consequently, implementation of the ITQ system will be delayed until that date. The extent of this delay, which was not known nor formally communicated to the Council until its September 1995 meeting, disrupted the Council's plans regarding optimal timing of the opening of the 1996 season under controlled harvest conditions.

The Council, in developing this proposed course of action at the September 1995 meeting, also faced a major management problem in that it did not know if the moratoriums or delays in implementing ITQ systems being considered by Congress would be enacted or whether such action would adversely affect Amendment 8. If the Council had decided at that time to delay action until this issue was resolved, it would not have had sufficient time to implement an alternative system before unrestricted harvest by fishermen aboard permitted reef fish vessels would begin on January 1, 1996.

Finally, the NMFS red snapper stock assessment was not available until the Council's November 1995 meeting, thereby preventing any possible

framework implementation of the delayed season by the start of the fishing year. The endorsement provisions were implemented as part of the FMP. Continuation of the endorsement provisions, therefore, requires emergency action, or an additional FMP amendment.

Given all of these circumstances, emergency action is the only option for optimizing the timing of the season opening.

Serious Conservation or Management Problems in the Fishery—Appropriateness of Emergency Action

The Council, prior to its September 1995 meeting, announced the 1996 season as an agenda item for Council action. The general public and, in particular, commercial red snapper fishermen, were actively involved in the deliberative process of forming the Council request. The fishermen endorsed the action to avoid a derby fishery in January when prices are lower and unfavorable weather in the Gulf of Mexico is more prevalent compared to the Lenten season, which begins in February. The Council believes that this emergency interim rule is necessary to avoid adverse social and economic impacts and conservation problems that could affect stock recovery. The red snapper endorsement system, which includes vessel trip limits, terminates on December 31, 1995. Without this action, when the commercial red snapper fishery opens, permitted vessels will have no restrictions on landing levels. The Council believes that this would result in a derby fishery of very short duration. Monitoring of landings under these conditions would be difficult, increasing the likelihood that the quota would be exceeded. The Council is concerned that this would adversely impact stock recovery. In addition, fishermen would suffer significant economic losses due to lower season ex-vessel prices as demonstrated in previous fishing years. Vessel safety would also be jeopardized by the competitive pressure to maximize harvest rates despite marginal weather conditions that are typical in January.

To avoid these problems, this emergency interim rule delays the season until a more appropriate time, continues the trip limits to constrain vessel landings to the total allowable catch, provides for better prices, and optimizes yield in the fishery. The immediate benefits of the emergency interim rule greatly outweigh the value of prior notice and opportunity for public comment which would occur under normal rulemaking.

NMFS concurs with the Council's findings about the emergency and the need for immediate regulatory action. Accordingly, NMFS issues this emergency interim rule, effective initially for 90 days, as authorized by section 305(c) of the Magnuson Act. By agreement between NMFS and the Council, this emergency interim rule may be extended for an additional period of 90 days.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

The AA finds that failure to implement the actions requested by the Council would result in economic hardships, would encourage fishing operations during marginal weather conditions, and the resulting rapid rate of harvest could contribute to overfishing of red snapper. The foregoing constitutes good cause to waive the requirement to provide prior notice and the opportunity for public comment, pursuant to authority set forth at 5 U.S.C. 553(b)(B), as such procedures would be contrary to the public interest. Similarly, the need to implement these measures in a timely manner to address the economic and social emergencies constitutes good cause under authority contained in 5 U.S.C. 553(d)(3) to establish an effective date less than 30 days after date of publication.

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

This emergency interim rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without prior notice and opportunity for public comment.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 21, 1995.

Nancy Foster,

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

For the reasons set out in the preamble, 50 CFR part 641 is amended as follows:

## PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

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

2. In § 641.7, paragraphs (nn) through (qq) are added to read as follows:

**§ 641.7 Prohibitions.**

* * * * *

(nn) During a closure of the commercial fishery for red snapper—

(1) Exceed the bag and possession limits for red snapper; or

(2) Purchase, barter, trade, or sell red snapper, or attempt to purchase, barter, trade, or sell red snapper—as specified in § 641.31(c).

(oo) Exceed the vessel trip or landing limits for red snapper, as specified in § 641.32(a) and (b).

(pp) Transfer a red snapper at sea, as specified in § 641.32(c).

(qq) Purchase, barter, trade, or sell, or attempt to purchase, barter, trade, or sell, a red snapper possessed or landed in excess of a trip or landing limit, as specified in § 641.32(d).

3. Sections 641.31 through 641.34 are added to read as follows:

**§ 641.31 Red snapper commercial closures and quota.**

Other provisions of this part 641 notwithstanding, the following provisions apply:

(a) The commercial fishery for red snapper is closed from January 1, 1996, through January 31, 1996.

(b) Persons who are fishing under a commercial reef fish permit issued under § 641.4, provided they are not subject to the bag limits specified in § 641.24, are subject to a quota of 1.00 million lb (0.45 million kg) for the period February 1, 1996, through March 31, 1996. When this quota is reached, or is projected to be reached, the Assistant Administrator will file a notification to that effect with the Office of the Federal Register. On and after the effective date of such notification, through March 31, 1996, the commercial fishery for red snapper is closed.

(c) During a closure of the commercial fishery for red snapper under paragraph (a) or (b) of this section, red snapper harvested from or possessed in the EEZ, and each vessel for which a currently valid commercial reef fish permit has been issued under § 641.4, are subject to the following:

(1) The bag and possession limits, as specified in § 641.24(b)(1) and (c); and

(2) The prohibition of purchase, barter, trade, or sale of red snapper taken under the bag limit, or attempted purchase, barter, trade, or sale of such red snapper, as specified in § 641.28(a). This prohibition does not apply to trade in red snapper taken under the commercial quota that were harvested, landed, and bartered, traded, or sold prior to the closure.

**§ 641.32 Red snapper trip limits.**

(a) Except as provided in paragraph (b) of this section, a vessel that has on

board a valid commercial reef fish permit may not possess on any trip or land in any day red snapper in excess of 200 lb (91 kg), whole or eviscerated.

(b) A vessel that has on board a valid commercial reef fish permit and a valid red snapper endorsement may not possess on any trip or land in any day red snapper in excess of 2,000 lb (907 kg), whole or eviscerated.

(c) A red snapper may not be transferred at sea from one vessel to another.

(d) No person may purchase, barter, trade, or sell, or attempt to purchase, barter, trade, or sell, a red snapper possessed or landed in excess of the trip or landing limits specified in paragraphs (a) and (b) of this section.

**§ 641.33 Red snapper endorsement.**

(a) As a prerequisite for exemption from the trip limit for red snapper specified in § 641.32(a), a vessel for which a commercial reef fish permit has been issued under § 641.4 must have a red snapper endorsement on such permit and such permit and endorsement must be aboard the vessel.

(b) A red snapper endorsement is invalid upon sale of the vessel; however, an owner of a vessel with a commercial reef fish permit may transfer the red snapper endorsement to another vessel with a commercial reef fish permit owned by the same entity by returning the existing endorsement with an application for an endorsement for the replacement vessel.

(c) The provisions of paragraph (b) of this section notwithstanding, special provisions apply in the event of the disability or death of the owner of a vessel with a red snapper endorsement or the disability or death of an operator whose presence on board the vessel is a condition for the validity of a red snapper endorsement.

(1) In the event that a vessel with a red snapper endorsement has a change of ownership that is directly related to the disability or death of the owner, the Regional Director may issue a red snapper endorsement, temporarily or permanently, with the commercial reef fish permit that is issued for the vessel under the new owner. Such new owner will be the person specified by the owner or his/her legal guardian, in the case of a disabled owner, or by the will or executor/administrator of the estate, in the case of a deceased owner. (Change of ownership of a vessel with a commercial reef fish permit upon disability or death of an owner is considered a purchase of a permitted vessel and § 641.4(m)(3) applies regarding a commercial reef fish permit for the vessel under the new owner.)

(2) In the event of the disability or death of an operator whose presence aboard a vessel is a condition for the validity of a red snapper endorsement, the Regional Director may revise and reissue an endorsement, temporarily or permanently, to the permitted vessel. Such revised endorsement will contain the name of a substitute operator specified by the operator or his/her legal guardian, in the case of a disabled operator, or by the will or executor/administrator of the estate, in the case of a deceased operator. As was the case with the replaced endorsement, the presence of the substitute operator aboard and in charge of the vessel is a condition for the validity of the revised endorsement. Such revised endorsement will be reissued only with the concurrence of the vessel owner.

**§ 641.34 Condition of a permit.**

As a condition of a commercial reef fish permit issued under § 641.4, without regard to where red snapper are harvested or possessed, a vessel with such permit—

(a) May not exceed the appropriate vessel trip or landing limit for red snapper, as specified in § 641.32(a) and (b); and

(b) May not transfer a red snapper at sea, as specified in § 641.32(c).

[FR Doc. 95–31410 Filed 12–29–95; 8:45 am]

BILLING CODE 3510–22–F

## 50 CFR Part 675

**[Docket No. 950905226–5282–02; I.D. 122695A]**

**RIN 0648–AH00**

## Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Extension of Allocations to Inshore and Offshore Components; Correction

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

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains a correction to the final rule (I.D. 083095A) that was published Tuesday, December 12, 1995, (60 FR 63654). The regulation related to an extension of the allocation of pollock for processing by the inshore and offshore components from January 1, 1996 through December 31, 1998.

**EFFECTIVE DATE:** January 1, 1996.

**FOR FURTHER INFORMATION CONTACT:** David Ham, 907–586–7228.

**SUPPLEMENTARY INFORMATION:**

Background

*Need for Publication*

At 60 FR 63654, December 12, 1995, a final rule to extend the inshore-offshore and Community Development Quota programs in the Bering Sea and Aleutian Islands Management Area for 3 years, from January 1, 1996, through December 31, 1998, was published. Unintentionally, in that final rule, a paragraph was excluded from an extension of the expiration date and is corrected here.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: December 26, 1995.

Gary Matlock,

*Program Management Officer, National Marine Fisheries Service.*

## PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

Accordingly, 50 CFR part 675 is corrected by making the following correcting amendment:

1. The authority citation for part 675 continues to read as follows:

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

2. Section 675.25 paragraph (b) heading is revised to read as follows:

**§ 675.25 Observer requirements.**

* * * * *

(b) *Additional observer coverage requirements applicable through December 31, 1998.* * * *

* * * * *

[FR Doc. 95–31517 Filed 12–29–95; 8:45 am]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
Vol. 61, No. 1
Tuesday, January 2, 1996

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 930

**[Docket No. AO–370–A5; FV93–930–1]**

### Proposed Tart Cherry Marketing Agreement and Order; Reopening of Comment Period To File Written Exceptions to the Proposed Marketing Agreement and Order for Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin

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

**ACTION:** Reopening of the comment period to file written exceptions to the proposed marketing agreement and order.

**SUMMARY:** Notice is hereby given that the time period for filing written exceptions to the proposed marketing agreement and order for tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin is reopened until January 16, 1996.

**DATES:** Comments must be received by January 16, 1996.

**ADDRESSES:** Interested persons are invited to submit written comments in triplicate to the Hearing Clerk, U.S. Department of Agriculture, room 1079–S, Washington, DC, 20050–9200. All written comments will be available for public inspection at the Office of the Hearing Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** (1) R. Charles Martin or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, room 2523–S, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456; telephone number (202) 720–5053.

(2) Robert Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland, Oregon, 97204; telephone: (503) 326–2725.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding: Notice of Hearing issued on November 23, 1993, and published in the November 30, 1993, issue of the Federal Register (58 FR 63108); Notice of Additional Hearings on the Proposed Agreement and Order issued on December 20, 1993, and published in the December 23, 1993, issue of the Federal Register (58 FR 68065); and an Amendment to the Notice of Hearing issued on January 25, 1994, and published in the Federal Register (59 FR 4259) on January 31, 1994. The Notice Reopening the Hearing was issued on December 5, 1994, and published in the Federal Register on December 8, 1994 (59 FR 63273). The Recommended Decision and Opportunity To File Written Exceptions to the proposed marketing agreement and order was issued on November 20, 1995, and published in the November 29, 1995, Federal Register (60 FR 61292).

The proposed marketing agreement and order are based on the record of a public hearing held December 15–17, 1993, in Grand Rapids, Michigan; January 10–11, 1994, in Rochester, New York; January 13, 1994, in Provo, Utah; February 15–17, 1994, in Portland, Oregon; January 9–10, 1995, in Grand Rapids, Michigan; and, January 12–13, 1995, in Portland, Oregon. These multiple hearing sessions were held to receive evidence on marketing order proposals from growers, handlers, processors and other interested parties located throughout the proposed production area.

The Recommended Decision was issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act, and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders [7 CFR part 900]. The deadline for filing written exceptions with the Hearing Clerk on the Recommended Decision was December 29, 1995.

The U.S. Department of Agriculture (USDA) has received three requests from interested parties to provide more time for interested persons to analyze the Recommended Decision and prepare and file with the Hearing Clerk their written comments. These requesters cite severe weather (that led to extended electrical power outages) in their respective growing areas, the holiday season and the voluminous hearing record as the reasons for requesting a 30-day extension for filing written comments to January 31, 1996.

Reopening the period in which written comments may be filed will provide interested persons more time to review the Recommended Decision and submit written comments thereto. Extending the comment period by 18 days to January 16, 1996, would provide additional time for commenters, to fairly address their concerns. A delay of 18 days should not substantially add to the time required to complete this proceeding. Accordingly, the period in which to file written comments is reopened until January 16, 1996. This notice is issued pursuant to the Act and the applicable rules of practice governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Authority: 7 U.S.C. 601–674.

Dated: December 27, 1995.

Kenneth C. Clayton,

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 95–31574 Filed 12–27–95; 3:36 pm]

**BILLING CODE 3410–02–P**

### Rural Utilities Service

### 7 CFR 1789

**RIN 0572–AB17**

### Use of Consultants Funded by Borrowers

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Rural Utilities Service (RUS) hereby proposes to implement recent amendments to the Rural Electrification Act of 1936, as amended, (RE Act) (7 U.S.C. 918(c)) and to amend 7 CFR chapter XVII by adding a new Part 1789, Use of Consultants Funded by Borrowers. This part would set forth procedures and policies pursuant to which a borrower under the RE Act may fund consultants used by the Administrator for financial, legal, engineering, environmental and other technical advice and services. The use of the consultants will assist RUS in the

expeditious review of applications for financial assistance or other approvals sought by borrowers.

**DATES:** Written comments concerning the proposed rule and/or its information collection requirements must be received by RUS or carry a postmark or equivalent by March 4, 1996.

**ADDRESSES:** Written comments should be addressed to F. Lamont Heppe, Jr., Deputy Director, Program Support Staff, U.S. Department of Agriculture, Rural Utilities Service, AG Box 1522, Washington, DC 20250–1522. RUS requires a signed original and 3 copies of all comments (7 CFR 1700.30(e)). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** F. Lamont Heppe, Jr., Deputy Director, Program Support Staff, (address as above). Telephone: (202) 720–0736. Facsimile: (202) 720–4120.

**SUPPLEMENTARY INFORMATION:** This proposed rule has been determined to be not significant for purposes of Executive Order 12866, Regulatory Planning and Review, and therefore has not been reviewed by the Office of Management and Budget (OMB). The Administrator of RUS has determined that the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this rule. The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore this action does not require an environmental impact statement or assessment. This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule title Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS electric loans and loan guarantees from coverage under this Order. This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposed rule: (1) Will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) will not have any retroactive effect; and (3) will not require administrative proceedings before any parties may file suit challenging the provisions of this rule in accordance with existing law.

The programs covered by this rule are listed in the Catalog of Federal Domestic Assistance Programs under numbers 10.850, Rural Electrification Loans and Loan Guarantees, 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Information Collection and Recordkeeping Requirements

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) RUS is requesting comments on the information collection incorporated in this proposed rule.

Dates: Comment on this information collection must be received by March 4, 1996.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

For Further Information Contact: Sue Arnold, Financial Analyst, Program Support Staff, Rural Utilities Service, U.S. Department of Agriculture, 14th & Independence Avenue, SW., AG Box 1522, Washington, DC 20250. Telephone: (202) 690–1078. FAX: (202) 720–4120.

Supplementary Information:

*Title:* Title 7 Part 1789, Use of Consultants Funded by Borrowers.

*Type of Request:* New information collection.

*Abstract:* On November 1, 1993, Public Law 103–129 amended section 18 of the RE Act to provide a mechanism for expediting RUS reviews. As amended, section 18(c) authorized RUS to use consultants voluntarily funded by borrowers for financial, legal, engineering, and other technical services. The consultant may to be used to facilitate timely action on applications by borrowers for financial assistance and for approvals required by RUS, pursuant to the terms of outstanding loans, or otherwise. RUS may not require borrowers to fund consultants. The provisions of section 18(c) may be utilized only at the borrower's request.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 2 hours per response.

*Respondents:* Business or other for-profit, small businesses or organizations.

*Estimated Number of Respondents:* 6.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 12.

Copies of this information collection can be obtained from Dawn Wolfgang, Program Support Staff, at (202) 720–0812.

Comments: Send comments regarding this information collection requirement to the Office of Information and Regulatory Affairs, OMB, ATTN: Desk Officer, USDA, Room 10102, New Executive Office Building, Washington, DC 20503, and F. Lamont Heppe, Jr., Deputy Director, Program Support Staff, Rural Utilities Service, AG Box 1522, Washington, DC 20250–1522.

Comments to OMB are best assured of having full effect if OMB receives them within 30 days of publication in the Federal Register.

All responses to this information collection requirement will be summarized and included in the final rule. All comments will become a matter of public record.

Background

Section 18 of the RE Act was amended effective November 1, 1993, pursuant to Public Law 103–129, 2(c)(4), 107 Stat. 1364. As amended, subsection (c) of section 18 authorizes the RUS to use consultants funded by borrowers for financial, legal, engineering, and other technical advice and services. The consultants are to be used to facilitate timely action on applications by borrowers for financial assistance and for approvals required by RUS pursuant to the terms of outstanding loan or security instruments or otherwise.

Subsection (c) expressly requires that RUS establish procedures for the use of consultants to ensure that the consultants have no financial or other conflicts of interest in the outcome of the application. Subsection (c) further provides that funding of consultants is strictly voluntary with the borrowers, that RUS may not require borrowers to agree to fund consultants. This proposed rule sets forth procedures and policies implementing the authority under subsection (c).

Policy

RUS believes that both RUS and its borrowers will be well served by the prudent use of this authority. It will assist RUS in the processing of certain complex transactions that have placed a

burden on its staff and resources. For example, financial and legal consultants may assist in the review of certain transactions involving complicated financing arrangements between borrowers and third parties that potentially impact on the feasibility of and security for outstanding government loans. Such transactions may require the review and analysis of voluminous documents and the development of an extensive administrative record. The transactions may involve complex technical issues regarding which RUS has limited expertise thus slowing the review process. Such transactions may be very time sensitive; any delays may jeopardize the transaction or reduce the benefits of the transaction to the borrower. In some cases, the transactions are very important to the borrower but cannot be given corresponding priority by the RUS as it dedicates its resources to matters that have program wide significance. It is in the interests of both RUS and the borrower to expedite review of such transactions with borrower funded consultants.

Examples of how RUS might use borrower funded consultants include, but are not limited to, the use of an engineering firm to review proposed generation projects for technical or financial feasibility, e.g., wind or hydroelectric projects utilizing relatively new technology. RUS could use consultants to make periodic visits to major construction projects and report to RUS on the status of construction and whether or not the project is on budget. Financial advisory consultants may be used to evaluate new financial products which are the basis for requests to modify the RUS mortgage. Legal support services will enhance RUS' ability to review and process merger, consolidation and holding company applications from both telephone and electric borrowers. RUS would also consider using environmental consultants to prepare environmental assessments and environmental impact studies under RUS' direction and supervision.

RUS does not, however, believe that use of subsection (c) authority is authorized or appropriate for all transactions requiring RUS review. The authority will not be used unless it is reasonably expected to facilitate timely action on an application by RUS. Even then, it may not always be in RUS' interest to rely on consultants. For example, transactions that involve matters that RUS is particularly qualified to address or which have program wide implications may not be well suited for expedited processing facilitated with borrower funded consultants. Thus, RUS will weigh its use of the authority under subsection (c) on a case by case basis.

Procedure

Under the proposed rule RUS may enter into contracts on the basis of case by case procurements or on a retainer basis with a series of consultants having different areas of expertise, i.e. financial, legal, engineering, or environmental. In order to assure that sufficient consultant resources are available and to allow for competition in terms of both quality and cost, RUS may contract with several different consultants in a given area of expertise.

RUS will solicit bids for the services of financial, legal, engineering, and environmental consultants in accordance with the provisions of the Federal Acquisition Regulations (FAR), 48 CFR Chapter 1. Notwithstanding the use of borrowers' funds, it has been determined that such funding must be treated as appropriated funds and the contracts are subject to the provisions of FAR.

The proposed rule provides that RUS will decide when timely consideration of an application or approval would best be facilitated by the use of borrower funded consultants. When the RUS has made such a determination, and the borrower in question is willing to fund consulting services, the borrower must provide to RUS an appropriate notice of proposal to fund consulting services. RUS will consider the borrower's proposal, whether it is consistent with this regulation and otherwise in the interests of the government. If RUS chooses to proceed with the borrower's proposal, RUS will require the borrower and the consultant selected by RUS to execute a funding agreement which complies with the regulation. The funding agreement will provide for the borrower to establish and fund an escrow account with a third-party commercial institution prior to the commencement of work by the consultant.

The use of a third-party commercial institution will allow for the escrow account to be interest-bearing and greatly ease the administrative burden of arranging for any excess funds to be remitted to the borrower upon the closing out of a task order. With the exception of an annual retainer fee, if applicable, the consultants shall not be entitled to any payments from RUS. Rather, all payment obligations for work performed must be satisfied by amounts available in the escrow account and RUS shall have sole discretion in directing that payments be made from the escrow account.

Once the escrow account is funded, RUS will then issue a task order to the consultant under the applicable contract and the consultant will commence work for RUS. Periodically, the consultant will submit invoices to RUS. Upon due authorization by RUS, the escrow agent will make payments to the consultant. The escrow account will be closed and any remaining funds remitted to the borrower upon direction from RUS.

The procedure outlined above generally applies to financial, legal, engineering and environmental consultant services. The proposed rule reserves the discretion, however, for RUS to contract for any type of consultant services on a case by case basis after receipt of an appropriate notice of proposal to fund from the borrower.

Legal and Selected Other Consultants

The procedures and policies applicable to the use of legal consultants pursuant to subsection 18(c) differs from the use of other consultants in several key respects. First, pursuant to 7 CFR part 2.47(a)(1), the Administrator may utilize consultants and attorneys for the provision of legal services with the concurrence of the General Counsel. The Secretary by regulation (7 CFR 2.31) has designated the General Counsel as the chief law officer of the Department and legal advisor to the Secretary with the responsibility for providing legal services for all activities of the Department; accordingly, any proposal by RUS to use outside legal counsel will require the approval of the General Counsel. The approval will include a review of the nature of the transaction and the scope of legal services to be provided. Moreover, any contracts for legal consultants will provide that an attorney from OGC will serve as a technical representative and adviser to the contracting officer. The technical representative will be responsible for, among other matters, evaluating the adequacy of performance.

The conflict of interest provisions in the proposed rule are different from the FAR in certain respects, particularly in the case of legal and financial consultants. For all consultants, however, it is important to protect against the possibility, or the appearance, that those consultants providing services to RUS might handle particular assignments in such a way as to encourage their own future employment with RUS program beneficiaries after fulfilling their government contract requirements. The electric and telephone borrowers are

particularly closely tied to RUS since RUS is responsible for a significant percentage of their annual capital requirements. Because of the unique position of RUS vis a vis its borrowers, it is in the government's interest that prospective legal counsel, financial consultants and other consultants be reasonably indifferent to the subsequent marketing implications of having RUS as a client. Additionally, because of the special nature of the attorney/client relationship, there is a need to provide for maximum discretion on the part of the RUS Administrator in the determination of conflict criteria for legal consultants. Accordingly, proposed conflict provisions specific to borrower funded RUS consultants are as follows:

(1) Disclosure requirements incorporated in procurements under the proposed rule shall provide that consultants disclose all business relationships with current or former RUS borrowers at the time proposals to offer consulting services are made to RUS and in the event additional business relationships are entered into subsequent to the original disclosure.

(2) Certification requirements incorporated in procurements under the proposed rule shall provide that consultants certify, at the time a proposal is made to provide consulting services to RUS, to the best of their knowledge and belief, that no Organizational Conflict of Interest exists and there are no relevant facts or circumstances which could give rise to an Organizational Conflict of Interest, or the consultant has disclosed all such relevant information. The representations in the certificate shall be deemed reaffirmed upon the execution of the Consultant Contract and upon the undertaking of each Task Order by the contractor.

(3) The determination of whether or not an Organizational Conflict of Interest exists shall rest with the Administrator in his sole discretion; RUS shall not award a contract or Task Order, as the case by be, to a consultant if an Organizational Conflict of Interest exists.

(4) Authority to waive an Organizational Conflict of Interest vests with the RUS Administrator; such waivers must be in writing to be effective.

(5) Consultant contracts with all legal consultants, all financial consultants and such other consultants as the RUS may determine on a case by case basis (selected other consultants) shall provide that such consultants agree not to undertake during the term of the applicable contract, inclusive of option or renewal periods, to represent any RUS borrower on the same or other matters without the express written consent of RUS.

(6) Consultant contracts with all legal consultants, all financial consultants and selected other consultants shall provide that such consultants agree not to undertake, for a period of not less than four years from the contract expiration date, to represent any RUS borrower or generation and transmission (G&T) affiliate thereof, including a borrower which may prepay outstanding RUS indebtedness subsequent to the consultant undertaking to represent RUS, on any matter in which RUS has a significant interest in the outcome, where such borrower(s) were the subject of consulting services rendered by that consultant during the tenure of the applicable contract, without the express written consent of RUS. *G&T affiliate* in this context shall refer to all members of the applicable generation and transmission cooperative and the cooperative(s) in which the borrower was itself a member. Representation includes any retainer or advisory contract and is not limited to representation relating to negotiations with or applications before RUS.

(7) RUS may waive any of the foregoing requirements or procedures by determining that its application in a particular situation would not be in the government's interest.

Key Personnel

Legal service contracts are distinguished from other consulting services funded by borrowers pursuant to Section 18 of the RE Act with respect to provisions relating to key personnel. Factors such as trust, judgment, negotiating style and presence and other intangibles affect the quality and effectiveness of representation and client satisfaction. Borrower funded legal service contracts will provide that no substitution of key personnel may occur without prior approval of the contracting officer, who may confer with the legal and RUS technical representatives for the applicable contract.

List of Subjects in 7 CFR Part 1789

Administrative practice and procedure, legal services, Electric power, Electric utilities, Loan programs—energy, Loan programs—telecommunications, escrow fund, consulting contracts.

For the reasons stated, RUS proposes to add a new part 1789 to chapter XVII of title 7 of the Code of Federal Regulations as follows:

## PART 1789—USE OF CONSULTANTS FUNDED BY BORROWERS

### Subpart A—Policy and Procedures With Respect to Consultant Services Funded by Borrowers—General

Sec.
1789.150 Purpose.
1789.151 Definitions.
1789.152 Policy.
1789.153 Borrower funding.
1789.154 Eligible borrowers.
1789.155 Approval criteria.
1789.156 Proposal procedure.
1789.157 Consultant contract.
1789.158 Implementation.
1789.159 Contract administration.
1789.160 Access to information.
1789.161 Conflicts of interest.
1789.162 Indemnification agreement.
1789.163 Waiver.
1789.164–1789.165 [Reserved]

### Subpart B—Escrow Account Funding and Payments

Sec.
1789.166 Terms and conditions of funding agreement.
1789.167 Terms and conditions of escrow agreement.
1789.168–1789.175 [Reserved]

Authority: 7 U.S.C. 901 et seq.; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*); [Title I, Subtitle D, Pub. L. 100–203, 101 Stat. 1330].

## Subpart A—Policy and Procedures With Respect to Consultant Services Funded by Borrowers—General

### § 1789.150 Purpose.

This part sets forth policies and the procedures for implementing subsection (c) of section 18 of the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 et seq.) (RE Act) which authorizes the Rural Utilities Service (RUS) to use the services of Consultants funded by the Borrowers to facilitate timely action on Applications by Borrowers for financial assistance and other approvals.

### § 1789.151 Definitions.

As used in this part:

*Administrator* means the Administrator of the Rural Utilities Service (RUS).

*Application* means a request for financial assistance under the RE Act or such other approvals as may be required of the RUS pursuant to the terms of outstanding loan or security instruments or otherwise.

*Borrower* means any organization which has an outstanding loan(s) made or guaranteed by RUS or its predecessor agency, the Rural Electrification Administration (REA) under the RE Act or any organization which has an Application before RUS.

*Consultant* means a person or firm which has been retained by RUS under

a contract to provide financial, legal, engineering, environmental, or other technical advice and services.

*Consultant Contract* means a contract for the performance of consulting services for RUS, to be paid using funds provided by a Borrower, which may be in the form of a Retainer Contract, purchase order, or such other form as RUS may choose.

*Escrow Account* means an account established pursuant to § 1789.158 herein.

*Escrow Agreement* means an agreement, between a Borrower, a Consultant and a Third-party Commercial Institution, meeting the requirements of § 1789.167.

*Final Invoice* means the closing Invoice prepared for a given Task Order.

*Financial Consultant* means a Consultant retained pursuant to this part to provide financial advisory services.

*Funding Agreement* means an agreement, between a Borrower and a Consultant providing for the Borrower to fund the costs of a Task Order and otherwise meeting the requirements of § 1789.166.

*Indemnification Agreement* means an agreement by a Borrower meeting the requirements of § 1789.162.

*Invoice* means an invoice, satisfactory to RUS, prepared by a Consultant pursuant to the terms of a Consultant Contract.

*Legal Consultant* means any Consultant retained pursuant to this part to provide legal services to RUS.

*Notice of Proposal to Fund* means a notice meeting the requirements of § 1789.156 provided to RUS by the Borrower.

*Organizational Conflict of Interest* means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage. Organizational conflicts of interest shall include, but not be limited to, a financial interest in the project which is the subject of the Application; and providing advice and services concurrently to RUS and to the Borrower which submitted the relevant Application, on the same or different matters. Organizational conflicts of interest may also include activities or relationships determined by the Administrator pursuant to § 1789.161 to constitute an organizational conflict of interest.

*Retainer Contract* means a Consultant Contract providing for a minimum required payment to a Consultant irrespective of whether services are utilized by RUS thereunder.

*Task Order* means a written request for consultant services made by RUS pursuant to the terms of a Consultant Contract.

*Third-party Commercial Institution* means a commercial financial institution mutually acceptable to the Borrower and the Consultant.

**§ 1789.152 Policy.**

(a) As provided in this subpart, RUS may, at its discretion, use the services of Consultants funded by a Borrower where such services will facilitate timely action on an Application by such Borrower for financial assistance or other approvals. Such Consultants may provide financial, legal, engineering, environmental or other technical advice and services in connection with the review of an Application.

(b) With the approval of RUS, a Borrower may fund the cost of consulting services in connection with the review by RUS of an Application by such Borrower. Such funding shall be provided pursuant to the terms of a Funding Agreement between the Borrower and the Consultant designated by RUS.

(c) RUS may not, without the consent of the Borrower, require, as a condition of processing any Application for approval, that the Borrower agree to pay the costs of a Consultant hired to provide services to RUS.

(d) RUS shall retain sole discretion in the selection of Consultants to provide services to RUS. RUS may use the services of one or more Consultants retained under Retainer Contracts to provide services for projects to be identified by RUS. Alternatively, RUS may elect to retain a Consultant in connection with a specific project. RUS shall have sole discretion to prescribe terms and conditions of Consultant Contracts. The Borrower shall be advised of the Consultant selected only after committing to fund consultant services.

**§ 1789.153 Borrower funding.**

Borrowers shall use their general funds for the purposes of funding consultant services hereunder. Borrowers may not use the proceeds of loans made or guaranteed under the RE Act for costs incurred by Borrowers pursuant to the funding of consultant services for RUS.

**§ 1789.154 Eligible borrowers.**

All Borrowers are eligible to fund consultant services under this part.

**§ 1789.155 Approval criteria.**

RUS will consider approving the use of consultant services funded by a Borrower on a case by case basis taking into account, among other matters, the following:

(a) Whether such services are required to facilitate timely action on a Borrower's Application. RUS shall determine what represents timely action with respect to each Application considering, among other matters, the review period normally required for such projects by RUS and other lenders and the consequences to the Borrower of adjusting the review period.

(b) The availability of staff resources, the priorities of other projects then before RUS, and the efficiencies to be realized from the use of consultant services.

(c) Whether it is in the best interest of RUS to use Borrower-funded Consultants. Certain types of projects, such as those involving issues of program-wide significance, may not be well suited for the use of Borrower funded Consultants.

**§ 1789.156 Proposal procedure.**

(a) In the event RUS determines that consideration should be given to the use of a Borrower-funded consultant in connection with the review of an Application, the RUS Regional Director or the Director of the Power Supply Division, as appropriate, will discuss with the Borrower the nature of the Application and the projected review period required of RUS. If RUS concludes that the projected review period will not result in timely action on the Application, and after being so notified in writing by RUS the Borrower wishes to fund consultant services to facilitate RUS review, the Borrower shall submit to the same Director a funding proposal. The proposal shall set forth the following:

(1) Identification in the heading or caption as a Notice of Proposal to Fund Consulting Services;

(2) Borrower's REA/RUS designation;

(3) Borrower's legal name and address;

(4) A description of the Application, critical issues and concerns relating to the Application, time deadlines, and the consequences of any delays in RUS review;

(5) A description of the consulting service(s) that would facilitate timely RUS review of the Application; and

(6) Such additional documents and information as RUS may request.

(b) RUS will review the Notice of Proposal to Fund and any additional information RUS deems relevant in determining whether to proceed with

procuring Borrower funded Consultants. If RUS proposes to utilize Legal Consultants, RUS must obtain the concurrence of the Office of General Counsel (OGC) of the Department of Agriculture. RUS will notify the Borrower in writing of its determination.

**§ 1789.157 Consultant contract.**

(a) The Federal Acquisition Regulation (FAR), 48 CFR Ch. 1 and Ch. 4 of the Agriculture Acquisition Regulation (AGAR) shall apply to all Consultant Contracts entered into pursuant to this part except as herein provided. Where there is a conflict between FAR and AGAR and the provisions of this part, the provision of this part shall apply. Exceptions to FAR and/or AGAR shall be incorporated in Consultant Contracts under this part as follows:

(1) Contracts for Legal Consultants shall provide for a technical representative from OGC and that no substitution of key personnel may occur without the prior approval of the applicable contracting officer.

(2) All Consultant Contracts shall provide for an escrow account funding mechanism pursuant to this part and for RUS sole discretion in determining whether payments are to be made from the Escrow Account to the Consultant.

(3) All Consultant Contracts shall provide that payment of all obligations for work performed thereunder must be satisfied by amounts available in the Escrow Account; with the exception of the annual retainer fee, if any, Consultants shall not be entitled to any payments from RUS.

(4) Consultant Contracts, as applicable, shall incorporate the applicable conflict of interest provisions set forth in § 1789.161.

(b) Notice of the provisions herein shall be given by RUS at such time as requests for proposals are issued under this part.

**§ 1789.158 Implementation.**

(a) Upon making a determination to go forward with Borrower funding for consulting services, RUS shall select a Consultant to provide the services. RUS may either contract with a Consultant on a case by case basis or elect to use a Consultant pursuant to an outstanding Retainer Contract. The Borrower will not be informed of the Consultant selected by RUS until such time as RUS provides the information set forth in subparagraph (c)(3) of this section.

(b) If RUS determines to contract with a Consultant on a case by case basis, RUS shall notify the Borrower of the applicable procedures.

(c) If RUS determines to contract with a Consultant under an outstanding Retainer Contract, the following procedures will normally apply:

(1) Pursuant to the terms of the contract, RUS will prepare a draft Task Order requesting consultant services in connection with the review of the Borrower's Application. The draft Task Order shall set forth for the Consultant's review and acceptance a description of the services to be provided and applicable time frames for the provision of such services.

(2) RUS will request that the Consultant:

(i) notify RUS as to the acceptability of the form and substance of the draft Task Order;

(ii) notify RUS as to its ability to provide RUS with a satisfactory conflict of interest certification consistent with the requirements of § 1789.161; and

(iii) provide a cost estimate for the draft Task Order.

(3) When RUS is satisfied with the response(s) received pursuant to paragraph (c)(2) of this section, RUS shall promptly provide to the Borrower:

(i) a copy of the draft Task Order identifying the Consultant;

(ii) the Consultant's cost estimate for the draft Task Order; and

(iii) contract information required to enable the Borrower to develop a Funding Agreement, an Escrow Agreement and an Indemnification Agreement (the ''agreements'').

(4) The Borrower shall develop and submit to RUS for approval executed originals of:

(i) the agreements; and

(ii) a certified copy of a resolution of the board of directors authorizing the Borrower to enter into the agreements and to take such other action as is necessary to effect the purposes of the agreements.

(5) Upon receiving written RUS approval of the agreements and the form and substance of the board resolution, the Borrower shall:

(i) establish and fund the Escrow Account; and

(ii) provide written notice to RUS of the Escrow Account number, the funding thereof, and such other information as required pursuant to the agreements.

(6) After the Borrower has funded the Escrow Account, RUS shall issue Task Order(s) for consultant services in accordance with the terms and conditions of the applicable Retainer Contract.

**§ 1789.159 Contract administration.**

RUS shall be solely responsible for the administration of a Consulting Contract and shall have complete control over the scope, content, timeliness, and quality of the Consultant's work and the approval of payment Invoices.

**§ 1789.160 Access to information.**

The Borrower shall not have rights in nor right of access to the work product of the Consultant. All analyses, studies, opinions, memoranda, and other documents and information provided by the Consultant pursuant to a Consulting Contract with RUS may be released and made available to the Borrower only with the approval of RUS. This section does not restrict release of information by RUS pursuant to the Freedom of Information Act (5 U.S.C. 552(a)(2)) or other legal process.

**§ 1789.161 Conflicts of interest.**

(a) Disclosure requirements incorporated in procurements under this part shall provide that Consultants disclose all business relationships with current or former RUS Borrowers at the time proposals to offer consulting services are made to RUS and in the event additional business relationships are entered into subsequent to the original disclosure.

(b) Certification requirements incorporated in procurements under this part shall provide that Consultants certify, at the time a proposal is made to provide consulting services to RUS, to the best of their knowledge and belief, that no Organizational Conflict of Interest exists and there are no relevant facts or circumstances which could give rise to an Organizational Conflict of Interest, or the Consultant has disclosed all such relevant information. The representations in the certificate shall be deemed reaffirmed upon the execution of the Consultant Contract and upon the undertaking of each Task Order by the Contractor.

(c) The determination of whether or not an Organizational Conflict of Interest exists shall rest with the Administrator in his sole discretion; RUS shall not award a contract or task order, as the case may be, to a Consultant if an Organizational Conflict of Interest exists.

(d) The Administrator may waive an Organizational Conflict of Interest pursuant to § 1789.163 hereof; such waivers must be in writing to be effective.

(e) Consultant Contracts with all Legal Consultants, all Financial Consultants and such other Consultants as the RUS may determine on a case by case basis (selected other Consultants) shall provide that such Consultants agree not to undertake during the term of the

applicable contract, inclusive of option or renewal periods, to represent any RUS Borrower on the same or other matters, without the express written consent of RUS.

(f) Consultant Contracts with all Legal Consultants, all Financial Consultants and selected other Consultants shall provide that such Consultants agree not to undertake, for a period of not less than four years from the contract expiration date, to represent any RUS Borrower or G&T affiliate thereof, including a Borrower which may prepay outstanding RUS indebtedness subsequent to the Consultant undertaking to represent RUS, on any matter in which RUS has a significant interest in the outcome, where such Borrower(s) were the subject of consulting services rendered by that Consultant during the tenure of the applicable contract, without the express written consent of RUS. G&T affiliate in this context shall refer to all members of the applicable generation and transmission cooperative and the cooperative(s) in which the Borrower was itself a member. Representation includes any retainer or advisory contract and is not limited to representation relating to negotiations with or Applications before RUS.

**§ 1789.162 Indemnification agreement.**

As a condition of approving Borrower funding, RUS will require the Borrower to enter into an Indemnification Agreement, in form and substance satisfactory to RUS, providing that the Borrower will indemnify and hold harmless the government and any officers, agents or employees of the government from any and all liability, including costs, fees, and settlements arising out of, or in any way connected with the administration and supervision of, the contract funded by the Borrower for consultant services relating to the Borrower's Application.

**§ 1789.163 Waiver**

RUS may waive any requirement or procedure of this subpart by determining that its application in a particular situation would not be in the government's interest.

**§§ 1789.164–1789.165 [Reserved]**

## Subpart B—Escrow Account Funding and Payments

**§ 1789.166 Terms and conditions of funding agreement.**

Funding Agreements between the Borrower and a Consultant shall be in form and substance satisfactory to RUS and provide for, among other matters, the following:

(a) Specific reference by number to the applicable Consulting Contract entered into between RUS and the Consultant;

(b) Specific reference by number to the applicable Task Order (where applicable);

(c) A brief description of the Application;

(d) A requirement that Invoices make specific reference to:

(1) The applicable contract and Task Order(s); and

(2) The Escrow Account from which payment is to be made;

(e) A requirement that the Final Invoice for a Task Order be clearly identified as such;

(f) A description of the services to be provided by the Consultant to RUS and the applicable time frames for the provision of such services;

(g) Agreement that the Borrower shall pay for the Consultant services provided to RUS under the applicable contract through an Escrow Account established pursuant to an Escrow Agreement, the Consultant shall not provide services to RUS under the applicable contract unless there are sufficient funds in the Escrow Account to pay for such services, the Consultant shall seek compensation for services provided under the applicable contract from, and only from, funds made available through the Escrow Account, and the Consultant must submit all Invoices to RUS for approval.

(h) A form of Escrow Agreement satisfactory to the Borrower, Consultant and the designated Third-party Commercial Institution;

(i) A schedule setting forth when and in what amounts the Borrower shall fund the Escrow Account;

(j) Acknowledgment by the Consultant of the Indemnification Agreement provided by the Borrower to the government; and

(k) The Funding Agreement shall not be effective unless and until approved in writing by RUS.

**§ 1789.167 Terms and conditions of escrow agreement.**

Escrow Agreements between and among the Borrower, Consultant and Third-party Commercial Institution shall be in form and substance satisfactory to RUS and provide for, among other matters, the following:

(a) Specific reference by number to the applicable contract for services entered into between RUS and the Consultant;

(b) Specific reference by number to the applicable Task Order;

(c) Specific reference by number to the Escrow Account into which funds are to be deposited;

(d) Invoices to specifically identify the applicable contract and Task Order(s);

(e) Funds to be held in the Escrow Account by the escrow agent until paid to the Consultant pursuant to RUS direction;

(f) The Escrow Account to be closed and all remaining funds remitted to the Borrower after payment of the Final Invoice, or upon notice from RUS to the escrow agent that RUS is satisfied no further payments are required under the Funding Agreement; and

(g) RUS, the Consultant and the Borrower to have the right to be informed, in a timely manner and in such form as they may reasonably request, as to the status of and activity in the Escrow Account.

**§§ 1789.168–1789.175 [Reserved]**

Dated: December 21, 1995.

Jill Long Thompson,

*Under Secretary, Rural Economic and Community Development.*

[FR Doc. 95–31452 Filed 12–29–95; 8:45 am]

BILLING CODE 3410–15–P

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 26

### Meeting Regarding Onsite Fitness-for-Duty Testing

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Open Meeting.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) will conduct an open meeting to discuss regulatory options under the provisions of 10 CFR Part 26 for performing onsite screening tests by the Washington Public Power Supply System (WPPS) of urine specimens collected by the Utilities Service Alliance (USA) members. The WPPS requested the meeting to discuss its proposed approach to conduct initial screening tests of urine specimens sent to them by USA members to determine which specimens are negtive and need no further testing at an HHS-certified laboratory. A summary of the meeting will be prepared and will be available upon request.

**DATES:** The meeting will be held at 9:30 a.m. on January 11, 1996.

**ADDRESSES:** The meeting will be in Room 1–F5 at NRC Headquarters, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Dated at Rockville, Maryland this 26th day of December 1995.

For the Nuclear Regulatory Commission.

Robert J. Dube,

*Deputy Chief, Safeguards Branch, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 95–31546 Filed 12–29–95; 8:45 am]

BILLING CODE 7590–01–P

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[PS–2–95]**

**RIN 1545–AT19**

## Distribution of Marketable Securities by a Partnership

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

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations relating to the treatment of a distribution of marketable securities by a partnership under section 731(c) of the Internal Revenue Code of 1986, as amended (Code). These proposed regulations provide taxpayers with guidance needed to comply with certain changes made by the Uruguay Round Agreements Act of 1994 (Pub. L. No. 103–465). This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written comments and requests to speak (with outlines of oral comments) at a public hearing scheduled for 10 a.m. on Wednesday, April 3, 1996 must be received by Wednesday, March 13, 1996.

**ADDRESSES:** Send submissions to: CC:DOM:CORP:R (PS–2–95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (PS–2–95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The public hearing will be held in the IRS Auditorium.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Terri A. Belanger or William M. Kostak, (202) 622–3080; concerning submissions and the hearing, Christina Vasquez, (202) 622–7190 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Introduction

This document proposes to add § 1.731–2 to the Income Tax Regulations (26 CFR part 1) under section 731(c) of the Code. Section 731(c) was amended by section 741(a) of the Uruguay Round Agreements Act of 1994 (Public Law 103–465).

### Background

Section 731(a)(1) of the Code provides that a partner must recognize gain on a distribution from a partnership to the extent that any money distributed exceeds the adjusted basis of the partner's interest in the partnership immediately before the distribution. Section 737 provides that a partner must recognize gain on a distribution of property other than money in an amount equal to the lesser of (i) the partner's net precontribution gain or (ii) the excess of the fair market value of the distributed property over the partner's basis in the partnership interest.

Section 731(c) provides that the term *money* includes marketable securities for purposes of section 731(a)(1) and section 737. As discussed in the legislative history accompanying section 731(c), treating marketable securities as money for this purpose is appropriate because marketable securities are economically equivalent to money. Section 731(c) affects only the tax consequences to the distributee partner; section 731(c) does not require the partnership or any partner other than the distributee partner to recognize gain on a distribution of marketable securities.

### Explanation of Provisions

#### *Marketable Securities Treated as Money*

Distributions of marketable securities are treated as distributions of money under section 731(c) only for purposes of sections 731(a)(1) and 737. For example, a distribution of marketable securities is not treated as a distribution of money to the extent it is subject to section 707 or section 751(b) because the distribution is not subject to section 731(a)(1) or section 737. In addition, marketable securities are not treated as money for purposes of section 731(a)(2), so that a partner does not recognize a loss on a distribution of marketable securities. Finally, marketable securities contributed by a partner are treated as property other than money for purposes of determining the partner's net precontribution gain under section 737(b).

#### *Reduction of Amount Treated as Money*

Under section 731(c)(3)(B), the amount of marketable securities that is treated as money is reduced by the excess of (i) the partner's share of the net gain of the partnership's securities of the same class and issuer as the distributed securities immediately before the distribution over (ii) the partner's share of such net gain immediately after the distribution. This provision allows a partner to withdraw the partner's share of appreciation in the partnership's marketable securities without recognizing gain on the distribution. As a result, section 731(c) generally applies only when a partner receives a distribution of marketable securities in exchange for the partner's share of appreciated assets other than marketable securities.

Under the authority of section 731(c)(3)(B), the proposed regulations provide that all marketable securities held by a partnership are treated as marketable securities of the same class and issuer as the distributed securities. Treating all marketable securities as a single asset for this purpose is consistent with the basic rationale of section 731(c) that marketable securities are the economic equivalent of money. As a result, the amount of the distribution that is not treated as money will depend on the partner's share of the net appreciation in all partnership securities, not on the partner's share of the appreciation in the type of securities distributed.

#### *Definition of Marketable Securities*

In general, the term *marketable securities* includes any financial instruments—such as stocks, options, and derivatives—that are actively traded within the meaning of section 1092(d)(1). In addition, section 731(c)(2)(B)(v) provides that an interest in an entity is a marketable security if substantially all of the assets of the entity consist of marketable securities or money. The proposed regulations provide that substantially all of the assets of an entity consist of marketable securities or money only if 90 percent or more of the assets of the entity at the time of the distribution consist of such assets.

Section 731(c)(2)(B)(vi) provides that, to the extent provided in regulations, an interest in an entity not described in section 731(c)(2)(B)(v) is a marketable security to the extent that the value of such interest is attributable to marketable securities or money. The proposed regulations provide that an interest in an entity is a marketable security to the extent that the value of the interest is attributable to marketable securities or money that constitute less than 90 percent but 20 percent or more of the assets of the entity. The 20 percent threshold means that an interest in an entity holding only a small

amount of marketable securities will not be treated as a marketable security.

The proposed regulations also provide that a marketable security will continue to be treated as a marketable security, even if the partnership or its partners are restricted by agreement or otherwise from selling or exchanging the security. This provision is intended to prevent a partnership from avoiding section 731(c) by temporarily restricting the transferability of the distributed security.

*Exceptions*

Consistent with the provisions of section 731(c)(3)(A), the proposed regulations provide three exceptions to section 731(c). First, the proposed regulations provide that if the marketable security was contributed to the partnership by the distributee partner, section 731(c) does not apply to the distribution of that security.

Second, the proposed regulations provide that section 731(c) does not apply to the distribution of a marketable security to the extent that the security was acquired by the partnership in a nonrecognition transaction in exchange for property other than marketable securities or cash and (i) the security is actively traded as of the date of distribution and (ii) the security is distributed by the partnership within five years of either the date the security was acquired by the partnership or, if later, the date the security became actively traded. For example, if a partnership contributed substantially all of its assets to a corporation in a transaction described in section 351 and the stock of the corporation became marketable, the distribution of the stock by the partnership within five years would not be subject to section 731(c). This exception recognizes that the marketable security in these situations is simply a substitute for the underlying assets exchanged in the nonrecognition transaction.

The proposed regulations also provide that section 731(c) does not apply to the distribution of a marketable security if (i) the security was not actively traded on the date acquired by the partnership and the entity to which the security relates had no outstanding actively traded securities at the time the security was acquired by the partnership; (ii) the security is actively traded as of the date of distribution; and (iii) the security was held by the partnership for at least six months before it became actively traded and the security was distributed by the partnership within five years of the date on which the security became actively traded.

In addition, the proposed regulations provide a successor security rule that applies to these exceptions. This rule provides that the exceptions continue to apply to a security acquired in a nonrecognition transaction in exchange for a security that was already subject to an exception.

*Investment Partnerships*

Section 731(c) does not apply to the distribution of marketable securities by an investment partnership to an eligible partner. An investment partnership is defined as a partnership that has never been engaged in a trade or business and substantially all of the assets of which consist of the investment assets described in section 731(c)(3)(C)(i). The proposed regulations provide that a partner can qualify as an eligible partner even if the partner contributed services to the partnership. In addition, the proposed regulations provide that a partnership will not be treated as engaged in a trade or business if the partnership provides reasonable and customary management services to a lower-tier investment partnership. This exception allows an upper-tier investment partnership to manage the investments and other activities of a lower-tier investment partnership without disqualifying the upper-tier partnership as an investment partnership. The exception does not extend to management services provided to lower-tier partnerships other than investment partnerships because, as discussed below, the tiering rules of section 731(c)(3)(C)(iv) treat the upper-tier management partnership as engaged in the trade or business of the lower-tier partnership, thereby preventing the upper-tier partnership from qualifying as an investment partnership.

The proposed regulations also provide that a partnership will not be treated as engaged in a trade or business if the partnership provides reasonable and customary services in assisting the formation, capitalization, expansion, or offering of interests in an entity in which the partnership holds a significant equity interest, provided that the anticipated receipt of compensation for the services does not represent a significant purpose for the partnership's investment in the entity and is incidental to the investment in the entity.

Section 731(c)(3)(C)(iv) provides that, except as otherwise provided in regulations, a partnership is treated as engaged in any trade or business engaged in by (and as holding the assets of) any partnership in which the partnership holds an interest. The proposed regulations provide that this look-through rule does not apply if the upper-tier partnership does not participate in the management of the lower-tier partnership and the interest held by the upper-tier partnership is less than 10 percent of the total profits and capital interests in the lower-tier partnership.

*Coordination With Other Sections*

The proposed regulations provide rules for coordinating section 731(c) with section 704(c)(1)(B) and section 737. This coordination is necessary because a distribution of marketable securities could occur as part of a larger distribution in which property contributed by the distributee partner is distributed to another partner (section 704(c)(1)(B)) or the distributee partner receives property in addition to marketable securities (section 737).

Under the proposed regulations, the basis increase in the partner's interest in the partnership as a result of any gain recognized by the partner under section 704(c)(1)(B) is taken into account in determining the distributee partner's gain under section 731(c) and the partner's basis in the distributed securities. Taking the stepped-up basis into account for purposes of section 731 reflects the fact that the general effect of section 704(c)(1)(B) is to treat the contributing partner as having contributed property with a full fair market value basis at the time of contribution. The proposed regulations, however, provide that the basis increase in the partner's interest as a result of any gain recognized by the partner under section 737 is not taken into account for these purposes. The proposed regulations are consistent with section 737, which generally treats a distribution of money as occurring before, and independent of, a distribution of other property.

*Anti-Abuse Rule*

The proposed regulations provide that the provisions of section 731(c) and this section must be applied in a manner that is consistent with the purpose of section 731(c) and the substance of the transaction.

*Proposed Effective Date*

This section is proposed to apply to distributions of marketable securities by a partnership to a partner on or after December 29, 1995.

Special Analyses

It has been determined that this notice of proposed rulemaking 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, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are timely submitted to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, April 3, 1996 at 10:00 a.m. in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by Wednesday, March 13, 1996 and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by Wednesday, March 13, 1996.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Terri A. Belanger and William M. Kostak, 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.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

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

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

Section 1.731–2 also issued under 26 U.S.C. 731(c).* * *

Par. 2. Section 1.731–2 is added to read as follows:

### § 1.731–2 Partnership distributions of marketable securities.

(a) *Marketable securities treated as money.* Except as otherwise provided in section 731(c) and this section, for purposes of section 731(a)(1) and 737, the term *money* includes marketable securities and such securities are taken into account at their fair market value as of the date of the distribution.

(b) *Reduction of amount treated as money*—(1) *Aggregation of securities.* For purposes of section 731(c)(3)(B) and this paragraph (b), all marketable securities held by a partnership are treated as marketable securities of the same class and issuer as the distributed security.

(2) *Amount of reduction.* The amount of the distribution of marketable securities that is treated as a distribution of money under section 731(c) and paragraph (a) of this section is reduced (but not below zero) by the excess, if any, of—

(i) The distributee partner's distributive share of the net gain, if any, which would be recognized if all the marketable securities held by the partnership were sold (immediately before the transaction to which the distribution relates) by the partnership for fair market value; over

(ii) The distributee partner's distributive share of the net gain, if any, which is attributable to the marketable securities held by the partnership immediately after the transaction, determined by using the same fair market value as used under paragraph (b)(2)(i) of this section.

(3) *Distributee partner's share of net gain.* For purposes of section 731(c)(3)(B) and paragraph (b)(2) of this section, a partner's distributive share of net gain is determined—

(i) By taking into account any basis adjustments under section 743(b) with respect to that partner; and

(ii) Without taking into account any special allocations adopted with a principal purpose of avoiding the effect of section 731(c) and this section.

(c) *Marketable securities*—(1) *Actively traded.* For purposes of section 731(c) and this section, a financial instrument is actively traded (and thus is a marketable security) if it is of a type that is, as of the date of distribution, actively traded within the meaning of section 1092(d)(1). Thus, for example, if *XYZ* common stock is listed on a national securities exchange, particular shares of *XYZ* common stock that are distributed by a partnership are marketable securities even if those particular shares cannot be resold by the distributee partner for a designated period of time.

(2) *Interests in an entity*—(i) *Substantially all.* For purposes of section 731(c)(2)(B)(v) and this section, substantially all of the assets of an entity consist (directly or indirectly) of marketable securities, money, or both only if 90 percent or more of the assets of the entity (by value) at the time of the distribution of an interest in the entity consist (directly or indirectly) of marketable securities, money, or both.

(ii) *Less than substantially all.* For purposes of section 731(c)(2)(B)(vi) and this section, an interest in an entity is a marketable security to the extent that the value of the interest is attributable (directly or indirectly) to marketable securities, money, or both, if less than 90 percent but 20 percent or more of the assets of the entity (by value) at the time of the distribution of an interest in the entity consist (directly or indirectly) of marketable securities, money, or both.

(d) *Exceptions*—(1) *Previously contributed property.* Section 731(c) and this section do not apply to the distribution of a marketable security if the security was contributed to the partnership by the distributee partner, except to the extent that the value of the distributed security is attributable to marketable securities or money contributed (directly or indirectly) by the partnership to the entity to which the distributed security relates.

(2) *Security acquired in nonrecognition transaction.* Section 731(c) and this section do not apply to the distribution of a marketable security to the extent that—

(i) The security was acquired by the partnership in a nonrecognition transaction in exchange for any property except money or marketable securities (including a security that would have been treated as a marketable security under paragraph (c)(2) of this section if distributed at the time of the exchange);

(ii) The distributed security is actively traded as of the date of distribution; and

(iii) The security is distributed within five years of either the date on which the security was acquired by the partnership or, if later, the date on

which the security became actively traded.

(3) *Security not marketable when acquired.* Section 731(c) and this section do not apply to the distribution of a marketable security if—

(i) The security was not actively traded as of the date acquired by the partnership and the entity to which the security relates had no outstanding actively traded securities on that date;

(ii) The security is actively traded as of the date of distribution; and

(iii) The security was held by the partnership for at least six months before the date the security became actively traded and the security was distributed within five years of the date on which the security became actively traded.

(4) *Successor security.* Section 731(c) and this section do not apply to the distribution of a marketable security to the extent that the security was acquired by the partnership in a nonrecognition transaction in exchange for a security the distribution of which immediately prior to the exchange would have been excepted under this paragraph (d).

(e) *Investment partnerships*—(1) *In general.* Section 731(c) and this section do not apply to the distribution of marketable securities by an investment partnership (as defined in section 731(c)(3)(C)(i)) to an eligible partner (as defined in section 731(c)(3)(C)(iii)).

(2) *Eligible partner.* For purposes of section 731(c)(3)(C)(iii) and this section, a partner is not treated as a partner other than an eligible partner solely because the partner contributed services to the partnership.

(3) *Trade or business activities.* For purposes of section 731(c)(3)(C) and this section, a partnership is not treated as engaged in a trade or business by reason of—

(i) Any activity undertaken as an investor, trader, or dealer in any asset described in section 731(c)(3)(C)(i), including the receipt of commitment fees, break-up fees, guarantee fees, director's fees, or similar fees that are customary in and incidental to any activities of the partnership as an investor, trader, or dealer in such assets;

(ii) Reasonable and customary management services (including the receipt of reasonable and customary fees in exchange for such management services) provided to an investment partnership (within the meaning of section 731(c)(3)(C)(i)) in which the partnership holds a partnership interest; or

(iii) Reasonable and customary services provided by the partnership in assisting the formation, capitalization, expansion, or offering of interests in a corporation (or other entity) in which the partnership holds or acquires a significant equity interest (including the provision of advice or consulting services, bridge loans, guarantees of obligations, or service on a company's board of directors), provided that the anticipated receipt of compensation for the services, if any, does not represent a significant purpose for the partnership's investment in the entity and is incidental to the investment in the entity.

(4) *Partnership tiers.* For purposes of section 731(c)(3)(C)(iv) and this section, a partnership (upper-tier partnership) is not treated as engaged in a trade or business engaged in by, or as holding (instead of a partnership interest) a proportionate share of the assets of, a partnership (lower-tier partnership) in which the partnership holds a partnership interest if—

(i) The upper-tier partnership does not participate in the management of the lower-tier partnership; and

(ii) The interest held by the upper-tier partnership is less than 10 percent of the total profits and capital interests in the lower-tier partnership.

(f) *Basis rules*—(1) *Partner's basis*—(i) *Partner's basis in distributed securities.* The distributee partner's basis in distributed marketable securities with respect to which gain is recognized by reason of section 731(c) and this section is the basis of the security determined under section 732, increased by the amount of such gain. Any increase in the basis of the marketable securities attributable to gain recognized by reason of section 731(c) and this section is allocated to marketable securities in proportion to their respective amounts of unrealized appreciation in the hands of the partner before such increase.

(ii) *Partner's basis in partnership interest.* The basis of the distributee partner's interest in the partnership is determined under section 733 as if no gain were recognized by the partner on the distribution by reason of section 731(c) and this section.

(2) *Basis of partnership property.* No adjustment is made to the basis of partnership property under section 734 as a result of any gain recognized by a partner, or any step-up in the basis in the distributed marketable securities in the hands of the distributee partner, by reason of section 731(c) and this section.

(g) *Coordination with other sections*—(1) *Section 704(c)(1)(B).* The basis of the distributee partner's interest in the partnership for purposes of determining the amount of gain, if any, recognized by reason of section 731(c) (and for determining the basis of the marketable securities in the hands of the distributee partner) includes the increase, if any, in the partner's basis that occurs under section 704(c)(1)(B)(iii) as a result of a distribution to another partner of property contributed by the distributee partner in a distribution that is part of the same distribution as the marketable securities.

(2) *Section 737*—(i) *Marketable securities as other property.* A distribution of marketable securities is treated as a distribution of property other than money for purposes of section 737 to the extent that the marketable securities are not treated as money under section 731(c). In addition, marketable securities contributed to the partnership are treated as property other than money in determining the contributing partner's net precontribution gain under section 737(b).

(ii) *Basis increase under section 737.* The basis of the distributee partner's interest in the partnership for purposes of determining the amount of gain, if any, recognized by reason of section 731(c) (and for determining the basis of the marketable securities in the hands of the distributee partner) does not include the increase, if any, in the partner's basis that occurs under section 737(c)(1) as a result of a distribution of property to the distributee partner in a distribution that is part of the same distribution as the marketable securities.

(h) *Anti-abuse rule.* The provisions of section 731(c) and this section must be applied in a manner consistent with the purpose of section 731(c) and the substance of the transaction. Accordingly, if a principal purpose of a transaction is to achieve a tax result that is inconsistent with the purpose of section 731(c) and this section, the Commissioner can recast the transaction for federal tax purposes as appropriate to achieve tax results that are consistent with the purpose of section 731(c) and this section. Whether a tax result is inconsistent with the purpose of section 731(c) and this section must be determined based on all the facts and circumstances. For example, under the provisions of this paragraph (h)—

(1) A change in partnership allocations or distribution rights with respect to marketable securities may be treated as a distribution of the marketable securities subject to section 731(c) if the change in allocations or distribution rights is, in substance, a distribution of the securities;

(2) A distribution of substantially all of the assets of the partnership other than marketable securities and money to some partners may also be treated as a distribution of marketable securities to the remaining partners if the

distribution of the other property and the withdrawal of the other partners is, in substance, equivalent to a distribution of the securities to the remaining partners; and

(3) The distribution of multiple properties to one or more partners at different times may also be treated as part of a single distribution if the distributions are part of a single plan of distribution.

(i) [Reserved]

(j) *Examples.* The following examples illustrate the rules of this section. Unless otherwise specified, all securities held by a partnership are marketable securities within the meaning of section 731(c); the partnership holds no marketable securities other than the securities described in the example; all distributions by the partnership are subject to section 731(a) and are not subject to sections 704(c)(1)(B), 751(b), or 737; and no securities are eligible for an exception to section 731(c).

*Example 1. Recognition of gain.* (i) *A* and *B* form partnership *AB* as equal partners. *A* contributes property with a fair market value of $1,000 and an adjusted tax basis of $250. *B* contributes $1,000 cash. *AB* subsequently purchases Security *X* for $500 and immediately distributes the security to *A* in a current distribution. The basis in *A*'s interest in the partnership at the time of distribution is $250.

(ii) The distribution of Security *X* is treated as a distribution of money in an amount equal to the fair market value of Security *X* on the date of distribution ($500). (The amount of the distribution that is treated as money is not reduced under section 731(c)(3)(B) and paragraph (b) of this section because, if Security *X* had been sold immediately before the distribution, there would have been no gain recognized by *AB* and *A*'s distributive share of the gain would therefore have been zero.) As a result, *A* recognizes $250 of gain under section 731(a)(1) on the distribution ($500 distribution of money less $250 adjusted tax basis in *A*'s partnership interest).

*Example 2. Reduction in amount treated as money—in general.* (i) *A* and *B* form partnership *AB* as equal partners. *AB* subsequently distributes Security *X* to *A* in a current distribution. Immediately before the distribution, *AB* held securities with the following fair market values, adjusted tax bases, and unrecognized gain or loss:

| | Value | Basis | Gain (loss) |
|---|---|---|---|
| Security *X* ..... | 100 | 70 | 30 |
| Security *Y* ..... | 100 | 80 | 20 |
| Security *Z* ..... | 100 | 110 | (10) |

(ii) If *AB* had sold the securities for fair market value immediately before the distribution to *A*, the partnership would have recognized $40 of net gain ($30 gain on Security *X* plus $20 gain on Security *Y* minus $10 loss on Security *Z*). *A*'s distributive share of this gain would have been $20 (one-half of $40 net gain). If *AB* had sold the remaining securities immediately after the distribution of Security *X* to *A*, the partnership would have $10 of net gain ($20 of gain on Security *Y* minus $10 loss on Security *Z*). *A*'s distributive share of this gain would have been $5 (one-half of $10 net gain). As a result, the distribution resulted in a decrease of $15 in *A*'s distributive share of the net gain in *AB*'s securities ($20 net gain before distribution minus $5 net gain after distribution).

(iii) Under paragraph (b) of this section, the amount of the distribution of Security *X* that is treated as a distribution of money is reduced by $15. The distribution of Security *X* is therefore treated as a distribution of $85 of money to *A* ($100 fair market value of Security *X* minus $15 reduction).

*Example 3. Reduction in amount treated as money—carried interest.* (i) *A* and *B* form partnership *AB*. *A* contributes $1,000 and provides substantial services to the partnership in exchange for a 60 percent interest in partnership profits. *B* contributes $1,000 in exchange for a 40 percent interest in partnership profits. *AB* subsequently distributes Security *X* to *A* in a current distribution. Immediately before the distribution, *AB* held securities with the following fair market values, adjusted tax bases, and unrecognized gain:

| | Value | Basis | Gain |
|---|---|---|---|
| Security *X* ..... | 100 | 80 | 20 |
| Security *Y* ..... | 100 | 90 | 10 |

(ii) If *AB* had sold the securities for fair market value immediately before the distribution to *A*, the partnership would have recognized $30 of net gain ($20 gain on Security *X* plus $10 gain on Security *Y*). *A*'s distributive share of this gain would have been $18 (60 percent of $30 net gain). If *AB* had sold the remaining securities immediately after the distribution of Security *X* to *A*, the partnership would have $10 of net gain ($10 gain on Security *Y*). *A*'s distributive share of this gain would have been $6 (60 percent of $10 net gain). As a result, the distribution resulted in a decrease of $12 in *A*'s distributive share of the net gain in *AB*'s securities ($18 net gain before distribution minus $6 net gain after distribution).

(iii) Under paragraph (b) of this section, the amount of the distribution of Security *X* that is treated as a distribution of money is reduced by $12. The distribution of Security *X* is therefore treated as a distribution of $88 of money to *A* ($100 fair market value of Security *X* minus $12 reduction).

*Example 4. Reduction in amount treated as money—change in partnership allocations.* (i) *A* is admitted to partnership *ABC* as a partner with a 1 percent interest in partnership profits. At the time of *A*'s admission, *ABC* held no securities. *ABC* subsequently acquires Security *X*. *A*'s interest in partnership profits is subsequently increased to 2 percent for securities acquired after the increase. *A* retains a 1 percent interest in all securities acquired before the increase. *ABC* then acquires Securities *Y* and *Z* and later distributes Security *X* to *A* in a current distribution. Immediately before the distribution, the securities held by *ABC* had the following fair market values, adjusted tax bases, and unrecognized gain or loss:

| Value | Basis | Gain | (loss) |
|---|---|---|---|
| Security *X* ..... | 1,000 | 500 | 500 |
| Security *Y* ..... | 1,000 | 800 | 200 |
| Security *Z* ..... | 1,000 | 1,100 | (100) |

(ii) If *ABC* had sold the securities for fair market value immediately before the distribution to *A*, the partnership would have recognized $600 of net gain ($500 gain on Security *X* plus $200 gain on Security *Y* minus $100 loss on Security *Z*). *A*'s distributive share of this gain would have been $7 (1 percent of $500 gain on Security *X* plus 2 percent of $200 gain on Security *Y* minus 2 percent of $100 loss on Security *Z*).

(iii) If *ABC* had sold the remaining securities immediately after the distribution of Security *X* to *A*, the partnership would have $100 of net gain ($200 gain on Security *Y* minus $100 loss on Security *Z*). *A*'s distributive share of this gain would have been $2 (2 percent of $200 gain on Security *Y* minus 2 percent of $100 loss on Security *Z*). As a result, the distribution resulted in a decrease of $5 in *A*'s distributive share of the net gain in *ABC*'s securities ($7 net gain before distribution minus $2 net gain after distribution).

(iv) Under paragraph (b) of this section, the amount of the distribution of Security *X* that is treated as a distribution of money is reduced by $5. The distribution of Security *X* is therefore treated as a distribution of $95 of money to *A* ($100 fair market value of Security *X* minus $5 reduction).

*Example 5. Basis consequences—distribution of marketable security.* (i) *A* and *B* form partnership *AB* as equal partners. *A* contributes nondepreciable real property with a fair market value and adjusted tax basis of $100.

(ii) *AB* subsequently distributes Security *X* with a fair market value of $120 and an adjusted tax basis of $90 to *A* in a current distribution. At the time of distribution, the basis in *A*'s interest in the partnership is $100. The amount of the distribution that is treated as money is reduced under section 731(c)(3)(B) and paragraph (b)(2) of this section by $15 (one- half of $30 net gain in Security *X*). As a result, *A* recognizes $5 of gain under section 731(a) on the distribution (excess of $105 distribution of money over $100 adjusted tax basis in *A*'s partnership interest).

(iii) *A*'s adjusted tax basis in Security *X* is $95 ($90 adjusted basis of Security *X* determined under section 732(a)(1) plus $5 of gain recognized by *A* by reason of section 731(c)). The basis in *A*'s interest in the partnership is $10 as determined under section 733 ($100 pre-distribution basis minus $90 basis allocated to Security *X* under section 732).

*Example 6. Basis consequences—distribution of marketable security and other property.* (i) *A* and *B* form partnership *AB* as equal partners. *A* contributes nondepreciable

real property, with a fair market value of $100 and an adjusted tax basis of $10.

(ii) *AB* subsequently distributes Security *X* with a fair market value and adjusted tax basis of $40 to *A* in a current distribution and, as part of the same distribution, *AB* distributes Property *Z* to *A* with an adjusted tax basis and fair market value of $40. At the time of distribution, the basis in *A*'s interest in the partnership is $10. *A* recognizes $30 of gain under section 731(a) on the distribution (excess of $40 distribution of money over $10 adjusted tax basis in *A*'s partnership interest).

(iii) *A*'s adjusted tax basis in Security *X* is $35 ($5 adjusted basis determined under section 732(a)(2) plus $30 of gain recognized by *A* by reason of section 731(c)). *A*'s basis in Property *Z* is $5, as determined under section 732(a)(2). The basis in *A*'s interest in the partnership is $0 as determined under section 733 ($10 pre-distribution basis minus $10 basis allocated between Security *X* and Property *Z* under section 732).

(iv) *AB*'s adjusted tax basis in the remaining partnership assets is unchanged unless the partnership has a section 754 election in effect. If *AB* made such an election, the aggregate basis of *AB*'s assets would be increased by $70 (the difference between the $80 combined basis of Security *X* and Property *Z* in the hands of the partnership before the distribution and the $10 combined basis of the distributed property in the hands of *A* under section 732 after the distribution). Under section 731(c)(5), no adjustment is made to partnership property under section 734 as a result of any gain recognized by *A* by reason of section 731(c) or as a result of any step-up in basis in the distributed marketable securities in the hands of *A* by reason of section 731(c).

*Example 7. Coordination with section 737.* (i) *A* and *B* form partnership *AB*. *A* contributes Property *A*, nondepreciable real property with a fair market value of $200 and an adjusted basis of $100 in exchange for a 25 percent interest in partnership capital and profits. *AB* owns marketable Security *X*.

(ii) Within five years of the contribution of Property *A*, *AB* subsequently distributes Security *X*, with a fair market value of $120 and an adjusted tax basis of $100, to *A* in a current distribution that is subject to section 737. As part of the same distribution, *AB* distributes Property *Y* to *A* with a fair market value of $20 and an adjusted tax basis of $0. At the time of distribution, there has been no change in the fair market value of Property *A* or the adjusted tax basis in *A*'s interest in the partnership.

(iii) If *AB* had sold Security *X* for fair market value immediately before the distribution to *A*, the partnership would have recognized $20 of gain. *A*'s distributive share of this gain would have been $5 (25 percent of $20 gain). Because *AB* has no other marketable securities, *A*'s distributive share of gain in partnership securities after the distribution would have been $0. As a result, the distribution resulted in a decrease of $5 in *A*'s share of the net gain in *AB*'s securities ($5 net gain before distribution minus $0 net gain after distribution). Under paragraph (b)(2) of this section, the amount of the distribution of Security *X* that is treated as a distribution of money is reduced by $5. The distribution of Security *X* is therefore treated as a distribution of $115 of money to *A* ($120 fair market value of Security *X* minus $5 reduction). The portion of the distribution of the marketable security that is not treated as a distribution of money ($5) is treated as other property for purposes of section 737.

(iv) *A* recognizes total gain of $40 on the distribution. *A* recognizes $15 of gain under section 731(a)(1) on the distribution of the portion of Security *X* treated as money ($115 distribution of money less $100 adjusted tax basis in *A*'s partnership interest). *A* recognizes $25 of gain under section 737 on the distribution of Property *Y* and the portion of Security *X* that is not treated as money. *A*'s section 737 gain is equal to the lesser of (i) *A*'s precontribution gain ($100) or (ii) the excess of the fair market value of property received ($20 fair market value of Property *Y* plus $5 portion of Security *X* not treated as money) over the adjusted basis in *A*'s interest in the partnership immediately before the distribution ($100) reduced (but not below zero) by the amount of money received in the distribution ($115).

(v) *A*'s adjusted tax basis in Security *X* is $115 ($100 basis of Security *X* determined under section 732(a) plus $15 of gain recognized by reason of section 731(c)). *A*'s adjusted tax basis in Property *Y* is $0 under section 732(a). The basis in *A*'s interest in the partnership is $25 ($100 basis before distribution minus $100 basis allocated to Security *X* under section 732(a) plus $25 gain recognized under section 737).

(k) *Effective date.* This section applies to distributions of marketable securities made on or after December 29, 1995.

Margaret Milner Richardson,

*Commissioner of Internal Revenue.*

[FR Doc. 95–31457 Filed 12–29–95; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF DEFENSE

### Department of the Army

### 33 CFR Part 207

### St. Marys Falls Canal and Locks, Michigan; Use, Administration, and Navigation

**AGENCY:** Corps of Engineers, Department of the Army, DOD.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Corps of Engineers proposes to amend the regulations which establish the operating schedule for Soo Locks at the St. Marys Falls Canal, Sault Ste. Marie, Michigan, to change the annual opening date from April 1 to March 25. The locks will not open earlier than March 25, except in case of emergency and are subject to closure at any time in a national emergency involving a vessel disaster or other extraordinary circumstances as currently provided in 33 CFR 207.440(u).

**DATES:** Written comments should be received February 1, 1996.

**ADDRESSES:** Submit written comments, in duplicate, to: Mr. William Willis, Acting Chief, Construction-Operations Division, Detroit District, U.S. Army Corps of Engineers, P.O. Box 1027, Detroit, Michigan 48231–1027, Phone: (313) 226–6794, or deliver them to Mr. Willis at the Detroit District office at 477 Michigan Avenue, Detroit, Michigan, between the hours of 7:30 a.m. and 4:00 p.m. Monday through Friday. Comments received and other materials relevant to this proposed rulemaking can be inspected at Mr. Willis' office during the same hours. An appointment may be required for inspection, so please call ahead to confirm availability and to avoid any conflicts with inspections by other interested persons. A reasonable fee may be charged for copying services.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Kidby at Corps of Engineers Headquarters in Washington, D.C., by telephone at (202) 761–8835.

**SUPPLEMENTARY INFORMATION:**

Legal Authority

The legal authority for the regulation governing the use, administration, and navigation of the St. Marys Falls Canal and Locks is Section 4 of the River and Harbor Act of August 18, 1894 (28 Stat. 362), as amended, which is codified at 33 U.S.C. Section 1. This statute requires the Secretary of the Army to ''prescribe such regulations for the use, administration, and navigation of the navigable waters of the United States'' as the Secretary determines may be required by public necessity.

Background

The regulation governing the operation of the St. Marys Falls Canal and Locks, in 33 CFR 207.440, was adopted on November 27, 1945 (10 FR 14451), and has been the subject of nine amendments. The legislation allows the period of operation to be adjusted to meet the reasonable demands of commerce. The provision setting out the current opening date for the locks was adopted on October 30, 1956 (21 FR 8285). It establishes an opening date of April 1, subject to annual modification by the Division Engineer if the public interest would be best served by the modification or in the event of emergency.

The opening date of the Soo Locks has been modified on a number of occasions and the length of the operating season has been the subject of a number of

studies. Between 1970 and 1979, as authorized by the River and Harbor Act of 1970, the locks at Sault St. Marie have remained open for as long as the entire year in a demonstration program on the practicability of winter navigation in the Great Lakes. Since the 1979 navigation season, the Soo Locks have opened on the following dates: March 25, 1980; March 23, 1981; April 1, 1982; March 29, 1983; March 26, 1984; April 1, 1985; April 1, 1986; March 22, 1987; March 22, 1988; March 15, 1989; March 21, 1990; March 21, 1991; March 22, 1992; March 21, 1993; March 25, 1994; and March 25, 1995. During periods of navigation in ice, numerous environmental studies have indicated no significant adverse environmental effects.

In 1977, a Final Environmental Impact Statement (FEIS) titled, ''Operation, Maintenance, and Minor Improvements to the Federal Facilities at Sault Ste. Marie, Michigan'' was prepared. Subsequent to this, a Detroit District staff report and supplemental environmental impact statement (Supplement I, EIS) completed in 1979 recommended operation of the locks each year to January 8 ± 1 week. Based on extensive environmental studies, a second supplemental EIS (Supplement II), dated September 1989, was completed by the Detroit District, concluding that no significant adverse environmental effects would result form annual operation of the locks as late as January 31 ± 2 weeks, and recommending that the closing date for the locks be extended to January 31 ± 2 weeks. A Notice of Proposed Rulemaking to change the closing date to January 15 was published on April 3, 1991 (56 FR 13604) and subsequently became effective March 24, 1992.

The proposal contained in this notice will establish a fixed opening date of March 25 for the Soo Locks. This fixed opening date, in conjunction with the January 15 closing date, will allow nearly 10 months access to and from Lake Superior so that industry may have an adequate basis for planning and management of their resources.

History of the Present Amendment

In March 1990, the Detroit District Engineer sent a letter to interested governmental, environmental, and business interests, proposing a comprehensive annual operating plan for the locks. It proposed a fixed closing date of January 15 and fixed opening date no earlier than March 15. Because the environmental studies of the supplemental EIS's in 1979 and 1989 focused specifically on the closing date, further environmental studies focusing on the effects of opening dates between March 15 and April 1 would be conducted in order to establish an opening date that would address the needs of both commerce and the environment.

In 1991 and 1992, another series of environmental studies concerning lock opening were completed. Employing these studies as well as the environmental data from the prior studies which examined possible impacts for Supplements I and II, potential impacts of commercial navigation before April 1 were assessed. The resulting February 1993 Draft EIS (DEIS) identified no significant impacts for opening the locks as early as March 15. Rather, the study found that even significant vessel traffic, with ice cover, would result in only insignificant adverse environmental effects. Given the favorable economic benefits, as set forth in the DEIS, a March 21 opening date was suggested in the DEIS. However, to alleviate Michigan Department of Natural Resources (MDNR) concerns raised in response to this document, the U.S. Coast Guard, the U.S. Fish and Wildlife Service, the MDNR, and the Detroit District signed a Memorandum of Agreement (MOA) in August of 1993 recommending a fixed lock opening date of March 25. In this MOA, the Federal and state agencies agreed to perform joint monitoring studies of the aquatic ecosystem and biota. This recommendation and MOA were included in the FEIS and distributed for public review.

Proposed Amendments to the Regulation

Based on consideration of the responses to the March 1990 letter, comments received on the Draft FEIS, further review of the pertinent background information in light of those responses, and the rationale set forth in the September 26, 1994 Record of Decision, the Corps of Engineers has determined that the overall public interest would be best served by implementing the March 25 fixed opening alternative. As was concluded by the District and Division Engineers, the recommended operation of the locks is engineeringly feasible and the overall adverse environmental effect of the March 25 opening date would not be significant. From an economic perspective, the establishment of a fixed opening date will create an atmosphere of stability and certainty within Great Lakes shipping interests and industries can plan and conduct their operations, and is economically justifiable.

At present, the regulation provides that at least one lock will be placed in operation on April 1 and additional locks will be opened as vessel traffic increases. As a result of the regulation proposed in this notice, the April 1 opening date under the current regulations will be modified from April 1 to March 25.

The Corps of Engineers proposes that the present authority of the Division Engineer to modify opening and closing dates in emergency conditions be retained. By their very nature, emergencies cannot be exhaustively defined. The example given in the current regulation is disaster to a vessel. Under the fixed closing date proposal, this type of emergency would remain a basis for modifying the operating dates of the locks. Similarly, national defense emergencies, extraordinary environmental circumstances, or extraordinary national or regional economic circumstances could also invoke the exercise of the Division Engineer's authority. As noted above, these examples are not intended to be exhaustive or exclusive.

Classification

1. The undersigned has reviewed this action and hereby certifies that it is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small businesses or other entities.

2. The Department of the Army has determined that this regulation will not affect the use or value of private property and, therefore, does not require a Takings Assessment under Executive Order 12630.

3. This proposed rule has been determined not to be a major rule under Executive Order 12866. A Regulatory Impact Analysis (RIA) Statement will not be prepared since the proposed changes will not result in significant adverse economic effects identified in the Executive Order as grounds for a finding of major action.

Environmental Documentation

This action was the subject of a FEIS, February 1994, which concluded that there would not be significant adverse environmental effects due to commencing the opening season of the locks on 21 March—earlier than the date now proposed. The FEIS is available for review upon request from the individual listed under **ADDRESSES**.

List of Subjects in 33 CFR Part 207

Navigation (Water), Water Transportation, Vessels.

For the reasons set out in the preamble, Title 33, Chapter II of the

Code of Federal Regulations is proposed to be amended as follows.

## PART 207—[AMENDED]

1. The authority citation for part 207 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1).

2. Section 207.440 is amended by revising paragraph (u) as follows:

**§ 207.440 St. Marys Falls Canal and Locks, Michigan; use, administration and navigation.**

* * * * *

(u) The locks will be opened and closed to navigation each year as provided in paragraphs (u) (1) and (2) of this section except as may be authorized by the Division Engineer. Consideration will be given to change in these dates in an emergency involving disaster to a vessel or other extraordinary circumstances.

(1) *Opening date.* At least one lock will be placed in operation for the passage of vessels on March 25. Thereafter, additional locks will be placed in operation as traffic density demands.

(2) *Closing date.* The locks will be maintained in operation only for the passage of down bound vessels departing from a Lake Superior port before midnight (2400 hours) of January 14, and of upbound vessels passing Detour before midnight (2400 hours) of January 15. Vessel owners are requested to report in advance to the Engineer in charge at Sault Ste. Marie, the name of vessel and time of departure from a Lake Superior port on January 14 before midnight, and of vessels passing Detour on January 15 before midnight, which may necessitate the continued operation of a lock to permit passage of vessel.

* * * * *

Dated: December 21, 1995.

John H. Zirschky,

*Acting Assistant Secretary of the Army (Civil Works).*

[FR Doc. 95–31543 Filed 12–29–95; 8:45 am]

BILLING CODE 3710–92–M

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**RIN 1018–AD62**

## Endangered and Threatened Wildlife and Plants: Proposed Establishment of a Nonessential Experimental Population of California Condors in Northern Arizona

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service, in cooperation with the Arizona Game and Fish Department, and the U.S. Bureau of Land Management, proposes to reintroduce California condors (*Gymnogyps californianus*) into northern Arizona. This reintroduction will achieve a primary recovery goal for this endangered species, establishment of a second non-captive population, spatially disjunct from the non-captive population in southern California. This population is proposed to be designated a nonessential experimental population in accordance with Section 10(j) of the Endangered Species Act of 1973, as amended. Captive-reared condors will be released in early 1996 (target date) and additional releases will occur annually thereafter until a self-sustaining wild population is established. The reintroduction will use tested release techniques developed in previous releases in southern California and will be managed in accordance with the provisions of this special rule. The potential impacts associated with this proposed rule were assessed in an Environmental Assessment completed in November 1995. This California condor reintroduction does not conflict with existing or anticipated Federal or State agency actions or traditional land uses on public or private lands.

**DATES:** Comments from all interested parties must be received by February 1, 1996. Public hearings will be held at Flagstaff High School on Tuesday, January 23, 1996, from 6:00 to 8:00 pm and Kanab High School on Thursday, January 25, 1996, from 6:00 to 8:00 pm.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to State Supervisor, U.S. Fish and Wildlife Service, Ecological Services, Arizona State Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, Arizona. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address. The public hearings will be held at the Main Auditorium, Flagstaff High School, 400 West Elm Street, Flagstaff, Arizona and Kanab High School Auditorium, 59 East Red Shadow Lane, Kanab, Utah.

**FOR FURTHER INFORMATION CONTACT:** Robert Mesta, U.S. Fish and Wildlife Service, Ecological Services, Ventura Field Office, 2493 Portola Road, Suite B, Ventura, California, 93003 (Telephone: 805/644–1766; Facsimile: 805/644–3958).

**SUPPLEMENTARY INFORMATION:**

Background

*1. Legislative.* Section 10(j) of the Endangered Species Act of 1973 (Act) enables the U.S. Fish and Wildlife Service (Service) to designate certain populations of federally listed species that are released into the wild as ''experimental.'' The circumstances under which this designation can be applied are—(1) The population is geographically disjunct from nonexperimental populations of the same species (e.g., the population is reintroduced outside the species' current range but within its historical range); and (2) the Service determines the release will further the conservation of the species. This designation can increase the Service's flexibility to manage a reintroduced population, because under section 10(j) an experimental population is treated as a threatened species regardless of its designation elsewhere in its range and, under section 4(d) of the Act, the Service has greater discretion in developing management programs for threatened species than it has for endangered species.

Section 10(j) of the Act requires that when an experimental population is designated, a determination be made by the Service whether that population is either ''essential'' or ''nonessential'' to the continued existence of the species, based on the best available information. Nonessential experimental populations located outside National Wildlife Refuge (NWR) or National Park Service (NPS) lands are treated, for the purposes of section 7 of the Act, as if they are proposed for listing. Thus, only two provisions of section 7 would apply outside NWR and NPS lands—section 7(a)(1), which requires all Federal agencies to use their authorities to conserve listed species, and section 7(a)(4), which requires Federal agencies to informally confer with the Service on actions that are likely to jeopardize the continued existence of a proposed species. Section 7(a)(2) of the Act, which requires Federal agencies to ensure that their activities are not likely to jeopardize the continued existence of

a listed species, would not apply except on NWR and NPS lands. Experimental populations determined to be ''essential'' to the survival of the species would remain subject to the consultation provisions of section 7 of the Act. Activities undertaken on private lands are not affected by section 7 of the Act unless the activities are authorized, funded or carried out by a Federal agency.

Individual animals that comprise a designated experimental population may be removed from an existing source or donor population only after it has been determined that such a removal is not likely to jeopardize the continued existence of the species; the removal must be conducted under a permit issued in accordance with the requirements of 50 CFR 17.22.

2. *Biological.* The California Condor (*Gymnogyps californianus*) was listed as endangered on March 11, 1967, (32 FR 4001) in a final rule published by the Service. The Service designated critical habitat for the California condor on September 24, 1976, (41 FR 41914). Long recognized as a vanishing species (Cooper 1890, Koford 1953, Wilbur 1978), the California condor remains one of the world's rarest and most imperiled vertebrate species.

California condors are among the largest flying birds in the world (U. S. Fish and Wildlife Service 1995a). Adults weigh approximately 10 kilograms (kg) (22 pounds (lbs)) and have a wing span up to 2.9 meters (m) (9 1/2 feet (ft)). Adults are black except for prominent white underwing linings and edges of the upper secondary coverts. The head and neck are mostly naked, and the bare skin is gray, grading into various shades of yellow, red, and orange. Males and females cannot be distinguished by size or plumage characteristics. The heads of juveniles up to 3 years old are grayish-black, and their wing linings are variously mottled or completely dark. During the third year the head develops yellow coloration, and the wing linings become gradually whiter (N.J. Schmitt *in litt.* 1995). By the time individuals are 5 or 6 years of age, they are essentially indistinguishable from adults (Koford 1953, Wilbur 1975, Snyder et al. 1987), but full development of the adult wing patterns may not be completed until 7 or 8 years of age (N.J. Schmitt *in litt.* 1995).

The California condor is a member of the family Cathartidae or New World vultures, a family of seven species, including the closely related Andean condor (*Vultur gryphus*) and the sympatric turkey vulture (*Cathartes aura*). Although the family has traditionally been placed in the Order Falconiformes, some contemporary taxonomists believe that New World vultures are more closely related to storks (Ligon 1967, Rea 1983, Sibley and Ahlquist 1990).

The fossil record of the genus *Gymnogyps* dates back about 100,000 years to the Middle Pleistocene Epoch (Brodkorb 1964). Fossil records also reveal that the species once ranged over much of the southern United States, south to Nuevo Leon, Mexico and east to Florida (Brodkorb 1964), and two well preserved fossil bones were reported from a site in upstate New York (Steadman and Miller 1987). There is evidence indicating that California condors nested in west Texas, Arizona, and New Mexico during the late Pleistocene. The disappearance of the California condor from much of this range occurred about 10,000–11,000 years ago, coinciding with the late Pleistocene extinction of the North American megafauna (Emslie 1987).

By the time European man arrived in western North America, California condors occurred only in a narrow Pacific coastal strip from British Columbia, Canada, to Baja California Norte, Mexico (Koford 1953, Wilbur 1978). California condors were observed until the mid-1800s in the northern portion of the Pacific Coast region (Columbia River Gorge) and until the early 1930s in the southern extreme, northern Baja California (Koford 1953, Wilbur 1973, Wilbur and Kiff 1980). Prior to 1987, California condors used a wishbone-shaped area encompassing six counties—Los Angeles, Ventura, Santa Barbara, San Luis Obispo, Monterey, and Kern, just north of Los Angeles, California (U.S. Fish and Wildlife Service 1995a).

Courtship and nest site selection occurs from December through the spring. Breeding California condors normally lay a single egg between late January and early April. The egg is incubated by both parents and hatches after approximately 56 days. Both parents share responsibilities for feeding the nestling. Feeding usually occurs daily for the first two months, then gradually diminishes in frequency. At two to three months of age, condor chicks leave the nest cavity but remain in the vicinity of the nest where they are fed by their parents. The chick takes its first flight at about six to seven months of age, but may not become fully independent of its parents until the following year. Parent birds occasionally continue to feed a fledgling even after it has begun to make longer flights to foraging grounds (U.S. Fish and Wildlife Service 1995a).

Because of the long period of parental care, it was formerly assumed that successful California condor pairs normally nested successfully every other year (Koford 1953). However, this pattern seems to vary, possibly depending mostly on the time of year that the nestling fledges. If a nestling fledges relatively early (in late summer or early fall), its parents may nest again in the following year, but late fledging probably inhibits nesting in the following year (Snyder and Snyder 1989).

The only wild California condor (a male) of known age bred successfully in the wild in 1986 at the age of six years. Recent data collected from captive birds, however, demonstrates that reproduction may occur, or at least be attempted, at earlier ages. A four-year old male was the youngest condor observed in courtship display, and the same bird subsequently bred successfully at the age of five years (M. Wallace, Los Angeles Zoo, *in litt.* 1993).

California condors nest in various types of rock formations including crevices, overhung ledges, potholes, and more rarely, in cavities of giant sequoia trees (*Sequoia giganteus*) (Snyder et al. 1986).

California condors are opportunistic scavengers, feeding only on carcasses. Typical foraging behavior includes long-distance reconnaissance flights, lengthy circling flights over a carcass, and hours of waiting at a roost or on the ground near a carcass (U.S. Fish and Wildlife Service 1995a). Condors may feed immediately, or wait passively as other California condors or golden eagles (*Aquila chrysaetos*) feed on the carcass (Wilbur 1978). Most California condor foraging occurs in open terrain. This ensures easy take-off and approach and makes food finding easier. Carcasses under brush are hard to see, and California condors apparently do not locate food by olfactory cues (Stager 1964). Condors maintain wide-ranging foraging patterns throughout the year, an important adaptation for a species that may be subjected to unpredictable food supplies (Meretsky and Snyder 1992).

Prior to the arrival of European man, California condor food items within interior California probably included mule deer (*Odocoileus hemionus*), tule elk (*Cervus nannodes*), pronghorn (*Antilocapra americana*), and smaller mammals. Along the Pacific shore the diet may have included whales, sea lions, and other marine species (Emslie 1987, U.S. Fish and Wildlife Service 1984). Koford (1953) listed observations of California condors feeding on 24 different mammalian species within the

last two centuries. He estimated that 95 percent of the diet consisted of the carcasses of cattle, domestic sheep, ground squirrels (*Spermophilus beechyi*), mule deer, and horses. Although cattle may be the most available food within the range of the condor, deer appear to be preferred (Koford 1953, Wilbur 1972, Meretsky and Snyder 1992). California condors appear to feed only one to three days per week, but the frequency of adult feeding is variable and may show seasonal differences (U.S. Fish and Wildlife Service 1995a).

Depending upon weather conditions and the hunger of the bird, a California condor may spend most of its time perched at a roost. California condors often use traditional roosting sites near important foraging grounds (U.S. Fish and Wildlife Service 1984). Although California condors usually remain at roosts until mid-morning, and generally return in mid- to late afternoon, it is not unusual for a bird to stay perched throughout the day. While at a roost, condors devote considerable time to preening and other maintenance activities. Roosts may also serve some social function, as it is common for two or more condors to roost together and to leave a roost together (U.S. Fish and Wildlife Service 1984). Cliffs and tall conifers, including dead snags, are generally used as roost sites in nesting areas. Although most roost sites are near nesting or foraging areas, scattered roost sites are located throughout the range. There may be adaptive as well as traditional reasons for California condors to continue to occupy a number of widely separated roosts, such as reducing food competition between breeding and non-breeding birds (U.S. Fish and Wildlife Service 1984).

Condor censusing efforts through the years have varied in intensity and accuracy. This has led to conflicting estimates of historical abundance, but all have indicated an ever-declining California condor population. Koford (1953) estimated a population of about 60 individuals in the late 1930s through the mid-1940s, apparently based on flock size. A field study by Eben and Ian McMillan in the early 1960s suggested a population of about 40 individuals, again based in part on the validity of Koford's estimates of flock size (Miller et al. 1965). An annual October California condor survey was begun in 1965 (Mallette and Borneman 1966) and continued for 16 years. Its results supported an estimate of 50 to 60 California condors in the late 1960s (Sibley 1969, Mallette 1970). Wilbur (1980) continued the survey efforts into the 1970s and concurred with the interpretations of the earlier October surveys. He further estimated that by 1978 the population had dropped to 25 to 30 individuals.

In 1981, the Service, in cooperation with California Polytechnic State University at San Luis Obispo, began census efforts based on individual identifications of birds through flight photography (Snyder and Johnson 1985). Minimum summer counts from these photo-censusing efforts showed a steady decline from an estimated minimum of 21 wild condors in 1982, 19 individuals in 1983, 15 individuals in 1984, and 9 individuals in 1985. Although the overall condor population increased slightly after 1982 as a result of double clutching, the wild population continued to decline. By the end of 1986, all but two California condors were captured for safe keeping and genetic security (U.S. Fish and Wildlife Service 1995a).

On April 19, 1987, the last wild condor was captured and taken to the San Diego Wild Animal Park (SDWAP). Beginning with the first successful captive breeding of California condors in 1988, the total population has increased annually and now stands at 103 individuals, including 90 in the captive flock and 13 in the wild (U.S. Fish and Wildlife Service 1995a).

Causes of the California condor population decline have probably been numerous and variable through time (U.S. Fish and Wildlife Service 1984). However, despite decades of research, it is not known with certainty which mortality factors have been dominant in the overall decline of the species. Relatively few dead condors have been found, and definitive conclusions on the causes of death were made in only a small portion of these cases (Miller et al. 1965, Wilbur 1978, Snyder and Snyder 1989). Poisoning, shooting, egg and specimen collecting, collisions with man-made structures, and loss of habitat have contributed to the decline of the species (U.S. Fish and Wildlife Service 1984).

*3. Recovery Efforts.* The primary recovery objective as stated in the California Condor Recovery Plan (Plan) (U.S. Fish and Wildlife Service 1995a), is to reclassify the condor to threatened status. The minimum criterion for reclassification to threatened is the maintenance of at least two non-captive populations and one captive population. These populations must (1) each number at least 150 individuals, (2) each contain at least 15 breeding pairs and (3) be reproductively self-sustaining and have a positive rate of population growth. The non-captive populations also must (4) be spatially disjunct and non-interacting, and (5) contain individuals descended from each of the 14 founders. When these five conditions are met, the species should be reclassified to threatened status.

The recovery strategy to meet this goal is focused on increasing reproduction in captivity to provide condors for release, and the release of condors to the wild. (U.S. Fish and Wildlife Service 1995a).

a. Captive Breeding. The years 1983 and 1984 were critical in formation of the captive California condor flock at the SDWAP and Los Angeles Zoo (LAZ). In 1983, two chicks and four eggs were brought in from the wild. The chicks went to the LAZ, and the eggs were hatched successfully at the San Diego Zoo (SDZ). Three of the chicks were taken to the SDWAP and one to the LAZ to be reared. In 1984, one chick and eight eggs were taken from the wild. The chick went to the LAZ and six of the eight eggs were successfully hatched at SDZ. Five of the chicks went to the LAZ and one went to the SDWAP to be reared. In 1985, two eggs were taken from the wild and hatched successfully, one at the SDZ and the other at the SDWAP. Both of these chicks were taken to the LAZ to be reared. In 1986, the last egg was brought in from the wild and hatched at the SDWAP, where it was kept for rearing. By 1986, only one pair of condors existed in the wild and the last free-flying condor was captured on April 19, 1987, bringing the captive population to 27. The first successful breeding in captivity occurred in 1988, when a chick was produced at the SDWAP by a pair of wild-caught condors. Four more chicks were produced in 1989. The number of chicks produced by captive condors continues to increase annually and the captive population has grown from the original 27 in 1987 to 90 in 1995, with 13 additional captive-reared condors that are now in the wild. In 1993, the captive breeding program was expanded to include a facility at The Peregrine Fund—s World Center for Birds of Prey (WCBP) in Boise, Idaho (U.S. Fish and Wildlife Service 1995a).

b. Releases. In October 1986, the California Condor Recovery Team (Team) recommended that criteria be satisfied before a release of captive-bred California condors could take place. These included having three actively breeding pairs of condors, three chicks behaviorally suitable for release, and retaining at least five offspring from each breeding pair contributing to the release. The Team added a provision to the third criterion to retain a minimum of seven progeny in captivity for founders that were not reproductively

active (U.S. Fish and Wildlife Service 1995a).

The 1991 breeding season produced two condor chicks that met the Team's criteria for release, a male from the SDWAP and a female from the LAZ. However, attempting to apply the Team's third criterion to the 1991 chicks also revealed that it would not be practical in the future, because several founders had died without producing five progeny. The Team, therefore, recommended choosing genetically appropriate chicks for future releases based on pedigree analyses developed for genetic management of captive populations (U.S. Fish and Wildlife Service 1995a).

Prior to capture of the last wild California condor in 1987, the Team recognized that anticipated future releases of captive-reared condors would pose the problem of reintroducing individuals of an altricial bird into habitat devoid of their parents and other members of their own species. Thus, the Team recommended initiation of an experimental release of Andean condors. Research objectives for the experimental release were to refine condor release and recapture techniques; test the criteria being used to select condor release sites; develop written protocols for releases, monitoring, and recapture of condors; field test rearing protocols being used, or proposed for use to produce condors suitable for release; evaluate radiotelemetry packages; supplemental feeding strategies; train a team of biologists for releasing condors; and identify potential problems peculiar to the California environment. The Andean condor experiment began in August 1988 and concluded in December 1991. During that period three release sites where tested and a total of 13 female Andean condors were released. Only one mortality occurred in the field when an Andean condor collided with a power line (U.S. Fish and Wildlife Service 1995a).

In 1991, two California condor chicks were released into Sespe Condor Sanctuary, Los Padres National Forest, Ventura County on January 14, 1992. The male died from ingesting ethylene glycol in October of the same year. The next release of California condors occurred on December 1, 1992, when six more captive-produced California condors chicks were released at the same Sespe Condor Sanctuary site. Socialization with the remaining female from the first release proceeded well, and the ''flock'' appeared to adjust well to the wild conditions. However, there was continuing concern over the tendency of the birds to frequent zones of heavy human activity. Indeed, three of these birds eventually died from collisions with power lines between late May and October 1993 (U.S. Fish and Wildlife Service 1995a).

Because of the tendency for the remaining condors to be attracted to the vicinity of human activity and man-made obstacles, especially power lines, another California condor release site was constructed in a more remote area, Lion Canyon, in the Los Padres National Forest near the boundary of the San Rafael Wilderness Area in Santa Barbara County. Five hatch year condors were released at the new site on December 8, 1993. In addition, the four condors that had been residing in the Sespe area were moved to the new site. They were re-released over a period of several weeks in hopes that this approach would reduce the probability that they would return to the Sespe area. Nevertheless, three of these condors eventually moved back to the Sespe area in March 1994, where they resumed the high risk practice of perching on power poles. Because of general concern about the tameness of these birds and the possibility that their undesirable behavior would be mimicked by younger California condors, these condors were retrapped on March 29, 1994 and added to the captive breeding population. On June 24, one of the 1993 California condors died when it collided with a power line. A second condor that was in the company of this condor at the time of its death, was trapped and returned to the LAZ. The three remaining wild condors continued to frequent areas of human activity and were trapped and returned to the zoo the same week the first 1995 release took place (U.S. Fish and Wildlife Service 1995a).

As a result of the deaths due to collisions with power lines and the attraction of newly released young condors to humans and their activities, the 14 young California condors scheduled for release in 1995 were subjected to aversion training in the zoo environment. An electrified mock power pole and natural snag perches were constructed in a large flight pen holding the release candidates. When the young condors landed on the electrified pole they were given a negative experience in the form of a mild shock. When they landed on the natural snag perches they received no shock. After only a few attempts at landing on the electrified power pole and receiving a mild shock, they all avoided the power pole and used the natural perches exclusively (M. Wallace, The Los Angeles Zoo, *in litt.* 1995).

This group of California condors was also subjected to a series of human aversion exercises. Aversion maneuvers were staged in which a person would appear in view of a group of condors at a distance of approximately 100 meters (300 yds). Once it was determined that the condors spotted the person, they would be ambushed and captured by a hidden group of biologists. These condors were then placed in sky kennels, and later released after nightfall (M. Wallace, The Los Angeles Zoo, *in litt.* 1995). The goals of this exercise were to condition the condors to associate this negative experience with humans and increase the distance in which they would flush in future encounters with humans. Six of these young condors were released to the wild on February 8, 1995, at the Lion Canyon release site. To date none of these condors have attempted to land on a power pole and, although they have roosted near campgrounds, they have not approached humans. The one exception was a young condor of this group that was lured into a campground by campers that placed food and water out for it. This condor was subsequently trapped and brought into the zoo. The remaining five continue to avoid both power poles and human activities. On August 29 the remaining eight California condors of this group were released at the Lion Canyon Site. There are now 13 condors flying free in southern California.

*4. Proposed Reintroduction Sites.* To satisfy the objectives of the Plan, at least one subpopulation of non-captive California condors must be established in an area disjunct from the subpopulation already being reestablished in the recent historical range in California. Following a widely publicized solicitation for suggestions for suitable condor release sites outside of California, the Team recommended in December 1991 that California condor releases be conducted in northern Arizona. Because this area once supported California condors, still provides a high level of remoteness, ridges and cliffs for soaring, and caves for nesting, the probability of a successful reintroduction is very good. The Service endorsed this recommendation on April 2, 1992. In collaboration with the Federal initiative to designate a release site in Arizona, the Arizona Game and Fish Department began evaluating a possible California condor reintroduction in 1989. The Arizona Game and Fish Department determined the reestablishment as appropriate and feasible in steps 1 and 2 of the Department's ''Procedures for

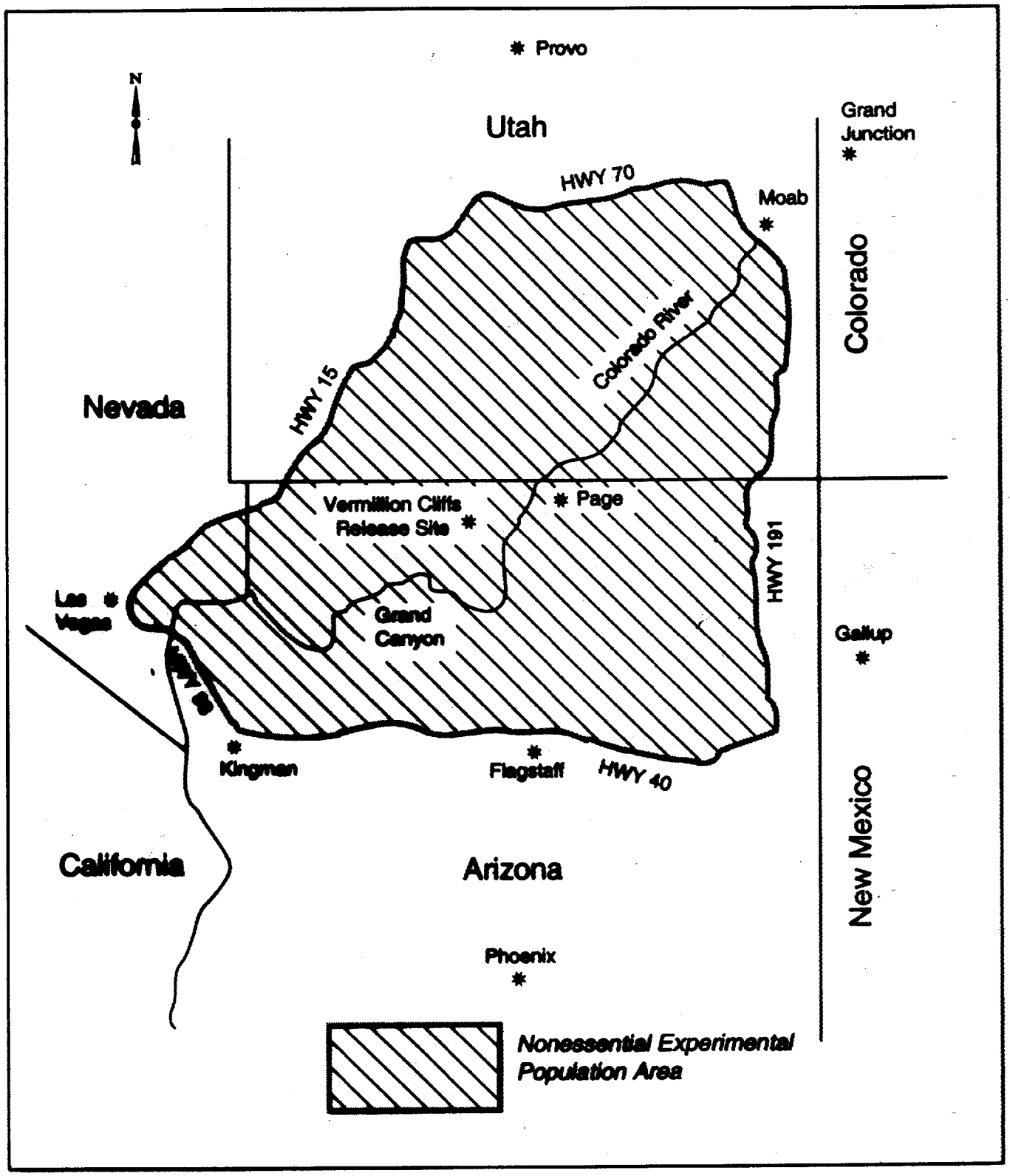
Nongame Wildlife and Endangered Species Re-establishment Projects,'' a 12-step process specifying the protocol for a nongame reintroduction to take place (U.S. Fish and Wildlife Service 1995b).

a. Site Selection Process. Potential release sites in northern Arizona were evaluated through aerial reconnaissance, site visits, and discussions with agency personnel familiar with the sites being evaluated. This evaluation process resulted in selection of four potential release sites. As required by the National Environmental Policy Act of 1969 (NEPA), the Service, in cooperation with the Arizona Game and Fish Department and the Bureau of Land Management (BLM), produced an Environmental Assessment titled—''Release of California Condors at the Vermilion Cliffs, 1995,'' in which the potential release sites were thoroughly examined and objectively evaluated. The NEPA process resulted in selection of a preferred release site at the Vermilion Cliffs located on BLM lands (U.S. Fish and Wildlife Service 1995b).

The suitability of the Vermilion Cliffs as a California condor release site was further evaluated using the Service's ''The Condor Release Site Evaluation System''. This system uses 25 working criteria divided into three priority classes—priority 1 includes features critical to releasing and establishing condors in the wild, priority 2 includes features that are necessary but not critical, and priority 3 includes features that would add or detract from suitability but are not critical. The working criteria are grouped into working factors that include: site suitability, logistics, man-made threats/hazards, and suitability of adjacent lands (for population expansion). Each working criterion is assigned a quantitative value and weighted according to assigned priority criteria. The sum from the three priority classes gives the total value for a site. This rating system verified the Vermilion Cliffs (the preferred alternative) as a suitable release site (U.S. Fish and Wildlife Service 1995b).

b. Vermilion Cliffs Release Site. The Vermilion Cliffs reintroduction site is on the southwestern corner of the Paria Plateau approximately 100 meters from the edge of the Vermilion Cliffs, Coconino County, Arizona, as shown on the following map:

BILLING CODE 4310–55–P




BILLING CODE 4310–55–C

The Paria Plateau is characterized by relatively flat, undulating topography dominated by pinyon-juniper/blue grama (*Pinus edulis-Juniperus osteosperma/Bouteloua gracilis*) communities and mixed shrub communities dominated by sagebrush (*Artemesia* spp.) on sandy upland soils. To the south and east of the Plateau lies the steep precipice of the Vermilion Cliffs, rising over 1,000 feet from the floor of House Rock Valley. Uplifting and differential erosion has created complex geologic structures and a diverse variety of habitats in a small geographic area. The cliffs are sharply dissected by canyons and arroyos and the lower slopes are littered with enormous boulders. Numerous springs emerge from the sides of the cliffs (U.S. Bureau of Land Management and Arizona Game and Fish Department 1983).

5. *Reintroduction Protocol.* In general, the reintroduction protocol will involve an annual release of captive-reared California condors until recovery goals, as outlined in the Plan, are achieved (U.S. Fish and Wildlife Service 1995b). These reintroduction protocols were developed and tested in the current southern California condor release project.

a. Condor Release. The reintroduction is designed to release a cohort of captive-reared California condors once each year, beginning in early 1996 (target date). Three captive breeding facilities (LAZ, SDWAP, and WCBP), are producing condors for release to the wild. The size of each release cohort will depend on the number of hatch-year condors produced during the late winter to early spring of that year, but releases will likely involve up to 10 hatch-year condors. These condors will be hatched in captivity and raised by a condor look-alike hand puppet, or by their parents, until they are approximately four months of age. They will then be placed together in a single large pen so they will form social bonds. At approximately 6 months of age they will be moved to a large flight pen and undergo aversion training to humans and power poles for one to two months. After the training has been completed the young condors will be transported by helicopter to the release site at Vermilion Cliffs (U.S. Fish and Wildlife Service 1995b).

At the release site they will be placed in a temporary release pen and will remain there for an acclimation period, of approximately one to two weeks. This structure will be approximately 16 ft by 8 ft and 6 ft high. Netting will cover the front of the pen, allowing the young condors to view and become accustomed to the surrounding area. The release pen will be pre-fabricated, delivered to the release site by helicopter, and removed from the site after the young condors have fledged (U.S. Fish and Wildlife Service 1995b).

Meanwhile, biologists will remain near the release pen 24 hours a day observing the young condor's behavior and guarding against predators or other disturbance. After the initial adjustment period and when all the young condors can fly, the release will take place. Any release candidate showing signs of physical or behavioral problems will not be released. Release is accomplished by removing the net at the front of the pen allowing the birds to exit. The young condors will likely remain in the immediate area of the pen for some time before beginning exploratory forays along the cliffs. A small area of approximately 10 acres will be temporarily closed to recreational activity to protect the newly released condors and will remain closed until they have dispersed from the release area (U.S. Fish and Wildlife Service 1995b).

b. *Supplemental Feeding.* Condors are dependent on carrion and must be fed until they learn to locate carcasses independently. Newly released young condors will be dependent on carrion provided by biologists, making it necessary to maintain a supplemental feeding program. However, older condors (sub-adults and adults), should be locating carcasses on their own and hopefully would not be dependent on the supplemental feeding program for their survival. Supplemental feeding should reduce the likelihood of deaths of young condors from accidental poisoning insofar as it will help prevent them from feeding on contaminated carcasses. The diet provided to the condors will consist primarily of livestock carcasses and road killed animals. Field biologists will deliver carcasses to the condors every four to five days by carrying carcasses to the edge of the cliffs at night, to avoid detection by the condors. A network of feeding stations on prominent points with high visibility will be identified in the general area of the release. Carcasses will be placed on the ground or, if predators become a problem, elevated off the ground by placing them atop natural rock outcrops less accessible to ground predators (U.S. Fish and Wildlife Service 1995b).

c. *Monitoring.* All California condors released to the wild will be equipped with two radio transmitters, one on each patagium, or one patagial placement and one mounted on the tail. In addition, they will wear bold colored patagial markers on each wing with code numbers to facilitate visual identification. The movements and behavior of each condor will be monitored for at least the first two to three years of its life. Ground triangulation will be the primary means of radio tracking. Aerial tracking will be used to find lost birds or when more accurate locations are desired. Telemetry flights will be coordinated with the appropriate land management agencies (U.S. Fish and Wildlife Service 1995b).

Status of Reintroduced Population

In accordance with section 10(j) of the Act, California condors reintroduced into northern Arizona are proposed to be designated as a nonessential experimental population. The experimental designation means the reintroduced California condors will be treated as a threatened population instead of an endangered population. Under section 4(d) of the Act, this designation enables the Service to develop special regulations for management of the population that are less restrictive than the mandatory prohibitions covering endangered species. Therefore, the experimental designation allows the management flexibility needed to ensure that this reintroduction is compatible with current or planned human activities in the reintroduction area and to permit management of the population for recovery purposes.

Experimental populations can be classified as either ''essential'' or ''nonessential''. An essential experimental population is a population whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild [50 CFR 17.80 (Subpart H-Experimental Populations)]. All other experimental populations are treated as nonessential, if they are not considered essential to the continued existence of the species. ''Nonessential'' experimental populations are treated for purposes of section 7 of the Act as though they were only proposed for listing (except on National Wildlife Refuge and National Park System lands where they will be treated as a species listed as ''threatened'' under the authority of the Act). The proposed California condor experimental population merits classification as nonessential because the population will not be essential to the continued existence of the species.

Currently, the principal California condor population (90 individuals) exists in the safe environment of three captive breeding facilities located at the SDWAP, LAZ, and WCBP. The captive

breeding facilities are not included in exhibits and are under 24 hour surveillance by condor keepers or video cameras. Only essential program personnel are granted access to the captive population. The captive population is given excellent care and to date there have been no deaths of adults or sub-adults. In addition, the geographic separation of the three breeding facilities protects the captive population from the threat of extinction due to a single catastrophic event.

The reproductive rate of the captive population dramatically exceeds the mortality rate of the wild population. All condors lost in the reintroduction efforts can be replaced by current chick production, while the captive population continues to increase. The extant population will not be adversely effected by the proposed reintroduction since it is hundreds of miles away (see below).

By mid-1987, every surviving individual of the species was held in captivity following agreement that the decline of the wild population to eight surviving adults had demonstrated that the wild population was destined for extinction (Geyer et al. 1993). Genetic management, which includes control of all matings, has preserved the genetic viability of the extant captive population. No California condor hatched in captivity is considered for release to the wild unless its founder line is well-represented in the captive population. All release candidates are genetically redundant and their loss will not jeopardize the diversity of the existing condor gene pool.

The proposed reintroduction project will further the recovery of the species by—establishing a second wild population, ensuring the existence of a wild population if a catastrophic event eliminates the southern California population, enhancing the opportunity to manage the genetic diversity of the wild population, and avoiding the potential risks inherent in overcrowding the captive population.

Location of Reintroduced Population

Under section 10(j)(1) of the Act, an experimental population must be separate geographically from nonexperimental populations of the same species. The last recorded sighting of a California condor in the area of the proposed experimental release occurred in 1924, when Edouard Jacot observed a condor feeding on a carcass with golden eagles near the town of Williams, Arizona (Rea 1983). The last known free-flying California condor was captured April 19, 1987, in southern California and placed in the captive breeding program. To date there have been no verified sightings of California condors in the wild and condor researchers are confident that there are no undocumented wild condors in the proposed release area or anywhere else in their historic range. Since January 1992, five releases of young California condors have taken place in Ventura and Santa Barbara counties, California. Currently, 13 endangered California condors are located in the wild back country of Santa Barbara County. This non-captive population is located approximately 720 kilometers (km) (450 miles (mi)) west of the proposed release site. The longest flight by these recently reintroduced condors has been approximately 40 km (25 mi), with typical daily flights from 8 km (5 mi) to 16 km (10 mi). According to Meretsky and Snyder (1992) the foraging flights by breeding California condors in the 1980's were from 70 km (44 mi) to 180 km (112 mi). Based on this information, the Service does not believe there will be any immigration/emigration between the existing non-captive and the proposed nonessential experimental populations.

The release site for reintroducing California condors into northern Arizona will be on the Vermilion Cliffs, in the southwestern corner of the Paria Plateau. However, the designated nonessential experimental population area will be significantly larger and include portions of three states—Arizona, Nevada, and Utah. The southern boundary is Interstate Highway 40 in Arizona from its junction with Highway 191 west across Arizona to Kingman; the western boundary starts at Kingman, goes northwest on Highway 93 to Interstate Highway 15, continues northeasterly on Interstate Highway 15 in Nevada, to Interstate Highway 70 in Utah; where the northern boundary starts and goes across Utah to Highway 191; where the eastern boundary starts and goes south through Utah until Highway 191 meets Interstate Highway 40 in Arizona (Fig. 1).

Management

The Vermilion Cliffs reintroduction project will be undertaken by the Service and its primary cooperators the Arizona Game and Fish Department and the BLM. Other cooperators that will provide support on an as-needed basis include—Grand Canyon National Park, Glen Canyon National Recreation Area, Kaibab National Forest, the Hualapai Tribe, the Navajo Nation, LAZ, Zoological Society of San Diego (the Zoological Society includes the SDWAP and SDZ), The Phoenix Zoo and The Peregrine Fund. All cooperators will participate in this recovery project under the general guidance of a Memorandum of Understanding written to promote recovery of the California condor. Reintroduction procedures were explained above under ''Background, 5. Reintroduction Protocols.''

The reintroduction site is surrounded by remote Federal or Indian Reservation lands with only a few small private inholdings. The current general management scheme for these lands will not affect the establishment of a nonessential experimental population in this area. Furthermore, the designation of nonessential experimental will encourage local cooperation as a result of the management flexibility allowed under this designation. The Service considers the nonessential experimental population designation and associated reintroduction plan necessary to receive cooperation of the affected landowners, agencies, and recreational interests in the area.

A designation of nonessential experimental prohibits the application of section 7(a)(2) of the Act except on NWR and NPS lands. This will ensure that current land uses and activities (such as, but not limited to, forest management, agriculture, mining, livestock grazing, sport hunting and fishing, and non-consumptive outdoor recreational activities) will not be restricted.

The progress of the reintroduction project will receive an informal review on an annual basis by the primary cooperators and a formal evaluation by all cooperators within the first five years after the first release to evaluate the reintroduction project and determine future management needs. Once recovery goals are met for downlisting the species, a rule will be proposed to address the downlisting. The 5-year evaluation will not include a reevaluation of the ''nonessential experimental'' designation for this population. The Service does not foresee any likely situation which would call for altering the nonessential experimental status of this population.

Public Comments Solicited

The Service intends that any action resulting from this proposed rulemaking to determine the northern Arizona California condor population as a nonessential experimental population be as effective as possible. The Service therefore solicits comments or recommendations concerning any aspect of this proposed rule (see **ADDRESSES** section) from Federal, State, public, and local government agencies, the scientific community, industry, or any other interested party. Comments

should be as specific as possible. Final promulgation of a rule to implement this proposed action will take into consideration the comments and any additional information received by the Service. Such communications may lead to a final rule that differs from this proposal.

Section 4(b)(5)(e) of the Act requires that a public hearing be held, if requested, within 45 days of a proposed rule. The Service has scheduled two public hearings on this proposal due to the anticipated number of requests for such hearings. The first public hearing will be held at the Main Auditorium, Flagstaff High School, 400 West Elm Street, Flagstaff, Arizona, on Tuesday, January 23, 1996, from 6:00 to 8:00 pm and the second at the Kanab High School Auditorium, 59 East Red Shadow Lane, Kanab, Utah, on Thursday, January 25, 1996, from 6:00 to 8:00 pm. Anyone expecting to make an oral presentation at these hearings is encouraged to provide a written copy of their statement to the hearing officer prior to the start of the hearing. In the event there is a large attendance, the time allotted for oral statements may have to be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at these hearings or mailed to the Service.

### National Environmental Policy Act

A final environmental assessment as defined under authority of the NEPA, has been prepared and is available to the public at the Service office identified in the **ADDRESSES** section. This assessment formed the basis for the decision that the proposed California condor reintroduction is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of NEPA.

### Migratory Bird Treaty Act

The proposed rule will not affect protection provided to the California condor by the Migratory Bird Treaty Act (MBTA). The take of all migratory birds, including the California condor, is governed by the MBTA. The MBTA regulates the taking of migratory birds for educational, scientific, and recreational purposes.

### Required Determinations

This proposed rule was subject to Office of Management and Budget review under Executive Order 12866. The rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Also, no direct costs, enforcement costs, information collection, or record-keeping requirements are imposed on small entities by this action and the rule contains no record-keeping requirements, as defined in the Paperwork Reduction Act of 1980 (44 U.S.C. 350 *et seq.*). This rule does not require a Federalism assessment under Executive Order 12612 because it would not have any significant federalism effects as described in the order.

### References Cited


Brodkorb, P. 1964. Catalogue of fossil birds. Part 2 (Anseriformes through Galliformes). Bulletin of the Florida State Museum. Biological Sciences 9:195–335.

Cooper, J.G. 1890. A doomed bird. Zoe 1:248–249.

Emslie, S.D. 1987. Age and diet of fossil California condors in Grand Canyon, Arizona, Science 237:768–770.

Geyer, C.J., O.A. Ryder, L.G. Chemnick, and E.A. Thompson. 1993. Analysis of relatedness in the California condors from DNA fingerprints. Molecular Biology and Evolution 10:571–589.

Koford, C.B. 1953. The California Condor. National Audubon Society Research Report No. 4:1–154.

Ligon, J.D. 1967. Relationships of the cathartid vultures. Occasional Paper of the Museum of Zoology, University of Michigan 651:1–26.

Mallette, R.D., and J.C. Borneman. 1966. First cooperative survey of the California condor. California Fish and Game. 52:185–203.

Mallette, R.D., F.C. Sibley, W.D. Carrier, and J.C. Borneman. 1970. California condor surveys. 1969. California Fish and Game. 56:199–202.

Meretsky, V.J., and N.F.R. Snyder. 1992. Range use and movements of California condors. Condor 94:313–335.

Miller, A.H., I. McMillan, and E. McMillan. 1965. The current status and welfare of the California condor. National Audubon Society Research Report. 6:1–61.

Rea, A.M. 1983. Cathartid affinities: a brief overview. *In* S.R. Wilbur and J.A. Jackson (eds.). Vulture biology and management. Pp. 26–54. University of California Press, Berkeley and Los Angeles.

Sibley, F. 1969. Effects of the Sespe Creek Project on the California condor. U.S. Fish and Wildlife Service, Laurel, Maryland.

Sibley, C.G., and J.E. Ahlquist. 1990. Phylogeny and classification of birds. A study in molecular evolution. Yale Univ. Press, New Haven, Connecticut.

Snyder, N.F.R., and E.V. Johnson. 1985. Photographic censusing of the 1982–1983 California condor population. Condor. 89:468–485.

Snyder, N.F.R., R.R. Ramey, and F.C. Sibley. 1986. Nest-site biology of the California condor. Condor. 88:228–241.

Synder, N.F.R., E.V. Johnson, and D.A. Clendenen. 1987. Primary molt of California condors. Condor 89:468–485.

Snyder, N.F.R., and H. Snyder. 1989. Biology and conservation of the California condor. *In* D.M. Powers (ed.). Current Ornithology, Vol. 6. Pp. 175–267. Santa Barbara Museum of Natural History. Santa Barbara. California.

Stager, K. 1964. The role of olfaction in food location by the turkey vulture (Catharses aura). Los Angeles County Museum Contributions to Science 81:1–63.

Steadman, D.W., and N.G. Miller. 1987. California condor associated with spruce-pine woodland in the late Pleistocene of New York. Quaternary Research 28:415–426.

U.S. Bureau of Land Management and Arizona Game and Fish Department, 1983. Paria-Kanab Creek habitat management plan. BLM Arizona Strip District, Vermilion Resource Area, St George Utah; Ariz. Game and Fish Department, Region 2, Flagstaff.

U.S Fish and Wildlife Service. 1984. California Condor Recovery Plan. Third Edition. Portland, Oregon. 110 pp.

U.S. Fish and Wildlife Service. 1995a. Draft California Condor Recovery Plan. Fourth Edition. Portland, Oregon. 63 pp.

U.S. Fish and Wildlife Service. 1995b. Draft Environmental Assessment: Release of California Condors at Vermilion Cliffs (Coconino County, Arizona). Ventura, California. 74 pp.

Wilbur, S.R. 1972. Food resources of the California condor. U.S. Fish and Wildlife Service, Patuxent Wildlife Research Center, Laurel, Maryland.

Wilbur, S.R. 1973. The California condor in the Pacific Northwest. Auk. 90:196–198.

Wilbur, S.R. 1975. California condor plumage and molt as field study aids. California Fish and Game. 61:144–148.

Wilbur, S.R. 1978. The California condor. 1966–76: a look at its past and future. U.S. Fish and Wildlife Service. North America Fauna. 72:1–136.

Wilbur, S.R. 1980. Estimating the size and trend of the California condor population. 1965–1978. California Fish and Game. 66:40–48.

Wilbur, S.R., and L.F. Kiff. 1980. The California condor in Baja California, Mexico. American Birds. 34:856–859.


### Author


The Primary author of this rule is Robert Mesta, U.S. Fish and Wildlife Service, Ecological Services, Ventura Field Office, 2493 Portola Road, Suite B, Ventura, California 93003.


### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

### Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of Chapter I, Title 50 of the Code of Federal Regulations as set forth below:

## PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In Section 17.11(h), the table entry ''Condor, California'' under BIRDS is revised to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| * | * | * | * | * | * | | * |
| **BIRDS** | | | | | | | |
| * | * | * | * | * | * | | * |
| Condor, California. | *Gymnogyps californianus.* | U.S.A. (AZ, CA, OR) Mexico (Baja California). | U.S.A. only, except where listed as an experimental population below. | E | 1,____ | 17.95(b) | NA |
| Do ..... | do ..... | do ..... | U.S.A. (specific portions of Utah, Nevada, and Arizona). | XN | ____ | NA | 17.84(j) |
| * | * | * | * | * | * | | * |

3. Section 17.84 is amended by adding paragraph (j) to read as follows:

**§ 17.84 Special rules—vertebrates.**

* * * * *

(j) California condor *(Gymnogyps californianus).*

(1) The California condor *(Gymnogyps californianus)* population identified in paragraph (j)(8) of this section is a nonessential experimental population.

(2) No person may take this species in the wild in the experimental population area except when such take is accidental, unavoidable, and not the purpose of the carrying out of an otherwise lawful activity, or as provided in paragraphs (j)(3), (4), and (9) of this section.

(3) Any person with a valid permit issued by the Service under § 17.32 may take California condors in the wild in the experimental population area.

(4) Any employee or agent of the Service, Bureau of Land Management or appropriate State wildlife agency, who is designated for such purposes, when acting in the course of official duties, may take a California condor from the wild in the experimental population area and vicinity if such action is necessary:

(i) For scientific purposes;

(ii) To relocate California condors within the experimental population area to improve condor survival and recovery prospects, or to address conflicts with ongoing activities or private landowners;

(iii) To relocate California condors that have moved outside the experimental population area, when removal is necessary to protect the condor, or is requested by an affected landowner or land manager;

(iv) To relocate California condors from the experimental population area into other condor reintroduction areas or captivity;

(v) To aid a sick, injured, or orphaned California condor;

(vi) To salvage a dead specimen that may be useful for scientific study; or

(vii) To dispose of a dead specimen.

(5) Any taking pursuant to paragraphs (j)(2), (j)(4)(v), (j)(4)(vi), and (j)(4)(vii), of this section must be reported immediately to the State Supervisor, U.S. Fish and Wildlife Service, Ecological Services, Arizona State Office, Phoenix, 2321 W. Royal Palm Road, Suite 103, Arizona (telephone 602/640–2720) who will determine the disposition of any live or dead specimens.

(6) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any California condor or part thereof from the experimental population taken in violation of this paragraph (j) or in violation of applicable State laws or regulations or the Endangered Species Act.

(7) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (j)(2) and (j)(6) of this section.

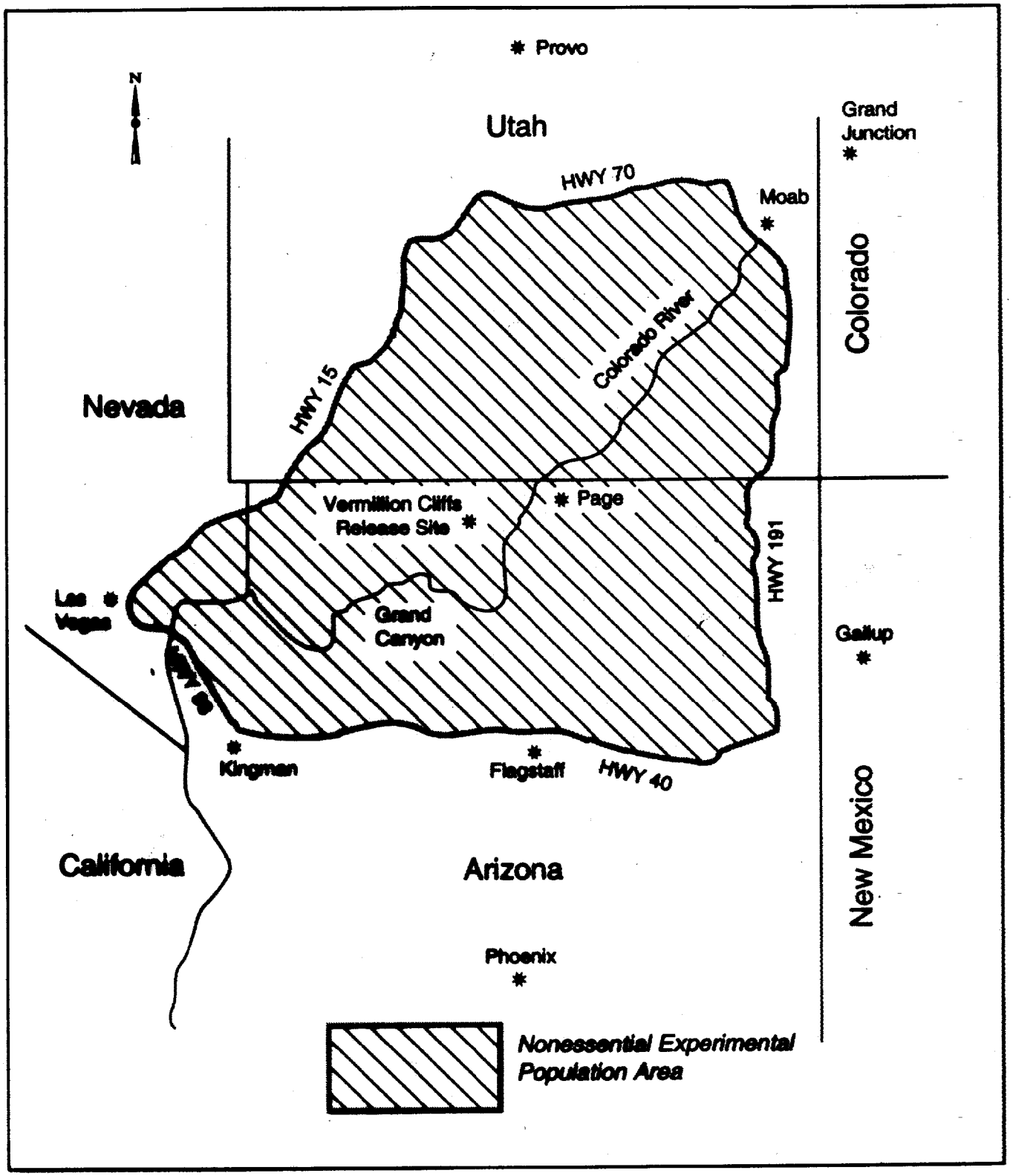
(8)(i) The designated experimental population area of the California condor includes portions of three states—Arizona, Nevada, and Utah. The southern boundary is Interstate Highway 40 in Arizona from its junction with Highway 191 west across Arizona to Kingman; the western boundary starts at Kingman, goes northwest on Highway 93 to Interstate Highway 15, continues northeasterly on Interstate Highway 15 in Nevada, to Interstate Highway 70 in Utah; where the northern boundary starts and goes across Utah to Highway 191; where the eastern boundary starts and goes south through Utah until Highway 191 meets Interstate Highway 40 in Arizona (See map at end of this paragraph (j).). All California condors found in the wild within these boundaries will comprise the experimental population.

(ii) All California condors released into the experimental population area will be marked and visually identifiable. All offspring will also be marked before fledging. Any condors found outside of the experimental population area will be identifiable by colored and coded patagial wing markers. In the event that a condor moves outside the experimental population area, three options will be considered—leave the condor undisturbed and monitor it closely, capture the condor and return it to the reintroduction area, or place it in a captive breeding facility. The fate of condors that move outside the experimental population area will be decided on a case by case basis.

(9) The experimental population will be monitored continually for the life of the reintroduction project. All California condors will be given physical examinations before being released. If there is any evidence that the condor is in poor health or diseased, it will not be released to the wild. Any condor that displays signs of illness, is injured, or otherwise needs special care may be captured by authorized personnel of the Service, Bureau of Land Management or appropriate State wildlife agency or their agents, and given the appropriate care. These condors will be re-released

into the reintroduction area as soon as possible, unless physical or behavioral problems make it necessary to keep them in captivity for an extended period of time, or permanently.

BILLING CODE 4310–55–P




BILLING CODE 4310–55–C

Dated: December 20, 1995.

George T. Frampton, Jr.,

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 95–31450 Filed 12–29–95; 8:45 am]

**BILLING CODE 4310–55–P**

# Notices

Federal Register
Vol. 61, No. 1
Tuesday, January 2, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Food and Consumer Service

### Collection Requirements Submitted for Public Comment and Recommendations: Information Clearinghouse Survey

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

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Consumer Service's (FCS) intention to request Office of Management and Budget (OMB) review of the Information Clearinghouse Survey.

**DATES:** Comments on this notice must be received by March 4, 1996.

**ADDRESSES/INFORMATION CONTACT:** Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Send comments to: Graydon J. Forrer, Acting Director, Office of Consumer Affairs, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 813–B, Alexandria, VA 22302.

For further information, contact Mr. Forrer at (703) 305–2281.

**SUPPLEMENTARY INFORMATION:**

*Title:* Information Clearinghouse Survey.

*OMB Number:* Not yet assigned.

*Expiration Date:* N/A.

*Type of Request:* New collection of information.

*Abstract:* The Healthy Meals for Healthy Americans Act of 1994 mandated that FCS enter into a contract with a nongovernmental organization to establish and maintain an information clearinghouse for groups that assist low-income individuals or communities regarding nutrition or other assistance. FCS awarded the 4-year contract to World Hunger Year (WHY) on September 29, 1995.

The clearinghouse will include a database of nongovernmental, grassroots programs that work in the areas of hunger and nutrition, as well as a mailing list of relevant local governmental agencies. Clearinghouse staff will begin to establish the database by reviewing relevant programs of organizations contained in several existing mailing lists. Updated program and mailing information about organizations culled from these lists will be collected and entered into the database through a series of electronically-processed survey questionnaires sent through the mail. Returned surveys will be scanned and data entered into the database. Clearinghouse staff will follow up by phone or fax to ensure the highest possible return rate on the questionnaires. Based on prior experience, clearinghouse staff anticipate that the return rate on questionnaires will be approximately 65 percent.

In order to effectively maintain the database, questionnaires will be sent to all organizations included in the database once each year (years 2 and 3 of the contract), in order to obtain updated information.

Each survey will be administered to each respondent only once each year.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 5 minutes for the survey (the survey includes one 2-page instrument).

*Respondents:* The respondents are nongovernmental organizations that have grassroots food and nutrition programs.

*Estimated Number of Respondents:* For the first year of the contract, 19,500 respondents are estimated; for the second year, 9,750 respondents; and for the third year, 6,500 respondents.

*Estimated Number of Responses per Respondent:* One response in each of the 3 years.

*Estimated Total Annual Burden on Respondents:* For the first year of the contract, 1,625 hours; for the second year, 813 hours; and for the third year, 542 hours.

Copies of this information collection can be obtained from Martha Newton, U.S. Department of Agriculture, Food and Consumer Service, 3101 Park Center Drive, Room 813–B, Alexandria, VA 22302.

Dated: December 19, 1995.

William E. Ludwig,

*Administrator, Food and Consumer Service.*

[FR Doc. 95–31538 Filed 12–29–95; 8:45 am]

BILLING CODE 3410–30–U

## ASSASSINATION RECORDS REVIEW BOARD

### Notice of Formal Determinations

**AGENCY:** Assassination Records Review Board.

**SUMMARY:** The Assassination Records Review Board (Review Board) met in a closed meeting on December 12 and 13, 1995, and made forma determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act) by issuing this notice, the Review Board complies with the section of the JFK Act that requires that Review Board to publish the results of its decisions on a document-by-document basis in the Federal Register within 14 days of the date of the decision.

**FOR FURTHER INFORMATION CONTACT:** T. Jeremy Gunn, General Counsel and Associate Director for Research and Analysis, Assassination Records Review Board, Second Floor, 600 E Street, NW., Washington, DC 20530 (202) 724–0088, fax (202) 724–0457.

**SUPPLEMENTARY INFORMATION:** This notice complies with the requirements of the *President John F. Kennedy Assassination Records Collection Act of 1992.* 44 U.S.C. § 2107.9(c)(4)(A) (1992). On December 12 and 13, 1995, the Review Board made formal

determinations on records it reviewed under the JFK Act. These determinations are listed below. The assassination records are identified by the record identification number assigned in the President John F. Kennedy Assassination Records Collection database maintained by the National Archives. For each document, the number of releases of previously redacted information is noted as well as the number of sustained postponements.

Two further points of explanation are in order:

(1) Three of the records listed below (124–10058–10009, 124–10239–10385, and 124–10275–10359) were the subjects of a prior notice of determinations (published at 60 FR 62066). Since that notice, the Review Board decided to reconsider its determinations on these records. Upon reconsideration, the Review Board decided at the December 12–13, 1995 meeting to sustain one additional redaction line ach record, but to postpone the opening of the records in full for five years, rather than until the year 2017, as originally determined.

(2) Copies of two of the assassination records listed below, 180–10097–10495 and 180–10087–10362, are already available to the public in unredacted form as part of the House Select Committee on Assassinations (HSCA) materials at the JFK Collection maintained by the National Archives at College Park, Maryland. The Review Board nevertheless took action with respect to these assassination records because the United State Secret Service wished to redact some of the information contained therein.

REVIEW BOARD DETERMINATIONS

| Record No. | ARRB releases | Sustained postpone-ments | Status of document | Action date |
|---|---|---|---|---|
| **FBI Documents** | | | | |
| 124–10001–10059 | 11 | 6 | Postponed in Part | 12/2005 |
| 124–10018–10363 | 3 | 0 | Open in Full | n/a |
| 124–10018–10373 | 1 | 0 | Open in Full | n/a |
| 124–10020–10093 | 0 | 12 | Postponed in Part | 10/2017 |
| 124–10027–10001 | 2 | 0 | Open in Full | n/a |
| 124–10027–10024 | 0 | 2 | Postponed in Part | 12/2005 |
| 124–10027–10030 | 11 | 0 | Open in Full | n/a |
| 124–10027–10065 | 1 | 2 | Postponed in Part | 12/2000 |
| 124–10027–10235 | 5 | 0 | Open in Full | n/a |
| 124–10035–10022 | 1 | 0 | Open in Full | n/a |
| 124–10035–10155 | 0 | 1 | Postponed in Part | 12/2005 |
| 124–10058–10009 | 0 | 3 | Postponed in Part | 12/2000 |
| 124–10058–10023 | 11 | 4 | Postponed in Part | 12/2005 |
| 124–10058–10024 | 7 | 0 | Open in Full | n/a |
| 124–10058–10042 | 7 | 0 | Open in Full | n/a |
| 124–10058–10043 | 4 | 0 | Open in Full | n/a |
| 124–10058–10044 | 5 | 0 | Open in Full | n/a |
| 124–10058–10056 | 0 | 1 | Postponed in Part | 12/2005 |
| 124–10062–10385 | 1 | 2 | Postponed in Part | 12/2005 |
| 124–10063–10432 | 2 | 0 | Open in Full | n/a |
| 124–10073–10337 | 0 | 1 | Postponed in Part | 12/2005 |
| 124–10079–10230 | 20 | 13 | Postponed in Part | 12/2005 |
| 124–10101–10017 | 6 | 0 | Open in Full | n/a |
| 124–10143–10359 | 1 | 0 | Open in Full | n/a |
| 124–10145–10105 | 3 | 0 | Open in Full | n/a |
| 124–10169–10080 | 1 | 0 | Open in Full | n/a |
| 124–10169–10165 | 0 | 1 | Postponed in Part | 12/2005 |
| 124–10175–10414 | 18 | 4 | Postponed in Part | 12/2005 |
| 124–10176–10376 | 1 | 0 | Open in Full | n/a |
| 124–10179–10180 | 11 | 0 | Open in Full | n/a |
| 124–10182–10051 | 5 | 0 | Open in Full | n/a |
| 124–10227–10320 | 0 | 1 | Postponed in Part | 12/2005 |
| 124–10229–10085 | 1 | 2 | Postponed in Part | 12/2005 |
| 124–10230–10093 | 5 | 0 | Open in Full | n/a |
| 124–10230–10098 | 4 | 0 | Open in Full | n/a |
| 124–10230–10117 | 5 | 0 | Open in Full | n/a |
| 124–10234–10000 | 1 | 2 | Postponed in Part | 12/2005 |
| 124–10239–10385 | 0 | 3 | Postponed in Part | 12/2000 |
| 124–10244–10426 | 5 | 0 | Open in Full | n/a |
| 124–10262–10087 | 0 | 1 | Postponed in Part | 12/2005 |
| 124–10263–10223 | 0 | 1 | Postponed in Part | 12/2005 |
| 124–10264–10324 | 18 | 4 | Postponed in Part | 12/2005 |
| 124–10264–10333 | 3 | 0 | Open in Full | n/a |
| 124–10265–10120 | 0 | 1 | Postponed in Part | 12/2005 |
| 124–10272–10262 | 3 | 0 | Open in Full | n/a |
| 124–10272–10288 | 1 | 0 | Open in Full | n/a |
| 124–10275–10359 | 0 | 3 | Postponed in Part | 122000 |

REVIEW BOARD DETERMINATIONS—Continued

| Record No. | ARRB releases | Sustained postponements | Status of document | Action date |
|---|---|---|---|---|
| **CIA Documents** | | | | |
| 104–1000–10257 | 1 | 2 | Postponed in Part | 10/2017 |
| 104–10015–10001 | 3 | 0 | Open in Full | n/a |
| 104–10015–10003 | 3 | 1 | Postponed in Part | 12/2005 |
| 104–10015–10036 | 6 | 0 | Open in Full | n/a |
| 104–10015–10043 | 9 | 0 | Open in Full | n/a |
| 104–10015–10090 | 16 | 7 | Postponed in Part | 12/2005 |
| 104–10015–10096 | 9 | 4 | Postponed in Part | 12/2005 |
| 104–10015–10097 | 6 | 1 | Postponed in Part | 12/2005 |
| 104–10015–10121 | 5 | 11 | Postponed in Part | 12/2005 |
| 104–10015–10138 | 7 | 0 | Open in Full | n/a |
| 104–10015–10143 | 2 | 0 | Open in Full | n/a |
| 104–10015–10149 | 18 | 6 | Postponed in Part | 12/2005 |
| 104–10015–10151 | 7 | 0 | Open in Full | n/a |
| 104–10015–10155 | 5 | 0 | Open in Full | n/a |
| 104–10015–10237 | 8 | 0 | Open in Full | n/a |
| 104–10015–10238 | 8 | 2 | Postponed in Part | 12/2005 |
| 104–10015–10365 | 12 | 5 | Postponed in Part | 12/2005 |
| 104–10015–10390 | 8 | 4 | Postponed in Part | 03/1996 |
| 104–10015–10401 | 4 | 2 | Postponed in Part | 12/2005 |
| 104–10015–10404 | 3 | 1 | Postponed in Part | 12/2005 |
| 104–10015–10414 | 14 | 6 | Postponed in Part | 12/2005 |
| 104–10015–10421 | 5 | 3 | Postponed in Part | 12/2005 |
| 104–10015–10422 | 5 | 3 | Postponed in Part | 03/1996 |
| 104–10015–10423 | 8 | 5 | Postponed in Part | 12/2005 |
| 104–10015–10424 | 4 | 2 | Postponed in Part | 12/2005 |
| 104–10016–10006 | 14 | 0 | Open in Full | n/a |
| 104–10016–10013 | 2 | 0 | Open in Full | n/a |
| 104–10016–10023 | 8 | 0 | Open in Full | n/a |
| 104–10016–10033 | 2 | 0 | Open in Full | n/a |
| 104–10017–10017 | 8 | 6 | Postponed in Part | 03/1996 |
| 104–10017–10034 | 6 | 1 | Postponed in Part | 12/2005 |
| 104–10017–10037 | 1 | 0 | Open in Full | n/a |
| 104–10017–10041 | 20 | 9 | Postponed in Part | 12/2005 |
| 104–10017–10042 | 13 | 6 | Postponed in Part | 01/1996 |
| 104–10017–10045 | 7 | 1 | Postponed in Part | 12/2005 |
| 104–10017–10051 | 4 | 1 | Postponed in Part | 12/2005 |
| 104–10017–10061 | 4 | 0 | Open in Full | n/a |
| 104–10017–10069 | 4 | 0 | Open in Full | n/a |
| 104–10017–10074 | 13 | 0 | Open in Full | n/a |
| 104–10018–10003 | 9 | 0 | Open in Full | n/a |
| 104–10018–10008 | 11 | 0 | Open in Full | n/a |
| 104–10018–10012 | 12 | 0 | Open in Full | n/a |
| 104–10018–10034 | 17 | 6 | Postponed in Part | 12/2005 |
| 104–10018–10035 | 9 | 3 | Postponed in Part | 12/2005 |
| 104–10018–10036 | 2 | 0 | Open in Full | n/a |
| 104–10018–10037 | 2 | 0 | Open in Full | n/a |
| 104–10018–10052 | 16 | 2 | Postponed in Part | 12/2005 |
| 104–10018–10059 | 7 | 2 | Postponed in Part | 03/1996 |
| 104–10018–10060 | 8 | 2 | Postponed in Part | 12/2005 |
| 104–10018–10063 | 31 | 0 | Open in Full | n/a |
| 104–10018–10071 | 13 | 3 | Postponed in Part | 12/2005 |
| 104–10018–10073 | 10 | 1 | Postponed in Part | 03/1996 |
| 104–10018–10087 | 3 | 4 | Postponed in Part | 12/2005 |
| 104–10018–10090 | 5 | 2 | Postponed in Part | 12/2005 |
| 104–10018–10093 | 4 | 4 | Postponed in Part | 03/1996 |
| 104–10018–10106 | 4 | 0 | Open in Full | n/a |
| 104–10018–10108 | 7 | 3 | Postponed in Part | 03/1996 |
| **HSCA Documents** | | | | |
| 180–10070–10282 | 1 | 0 | Open in Full | n/a |
| 180–10076–10061 | 5 | 0 | Open in Full | n/a |
| 180–10076–10062 | 1 | 0 | Open in Full | n/a |
| 180–10076–10102 | 10 | 0 | Open in Full | n/a |
| 180–10076–10123 | 1 | 0 | Open in Full | n/a |
| 180–10076–10124 | 9 | 0 | Open in Full | n/a |
| 180–10076–10155 | 1 | 0 | Open in Full | n/a |

REVIEW BOARD DETERMINATIONS—Continued

| Record No. | ARRB releases | Sustained postponements | Status of document | Action date |
|---|---|---|---|---|
| 180–10087–10362 | 3 | 0 | Open in Full | n/a |
| 180–10093–10496 | 1 | 0 | Open in Full | n/a |
| 180–10097–10328 | 1 | 0 | Open in Full | n/a |
| 180–10097–10495 | 1 | 0 | Open in Full | n/a |
| 180–10117–10086 | 1 | 0 | Open in Full | n/a |
| 180–10117–10173 | 1 | 0 | Open in Full | n/a |
| 180–10117–10174 | 1 | 0 | Open in Full | n/a |
| 180–10117–10175 | 3 | 0 | Open in Full | n/a |
| 180–10117–10176 | 1 | 0 | Open in Full | n/a |
| 180–10117–10179 | 1 | 0 | Open in Full | n/a |
| 180–10117–10181 | 4 | 0 | Open in Full | n/a |
| 180–10117–10184 | 4 | 0 | Open in Full | n/a |
| 180–10117–10185 | 4 | 0 | Open in Full | n/a |
| 180–10117–10186 | 3 | 0 | Open in Full | n/a |
| 180–10117–10189 | 4 | 0 | Open in Full | n/a |
| 180–10117–10190 | 4 | 0 | Open in Full | n/a |

Additional Releases

After consultations with appropriate Federal agencies, the Review Board determined that the following records from the House Select Committee on Assassinations may now be opened in full:

180–10131–10320: 07/27/78 deposition of James C. Michael, 21 pgs.;
180–10131–10323: 05/30/78 deposition of Yuri Nosenko, 40 pgs.;
180–10110–10007: 06/19/78 deposition of Yuri Nosenko, 99 pgs.;
180–10131–10342: 01/03/78 deposition of E. Howard Hunt, 87 pgs.;
180–10131–10343: 08/17/78 deposition of J. Lee Rankin, 34 pgs.;
180–10081–10347: A 6-page portion of this 140-page file constitutes previously referred pages of a 02/26/78 communication from Dr. Pierre Finck to the HSCA.

In addition, after consultations with ARRB staff, the FBI has agreed to open in full the following assassination records, which previously contained postponements:

124–10001–10243, 124–10001–10247, 124–10002–10432, 124–10002–10434, 124–10003–10065, 124–10003–10425, 124–10003–10437, 124–10003–10463, 124–10005–10132, 124–10005–10189, 124–10005–10387, 124–10006–10321, 124–10007–10203, 124–10009–10054, 124–10009–10380, 124–10017–10247, 124–10018–10353, 124–10018–10355, 124–10018–10357, 124–10018–10364, 124–10018–10474, 124–10018–10475, 124–10018–10476, 124–10018–10477, 124–10018–10478, 124–10018–10488, 124–10018–10492, 124–10020–10120, 124–10020–10129, 124–10020–10157, 124–10023–10212, 124–10023–10243, 124–10023–10268, 124–10024–10440, 124–10026–10348, 124–10027–10004, 124–10027–10007, 124–10027–10009, 124–10027–10014, 124–10027–10019, 124–10027–10020, 124–10027–10027, 124–10027–10031, 124–10027–10038, 124–10027–10070, 124–10027–10071, 124–10027–10074, 124–10027–10076, 124–10027–10080, 124–10027–10106, 124–10027–10107, 124–10027–10108, 124–10027–10113, 124–10027–10114, 124–10027–10115, 124–10027–10129, 124–10027–10130, 124–10027–10148, 124–10027–10152, 124–10027–10153, 124–10027–10154, 124–10027–10155, 124–10027–10156, 124–10027–10157, 124–10027–10158, 124–10027–10159, 124–10027–10160, 124–10027–10162, 124–10027–10168, 124–10027–10169, 124–10027–10170, 124–10027–10171, 124–10027–10172, 124–10027–10173, 124–10027–10174, 124–10027–10175, 124–10027–10191, 124–10027–10376, 124–10029–10253, 124–10029–10480, 124–10030–10278, 124–10034–10465, 124–10035–10051, 124–10035–10053, 124–10035–10058, 124–10035–10059, 124–10035–10091, 124–10035–10118, 124–10035–10126, 124–10035–10129, 124–10035–10131, 124–10035–10143, 124–10035–10156, 124–10035–10426, 124–10038–10106, 124–10044–10003, 124–10045–10034, 124–10045–10407, 124–10045–10464, 124–10045–10472, 124–10047–10284, 124–10049–10041, 124–10049–10136, 124–10054–10017, 124–10054–10018, 124–10057–10227, 124–10057–10229, 124–10057–10230, 124–10057–10479, 124–10058–10003, 124–10058–10019, 124–10058–10026, 124–10058–10027, 124–10058–10028, 124–10058–10029, 124–10058–10032, 124–10058–10033, 124–10058–10038, 124–10058–10041, 124–10058–10054, 124–10058–10067, 124–10058–10301, 124–10058–10444, 124–10063–10020, 124–10063–10224, 124–10063–10355, 124–10063–10474, 124–10065–10355, 124–10068–10132, 124–10068–10183, 124–10069–10214, 124–10069–10401, 124–10070–10223, 124–10070–10390, 124–10072–10144, 124–10072–10153, 124–10072–10168, 124–10072–10179, 124–10072–10213, 124–10072–10261, 124–10072–10312, 124–10075–10004, 124–10076–10085, 124–10077–10196, 124–10079–10104, 124–10081–10020, 124–10081–10026, 124–10081–10037, 124–10084–10016, 124–10087–10335, 124–10087–10341, 124–10087–10344, 124–10092–10037, 124–10093–10184, 124–10100–10102, 124–10101–10024, 124–10102–10004, 124–10102–10110, 124–10102–10307, 124–10103–10220, 124–10104–10235, 124–10104–10242, 124–10105–10247, 124–10108–10033, 124–10108–10095, 124–10108–10189, 124–10108–10205, 124–10108–10235, 124–10108–10260, 124–10110–10009, 124–10110–10040, 124–10116–10042, 124–10118–10017, 124–10118–10352, 124–10118–10353, 124–10118–10354, 124–10118–10424, 124–10118–10426, 124–10118–10429, 124–10119–10049, 124–10119–10216, 124–10122–10014, 124–10125–10120, 124–10126–10132, 124–10131–10144, 124–10137–10027, 124–10138–10000, 124–10142–10152, 124–10142–10325, 124–10143–10029, 124–10143–10130, 124–10143–10179, 124–10143–10293, 124–10144–10065, 124–10145–10009, 124–10145–10061, 124–10145–10103, 124–10146–10120, 124–10146–10227, 124–10151–10010, 124–10151–10150, 124–10151–10376, 124–10156–10049, 124–10156–10053, 124–10156–10055, 124–10157–10024, 124–10157–10447, 124–10157–10487, 124–10158–10017, 124–10158–10026, 124–10158–10046, 124–10158–10112, 124–10158–10199, 124–10158–10429, 124–10159–10381, 124–10159–10396, 124–10159–10441, 124–10159–10447, 124–10160–10014, 124–10162–10400, 124–10163–10117, 124–10163–10125,

124–10164–10263, 124–10164–10268, 124–10164–10274, 124–10169–10106, 124–10169–10121, 124–10169–10127, 124–10170–10000, 124–10170–10011, 124–10170–10013, 124–10170–10030, 124–10170–10110, 124–10170–10124, 124–10170–10126, 124–10170–10438, 124–10170–10452, 124–10171–10002, 124–10171–10063, 124–10171–10094, 124–10171–10098, 124–10171–10123, 124–10172–10029, 124–10173–10112, 124–10173–10245, 124–10176–10378, 124–10178–10244, 124–10178–10265, 124–10178–10480, 124–10179–10084, 124–10180–10116, 124–10183–10094, 124–10183–10100, 124–10183–10154, 124–10187–10012, 124–10191–10092, 124–10227–10105, 124–10227–10112, 124–10227–10310, 124–10227–10366, 124–10228–10036, 124–10228–10039, 124–10228–10042, 124–10228–10044, 124–10228–10055, 124–10228–10058, 124–10228–10085, 124–10228–10091, 124–10228–10094, 124–10228–10242, 124–10229–10405, 124–10230–10012, 124–10230–10022, 124–10230–10054, 124–10230–10421, 124–10230–10425, 124–10230–10426, 124–10230–10427, 124–10230–10428, 124–10231–10483, 124–10233–10233, 124–10233–10294, 124–10233–10452, 124–10234–10088, 124–10234–10289, 124–10234–10460, 124–10235–10183, 124–10235–10184, 124–10235–10191, 124–10235–10199, 124–10235–10284, 124–10235–10436, 124–10236–10087, 124–10236–10113, 124–10236–10129, 124–10236–10131, 124–10236–10285, 124–10236–10296, 124–10236–10321, 124–10236–10332, 124–10237–10010, 124–10239–10093, 124–10239–10094, 124–10240–10347, 124–10240–10368, 124–10241–10130, 124–10241–10414, 124–10241–10417, 124–10242–10106, 124–10242–10262, 124–10243–10243, 124–10244–10061, 124–10246–10080, 124–10247–10193, 124–10248–10027, 124–10249–10127, 124–10249–10153, 124–10250–10368, 124–10250–10481, 124–10250–10491, 124–10251–10396, 124–10252–10037, 124–10254–10009, 124–10254–10181, 124–10254–10342, 124–10255–10095, 124–10255–10371, 124–10256–10291, 124–10256–10294, 124–10259–10374, 124–10259–10418, 124–10259–10421, 124–10259–10423, 124–10260–10249, 124–10260–10332, 124–10260–10348, 124–10262–10192, 124–10262–10414, 124–10263–10381, 124–10264–10224, 124–10269–10474, 124–10270–10144, 124–10270–10484, 124–10270–10487, 124–10270–10488, 124–10270–10490, 124–10272–10019, 124–10272–10040, 124–10272–10334, 124–10275–10259, 124–10276–10013, 124–10276–10049, 124–10276–10073, 124–10276–10075, 124–10276–10377.

Dated: December 27, 1995.

David G. Marwell,

*Executive Director.*

[FR Doc. 95–31560 Filed 12–29–95; 8:45 am]

BILLING CODE 6118–01–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 122195A]**

### Marine Mammals

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

**ACTION:** Modification No. 3 to scientific research permit No. 716 (P466).

**SUMMARY:** Notice is hereby given that a request for modification of scientific research permit No. 716 submitted by Mr. Scott D. Kraus, Edgerton Research Laboratory, New England Aquarium, Central Wharf, Boston, MA 02110–3309 has been granted. The modification includes a 6 month extension and authority to satellite tag 5 right whales.

**ADDRESSES:** The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Suite 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive North, St. Petersburg, FL 33702 (813/570–5312); and

Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200).

**SUPPLEMENTARY INFORMATION:** This modification was granted under authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222).

Issuance of this modification, as required by the Endangered Species Act of 1973, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act.

Dated: December 21, 1995.

Ann D. Terbush,

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 95–31541 Filed 12–29–95; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Base Closure and Community Redevelopment and Homeless Assistance Act; Base Realignments and Closures

**AGENCY:** Economic Security, Department of Defense.

**ACTION:** Notice.

**SUMMARY:** This Notice provides a partial list of closing or realigning military installations pursuant to the 1995 Defense Base Closure and Realignment (BRAC) Report, and the points of contacts, addresses, and telephone numbers for the Local Redevelopment Authorities (LRAs) for those installations. Representatives of state and local governments and homeless providers interested in the reuse of an installation should contact the person or organization listed. The following information will be published in a newspaper of general circulation in the area of each installation. There will be additional Notices providing this same information about the LRAs for other closing or realigning installations as those LRAs are recognized by the Office of Economic Adjustment (OEA).

**EFFECTIVE DATE:** January 2, 1996.

**FOR FURTHER INFORMATION CONTACT:** Helene O'Connor, Office of Assistant Secretary of Defense for Economic Security, Office of Economic Adjustment, 400 Army Navy Drive, Suite 200, Arlington, VA 22202 (703) 604–5905.

Dated: December 27, 1995.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 5000–04–M

**LOCAL REDEVELOPMENT AUTHORITIES (LRAs)**
**for**
**CLOSING AND REALIGNING MILITARY INSTALLATIONS**

**ALABAMA**

| | |
|---|---|
| **Installation Name:** | **Fort McClellan** |
| LRA Name: | Fort McClellan Reuse and Redevelopment Authority |
| Point of Contact: | Mr. Ronnie Smith |
| Address: | P.O. Box 306<br>Anniston, AL 36202 |
| Phone: | (205) 236-3521 |

**CALIFORNIA**

| | |
|---|---|
| **Installation Name:** | **Pt. Molate** |
| LRA Name: | Richmond City Council |
| Point of Contact: | Ms. Patricia Jones |
| Address: | Office of the City Manager<br>City of Richmond<br>2600 Barrett Avenue<br>Richmond, CA 94804 |
| Phone: | (510) 620-6512 |

| | |
|---|---|
| **Installation Name:** | **Fleet and Industrial Supply Center (FISC) Oakland** |
| LRA Name: | Oakland Base Reuse Authority |
| Point of Contact: | Mr. Paul Nahm |
| Address: | 1333 Broadway, 9th Floor<br>Oakland, CA 94612 |
| Phone: | (510) 238-7256 |

| | |
|---|---|
| **Installation Name:** | **Oakland Army Base** |
| LRA Name: | Oakland Base Reuse Authority |
| Point of Contact: | Mr. Paul Nahm<br>1333 Broadway, 9th Floor<br>Oakland, CA 94612 |
| Phone: | (510) 238-7256 |

**COLORADO**

| | |
|---|---|
| **Installation Name:** | **Fitzsimons Army Medical Center** |
| LRA Name: | Fitzsimons Redevelopment Authority |
| Point of Contact: | Mr. Leonard Franklin Regan |
| Address: | City of Aurora<br>1470 S. Havana Street<br>Aurora, CO 80012 |
| Phone: | (303) 695-7023 |

**CONNECTICUT**

| | |
|---|---|
| **Installation Name:** | **Naval Undersea Warfare Center Newport Division, New London Detachment** |
| LRA Name: | Naval Undersea Warfare Center Authority/City of New London |
| Point of Contact: | Mr. Richard M. Brown |
| Address: | 181 State Street<br>New London, CT 96320 |
| Phone: | (203) 447-5201 |

**FLORIDA**

| | |
|---|---|
| **Installation Name** | **Naval Air Station Key West** |
| LRA Name: | Naval Properties Local Redevelopment Authority |
| Point of Contact | Mr. Paul J. Cates |
| Address: | P.O. Box 1409<br>Key West, FL 33041-1409 |
| Phone: | (305) 292-8117 |

**INDIANA**

| | |
|---|---|
| **Installation N e:** | **Naval Air Warfare Center Aircraft Division Indianapolis** |
| LRA Name: | NAWC-ADI Reuse Planning Authority |
| Point of Cont t: | Mr. Michael A. Sargent |
| Address: | City County Building, Suite 2510<br>6000 East 21st Street, Mail Stop 24<br>Indianapolis, IN 46219-2189 |
| Phone: | (317) 306-7032 |

**KENTUCKY**

| | |
|---|---|
| **Installation Name:** | **Naval Ordnance Station, Crane Division, Naval Surface Warfare Center** |
| LRA Name: | Louisville/Jefferson County Redevelopment Authority |
| Point of Contact: | Mr. Frank Jemley, III |
| Address: | 600 West Main Street<br>Suite 400<br>Louisville, KY 40202-4266 |
| Phone: | (502) 574-1533 |

**MARYLAND**

| | |
|---|---|
| **Installation Name:** | **Fort Holabird** |
| LRA Name: | Holabird Working Group |
| Point of Contact: | Ms. Sara Trenery |
| Address: | Baltimore Development Corporation<br>36 S. Charles Street, 16th Floor<br>Baltimore, MD 21201 |
| Phone: | (410) 837-9305 |

| | |
|---|---|
| **Installation Name:** | **Fort Richie** |
| LRA Name: | Fort Richie Local Redevelopment Authority |
| Point of Contact: | Dr. Dick Palmer |
| Address: | P.O. Box 699<br>Cascade, MD 21719 |
| Phone: | (301) 241-4050 |

| | |
|---|---|
| **Installation Name:** | **Naval Surface Warfare Center White Oak** |
| LRA Name: | White Oak Local Redevelopment Authority, Community Partnership |
| Point of Contact: | Ms. Marie Friedman |
| Address: | Office of Economic Development<br>Executive Office Building<br>101 Monroe Street, Suite 1500<br>Rockville, MD 20850 |
| Phone: | (301) 217-2345 |

**NEW JERSEY**

| | |
|---|---|
| **Installation Name:** | **Bayonne Military Ocean Terminal** |
| LRA Name: | Military Ocean Terminal Base Reuse Commission |
| Point of Contact: | Honorable Leonard P. Kiczek |
| Address: | Municipal Building<br>630 Avenue C<br>Bayonne, NJ 07002-3898 |
| Phone: | (201) 858-6010 |

**NEW YORK**

| | |
|---|---|
| **Installation Name:** | **Seneca Army Depot** |
| LRA Name: | Seneca Army Depot Local Redevelopment Authority |
| Point of Contact: | Mr. Kenneth Stafford |
| Address: | 1 DiPronio Drive<br>Waterloo, NY 13165 |
| Phone: | (315) 539-5655 Ext 2118 |

**PENNSYLVANIA**

| | |
|---|---|
| **Installation Name:** | **Letterkenny Army Depot** |
| LRA Name: | Letterkenny Reuse Committee |
| Point of Contact: | David G. Sciamanna |
| Address: | 75 South Second Street<br>Chambersburg, PA 17201 |
| Phone: | (717) 264-7101 |

**TENNESSEE**

| | |
|---|---|
| **Installation Name:** | **Defense Distribution Depot Memphis** |
| LRA Name: | Memphis Defense Depot Redevelopment Authority |
| Point of Contact: | Cynthia Buchanan |
| Address: | 2163 Airways Blvd,<br>Building 144, Suite 140<br>Memphis, TN 38114 |
| Phone: | (901) 942-4939 |

**UTAH**

| | |
|---|---|
| **Installation Name:** | **Defense Distribution Depot Ogden** |
| Name of LRA: | City of Ogden |
| Point of Contact: | Mayor Glenn J. Mechan |
| Address: | 2484 Washington Boulevard<br>Suite 300<br>Ogden, UT 84401 |
| Phone: | (801) 629-8100 |

**VIRGINIA**

| | |
|---|---|
| **Installation Name:** | **Fort Pickett** |
| Name of LRA | Fort Pickett Local Reuse Authority |
| Point of Contact: | Mr. Stanley W. Worsham, Jr. |
| Address: | P.O. Box 92<br>Nottoway, VA 23955 |
| Phone: | (804) 645-8696 |

[FR Doc. 95–31549 Filed 12–29–95; 8:45 am]
BILLING CODE 5000–04–C

### Meeting of the Military Health Care Advisory Committee

**AGENCY:** Department of Defense, Military Health Care Advisory Committee.

**ACTION:** Notice.

**SUMMARY:** On December 20, 1995, the Military Health Care Advisory Committee announced the third meeting of the committee (60 FR 65638). The purpose of this notice is to announce a change in the time for the scheduled business sessions. Business sessions are now scheduled between 8:30 a.m. and 12:15 p.m., Thursday, January 11, 1996, and between 8:00 a.m. and 12 Noon on Friday, January 12, 1996. All other information remains the same.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary A. Christopherson, Senior Advisor, or Commander Sid Rodgers, Special Assistant to PDASD, Office of the Assistant Secretary of Defense (Health Affairs), 1200 Defense Pentagon, Room 3E346, Washington, DC 20301–1200; telephone (703) 697–2111.

Dated: December 27, 1995.

Patricia L. Toppings,

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 95–31553 Filed 12–29–95; 8:45 am]

**BILLING CODE 3810–01–M**

### Meeting of the Historical Records Declassification Advisory Panel, Department of Defense Historical Advisory Committee

**AGENCY:** Department of Defense.

**SUMMARY:** Notice is hereby given of the forthcoming meeting of the Historical Records Declassification Advisory Panel. The purpose of this meeting is to discuss recommendations to the Department of Defense on topical areas of interest that, from a historical perspective, would be of the greatest benefit if declassified. Four publish sessions will be held in 1996. The OSD Historian will chair these meetings.

**DATE:** February 23, 1996.

**ADDRESSES:** The National Archives Building, The Archivist Reception Room 105, 7th and Pennsylvania Avenue, NW., Washington, DC 20408.

**FOR FURTHER INFORMATION CONTACT:** William Bell, Room 3C281, Office of the Deputy Assistant Secretary of Defense (Intelligence and Security), Office of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence, 6000 Defense Pentagon, Washington, DC 20301–6000, telephone (703) 695–2289/2686.

Dated: December 27, 1995.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 95–31550 Filed 12–29–95; 8:45 am]

**BILLING CODE 5000–04–M**

## DEPARTMENT OF ENERGY

### Office of Energy Research

### Energy Research Financial Assistance Program Notice 96–07: Experimental Program to Stimulate Competitive Research (EPSCoR)

**AGENCY:** U.S. Department of Energy (DOE).

**ACTION:** Notice inviting grant applications.

**SUMMARY:** The Office of Basic Energy Sciences (BES) of the Office of Energy Research (ER), U.S. Department of Energy (DOE), in keeping with its energy-related mission to assist in strengthening the Nation's scientific research enterprise through the support of science, engineering, and mathematics, announces its interest in receiving applications from eligible States for the support of the DOE/EPSCoR Program. The purpose of the DOE/EPSCoR Program is to enhance the capabilities of designated States to conduct nationally-competitive energy-related research and to develop science and engineering manpower in energy-related areas to meet current and future needs. Subject to availability of funds, approximately $7 million will be available for awards under the DOE/EPSCoR Program in FY1996 for collaborative research and manpower development in energy-related science and engineering disciplines.

**DATES:** Applications under this Notice should be received by 4:30 p.m. Eastern Standard Time, February 21, 1996.

**ADDRESSES:** Application materials are available from Donna J. Prokop, DOE/EPSCoR Program Manager, Office of Basic Energy Sciences, ER–132, U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874–1290. Telephone requests for application materials may be made by calling (301) 903–3426.

The completed formal applications referencing Program Notice 96–07, must be submitted to U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 96–07. The above address also must be used when submitting applications by U.S. Postal Service Express mail, any commercial mail delivery service, or when hand carried by the applicant.

**FOR FURTHER INFORMATION CONTACT:** Donna J. Prokop, DOE/EPSCoR Program Manager, Office of Basic Energy Sciences, ER–132, U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874–1290, Telephone, (301) 903–3426—Fax. (301) 903–9513.

**SUPPLEMENTARY INFORMATION:** The Senate report accompanying the FY 1996 Energy and Water Development Appropriation Bill (S.Rep. No. 104–120, 104th Congress, 1st Sess., pg. 96) recommended that $7 million be committed to continuing the DOE/EPSCoR Program. In accordance with 10 CFR 600.7(b)(1), and to continue to enhance the competitiveness of states and territories identified for participation in the Experimental Program to Stimulate Competitive Research (EPSCoR) by the National Science Foundation (NSF), DOE has decided to continue to restrict eligibility to the following states and territory: Alabama, Arkansas, Idaho, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, North Dakota, Oklahoma, South Carolina, South Dakota, Vermont, West Virginia, Wyoming, and the Commonwealth of Puerto Rico.

Awards issued under this Notice will provide renewal support for up to seven of the Research Implementation Awards begun under the DOE/EPSCoR initiative in FY 1993 and FY 1994. Recipients of Research Implementation Awards in these fiscal years include: Alabama, Maine, Kentucky, Louisiana, Montana, Nevada, and Puerto Rico. Renewal awards will be issued for a one-year period with up to a maximum award amount of $1.0 million. In addition, as a tangible measure of an applicant's commitment to the objectives of the DOE/EPSCoR Program, cost-sharing on a minimum one-to-one ratio is a requirement of this program. Therefore, each application submitted requesting support from DOE under this Notice must provide, from non-Federal funds, an amount equal to or greater than the amount awarded by DOE; i.e. for every dollar provided by DOE, the recipient must provide a dollar or more from non-Federal sources for the project.

General information about development and submission of applications, eligibility, limitations, evaluation, and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Energy Research Financial Assistance Program and in 10 CFR Part

605. Electronic access to ER's Financial Assistance Guide is possible via the Internet using the following E-mail address: http://www.er.doe.gov/

The Catalog of Federal Domestic Assistance number of this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, D.C., on December 22, 1995.

Martha A. Krebs,

*Director, Office of Energy Research.*

[FR Doc. 95–31566 Filed 12–29–95; 8:45 am]

BILLING CODE 6450–01–P

## International Energy Agency Meeting

**AGENCY:** Department of Energy.

**ACTION:** Notice of meeting.

**SUMMARY:** The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet January 11, 1996, at the offices of the Organization for Economic Cooperation and Development (OECD) in Paris, France, to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions on the same date at the OECD offices.

**FOR FURTHER INFORMATION CONTACT:** Samuel M. Bradley, Acting Assistant General Counsel for International and Legal Policy, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, 202–586–6738.

**SUPPLEMENTARY INFORMATION:** In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on January 11, 1996, at the headquarters of the Organization for Economic Cooperation and Development (OECD), 2, rue Andre-Pascal, Paris, France, beginning at 9:30 a.m. on January 11. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ) which is scheduled to be held at the OECD on January 11, 1996, including a preparatory session for company representatives from 9:00 a.m. to 9:30 a.m. on January 11.

The agenda for the preparatory session for company representatives is to elicit views regarding items on the agenda for the SEQ meeting. The agenda for the meeting of the SEQ is under the control of the SEQ. It is expected that the following draft agenda will be followed:

1. Adoption of the Agenda
2. Approval of Summary Record of the 85th Meeting
3. Policy and Legislative Developments in Member Countries
   —Energy Policy and Conversation Act (EPCA)
   —Removal of Restrictions on Oil Exports from Alaska
   —EU Legislative Developments
   —Other Country Developments
4. SEQ Work Program
   —Status of SEQ 1996 Work Program
   —Conference on Long Term Security Issues—June 1996
   —Preparations for Work Program of 1997
5. Industry Advisory Board
   —Current and Planned IAB Activities
6. Proposals on IEA Emergency Response
   —Follow-up by the SEQ to Governing Board Decision of February 22, 1995 on IEA Emergency Response
7. Emergency Reserve Situation of IEA Countries
   —Emergency Reserve and Net Import Situation of IEA Countries on October 1, 1995
8. Emergency Response Reviews
   —Updated Schedule of Reviews
9. Emergency Response Issues in IEA Candidate Countries
   —The Emergency Response Situation of the Czech Republic
   —The Emergency Response Situation of Hungary, Korea and Poland
10. Oil Market Situation
11. Emergency Data System and Related Questions
   —Report on October/November 1995 Test Submission of Questionnaires A and B
   —MOS for July 1995
   —MOS for August 1995
   —MOS for September 1995
   —BPFC—Q494–Q395
   —QOF—Q495/Q396 and Current Trigger Situation
12. Emergency Management Manual
   —Emergency Reference Guide
13. IEA Dispute Settlement Centre
   —Panel of Arbitrators
14. Overview of IEA Communications Systems
15. Any Other Business
   Participation in SEQ Activities by Candidate Countries
   Tentative calendar of SEQ Activities until end 1996

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), this meeting is open only to representatives of members of the IAB and their counsel, representatives of members of the SEQ, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of the Congress, the IEA, and the European Commission, and invitees of the IAB, the SEQ or the IEA.

Issued in Washington, D.C., December 27, 1995.

Eric J. Fygi,

*Acting General Counsel.*

[FR Doc. 95–31567 Filed 12–29–95; 8:45 am]

BILLING CODE 6450–01–P

## Environmental Management Site-Specific Advisory Board, Oak Ridge

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge.

**DATES:** Wednesday, January 24, 1996: 6:00 p.m.–9:00 p.m.

**ADDRESSES:** Jacobs Engineering Group, Inc. Building, Einstein Conference Room, 125 Broadway, Oak Ridge, Tennessee.

**FOR FURTHER INFORMATION CONTACT:** Sandy Perkins, Site-Specific Advisory Board Coordinator, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, (423) 576–1590.

**SUPPLEMENTARY INFORMATION:** Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

This meeting is called specifically to work on the by-laws of this site group. No other business is expected to be discussed.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Sandy Perkins at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual

wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 8:30 am and 5:00 pm on Monday, Wednesday, and Friday; 8:30 am and 7:00 pm on Tuesday and Thursday; and 9:00 am and 1:00 pm on Saturday, or by writing to Sandy Perkins, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, or by calling her at (423) 576–1590.

Issued at Washington, DC on December 22, 1995

Rachel M. Samuel,

*Acting Deputy Advisory Committee Management Officer.*

[FR Doc. 95–31564 Filed 12–29–95; 8:45 am]

BILLING CODE 6450–01–P

## Environmental Management Site-Specific Advisory Board, Oak Ridge

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge

**DATES:** Wednesday, January 17, 1996: 6 p.m.–9 p.m.

**ADDRESSES:** Jacobs Engineering Group Building, Einstein Conference Room, 125 Broadway, Oak Ridge, Tennessee.

**FOR FURTHER INFORMATION CONTACT:** Sandy Perkins, Site-Specific Advisory Board Coordinator, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, (423) 576–1590.

**SUPPLEMENTARY INFORMATION:** Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

*January Meeting Topics*

The Board will continue to address the proposed by-laws necessary for the Board to function. Additional topics to be discussed will be a report on the Environmental Management Site-Specific Advisory Board administrative session held in Denver in November; and a technical presentation will be provided on the results of the aerial remote-sensing survey of the Oak Ridge Reservation.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Sandy Perkins at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 8:30 am and 5:00 pm on Monday, Wednesday, and Friday; 8:30 am and 7:00 pm on Tuesday and Thursday; and 9:00 am and 1:00 pm on Saturday, or by writing to Sandy Perkins, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, or by calling her at (423) 576–1590.

Issued at Washington, DC on December 22, 1995.

Rachel M. Samuel,

*Acting Deputy Advisory Committee Management Officer.*

[FR Doc. 95–31563 Filed 12–29–95; 8:45 am]

BILLING CODE 6450–01–P

## Office of Fossil Energy

**[FE Docket No. 95–109–NG]**

## Enron Capital & Trade Resources Corporation; Order Granting Long-Term Authorization To Import Natural Gas From Canada

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Enron Capital & Trade Resources Corporation authorization to import up to 15 MMcf of natural gas per day from Canada for a period of ten years, beginning November 1, 1996, under the terms and conditions of a purchase and sale agreement with Enron Capital & Trade Resources Canada Corporation.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 30, 1995.

Clifford P. Tomaszewski,

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy*

[FR Doc. 95–31569 Filed 12–29–95; 8:45 am]

BILLING CODE 6450–01–P

**[FE Docket No. 95–104–NG]**

## Coastal Gas Marketing Company; Order Granting Long-Term Authorization To Import Natural Gas From Canada

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Coastal Gas Marketing Company authorization to import up to 10 MMcf of natural gas per day from Canada for a period of ten years and seven months, beginning April 1, 1996, under the terms and conditions of the letter agreements with Morgan Hydrocarbons Inc.

This order is available for inspection and copying in the Office of Fuels

Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., November 30, 1995.

Clifford P. Tomaszewski,

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 95–31568 Filed 12–29–95; 8:45 am]

**BILLING CODE 6450–01–P**

## Energy Information Administration

## Proposed Revision and Extension of Forms

**AGENCY:** Energy Information Administration, Energy.

**ACTION:** Notice of the Proposed Revision and Extension of the Forms EIA–457A–G, ''Residential Energy Consumption Survey,'' and Solicitation of Comments.

**SUMMARY:** The Energy Information Administration (EIA) is soliciting comments concerning the proposed revision and extension to the Forms EIA–457A–G, ''Residential Energy Consumption Survey (RECS).''

**DATES:** Written comments must be submitted within 60 days of the publication of this notice. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

**ADDRESSES:** Send comments to Wendel Thompson, EI–631, Forrestal Building, U.S. Department of Energy, Washington, DC 20585, (202–586–1119 or FAX 202–586–0018 or e-mail to: wthompso@eia.doe.gov).

**FOR FURTHER INFORMATION:** Requests for additional information or copies of the form and instructions should be directed to Wendel Thompson at the address listed above.

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Current Actions
III. Request for Comments

### I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. No. 93–275) and the Department of Energy Organization Act (Pub. L. No. 95–91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The Energy Information Administration, as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13)), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

To meet this responsibility, as well as internal DOE requirements that are dependent on accurate data, the EIA has developed an ongoing program of national sample surveys on energy consumption in the manufacturing, commercial, residential, and residential transportation sectors.

The RECS has been designed by EIA to collect data on energy consumption in the residential sector. Information about the housing unit is collected through voluntary interviews with a representative national sample of approximately 6,500 households. Households are asked about what energy is used for in the home and characteristics of energy-using equipment. Data are also collected on household demographics (e.g., income, size, origin) and the housing unit's physical characteristics. Data on actual energy consumption and expenditures are obtained through a mandatory mailed survey that requests the billing records from the household's energy suppliers. The RECS has been conducted annually from 1980 through 1982 and triennially beginning in 1984. The data are disseminated in two publications, one entitled Housing Characteristics and the other Household Energy Consumption and Expenditures.

### II. Current Actions

For the 1996 RECS, the EIA proposes several changes to the existing collection. The extension from the currently approved OMB expiration date (May 31, 1996) has been proposed for three years (through May 31, 1999).

The household questionnaire (Form EIA–457A) for the 1996 RECS will be considerably shorter than it was for 1993. Almost all areas in which information has been collected will be reduced. The most significant is dropping the measurement of floorspace. Questions on consumer decision making, new technologies, demand-side management programs, and detail on new homes will be dropped. Less information will be collected on the Low Income Energy Assistance Program, characteristics of household members, wood burning, insulation, and lights. Form EIA–457H, the Lighting Supplement, will be eliminated and fewer questions will be asked about light usage, reducing the liklihood that EIA can produce an annual estimate for consumption of electricity for lighting. Energy suppliers will not be asked to provide information about their customer's participation in demand-side management programs or other energy conservation programs.

Form EIA–457A, the in-person household interview, will be conducted partially using Computer-Assisted Personal Interviewing (CAPI). This technology involves replacing the paper and pencil procedure with a laptop computer. Using CAPI frees the interviewer from determining difficult branching operations in the questionnaire, notes inconsistent answers which can be resolved in the presence of the respondent, and speeds data delivery.

The sample design for 1996 will not oversample low income homes nor newly constructed homes. The sample of 6,500 households will be comprised of 2,000 in-person interviews and 4,500 telephone interviews. Less information will be collected by telephone. The in-person interviews and telephone interviews will be combined into one data set on the basis that each represents a national sample of households. Adjustments will be necessary to the telephone survey to correct for biases that result from excluding households without telephones from the sample.

The telephone method may not be used if an acceptable response rate cannot be achieved in a pretest currently underway. The response rate consists of successfully completing the telephone contact and receiving a signed authorization form from the household giving EIA permission to request the household's billing data from the energy supplier. If the telephone mode is not used, the sample of in-person interviews will be

increased from 2,000 to 3,000 interviews.

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposed extension and revisions. The following general guidelines are provided to assist in the preparation of responses. Please indicate to which form(s) your comments apply.

*General Issues*

EIA is interested in receiving comments from persons regarding:

A. Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility. Practical utility is the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can EIA make to the quality, utility, and clarity of the information to be collected?

*As a Potential Respondent*

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can data be submitted in accordance with the due date specified in the instructions?

C. Public reporting burden for this collection is estimated to average:

35 minutes per household for Form EIA–457A (2,000 in-person interviews at 45 minutes each and 4,500 telephone interviews at 30 minutes each),

20 minutes per household for Form EIA–457B,

15 minutes per response for Form EIA–457C,

30 minutes for Form EIA–457D,

30 minutes for Form EIA–457E,

30 minutes for Form EIA–457F, and

30 minutes for Form EIA–457G.

Burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) Reviewing instruction; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

Please comment on (1) the accuracy of our estimate and (2) how the agency could minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

D. What is the estimated cost of completing each this form, including the direct and indirect costs associated with the data collection? The following estimated costs are provided for comment.

$21 per household for Form EIA–457A,

$13 per household for Form EIA–457B,

$9 per response for Form EIA–457C,

$18 for Form EIA–457D,

$18 for Form EIA–457E,

$18 for Form EIA–457F, and

$18 for Form EIA–457G.

Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

E. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the methods of collection.

*As a Potential User*

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Be specific.

C. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

D. For the most part, information is published by EIA in U.S. customary units, e.g., cubic feet of natural gas, short tons of coal, and barrels of oil. Would you prefer to see EIA publish more information in metric units, e.g., cubic meters, metric tons, and kilograms? If yes, please specify what information (e.g., coal production, natural gas consumption, and crude oil imports), the metric unit(s) of measurement preferred, and in which EIA publication(s) you would like to see such information.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form; they also will become a matter of public record.

Statutory Authorities: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C. December 21, 1995.

John Gross,

*Acting Director, Office of Statistical Standards, Energy Information Administration.*

[FR Doc. 95–31565 Filed 12–29–95; 8:45 am]

BILLING CODE 6450–01–P

## Federal Energy Regulatory Commission

**[Docket No. RP95–197–007]**

## Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 26, 1995.

Take notice that on December 19, 1995, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff's, Third Revised Volume No. 1 and Original Volume No. 2, which tariff sheets are listed in Appendix A to the filing. The tariff sheets are proposed to be effective as indicated on Appendix A.

Transco states that the purpose of the instant filing is to comply with the Commission's December 4, 1995, order in the referenced proceeding which directed Transco to refile its rates to be effective September 1, 1995 to eliminate from its filed cost of service any ad valorem taxes associated with the gas plant Transco removed in its Motion filing of August 31, 1995 (Motion filing).

In Transco's Motion filing, Transco reflected actual cost of gas plant in service as of August 31, 1995, which costs included an estimate of the actual amounts expected to be closed to gas plant in service during the month of August since such amounts were not known at the time of the filing. In the instant filing, in addition to revising its ad valorem taxes, Transco has revised its gas plant to reflect actual gas plant in service and accumulated reserve for depreciation as of August 31, 1995. In addition to the foregoing, Transco has made corresponding adjustments to ad valorem taxes, operation and maintenance expenses, depreciation expense, return and income taxes. The total cost of service reflected herein represents a $1.1 MM reduction from the total cost of service underlying Transco's Motion filing.

Transco states that copies of the instant filing are being mailed to customers, State Commissions and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC

20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. Pursuant to Section 154.210 of the Commission Regulations, all such protests must be filed not later than 12 days after the date of the filing noted above. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 95–31535 Filed 12–29–95; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. CP96–101–000]**

## Williams Natural Gas Company; Notice of Request Under Blanket Authorization

December 26, 1995.

Take notice that on December 8, 1995, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP96–101–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to (1) abandon by sale to Western Resources, Inc. (WRI) approximately 2.3 miles of 8-inch lateral pipeline and two meter settings located in Osage County, Oklahoma and approximately 0.57 miles of 10-inch lateral pipeline located in Washington County, Oklahoma, and (2) to relocate the West Bartlesville town border to the site of WNG's high pressure regulator setting in Osage County, under WNG's blanket certificate issued in Docket No. CP82–479–000 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.

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 § 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. 95–31536 Filed 12–29–95; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. CP96–107–000]**

## Southern Natural Gas Company; Notice of Request Under Blanket Authorization

December 26, 1995.

Take notice that on December 14, 1995, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP96–107–000 a request pursuant to sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon measurement facilities under Southern's blanket certificate issued in Docket No. CP82–406–000 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.

Southern proposes to abandon its Fayette Meter Station by sale to Sonat Intrastate-Alabama, Inc. It is stated that sales service has already been abandoned but not the facilities. Since service has not been provided since the abandonment of the sales service, abandonment of the facilities is requested herein.

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. 95–31537 Filed 12–29–95; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. CP96–98–000]**

## National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

December 26, 1995.

Take notice that on December 5, 1995, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York, 14203, filed in the above docket a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act to construct and operate a sales tap that will render service to American Meter Company (American Meter) under its authorization issued in Docket No. CP83–4–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

National proposes to construct and operate a new sales tap in Erie County, Pennsylvania, on National's Line S–55. National indicates that this tap will provide service to American Meter pursuant to National's Rate Schedules IAS, FT and IT. National states that the service provided under Rate Schedule IAS will require a new receipt point so that National can receive gas back from American Meter. This new receipt point will be constructed pursuant to the authority granted at 157.208(a) and will be located on National's Line L, less than 100 feet from the proposed sales tap.

The cost of construction for the sales tap is estimated to be $60,000, for which National will be reimbursed by American Meter. The cost of the automatically authorized receipt point is estimated to be $4,000, for which National will be reimbursed by American Meter.

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 Rules of Practice and Procedure (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 is deemed to be authorized effective on 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. 95–31533 Filed 12–29–95; 8:45 am]

BILLING CODE 6717–01–M

---

**[Docket No. CP96–104–000]**

## Texas Gas Transmission Corporation; Notice of Request Under Blanket Authorization

December 21, 1995.

Take notice that on December 15, 1995, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP96–104–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a delivery point under Texas Gas's blanket certificate issued in Docket No. CP82–407–000 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.

Texas Gas proposes to construct and operate a delivery point for USG Interiors, Inc. (Interiors) in Washington County, Mississippi. Interiors has requested that Texas Gas construct the new delivery point and will reimburse Texas Gas in full for the cost of the facilities.

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. 95–31531 Filed 12–29–95; 8:45 am]

BILLING CODE 6717–01–M

---

**[Docket No. ER95–590–000, et al.]**

## Midwest Energy, Inc., et al.; Electric Rate and Corporate Regulation Filings

December 22, 1995.

Take notice that the following filings have been made with the Commission:

1. Midwest Energy, Inc.

[Docket No. ER95–590–000]

Take notice that on December 15, 1995, Midwest Energy, Inc. tendered for filing an amendment in the above-referenced docket.

*Comment date:* January 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Virginia Electric and Power Company

[Docket No. ER96–214–000]

Take notice that on December 13, 1995, Virginia Electric and Power Company tendered for filing additional information in the above-referenced docket.

*Comment date:* January 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Kentucky Utilities Company

[Docket No. ER96–469–000]

Take notice that on November 29, 1995, Kentucky Utilities Company tendered for filing a Notice of Cancellation in the above-referenced docket. In addition, on December 8, 1995, Kentucky Utilities Company tendered for filing additional information in this docket.

*Comment date:* January 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power Corporation

[Docket No. ER96–516–000]

Take notice that on December 4, 1995, Florida Power Corporation tendered for filing a Contract for Interchange Service between itself and Sonat Power Marketing, Inc. The contract provides for service under existing Schedule J, Negotiated Interchange Service, and existing Schedule OS, Opportunity Sales.

*Comment date:* January 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Company

[Docket No. ER96–517–000]

Take notice that on December 19, 1995, New England Power Company tendered for filing an amendment in the above-referenced docket.

*Comment date:* January 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Louisville Gas and Electric Company

[Docket No. ER96–573–000]

Take notice that on December 11, 1995, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Louis Dreyfus Electric Power Inc. under Rate GSS.

*Comment date:* January 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Louisville Gas and Electric Company

[Docket No. ER96–574–000]

Take notice that on December 11, 1995, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Sonat Power Marketing, Inc. under Rate GSS.

*Comment date:* January 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Louisville Gas and Electric Company

[Docket No. ER96–575–000]

Take notice that on December 11, 1995, Louisville Gas and Electric Company, tendered for filing copies of service agreements between Louisville Gas and Electric Company and Enron Power Marketing, Inc. under Rate GSS.

*Comment date:* January 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power & Light Company

[Docket No. ER96–576–000]

Take notice that on December 12, 1995, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Power and Energy between FPL and Western Gas Resources Power Marketing, Inc. FPL requests an effective date of December 18, 1995.

*Comment date:* January 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power & Light Company

[Docket No. ER96–577–000]

Take notice that on December 12, 1995, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Power and Energy between FPL and NorAm Energy Services, Inc. FPL requests an effective date of December 18, 1995.

*Comment date:* January 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Alabama Power Company

[Docket No. ER96–578–000]

Take notice that on December 11, 1995, Alabama Power Company, tendered for filing a revised

Transmission Service Delivery Point Agreement dated November 1, 1995 reflecting a revision to the delivery point voltage level for Central Alabama Electric Cooperative's Redland delivery point. The delivery point has been and will be served under the terms and conditions of the Agreement for Transmission Service to Distribution Cooperative Member of Alabama Electric Cooperative, Inc., dated August 28, 1980 (designed FERC Rate Schedule No. 147).

*Comment date:* January 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. New England Power Company

[Docket No. ER96–579–000]

Take notice that on December 11, 1995, New England Power Company, tendered for filing Amendments to FERC Electric Tariff, Original Volume No. 6.

*Comment date:* January 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Southern Company Services, Inc.

[Docket No. ER96–580–000]

Take notice that on December 12, 1995, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed three (3) service agreements between SCS, as agent of the Southern Companies, and i) Louisville Gas & Electric Company, ii) Florida Power Corporation, and iii) Delhi Energy Services, Inc. for non-firm transmission service under the Point-to-Point Transmission Service Tariff of Southern Companies.

*Comment date:* January 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Portland General Electric Company

[Docket No. ER96–581–000]

Take notice that on December 12, 1995, Portland General Electric Company (PGE), tendered for filing under FERC Electric Tariff, 1st Revised Volume No. 2, executed Service Agreements between PGE and the Public Utility District No. 1 of Douglas County and Catex Vitol Electric.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993 (Docket No. PL93–2–002), PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the executed Service Agreements to become effective January 1, 1996.

Copies of this filing were served upon the entities listed in the body of the filing letter.

*Comment date:* January 5, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Saquaro Power Company, a Limited Partnership

[Docket No. QF90–203–001]

On December 14, 1995, Saquaro Power Company, a Limited Partnership (Applicant), 18101 Von Karman Avenue, Suite 1700, Irvine, California 92715–1007, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

According to Applicant, the topping-cycle cogeneration facility is located in Clark County, near the City of Henderson, Nevada. The Commission previously certified the facility as a qualifying cogeneration facility in *Saquaro Power Company, a Limited Partnership,* 53 FERC ¶ 62,209 (1990). The instant request for recertification is due to a partnership interest financing arrangement.

*Comment date:* February 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 95–31534 Filed 12–29–95; 8:45 am]

BILLING CODE 6717–01–P

**[Docket No. EG96–24–000, et al.]**

## Hainan Meinan Power Company, et al.; Electric Rate and Corporate Regulation Filings

December 26, 1995.

Take notice that the following filings have been made with the Commission:

1. Hainan Meinan Power Company

[Docket No. EG96–24–000]

On December 14, 1995, Hainan Meinan Power Company (''HMPC''), with its principal office at Room 807, Haikou International Commercial Center, 38 Da Tong Road, Haikou, Hainon, People's Republic of China (''PRC''), filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

HMPC states that it is a joint venture organized under the laws of the PRC. HMPC will be engaged directly and exclusively in owning an approximately 150 MW liquified petroleum gas and distillate fuel oil-fired electric generating facility located in Wenchang County, Hainan Province, PRC. Electric energy produced by the facility will be sold at wholesale to Hainan Electric Power Corporation. In no event will any electricity be sold to consumers in the United States.

*Comment date:* January 12, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Kingston Cogen Limited Partnership

[Docket No. EG96–25–000]

Take notice that on December 18, 1995, Kingston Cogen Limited Partnership (Kingston) (c/o Michael J. Zimmer, Esq., Reid & Priest LLP, 701 Pennsylvania Avenue, NW., Washington, DC 20004) filed with the Federal Energy Regulatory Commission an application on December 18, 1995, for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Kingston is an Ontario, Canada limited partnership formed to own an electric generating facility located in Ernestown Township, Ontario, Canada.

*Comment date:* January 12, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Williams Energy Services Company

[Docket No. ER95–305–004]

Take notice that on December 4, 1995, Williams Energy Service Company tendered for filing a Notice of Succession in the above-referenced docket.

*Comment date:* January 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Rig Gas Inc., Texas-Ohio Power Martketing, Inc.

[Docket No. ER95–480–003, Docket No. ER94–1676–005 (Not Consolidated)]

Take notice that the following information filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On December 11, 1995, Rig Gas Inc. filed certain information as required by the Commission's March 16, 1995, order in Docket No. ER95–480–000.

On December 12, 1995, Texas-Ohio filed certain information as required by the Commission's October 31, 1994, order in Docket No. ER94–1676–000.

5. PacifiCorp Power Marketing, Inc.

[Docket No. ER95–1096–000]

Take notice that on December 14, 1995, PacifiCorp Power Marketing, Inc., tendered for filing an amendment in the above-referenced docket.

*Comment date:* January 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Northwest Regional Transmission Association

[Docket No. ER96–384–000]

Take notice that on November 14, 1995, Northwest Regional Transmission Association tendered for filing a Notice of Withdrawal in the above-referenced docket.

*Comment date:* January 9, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Utility Management and Consulting Inc.

[Docket No. ER96–525–000]

Take notice that on December 18, 1995, Utility Management and Consulting Inc. supplemented its earlier filing in this docket.

*Comment date:* January 8, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. City of College Station, Texas

[Docket No. TX96–2–000]

Take notice that on December 15, 1995, the City of College Station, filed with the Commission an application requesting that the Commission order the City of Bryan, Texas (Bryan) and the Texas Municipal Power Agency (TMPA) to provide transmission services pursuant to Sections 211 and 212 of the Federal Power Act, as amended.

The name of the affected parties are as follows:

Affected State Regulatory Authority: Public Utility Commission of Texas.

Affected Federal power marketing agency: None.

Affected Electric Utilities:

City of Bryan, Texas
Texas Municipal Power Agency
Texas Utilities Electric Company
Texas Municipal Power Pool
Brazos Electric Power Cooperative, Inc.
Public Utilities Board of the City of Brownsville, Texas
Lower Colorado River Authority
Medina Electric Power Cooperative, Inc.
Texas-New Mexico Power Company
South Texas Electric Cooperative, Inc.
West Texas Utilities Company
Central Power & Light Company
City of Austin, Texas
City Public Service Board of San Antonio, Texas
Houston Lighting & Power Company

College Station currently receives wholesale electric service at points of delivery (PODs) on the transmission systems of Bryan and TMPA, all located within the load control area of the Texas Municipal Power Pool (TMPP). College Station seeks transmission services from Bryan and TMPA for the delivery of power and energy from the bulk power facilities of Texas Utilities Electric Company (TU Electric) to the PODs located at the transmission substations of College Station. In order to implement such service, College Station's load must be transferred from the TMPP control area and added to TU electric's control area by means of remote control telemetry equipment.

The proposed date for initiating the requested transmission service is January 1, 1996. Termination of service will be coincident with the term of College Station's Power Supply Agreement with TU electric (up to 10 years).

The transmission service being requested by College Station is firm transmission service over the Bryan and TMPA transmission systems at a level and quantity sufficient for College Station to meet its loads at the PODs, estimated to be approximately 128 MW during 1996.

*Comment date:* January 22, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 95–31548 Filed 12–29–95; 8:45 am]

BILLING CODE 6717–01–P

---

**[Docket Nos. CP95–668–000 and CP95–668–001]**

## CNG Transmission Corporation and Texas Eastern Transmission Corporation; Notice of Availability of the Environmental Assessment for the Proposed South Oakford Project

December 26, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas facilities proposed by CNG Transmission Corporation (CNG) and Texas Eastern Transmission Corporation (Texas Eastern) in the above-referenced dockets.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the South Oakford Project. The proposed facilities include:

- 10,000 hp of electric motor-driven compression and related facilities at the South Oakford Compressor Station in Westmoreland County, Pennsylvania;
- A pig receiver and barrel drip at the Earhart Gate;
- 3,158 feet of 30-inch-diameter storage suction pipeline (Line JP–296) between the South Oakford Compressor Station and the South Oakford Gate;
- 3,158 feet of 16-inch-diameter storage discharge pipeline (Line JP–297) between the South Oakford Compressor Station and the South Oakford Gate;

• A drip on the new suction pipeline; and

• Facilities to interconnect new Lines JP–296 and JP–297 to existing Lines JP–250 and JP–40, respectively, at the South Oakford Gate.

The EA also addresses the potential environmental effects of the proposed abandonment of facilities including:

• All buildings, parking lots, driveways, equipment, piping, and 7,980 horsepower (hp) of compression at the Jeannette Compressor Station;

• A pig receiver and barrel drip at the Huff Gate near the Jeannette Compressor Station (to be removed and installed at Earhart Gate);

• 75 feet of Line JP–40 within the Earhart Gate; and

• A 20-inch mainline gate setting (250–IM) for Line JP–250 at the Earhart Gate.

The purpose of the proposed facilities would be to improve safety, reliability, and flexibility in the operation of the Oakford Storage Field. There would be no increase in the amount of gas stored in the Oakford Storage Field as a result of construction of the proposed facilities. Presently, the Jeannette Compressor Station delivers gas out of the Oakford Storage Field, recovers migrating gas, and re-injects recovered gas into the storage pool. With the addition of the proposed compression and related facilities at the existing South Oakford Compressor Station, the recovery operation performed by the Jeannette Compressor Station would continue with facilities consolidated at one location.

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street NE., Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, State and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

A limited number of copies of the EA are available from: Ms. Jennifer Goggin, Environmental Project Manager, Environmental Review and Compliance Branch II, Office of Pipeline Regulation, 888 First Street NE., PR 11.2, Washington, DC 20426, (202) 208–2226.

Any person wishing to comment on the EA may do so. Written comments must reference Docket No. CP95–668–000 and be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comments should be filed as soon as possible, but must be received no later than January 26, 1996, to ensure consideration prior to a Commission decision on this proposal. A copy of any comments should also be sent to Ms. Jennifer Goggin, Environmental Project Manager, at the above address.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Additional information about this project is available from Ms. Jennifer Goggin, Environmental Project Manager.

Lois D. Cashell,

*Secretary.*

[FR Doc. 95–31532 Filed 12–29–95; 8:45 am]

BILLING CODE 6717–01–M

## FEDERAL TRADE COMMISSION

**[File No. 961–0014]**

### Johnson & Johnson; Consent Agreement With Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require the New Brunswick, New Jersey-based manufacturer of health care products to divest the Cordis Neuroscience Business, which develops cranial shunts used in the treatment of hydrocephalus. The Commission had alleged that Johnson & Johnson's acquisition of Cordis Corporation would reduce competition in the market for neurological shunts by giving two firms control of 85 percent of the market.

**DATES:** Comments must be received on or before March 4, 1996.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Ann Malester, Federal Trade Commission, S–2035, 6th and Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326–2682. Michael R. Moiseyev, Federal Trade Commission, S.–2025, 6th and Pennsylvania Avenue, NW, Washington, DC 20580. (202) 326–3106.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission (''Commission''), having initiated an investigation of the proposed merger of Johnson & Johnson, a corporation, and Cordis Corporation (''Cordis''), a corporation, and it now appearing that Johnson & Johnson, hereinafter sometimes referred to as ''Proposed Respondent,'' is willing to enter into an agreement containing an order to divest certain assets, and providing for certain other relief:

It is hereby agreed by and between Proposed Respondent Johnson & Johnson, by its duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent Johnson & Johnson is a corporation organized, existing, and doing business under and by virtue of the laws of the state of New Jersey with its principal executive offices located at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933.

2. Proposed Respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed Respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the Proposed Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by Proposed Respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to Proposed Respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to Proposed Respondent shall constitute service. Proposed Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed Respondent has read the proposed complaint and order contemplated hereby. Proposed Respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed Respondent further understands it may be liable for civil penalties in the amount provided by law for each violation of the order by Proposed Respondent or any agent of Proposed Respondent after it becomes final. By signing this Agreement, Proposed Respondent represents that the relief contemplated by this Agreement can be accomplished.

*Order*

I

It is ordered that, as used in this order, the following definitions shall apply:

A. ''Respondent'' or ''Johnson & Johnson'' means Johnson & Johnson, its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, and groups and affiliates controlled by Johnson & Johnson, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

B. ''Cordis'' means Cordis Corporation, its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, and groups and affiliates controlled by Cordis, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

C. ''Cordis Innovasive Systems'' means Cordis Innovasive Systems Inc., its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, and groups and affiliates controlled by Cordis Innovasive Systems, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

D. ''Nobles-Lai'' means Nobles-Lai Engineering, Inc. (formerly known as Visioneering, Inc.), its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, and groups and affiliates controlled by Nobles-Lai, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

E. ''Commission'' means the Federal Trade Commission.

F. ''Merger'' means the stock-for-stock merger of Johnson & Johnson and Cordis pursuant to the merger agreement dated November 12, 1995.

G. ''Assets and Businesses'' means all assets, properties, business and goodwill, tangible and intangible, including, without limitation, the following:

1. All real property interests, including rights, title and interest in and to owned or leased property, together with all buildings, improvements, appurtenances, licenses and permits;

2. All machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property;

3. All customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, software, software licenses, inventions, copyrights, trademarks, trade names, trade secrets, intellectual property, patents, technology, know-how, specifications, designs, drawings, processes and quality control data;

4. Inventory, supplies and storage capacity;

5. All rights, title and interest in and to the contracts entered into in the ordinary course of business with Nobles-Lai, customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

6. All rights under warranties and guarantees, express or implied;

7. All books, records, and files; and

8. All items of prepaid expense.

H. ''Cordis Neuroscience Business'' means:

1. Cordis Innovasive Systems and all of its Assets and Businesses; and

2. All of Cordis's rights, title, and interest, as of November 11, 1995, in all Assets and Businesses relating to the development, manufacture, distribution and sale of Neuroscience Products, including, but not limited to, all interest in Nobles-Lai.

I. ''Neuroscience Products'' means:

1. Neurological shunts, including, but not limited to, the Orbis-Sigma and Hakim shunt products;

2. Neurological external drainage systems, including, but not limited to, External Drainage Systems (EDS) and External Ventricular Drainage System Set (EDVS) products; and

3. Neuroendoscopy products, including, but not limited to, the Vision 2020 neuroendoscope product and the Cordis HawkVision Neuroendoscopy System.

J. ''Neurological Shunts'' means systems consisting of a ventricular catheter, a distal catheter, and a valve that are implanted in the brain to divert cerebrospinal fluid (CSF) into the bloodstream of patients experiencing excessive intercranial pressure because of a surplus of CSF inside the skull.

K. ''Neurological External Drainage Systems'' means systems consisting of a ventricular catheter, a drainage bag, tubing, and a stopcock that are used for draining CSF to control intracranial pressure and for monitoring intracranial pressure.

L. ''Neuroendoscopy Products'' means:

1. Neuroendoscopes, which are hand-held devices with an optical and light system that permit viewing of the neural cavity for use in neurosurgical procedures;

2. Neuroendoscopy systems, which are imaging systems used in conjunction with neuroendoscopes; and

3. Neuroendoscopy disposables and accessories, including, but not limited to, cannulas, irrigators, plugs, probes, forceps, scissors, graspers, aspirators, couplers, pumps, cameras and other products used in conjunction with neuroendoscopes and neuroendoscopy systems.

II

It is further ordered that:

A. Johnson & Johnson shall divest, absolutely and in good faith, within twelve (12) months of the date this order becomes final, the Cordis Neuroscience Business, and shall also divest such additional ancillary Assets and Businesses and effect such arrangements as are necessary to assure the marketability, viability and competitiveness of the Cordis Neuroscience Business.

B. Johnson & Johnson shall divest the Cordis Neuroscience Business only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continuation of the Cordis Neuroscience Business as an ongoing, viable operation, engaged in the same business in which the Cordis Neuroscience Business is engaged at the time of the proposed divestiture, and to remedy the lessening of competition resulting from the Merger as alleged in the Commission's complaint.

C. Pending divestiture of the Cordis Neuroscience Business, Johnson & Johnson shall take such actions as are necessary to maintain the viability, marketability, and competitiveness of the Cordis Neuroscience Business, and to prevent the destruction, removal, wasting, deterioration or impairment of the Cordis Neuroscience Business except for ordinary wear and tear.

D. If Johnson & Johnson is prevented from divesting the Cordis Neuroscience Business because of, or as a result of, the assertion by Nobles-Lai of any contractual rights, requirements or prohibitions, then for a period of five (5) years commencing on the date that this order is accepted by the Commission, Johnson & Johnson shall not:

1. Contract with Nobles-Lai for the research, development or manufacture of any Neuroendoscopy Product; or

2. Purchase any Neuroendoscopy Product from, or distribute any Neuroendoscopy Product for, Nobles-Lai.

III

It is further ordered that:

A. If Johnson & Johnson has not divested, absolutely and in good faith, and with the prior approval of the Commission, the Cordis Neuroscience Business within twelve (12) months of the date this order becomes final, the Commission may appoint a trustee to divest the Cordis Neuroscience Business

B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. (§ 45l), or any other statute enforced by the Commission, Johnson & Johnson shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph III shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Johnson & Johnson to comply with this order.

C. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A., Johnson & Johnson shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Johnson & Johnson, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in mergers and divestitures. If Johnson & Johnson has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Johnson & Johnson of the identity of any proposed trustee, Johnson & Johnson shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Cordis Neuroscience Business.

3. Within ten (10) days after appointment of the trustee, Johnson & Johnson shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III.C.3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Cordis Neuroscience Business, or to any other relevant information, as the trustee may request. Johnson & Johnson shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Johnson & Johnson shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Johnson & Johnson shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Johnson & Johnson's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to acquirer as set out in Paragraph II of this order, as appropriate; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity selected by Johnson & Johnson from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of Johnson & Johnson, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and

expense of Johnson & Johnson, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Johnson & Johnson, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Cordis Neuroscience Business.

8. Johnson & Johnson shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Cordis Neuroscience Business.

12. In the event that the trustee determines that he or she is unable to divest the Cordis Neuroscience Business in a manner consistent with the Commission's purpose as described in Paragraph II, the trustee may divest additional ancillary assets of Johnson & Johnson and effect such arrangements as are necessary to satisfy the requirements of this order.

13. The trustee shall report in writing to Johnson & Johnson and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV

It is further ordered that Johnson & Johnson shall comply with all terms of the Cordis Neuroscience Business Agreement to Hold Separate, attached to this order and made a part hereof as Appendix I. The Cordis Neuroscience Business Agreement to Hold Separate shall continue in effect until Johnson & Johnson has divested all of the Cordis Neuroscience Business.

V

It is further ordered that:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until Johnson & Johnson has fully complied with Paragraphs II, III, and IV of this order, Johnson & Johnson shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II, III, and IV of this order. Johnson & Johnson shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II, III, and IV, including a description of all substantive contacts or negotiations for the divestiture required by this order, including the identity of all parties contacted. Johnson & Johnson shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture.

B. If Johnson & Johnson is precluded from purchasing from, contracting with, or distributing for Nobles-Lai pursuant to Paragraph II.D. of this order, then one (1) year from the date this order becomes final, annually for the next (5) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with Paragraph II.D. of this order.

VI

It is further ordered that, for the purpose of determining or securing compliance with this order, Johnson & Johnson shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Johnson & Johnson, relating to any matters contained in this order; and

B. Upon five (5) days' notice to Johnson & Johnson, and without restraint or interference from Johnson & Johnson, to interview officers, directors, or employees of Johnson & Johnson. Officers and employees of Johnson & Johnson whose places of employment are outside the United States shall be made available on reasonable notice.

VII

It is further ordered that Johnson & Johnson shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Johnson & Johnson such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

Benjamin I. Berman,

*Acting Secretary.*

## Appendix I

## Cordis Neuroscience Business Agreement To Hold Separate

This Agreement to Hold Separate (''Hold Separate'') is by and between Johnson & Johnson, a corporation organized, existing, and doing business under and by virtue of the laws of the state of New Jersey, with its office and principal place of business at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933; and the Federal Trade Commission (''Commission''), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, et seq. (collectively, the ''Parties'').

*Premises*

Whereas, Johnson & Johnson and Cordis Corporation (''Cordis''), on November 12, 1995, entered into a stock-for stock merger (hereinafter ''Merger''); and

Whereas, Cordis, with its principal office and place of business located at 14201 N.W. 60th Avenue, Miami Lakes, Florida 33014 develops, manufactures and markets, among other things, neurological shunts; and

Whereas, Johnson & Johnson, with its principal office and place of business located at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933, through its subsidiary Johnson & Johnson Professional, Inc., develops, manufactures and markets, among other things, neurological shunts; and

Whereas, the Commission is now investigating the Merger to determine whether it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the Agreement Containing Consent Order (''Consent Agreement''), the Commission must place it on the public record for a

period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the status quo ante of Cordis Neuroscience Business, as defined in Paragraph I.H. of the Consent Agreement, during the period prior to the final acceptance and issuance of the Consent Agreement by the Commission (after the 60-day public comment period), divestiture resulting from any proceeding challenging the legality of the Merger might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Merger is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Cordis Neuroscience Business and the Commission's right to have the Cordis Neuroscience Business continue as a viable competitor; and

Whereas, the purpose of this Hold Separate and the Consent Agreement are:

A. To preserve the Cordis Neuroscience Business as a viable, competitive, and independent business pending divestiture of the Cordis Neuroscience Business, and

B. To remedy any anticompetitive effects of the Merger; and

Whereas, Johnson & Johnson's entering into this Hold Separate shall in no way be construed as an admission by Johnson & Johnson that the Merger is illegal; and

Whereas, Johnson & Johnson understands that no act or transaction contemplated by this Hold Separate shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Hold Separate.

Now, therefore, the Parties agree, upon the understanding that the Commission has not yet determined whether the Merger will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the Consent Agreement for public comment, it will grant early termination of the Hart-Scott-Rodino waiting period, as follows:

1. Johnson & Johnson agrees to execute and be bound by the Consent Agreement.

2. Johnson & Johnson agrees that from the date this Hold Separate is accepted until the earliest of the times listed in subparagraphs 2.a.–2.b., it will comply with the provisions of Paragraph 3. of this Hold Separate:

a. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. The time that divestiture of the Cordis Neuroscience Business is required by Paragraph II of the Consent Agreement is completed.

3. To assure the complete independence and viability of the Cordis Neuroscience Business, and to assure that no material confidential information is exchanged between Johnson & Johnson and the Cordis Neuroscience Business, Johnson & Johnson shall hold the Cordis Neuroscience Business separate and apart on the following terms and conditions:

a. The Cordis Neuroscience Business, as defined in Paragraph I.H. of the Consent Agreement, shall be held separate and apart and shall be managed and operated independently of Johnson & Johnson (meaning here and hereinafter, Johnson & Johnson excluding the Cordis Neuroscience Business and excluding all personnel connected with the Cordis Neuroscience Business as of the date this Agreement is signed, but including all other portions of Cordis), except to the extent that Johnson & Johnson must exercise direction and control over the Cordis Neuroscience Business to assure compliance with this Hold Separate or the Consent Agreement.

b. Johnson & Johnson shall maintain the marketability, viability, and competitiveness of the Cordis Neuroscience Business and shall not cause or permit the destruction, removal, wasting, deterioration, or impairment of any assets or business it may have to divest except in the ordinary course of business and except for ordinary wear and tear, and it shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair the marketability, viability or competitiveness of the Cordis Neuroscience Business.

c. Johnson & Johnson shall appoint a knowledgeable person among the top management of the Cordis Neuroscience Business, as Manager to manage and maintain the Cordis Neuroscience Business on a day to day basis during the Hold Separate. The Manager shall have exclusive management and control of the Cordis Neuroscience Business, and shall manage the Cordis Neuroscience Business independently of Johnson & Johnson's other businesses.

d. The Manager shall report exclusively to the Cordis Neuroscience Business Management Committee (''Management Committee''), which shall be appointed by Johnson & Johnson. The Committee shall consist of two knowledgeable persons from among the top management of the Cordis Neurological Products business; and a Johnson & Johnson financial officer or a comparable, knowledgeable person from Johnson & Johnson's financial office who has no direct involvement with Johnson & Johnson's Neurological Products Business (''Johnson & Johnson Management Committee Member''). The Manager shall be the Chairman of the Management Committee. Except for the Johnson & Johnson Management Committee Member serving on the Management Committee, Johnson & Johnson shall not permit any officer, employee, or agent of Johnson & Johnson also to be an officer, employee or agent of the Cordis Neuroscience Business. Each Management Committee member shall enter into a confidentiality agreement agreeing to be bound by the terms and conditions set forth in Attachment A, appended to this Hold Separate. The Management Committee shall meet monthly during the course of the Hold Separate, and as otherwise necessary. Meetings of the Management Committee during the term of the Hold Separate shall be audio recorded, and the recording shall be retained for two (2) years after the termination of the Hold Separate.

e. All material transactions, out of the ordinary course of business and not precluded by Paragraph 3 hereof, shall be subject to a majority vote of the Management Committee.

f. Johnson & Johnson shall not exercise direction or control over, or influence directly or indirectly, the Cordis Neuroscience Business, the Management Committee, or the Manager of the Cordis Neuroscience Business, any of their operations, assets, or businesses; provided, however, that Johnson & Johnson may exercise only such direction and control over the Cordis Neuroscience Business as is necessary to assure compliance with this Hold Separate, the Consent Order and with all applicable laws and except as otherwise provided in this Hold Separate.

g. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating and consummating the Merger, defending investigations or litigation, obtaining legal advice, complying with this Hold Separate or the Consent Order or negotiating agreements to divest assets, Johnson & Johnson shall not receive or have access to, or the use of, any material confidential information of the Cordis Neuroscience Business or the activities of the Manager or Management Committee not in the public domain, nor shall the Cordis Neuroscience Business, Manager, or the Management Committee receive or have access to, or the use of, any material confidential information about Johnson & Johnson. Johnson & Johnson may receive on a regular basis from the Cordis Neuroscience Business aggregate financial information necessary and essential to allow Johnson & Johnson to file financial reports, tax returns, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph. (''Material confidential information,'' as used herein, means competitively sensitive or proprietary information not independently known to:

1. Johnson & Johnson, with regard to the Cordis Neuroscience Business, from sources other than the Cordis Neuroscience Business or its employees or the Management Committee; or

2. The Management Committee or the Cordis Neuroscience Business or its employees, with regard to Johnson & Johnson, from sources other than Johnson & Johnson,

and includes, but is not limited to, customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.)

h. Except as is permitted by this Hold Separate, the Johnson & Johnson Management Committee Member shall not receive any Cordis Neuroscience Business material confidential information and shall not disclose any such information obtained through his or her involvement with the Cordis Neuroscience Business to Johnson & Johnson or use it to obtain any advantage for Johnson & Johnson. The Johnson & Johnson Management Committee Member shall participate in matters that come before the Management Committee only for the limited purpose of considering any capital investment of over $250,000, approving any

proposed budget and operating plans, authorizing dividends and repayment of loans consistent with the provisions hereof, reviewing material transactions described in subparagraph 3.e, and carrying out Johnson & Johnson's responsibilities under the Hold Separate and the Consent Agreement. Except as permitted by the Hold Separate, the Johnson & Johnson Management Committee Member shall not participate in any matter, or attempt to influence the votes of the other directors on the Management Committee with respect to matters that would involve a conflict of interest between Johnson & Johnson and the Cordis Neuroscience Business.

i. Johnson & Johnson shall not change the composition of the Management Committee unless a majority of the Management Committee consents. The Chairman of the Management Committee shall have the power to remove members of the Management Committee for cause and to require Johnson & Johnson to appoint replacement members to the Management Committee in the same manner as provided in Paragraph 3.d. of this Hold Separate. Johnson & Johnson shall not change the composition of the management of the Cordis Neuroscience Business, except that the Management Committee shall have the power to remove management employees for unsatisfactory performance or for cause.

j. If the Chairman of the Management Committee ceases to act or fails to act diligently, a substitute Chairman shall be appointed in the same manner as provided in Paragraphs 3.c. and 3.d.

k. Cordis personnel connected with the Cordis Neuroscience Business or providing support services to the Cordis Neuroscience Business as of the date this Hold Separate is signed shall continue, as employees of Johnson & Johnson, to provide such services as of the date of this Hold Separate. Such Johnson & Johnson personnel must retain and maintain all material confidential information relating to the Cordis Neuroscience Business on a confidential basis and, except as is permitted by this Hold Separate, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other Johnson & Johnson business.

Such Johnson & Johnson personnel shall also execute a confidentiality agreement prohibiting the disclosure of any material confidential Cordis Neuroscience Business or Johnson & Johnson information.

1. The Cordis Neuroscience Business shall be staffed with sufficient employees to maintain the viability and competitiveness of the Cordis Neuroscience Business, which employees shall be the Cordis Neuroscience Business's employees and may also be hired from sources other than Johnson & Johnson. Each management employee of the Cordis Neuroscience Business shall execute a confidentiality agreement prohibiting the disclosure of any Cordis Neuroscience Business confidential information.

m. Johnson & Johnson shall circulate to the management employees of the Cordis Neuroscience Business and appropriately display a notice of this Hold Separate and Consent Order in the form attached hereto as Attachment A.

n. Johnson & Johnson shall cause the Cordis Neuroscience Business to expend funds for research and development, quality control, manufacturing and marketing of Cordis Neuroscience Business products at a level not lower than that budgeted for either the 1994 or 1995 fiscal year, and shall increase such spending as deemed reasonably necessary in light of competitive conditions. Within thirty (30) days of the date of this Hold Separate, the Chairman of the Management Committee shall develop a budget and operating plan for the 1996 fiscal year that complies with the provisions of this Paragraph and present it to the Management Committee for approval. If necessary, Johnson & Johnson shall provide the Cordis Neuroscience Business with any funds to accomplish the foregoing. Johnson & Johnson shall provide to the Cordis Neuroscience Business such support services as provided by Cordis prior to the Merger.

o. Johnson & Johnson shall provide the Cordis Neuroscience Business with sufficient working capital to operate at a level not less than the rate of operation in effect during the twelve (12) months preceding the date of this Hold Separate.

p. The Management Committee shall serve at the cost and expense of Johnson & Johnson. Johnson & Johnson shall indemnify the Management Committee against any losses or claims of any kind that might arise out of its involvement under this Hold Separate, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Management Committee members.

q. The Management Committee shall have access to and be informed about all companies who inquire about, seek or propose to buy the Cordis Neuroscience Business.

r. Notwithstanding the provisions of Paragraph 3.h., companies who undertake a due diligence process in the course of negotiations to purchase the Cordis Neuroscience Business may be accompanied and assisted by the Johnson & Johnson Management Committee Member, in addition to appropriate Cordis Neuroscience Business employees selected by the Management Committee. The Johnson & Johnson Management Committee Member may delegate tasks relating to such due diligence to attorneys, accountants and/or other financial employees of Johnson & Johnson who are not directly engaged in the Johnson & Johnson Neurological Products Business; provided, however, that such Johnson & Johnson employees, accountants and attorneys shall execute a confidentiality agreement prohibiting the disclosure of any Cordis Neuroscience Business material confidential information.

4. Should the Federal Trade Commission seek in any proceeding to compel Johnson & Johnson to divest itself of the Cordis Neuroscience Business, or any additional assets, as provided in the Consent Agreement, or to seek any other injunctive or equitable relief, Johnson & Johnson shall not raise any objection based on the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Merger. Johnson & Johnson shall also waive all rights to contest the validity of this Hold Separate.

5. To the extent that this Hold Separate requires Johnson & Johnson to take, or prohibits Johnson & Johnson from taking, certain actions that otherwise may be required or prohibited by contract, Johnson & Johnson shall abide by the terms of this Hold Separate or the Consent Agreement, and shall not assert as a defense such contract requirements in a civil penalty action brought by the Commission to enforce the terms of this Hold Separate or the Consent Agreement.

6. For the purpose of determining or securing compliance with this Hold Separate, subject to any legally recognized privilege or provision of applicable law, and upon written request with reasonable notice to Johnson & Johnson made to its General Counsel, Johnson & Johnson shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Johnson & Johnson and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Johnson & Johnson or relating to compliance with this Hold Separate;

b. Upon five (5) days' notice to Johnson & Johnson, and without restraint or interference from it, to interview officers or employees of Johnson & Johnson, who may have counsel present, regarding any such matters.

7. This Hold Separate shall not be binding until approved by the Commission.

## Attachment A.—Notice of Divestiture and Requirement for Confidentiality

Johnson & Johnson and Cordis Corporation have entered into a Consent Agreement and Agreement to Hold Separate with the Federal Trade Commission (''Commission'') relating to the divestiture of the Cordis Neuroscience Business. Until after the Commission's Order becomes final and the Cordis Neuroscience Business are divested, the Cordis Neuroscience Business must be managed and maintained as a separate, ongoing business, independent of all other Johnson & Johnson businesses. All competitive information relating to The Cordis Neuroscience Business must be retained and maintained by the persons involved in the Cordis Neuroscience Business on a confidential basis and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment or agency involves any other Johnson & Johnson business. Similarly, all such persons involved in any other Johnson & Johnson business small be prohibited

from providing, discussing, exchanging, circulating or otherwise furnishing competitive information about such business to or with any person whose employment or agency involves the Cordis Neuroscience Business.

Any violation of the Consent Agreement or the Agreement to Hold Separate, incorporated by reference as part of the Consent Order, may subject Johnson & Johnson to civil penalties and other relief as provided by law.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted subject to final approval an agreement containing a proposed consent order from Johnson & Johnson under which Johnson & Johnson would divest the Cordis Neuroscience Business, which includes Cordis' neurological shunt product line.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Johnson & Johnson, a New Jersey based corporation, has proposed to acquire Cordis Corporation, a Florida based corporation, in a stock for stock exchange worth $1.8 billion.

The proposed complaint alleges that the proposed merger, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the market for neurological shunts. Neurological shunts are medical devices used to treat hydrocephalus, a brain disorder that primarily afflicts young children. The merger will substantially increase concentration in the already highly concentrated U.S. shunt market: two firms will control over 85% of the market. Anticompetitive effects, such as increased prices and decreased services, are likely to result. In addition, timely entry by other companies, both in the United States and overseas, is unlikely to defeat these anticompetitive effects. Entry cannot occur in a timely fashion because of the difficulty of developing competitive neurological shunt designs, establishing manufacturing facilities, organizing a sales and service network, receiving Food and Drug Administration approval, and gaining physician acceptance in the market.

The proposed consent order would remedy the alleged violation by replacing the lost competition that would result from the merger. It provides that Johnson & Johnson shall divest the Cordis Neuroscience Business within twelve (12) months of the date the proposed order becomes final. The Cordis Neuroscience Business is a single operational unit that sells neurological shunts, intracranial pressure drainage systems and neuroendoscopy equipment. Significant synergies between the products manufactured and sold by the Business exist, and Cordis' shunts are sold as part of the broader product line. Therefore, a divestiture of the whole business is necessary to maintain competition in the shunt market. The proposed order requires Cordis Neuroscience Business to take all the steps necessary to assure the viability, marketability, and competitiveness of the Cordis Neuroscience Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Cordis Neuroscience Business.

If Johnson & Johnson is unable to divest the Cordis Neuroscience Business within twelve (12) months, then a trustee may be appointed by the Commission to divest the Cordis Neuroscience Business within an additional twelve (12) month period. If, at the end of that twelve (12) month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the time period for divestiture can be extended up to two (2) times by the court.

A Hold Separate Agreement signed by Johnson & Johnson provides that, during the time period from the date the Hold Separate is accepted until the divestiture of the Cordis Neuroscience Business is completed, the Cordis Neuroscience Business shall be held separate and operated independently of Johnson & Johnson.

Under the provisions of the order, Johnson & Johnson is also required to provide to the Commission a report of compliance with the divestiture provisions of the order within sixty (60) days following the date this order becomes final, and every sixty (60) days thereafter until Johnson & Johnson has completely divested its interest in the Cordis Neuroscience Business.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

[FR Doc. 95–31558 Filed 12–29–95; 8:45 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 95E–0301]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; PREVACID®

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for PREVACID® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

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

**FOR FURTHER INFORMATION CONTACT:** Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration,5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the

Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product PREVACID® (lansoprazole). PREVACID® is indicated for short-term treatment (up to 4 weeks) for healing and symptom relief of active duodenal ulcer. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for PREVACID® (U.S. Patent No. 4,628,098) from Hiroshi Akimoto, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 25, 1995, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of PREVACID® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for PREVACID® is 2,870 days. Of this time, 2,328 days occurred during the testing phase of the regulatory review period, while 542 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: July 3, 1987. FDA has verified the applicants's claim that the date that the investigational new drug application (IND) became effective was July 3, 1987.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: November 15, 1993. The applicant claims November 12, 1993, as the date the new drug application (NDA) for PREVACID® (NDA 20–406) was initially submitted. However, FDA records indicate that the applicant submitted NDA 20–406 on November 12, 1993, and FDA received the NDA on November 15, 1993, which is considered to be the NDA initially submitted date.

3. *The date the application was approved*: May 10, 1995. FDA has verified the applicant's claim that NDA 20–406 was approved on May 10, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,706 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before March 4, 1996, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before July 1, 1996, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 21, 1995.

Stuart L. Nightingale,

*Associate Commissioner for Health Affairs.*

[FR Doc. 95–31557 Filed 12–29–95; 8:45 am]

BILLING CODE 4160–01–F

---

**[Docket No. 95E–0303]**

## Determination of Regulatory Review Period for Purposes of Patent Extension; ADENOSCAN®

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for ADENOSCAN® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

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

**FOR FURTHER INFORMATION CONTACT:** Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product ADENOSCAN® (adenosine). ADENOSCAN® is indicated as an adjunct to thallium-201 myocardial perfusion scintigraphy in patients unable to exercise adequately. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ADENOSCAN® (U.S. Patent No. 5,070,877) from Medco Research, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 25, 1995, FDA advised the Patent and Trademark Office that this

human drug product had undergone a regulatory review period and that the approval of ADENOSCAN® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ADENOSCAN® is 2,688 days. Of this time, 768 days occurred during the testing phase of the regulatory review period, while 1,920 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: January 9, 1988. The applicant claims December 10, 1987, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was January 9, 1988, which was 30 days after FDA receipt of the IND on December 10, 1987.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: February 14, 1990. The applicant claims February 9, 1990, as the date the new drug application (NDA) for ADENOSCAN® (NDA 20–059) was initially submitted. However, while FDA records indicate that the applicant submitted NDA 20–059 on February 9, 1990, FDA received the NDA on February 14, 1990, which is considered to be the date the NDA was initially submitted.

3. *The date the human drug was approved*: May 18, 1995. FDA has verified the applicant's claim that NDA–059 was approved on May 18, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 159 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before March 4, 1996, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before July 1, 1996, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 21, 1995.

Stuart L. Nightingale,

*Associate Commissioner for Health Affairs.*

[FR Doc. 95–31555 Filed 12–29–95; 8:45 am]

BILLING CODE 4160–01–F

## 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.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

**MEETING:** The following advisory committee meeting is announced:

### Immunology Devices Panel of the Medical Devices Advisory Committee

*Date, time, and place.* January 22, 1996, 9:30 a.m., Gaithersburg Hilton Hotel, Salons D & E, 620 Perry Pkwy., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the hotel. Attendees requiring overnight accommodations may contact the hotel at 301–977–8900 and reference FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability.

*Type of meeting and contact person.* Open public hearing, 9:30 a.m. to 10:30 a.m., unless participation does not last that long; open committee discussion, 10:30 a.m. to 4 p.m. For information regarding the analyte specific reagents classification—Kaiser J. Aziz, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–3084. For information regarding the conduct of the meeting—Peter E. Maxim, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1293, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Immunology Devices Panel, code 12516.

*General function of the committee.* The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 8, 1996, 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.

*Open committee discussion.* The committee will consider the classification of analyte specific reagents as in vitro diagnostic devices. FDA intends to develop a regulatory scheme to handle products currently being used by clinical laboratories as materials for in-house (''home brew'') assays. Analyte specific reagents are chemical, poly or monoclonal antibodies, proteins, nucleic acid sequences, which, by their physio-chemical reaction with substances in a specimen, allow a test procedure to distinguish or quantify an individual chemical substance or ligand in a biological specimen. These are used in the production of in-house tests which are of high complexity under the Clinical Laboratory Improvement Act of

1988. They are considered medical devices. Currently, such reagents are being made widely available to clinical laboratories under ''research use only'' or ''investigational use only'' labeling or as unlabeled components of a final test.

FDA believes that most analyte specific reagents may be considered for classification as class I devices and exempted from the premarket notification (510(k)) procedure in subpart E of 21 CFR part 807 if the reagents do not make analytical or clinical performance claims. FDA is currently considering an approach under which such analyte specific reagents would be subject to other general controls: (1) Registration and listing, (2) medical device reporting requirements, and (3) good manufacturing practice requirements. FDA is also considering establishing restrictions under section 520(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(e)) on the sale, distribution, or use of the devices.

The issue of classification and the nature of appropriate restrictions will be the subject of the panel meeting.

Although FDA believes that most analyte specific reagents may be considered for regulation in this way, the agency also believes that a small number of analyte specific reagents (e.g., those used to diagnose communicable diseases through blood or other means) would be more properly classified into class II or III and subject to the premarket controls (510(k) or premarket approval) applicable to such classification.

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: December 21, 1995.

Michael A. Friedman,

*Deputy Commissioner for Operations.*

[FR Doc. 95–31554 Filed 12–29–95; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, WA

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of meetings.

**SUMMARY:** Title XII, The Act of October 31, 1994 (Public Law 103–434), directs the Secretary of the Interior, in consultation with the State of Washington, the Yakama Indian Nation, Yakima River Basin Water Conservation Advisory Group and a Facilitator within 12 months of enactment. The purpose of the Conservation Advisory Group is to provide technical advice and counsel to the Secretary and the State on the structure, implementation, and oversight of the Yakima River Basin Water Conservation Program.

**DATES:** Meetings will be held at the Upper Columbia Area Office, Bureau of Reclamation, 1917 Marsh Road, Yakima, Washington, beginning at 12 noon on the following dates: January 16, 1996, February 20, 1996, March 19, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Walt Fite, Program Manager, Yakima River Water Enhancement Project, PO Box 1749, Yakima, Washington 98907, (509) 575–5848 ext. 267.

**SUPPLEMENTARY INFORMATION:** The Basin Conservation Program is structured to provide economic incentives with cooperative Federal, State, and local funding to stimulate the identification and implementation of structural and nonstructural cost-effective water conservation measures in the Yakima River basin. Improvements in the efficiency of water delivery and use will result in improved streamflows for fish and wildlife and improve the reliability of water supplies for irrigation.

Dated: December 20, 1995.

Jim Cole,

*Area Manager, Upper Columbia Area Office, Bureau of Reclamation, Yakima, Washington.*

[FR Doc. 95–31551 Filed 12–29–95; 8:45 am]

BILLING CODE 4310–94–M

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for a Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of Federal railroad safety regulations. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket No. RSEQ–95–3) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW, Washington, DC 20590. Communications received before March 4, 1996 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW, Washington, DC 20590. The waiver petitions are as follows:

Michigan State Trust for Railway Preservation, Inc. (MSTP)

*FRA Waiver Petition Docket No. RSEQ–95–3*

The MSTP seeks a waiver of compliance with Title 49, Code of Federal Regulations (49 CFR), Part 240, ''Qualifications for Locomotive Engineers.'' MSTP is a non-profit educational corporation. MSTP owns and operates a 1941 Lima built steam locomotive. The locomotive, No. 1225, has operated approximately 5000 miles since 1988 throughout the general railroad system and has been in compliance with 49 CFR part 230 since that time. The MSTP steam locomotive is located at a repair facility in Owosso, Michigan. The facility is connected to the tracks of the Tuscola and Saginaw Bay Railway (TSBY). The MSTP owns and controls two (2) lead tracks each approximately 130 feet long and extending from the repair shop building to the connection with the TSBY. The MSTP requests a waiver from Part 240 which will allow operation of No. 1225 a distance of .875 miles in each direction by non-certified persons over TSBY trackage with approved restrictions. The waiver would allow MSTP to permit the public to operate the locomotive on the TSBY trackage. In addition, MSTP would generate continued interest in and revenue required to teach steam technology to future generations.

Phil Olekszyk,

*Deputy Associate Administrator for Safety Compliance and Program Implementation.*

[FR Doc. 95–31547 Filed 12–29–95; 8:45 am]

BILLING CODE 4910–06–M

## DEPARTMENT OF THE TREASURY

### Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service

**AGENCY:** Department Offices, Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces the date and time of the next meeting and the agenda for consideration by the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

**DATE:** The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on Friday, January 19, 1996, from 9:30 a.m. to 12:30 p.m. and from 2:00 p.m. to 3:30 p.m. in the Stanton Room, 20th Floor, World Trade Center, Baltimore, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Under Secretary (Enforcement), Room 4004, Department of the Treasury, 1500 Pennsylvania, NW., Washington, DC 20220. Tel.: (202) 622–0220.

**SUPPLEMENTARY INFORMATION:** At the January 19, 1996 session, the regular quarterly meeting of the Advisory Committee, the Committee is expected to consider the agenda items listed below. The agenda may be modified prior to the meeting.

1. FY 1995 compliance measurement results.

2. Review of the remote filing test and future plans.

3. Customs inbond proposal under the Customs Modernization Act.

4. Fraud detection and cargo inspection innovations.

5. Protection of confidentiality of account information and other proprietary information made available to Customs.

6. Selective review of Customs enforcement and administration of other Federal agency laws, regulations, and requirements.

The tentative agenda for the meeting may be modified prior to the meeting date. Public observers wishing to verify agenda items prior to the meeting may do so by contacting the office of Tariff and Trade Affairs, (202) 622–0220.

The meeting is open to the public; however participation in the Committee's deliberations is limited to Committee members and Customs and Treasury Department staff. A person other than an Advisory Committee member who wishes to attend the meeting, should give advance notice by contacting Ms. Theresa Manning at (202) 622–0220 no later than January 12, 1996.

Dated: December 27, 1995.

Dennis M. O'Connell,

*Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).*

[FR Doc. 95–31575 Filed 12–29–95; 8:45 am]

BILLING CODE 4810–25–M

### Customs Service

### Public Information Collection Requirements; Request for Public Input; Extension of Time in Which To File Vessel Repair Documents

**AGENCY:** U.S. Customs, Department of the Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Extension of Time Limit In Which To File Vessel Repair Documents. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments should be received on or before March 4, 1996, to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs Service, Printing and Records Services Group, Room 6216,

1301 Constitution Ave., N.W., Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: Norman Waits, Room 6216, 1301 Constitution Avenue N.W., Washington, D.C. 20229, Tel. (202) 927–1551.

**SUPPLEMENTARY INFORMATION:** Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

*Title:* Extension of Time In Which To File Vessel Repair Documents.

*OMB Number:* 1515–0195.

*Form Number:* N/A.

*Abstract:* This collection of information is required to establish duties assessed upon the value of repairs accomplished outside of the United States on certain American-flag vessels. Customs regulations 19 CFR 4.14(a)(2)(iii)(B)(b)(2)(ii) states ''whenever a repair entry is submitted as a full and complete account, the entry is submitted as an incomplete account, the evidence must be submitted within 90 days from the date of the vessel's arrival.'' However, an additional 30-day extension may be granted if a written request is submitted before the end of the 90-day period, along with a satisfactory explanation, by the party required to furnish the evidence of cost.

*Current Actions:* There are no changes to the information collection. This submission is being submitted to extend the expiration date.

*Type of Review:* Extension (without change).

*Affected Public:* Business or other for-profit institutions.

*Estimated Number of Respondents:* 2,000.

*Estimated Time Per Respondent:* 3 minutes.

*Estimated Total Annual Burden Hours:* 112.

Dated: December 27, 1995.

V. Carol Barr,

*Leader, Printing and Records Services Group.*

[FR Doc. 95–31562 Filed 12–29–95; 8:45 am]

**BILLING CODE 4820–02–P**

## Public Information Collection Requirements; Request for Public Input; Documentation Requirements for Articles Entered Under Certain Special Tariff Treatment Provisions

**AGENCY:** U.S. Customs, Department of the Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Documentation Requirements For Articles Entered Under Certain Special Tariff Treatment Provisions. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments should be received on or before March 4, 1996, to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs Service, Printing and Records Services Group, Room 6216, 1301 Constitution Ave., N.W., Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: Norman Waits, Room 6216, 1301 Constitution Avenue N.W., Washington, D.C. 20229, Tel. (202) 927–1551.

**SUPPLEMENTARY INFORMATION:** Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

*Title:* Documentation Requirements For Articles Entered Under Certain Special Tariff Treatment Provisions.

*OMB Number:* 1515–0194.

*Form Number:* N/A.

*Abstract:* This collection of information is required to determine whether imported articles are entitled to duty-free or reduced duty treatment when returned to the U.S. and entered under subheading 9801.00.10, 9802.00.20, 9802.00.50, or 9802.00.60, Harmonized Tariff Schedule of the United States (HTSUS). The declaration by the owner, importer, consignee, or agent required by 19 CFR 10.1(a), 10.8(a), and 10.9(a) state that the statutory conditions and requirements for entry under the above HTSUS subheadings have been satisfied.

*Current Actions:* There are no changes to the information collection. This submission is being submitted to extend the expiration date.

*Type of Review:* Extension (without change).

*Affected Public:* Business or other for-profit institutions.

*Estimated Number of Respondents:* 2,250.

*Estimated Time Per Respondent:* 12 minutes.

*Estimated Total Annual Burden Hours:* 450.

Dated: December 27, 1995.

V. Carol Barr,

*Leader, Printing and Records Services Group.*

[FR Doc. 95–31561 Filed 12–29–95; 8:45 am]

**BILLING CODE 4820–02–P**

**[T.D. 96–5]**

## Tariff Classification of Sleepwear Separates

**AGENCY:** Customs Service, Treasury.

**ACTION:** Final determination regarding inconsistent tariff classification rulings of sleepwear separates.

**SUMMARY:** This notice advises the public that Customs is modifying inconsistent rulings on garments known as pajama or sleepwear separates which do not conform with Customs position on the proper classification of such garments. Customs Headquarters has issued rulings that women's woven cotton pajama or sleepwear separates, when imported without a matching component (thus precluding classification as pajamas), are classified as similar articles and remain within heading 6208 of the Harmonized Tariff Schedule of the United States (HTSUS). Heading 6208, HTSUS, provides for

women's or girls' singlets and other undershirts, slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles. It has come to Customs attention that prior to issuance of these rulings a limited number of rulings were issued on similar garments referred to as pajama bottoms, sleep bottoms or sleep shorts. In these earlier rulings, the garments ruled upon were classified in the provision for women's or girls' pajamas. This was an error. Due to the likelihood that Customs Headquarters may not be aware of all rulings issued on such garments, notice was given on August 18, 1995 in the Federal Register (60 FR 43183) of our intent to modify these inconsistent rulings to conform with our view with respect to classification of the garments, not as pajamas, but as similar articles. No comments were received in response to our notice of intent to modify the inconsistent rulings.

**EFFECTIVE DATE:** Merchandise entered or withdrawn from warehouse for consumption on or after March 4, 1996.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Reese, Textile Classification Branch (202–482–7050).

**SUPPLEMENTARY INFORMATION:**

Background

This notice advises the public that Customs is modifying inconsistent rulings on garments known as pajama or sleepwear separates which do not conform with Customs current views on the proper classification of such garments. Customs Headquarters issued a ruling on the classification of certain women's sleepwear separates, HRL 956202 of September 29, 1994. In that ruling, Customs ruled that women's woven cotton pajama or sleepwear separates, when imported without a matching component (thus precluding classification as pajamas), are classified as similar articles and remain within heading 6208 of the Harmonized Tariff Schedule of the United States (HTSUS). Heading 6208, HTSUS, provides for women's or girls' singlets and other undershirts, slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles. As similar articles, the pajama/sleepwear separates were classified in subheading 6208.91.3010, Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

Rulings issued since HRL 956202 have followed the classification arguments stated therein. Customs became aware that prior to issuance of this ruling a limited number of rulings were issued on similar garments referred to as pajama bottoms, sleep bottoms or sleep shorts. In these earlier rulings, the garments ruled upon were classified in the provision for women's or girls' pajamas. This was an error. Due to the likelihood that Customs Headquarters may not be aware of all rulings issued on such garments, notice was given on August 18, 1995 in the Federal Register (60 FR 43183) of our intent to modify these rulings to reflect classification of the garments, not as pajamas, but as similar articles. No comments were received in response to the notice.

In Headquarters Ruling Letter 088192 issued on February 20, 1991, and New York Ruling Letter 862500 of April 29, 1991, a pair of ladies' boxer-style shorts, style 53035, were classified in subheading 6208.22.0000, HTSUSA, which provides for women's or girls' nightdresses and pajamas of man-made fibers. Style 53035 was constructed of a woven polyester satiny fabric. In NYRL 885168 of May 17, 1993, Customs classified a pair of boxer-type shorts of 100 percent woven polyester charmeuse as sleepwear in subheading 6208.22.0000, HTSUSA. In DD 889242 of August 27, 1993, Customs classified a women's woven cotton pajama pant in subheading 6208.21.0020, HTSUSA, and, in NYRL 890570 of October 20, 1993, (amended by supplemental letter of October 28, 1993) Customs classified five styles of women's woven boxer-styled sleep shorts (all sold with a coordinating upper body garment) in subheadings 6208.21.0010, HTSUSA and 6208.21.0020, HTSUSA. Customs Headquarters believes the conclusions in these rulings that the garments at issue therein would be principally used as sleepwear and should be classified as such are correct. These are rulings which Customs is able to identify and which are hereby modified to conform with HRL 956202. The error in the rulings was not the conclusion that the garments were sleepwear, but the classification of the garments at the subheading level in the provision for pajamas. Any other Customs rulings on virtually identical merchandise in which the goods were classified in the provision for pajamas are also subject to this notice.

In order to be classified in the provision for nightdresses and pajamas, a garment must be one of the named articles. In Headquarters Ruling Letter 088635 of May 24, 1991, the meaning of the term ''pajamas'' was examined and it was determined that the common meaning of the term required top and bottom garments and that ''pajama bottoms'' or sleep bottoms without pajama tops are not classifiable as pajamas.

It follows that the women's sleepwear bottoms which were the subject of the previously cited rulings cannot be classified in the provision for nightdresses and pajamas. Although not classifiable as pajamas, these garments may be classified as ''other similar articles'' in the ''other'' provision of heading 6208, HTSUS.

The rationale for classification of the garments at issue in heading 6208, HTSUS, as similar to nightdresses and pajamas lies in the rule of statutory construction known as *ejusdem generis.* In *Van Dale Industries* v. *United States,* Slip Op. 94–54, (April 1, 1994), in discussing *ejusdem generis,* the Court of International Trade stated:

> One rule of statutory construction is *ejusdem generis,* which means ''of the same kind, class, or nature.'' *Black's Law Dictionary* 464 (5th ed. 1979). This rule applies ''whenever a doubt arises as to whether a given article not specifically named in the statute is to be placed in a class of which some of the individual subjects are named.'' [*United States* v. *Damrak Trading Co., Inc.,* 43 CCPA 77, 79, C.A.D. 611 (1956).] Under *ejusdem generis,* where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described. *Id.* In other words, *ejusdem generis* requires that merchandise possess the particular characteristics or purposes that unite the specified exemplars in order to be classified under the general terms. *See, Nissho-Iwasi Am. Corp.* v. *United States,* 10 CIT 154, 157, 641 F. Supp. 808, 810 (1986) (citations omitted).

Heading 6208, HTSUS, specifically provides for women's and girls' singlets and other undershirts, slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles. To apply *ejusdem generis,* Customs must ascertain the shared characteristics or purposes of the named garments in heading 6208, HTSUS.

All of the articles named in heading 6208, HTSUS, may be characterized as ''intimate apparel''. They are garments which are recognized as either underwear (the singlets and other undershirts, slips, petticoats, briefs and panties), sleepwear (the nightdresses, pajamas and negligees), or garments normally worn indoors in the presence of family or close friends (the negligees, bathrobes and dressing gowns). The explanatory note for heading 6208 describes the scope of the heading as including women's or girls' underclothing and, after naming the last five exemplars, ''garments usually worn indoors''. While the explanatory notes contained in the *Harmonized*

*Commodity Description and Coding System Explanatory Notes* are not legally binding, they do represent the international interpretation of the Harmonized System and provide guidance in determining the scope of the various headings.

As Customs believes the garments in the previously named rulings were properly classified in heading 6208, HTSUS, based on the examination of the garments by Customs which determined that the garments were sleepwear, it is only the subheadings in which the garments were classified that is viewed as an error. Clearly, these garments were of a type which may be characterized as ''intimate apparel'', *i.e.*, garments which are either worn under other apparel (undergarments) or, garments which are not worn outside the home and when worn in the home would be worn only in the presence of family or intimate friends. Therefore, Customs is modifying these decisions to reflect the proper classification of the garments in subheading 6208.91.3010, HTSUSA, if of cotton or in subheading 6208.92.0030, HTSUSA, if of man-made fibers. These subheadings provide for, inter alia, women's other garments similar to nightdresses, pajamas, negligees, bathrobes, and dressing gowns.

Authority

This notice is published pursuant to 5 U.S.C. 552 (a)(1)(D). Publication of this notice in the Federal Register pursuant to the foregoing provision provides a higher degree of notice than that required under section 625 of the Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, (hereinafter section 625). Accordingly, it is Customs position that publication pursuant to section 625 is unnecessary. Customs is using Federal Register publication 1) because all rulings to which this notice relates may not have been identified, 2) in order to ensure a uniform and consistent position with respect to classification of this merchandise at an early date, 3) to assist Customs in its responsibility to administer informed compliance with respect to the trade community, and 4) as an aid to the importing community in exercising reasonable care with respect to importations of merchandise subject to this notice.

George J. Weise,

*Commissioner of Customs.*

Approved: November 29, 1995.

Dennis M. O'Connell,

*Acting Deputy Assistant Secretary of the Treasury.*

[FR Doc. 95–31499 Filed 12–29–95; 8:45 am]

BILLING CODE 4820–02–P

## UNITED STATES SENTENCING COMMISSION

### Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of proposed amendments to sentencing guidelines, policy statements, and commentary. Request for public comment.

**SUMMARY:** The Commission is considering promulgating certain amendments to the sentencing guidelines, policy statements, and commentary. This notice sets forth the proposed amendments and, for each proposed amendment, a synopsis of the issues addressed by that amendment. The Commission seeks comment on the proposed amendments, alternative proposed amendments, and any other aspect of the sentencing guidelines, policy statements, and commentary. The Commission may submit amendments to the Congress not later than May 1, 1996.

**DATES:** Written public comment should be received by the Commission not later than March 6, 1996, in order to be considered by the Commission in the promulgation of amendments and in the possible submission of those amendments to the Congress by May 1, 1996.

**ADDRESSES:** Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, N.E., Suite 2–500, Washington, D.C. 20002–8002, Attention: Public Information.

**FOR FURTHER INFORMATION CONTACT:** Michael Courlander, Public Information Specialist, Telephone: (202) 273–4590.

**SUPPLEMENTARY INFORMATION:** The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

Ordinarily, the rule-making requirements of the Administrative Procedure Act are inapplicable to judicial agencies; however, 28 U.S.C. 994(x) makes the rule-making provisions of 5 U.S.C. 553 applicable to the promulgation of sentencing guidelines by the Commission.

The proposed amendments are presented in this notice in one of two formats. First, some of the amendments are proposed as specific revisions of a guideline, policy statement, or commentary. Second, the Commission has highlighted certain issues for comment and invites suggestions for specific amendment language and, in the case of penalties for cocaine offenses, related legislative proposals.

Section 1B1.10 of the United States Sentencing Commission Guidelines Manual sets forth the Commission's policy statement regarding retroactivity of amended guideline ranges. The Commission requests comment as to whether any of the proposed amendments should be made retroactive under this policy statement.

As set forth more fully in its notice dated September 22, 1995, (see 60 F.R. 49316–17), the Commission currently is engaged in a comprehensive guideline assessment and simplification effort. This project is expected to be a two-year initiative that may produce amendments in the 1996–97 amendment cycle for submission to Congress not later than May 1, 1997. During this initial year of the project, the Commission generally plans to promulgate no guideline amendments, except as may be necessary to implement legislation enacted by Congress. The Commission believes that a one-year hiatus in the heretofore annual amendment process is appropriate at this juncture to allow a guideline settling period and to permit more deliberate consideration of broader guideline concerns.

The matters published for comment in this notice pertaining to sentencing policy for cocaine and money laundering offenses are responsive to Pub. L. 104–38 (Oct. 30, 1995). The matters relating to proposed guideline amendments for food and drug offenses are a product of a staff working group that has considered these issues during the past two years. The Commission voted at its September 5, 1995, meeting, prior to its subsequent decision declaring a one-year hiatus on Commission amendment initiatives, to

publish these amendments for comment.

Publication of these matters for comment reflects only the Commission's determination that public comment on the amendment or issue would be welcome and helpful at this time. The Commission may or may not act upon these proposals in the current amendment cycle.

Authority. 28 U.S.C. 994 (a), (o), (p), (x).

Richard P. Conaboy,

*Chairman.*

Cocaine Offenses

*Chapter Two, Part D (Offenses Involving Drugs)*

1. Issue for Comment: The Violent Crime Control and Law Enforcement Act of 1994 directed the Commission to issue a report and recommendations on the issue of cocaine and federal sentencing policy. On February 28, 1995, the Commission issued its report to Congress in which it recommended that changes be made to the current cocaine sentencing scheme, including changes to the 100-to-1 quantity ratio between crack cocaine and powder cocaine used in calculating sentences in the current guidelines. The report indicated that the Commission would investigate the feasibility of creating new guideline enhancements and amending current enhancements to more fully and fairly address the harms associated with cocaine offenses generally and the harms associated with crack cocaine offenses, specifically. Based on these new enhancements, the Commission would make appropriate adjustments in the guideline quantity ratio.

On May 1, 1995, the Commission sent to Congress proposed changes to the sentencing guidelines implementing the recommendations made in the report. See 60 Fed. Reg. 25074, 25075–77 (May 10, 1995). The proposed guidelines included provisions that would have enhanced penalties for drug offenders, including crack cocaine offenders, who used weapons during their drug crimes, involved minors in the drug crimes, or committed their crimes near a school, or for other specified reasons that made those crimes more dangerous to society. In addition, the proposed amendments adjusted the guideline quantity ratio so that the base sentences, from which the enhancements would be added, would be the same for both powder cocaine and crack cocaine offenses.

Pursuant to 28 U.S.C. 994(p), Congress subsequently enacted legislation disapproving the Commission's proposed amendments. See Pub. L. 104–38, 109 Stat. 334 (Oct. 30, 1995). In the legislation, Congress directed the Commission to:

''(1) * * * submit to Congress recommendations (and an explanation therefor), regarding changes to the statutes and sentencing guidelines governing sentences for unlawful manufacturing, importing, exporting, trafficking of cocaine, and like offenses, including unlawful possession with intent to commit any of the foregoing offenses, and attempt and conspiracy to commit any of the foregoing offenses. The recommendations shall reflect the following considerations—

(A) the sentence imposed for trafficking in a quantity of crack cocaine should generally exceed the sentence imposed for trafficking in a like quantity of powder cocaine;

(B) high-level wholesale cocaine traffickers, organizers, and leaders, of criminal activities should generally receive longer sentences than low-level retail cocaine traffickers and those who played a minor or minimal role in such activity;

(C) if the Government establishes that a defendant who traffics in powder cocaine has knowledge that such cocaine will be converted into crack cocaine prior to its distribution to individual users, the defendant should be treated at sentencing as though the defendant had trafficked in crack cocaine; and

(D) an enhanced sentence should generally be imposed on a defendant who, in the course of an offense described in this subsection—

(i) murders or causes serious bodily injury to an individual;

(ii) uses a dangerous weapon;

(iii) uses or possesses a firearm;

(iv) involves a juvenile or a woman who the defendant knows or should know to be pregnant;

(v) engages in a continuing criminal enterprise or commits other criminal offenses in order to facilitate his drug trafficking activities;

(vi) knows, or should know, that he is involving an unusually vulnerable person;

(vii) restrains a victim;

(viii) traffics in cocaine within 500 feet of a school;

(ix) obstructs justice;

(x) has a significant prior criminal record; or

(xi) is an organizer or leader of drug trafficking activities involving five or more persons.

(2) Ratio.—The recommendations described in the preceding subsection shall propose revision of the drug quantity ratio of crack cocaine to powder cocaine under the relevant statutes and guidelines in a manner consistent with the ratios set for other drugs and consistent with the objectives set forth in section 3553(a) of title 28 United States Code.''

The Commission invites comment regarding implementation of this congressional directive, including comment on appropriate enhancements for violence and other harms associated with crack and powder cocaine, as well as the quantity ratio that should be substituted for the current 100-to-1 ratio. (Note that the reference in the congressional directive to section 3553(a) of title 28, United States Code, should be a reference to section 3553(a) of title 18, United States Code.)

A number of amendment proposals and issues for comment relating to cocaine sentencing policy are set forth in the Federal Registers of January 9 and March 15, 1995. See 60 Fed. Reg. 2430, 2445–51; 14054–55.

Money Laundering Offenses

*Chapter Two, Part S (Money Laundering and Monetary Transaction Reporting)*

2. Synopsis of Proposed Amendment: In 1992, the Commission formed a staff working group to assess the operation of the guidelines for money laundering and monetary transaction reporting offenses. The group produced a report and recommended amendments. The Commission subsequently adopted a revised guideline covering monetary transaction reporting offenses. See Guidelines Manual, Appendix C, Amendment 490 (effective November 1, 1993). In 1995, after considering an updated analysis prepared by the working group, the Commission adopted a revised, consolidated guideline for money laundering offenses. See amendment 18, 60 Fed. Reg. 25074, 25085–86 (May 10, 1995). This amendment subsequently was disapproved by Congress. See Pub. L. 104–38, 109 Stat. 334 (Oct. 30, 1995). Congressional debate related to the disapproval legislation appears to suggest, however, that the Commission is expected to modify and resubmit appropriate amendments to the money laundering guidelines, taking into account concerns that serious money laundering offenses continue to receive appropriately severe punishment. See generally 14 Cong. Rec. H10,255–84 (daily ed. Oct. 18, 1995).

Accordingly, to frame the discussion for continued efforts to develop appropriate revisions to the money laundering guidelines, the Commission is republishing for comment the amendment submitted to Congress in 1995 along with a Department of Justice alternative. The Commission invites

comment on these alternative proposals or on some variation of them that appropriately addresses the goals of: (1) Assuring that offense levels comport with the seriousness of the defendant's offense conduct; and (2) avoiding unwarranted sentencing disparities as a result of charging practices.

*(A) Proposed Amendment*

Sections 2S1.1 and 2S1.2 are deleted and the following inserted in lieu thereof:

''§ 2S1.1. Laundering of Monetary Instruments; Engaging in Monetary Transactions in Property Derived from Unlawful Activity

(a) Base Offense Level (Apply the Greatest)

(1) The offense level for the underlying offense from which the funds were derived, if the defendant committed the underlying offense (or otherwise would be accountable for the commission of the underlying offense under § 1B1.3 (Relevant Conduct)) and the offense level for that offense can be determined; or

(2) 12 plus the number of offense levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to the value of the funds, if the defendant knew or believed that the funds were the proceeds of, or were to be used to promote, an offense involving the manufacture, importation, or distribution of controlled substances or listed chemicals; a crime of violence; or an offense involving firearms or explosives, national security, or international terrorism; or

(3) 8 plus the number of offense levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to the value of the funds.

(b) Specific Offense Characteristics

(1) If the defendant knew or believed that (A) the financial or monetary transactions, transfers, transportation, or transmissions were designed in whole or in part to conceal or disguise the proceeds of criminal conduct, or (B) the funds were to be used to promote further criminal conduct, increase by 2 levels.

(2) If subsection (b)(1)(A) is applicable and the offense (A) involved placement of funds into, or movement of funds through or from, a company or financial institution outside the United States, or (B) otherwise involved a sophisticated form of money laundering, increase by 2 levels.

Commentary

Statutory Provisions: 18 U.S.C. 1956, 1957.

Application Notes

1. ''Value of the funds'' means the value of the funds or property involved in the financial or monetary transactions, transportation, transfers, or transmissions that the defendant knew or believed (A) were criminally derived funds or property, or (B) were to be used to promote criminal conduct.

When a financial or monetary transaction, transfer, transportation, or transmission involves legitimately derived funds that have been commingled with criminally derived funds, the value of the funds is the amount of the criminally derived funds, not the total amount of the commingled funds. For example, if the defendant deposited $50,000 derived from a bribe together with $25,000 of legitimately derived funds, the value of the funds is $50,000, not $75,000.

Criminally derived funds are any funds that are derived from a criminal offense; e.g., in a drug trafficking offense, the total proceeds of the offense are criminally derived funds. In a case involving fraud, however, the loss attributable to the offense occasionally may be considerably less than the value of the criminally derived funds (e.g., the defendant fraudulently sells stock for $200,000 that is worth $120,000 and deposits the $200,000 in a bank; the value of the criminally derived funds is $200,000, but the loss is $80,000). If the defendant is able to establish that the loss, as defined in § 2F1.1 (Fraud and Deceit), was less than the value of the funds (or property) involved in the financial or monetary transactions, transfers, transportation, or transmissions, the loss from the offense shall be used as the 'value of the funds.'

2. If the defendant is to be sentenced both on a count for an offense from which the funds were derived and on a count under this guideline, the counts will be grouped together under subsection (c) of § 3D1.2 (Groups of Closely-Related Counts).

3. Subsection (b)(1)(A) provides an increase for those cases that involve efforts to make criminally derived funds appear to have a legitimate source. This subsection will apply, for example, when the defendant conducted a transaction through a straw party or a front company, concealed a money-laundering transaction in a legitimate business, or used an alias or otherwise provided false information to disguise the true source or ownership of the funds.

4. In order for subsection (b)(1)(B) to apply, the defendant must have known or believed that the funds would be used to promote further criminal conduct, i.e, criminal conduct beyond the underlying criminal conduct from which the funds were derived.

5. Subsection (b)(2) provides an additional increase for those money laundering cases that are more difficult to detect because sophisticated steps were taken to conceal the origin of the money. Subsection (b)(2)(B) will apply, for example, if the offense involved the 'layering' of transactions, i.e., the creation of two or more levels of transaction that were intended to appear legitimate.

Background

The statutes covered by this guideline were enacted as part of the Anti-Drug Abuse Act of 1986. These statutes cover a wide range of conduct. For example, they apply to large-scale operations that engage in international laundering of illegal drug proceeds. They also apply to a defendant who deposits $11,000 of fraudulently obtained funds in a bank. In order to achieve proportionality in sentencing, this guideline generally starts from a base offense level equivalent to that which would apply to the specified unlawful activity from which the funds were derived. The specific offense characteristics provide enhancements if the offense was designed to conceal or disguise the proceeds of criminal conduct and if the offense involved sophisticated money laundering.''.

Section 3D1.2(d) is amended in the second paragraph by deleting ''2S1.2,''.

Section 8C2.1(a) is amended by deleting ''2S1.2,''.

The Commentary to § 8C2.4 captioned ''Application Notes'' is amended in Note 5 by deleting ''§ 2S1.1 (Laundering of Monetary Instruments); § 2S1.2 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity); and § 2S1.3 (Structuring Transactions to Evade Reporting Requirements; Failure to Report Cash or Monetary Transactions; Failure to File Currency and Monetary Instrument Report; Knowingly Filing False Reports)''; and by inserting ''or'' immediately before ''§ 2R1.1''.

Appendix A (Statutory Index) is amended in the line reference to 18 U.S.C. § 1957 by deleting ''2S1.2'' and inserting in lieu thereof ''2S1.1''.

*(B) Proposed Amendment—Department of Justice Alternative*

Sections 2S1.1 and 2S1.2 are deleted and the following inserted in lieu thereof:

''§ 2S1.1. Laundering of Monetary Instruments; Engaging in Monetary Transactions in Property Derived from Unlawful Activity

(a) Base Offense Level (Apply the Greatest)

(1) the offense level for the underlying offense from which the funds were derived plus 2 levels, if the defendant committed the underlying offense and the offense level for that offense can be determined; or

(2) 16 plus the number of offense levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to the value of the funds, if the defendant knew or believed that the funds were the proceeds of an unlawful activity involving a matter of national security or munitions control, a crime of violence, a firearm, an explosive, the sexual exploitation of children, or the manufacture, importation, or distribution of a controlled substance, or were intended to promote those offenses; or

(3) 12 plus the number of offense levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to the value of the funds.

(b) Specific Offense Characteristics

(1) Apply the greater:

(A) If the defendant knew or believed that (i) the transactions were designed in whole or in part to conceal or disguise the proceeds of criminal conduct, or (ii) the funds were to be used to promote further criminal activity, increase by 2 levels; or

(B) If the defendant (i) intended to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986, or (ii) knew or believed that the transactions were designed in whole or in part to avoid a transaction reporting requirement under State or Federal law, increase by 1 level.

(2) If subsection (b)(1)(A) is applicable and the offense involved (A) placement of funds into, or movement of funds through or from, a company or financial institution outside the United States, or (B) otherwise involved the used of a sophisticated form of money laundering, increase by 2 levels.

(c) Special Instruction for Receipt and Deposit Cases

The offense level is 8 plus the number of offense levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to the value of the funds where all of the following are present:

(1) the defendant's money laundering conduct is limited solely to the deposit of the unlawful proceeds into a domestic financial institution account that is readily identifiable as belonging to the person who committed the specified unlawful activity; (2) the offense was not intended or designed, either in whole or in part, to conceal or disguise the nature, location, source, ownership, or control of the proceeds of specified unlawful activity, to violate section 7201 or 7206 of the Internal Revenue Code of 1986, or to avoid a transaction reporting requirement under State or Federal law; and

(3) the specified unlawful activity did not involve a matter of national security or munitions control, a crime of violence, a firearm, an explosive, the sexual exploitation of children, or the manufacture, importation, or distribution of a controlled substance.

Commentary

Statutory Provisions: 18 U.S.C. 1956, 1957.

Application Notes

1. ''Value of the funds'' means the value of the funds or property involved in the financial or monetary transactions, transportation, transfers, or transmissions that the defendant knew or believed (A) were criminally derived funds or property, or (B) were to be used to promote criminal conduct.

When a financial or monetary transaction, transfer, transportation, or transmission involves legitimately derived funds that have been commingled with criminally derived funds, the value of the funds is the amount of the criminally derived funds, not the total amount of the commingled funds. For example, if the defendant deposited $50,000 derived from a bribe together with $25,000 of legitimately derived funds, the value of the funds is $50,000, not $75,000.

Where a financial or monetary transaction, transfer, transportation, or transmission involves legitimately derived funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States with the intent to promote the carrying on of specified unlawful activity, the value of the funds is the amount intended to promote the carrying on of specified unlawful activity.

2. If the defendant is to be sentenced both on a count for an offense from which the funds were derived and on a count under this guideline, the counts will be grouped together under subsection (c) of § 3D1.2 (Groups of Closely-Related Counts).

3. Subsection (b)(1)(A) is intended to provide an increase for those cases that involve efforts to make criminally derived funds appear to have a legitimate source. This subsection will apply, for example, when the defendant conducted a transaction through a straw party or a front company, concealed a money-laundering transaction in a legitimate business, or used an alias or otherwise provided false information to disguise the true source or ownership of the funds.

4. In order for subsection (b)(1)(B) to apply, the defendant must have known or believed that the funds would be used to promote further criminal conduct, i.e., criminal conduct beyond the underlying criminal conduct from which the funds were derived.

5. Subsection (b)(2) is designed to provide an additional increase for those money laundering cases that are more difficult to detect because sophisticated steps were taken to conceal the origin of the money. Subsection (b)(2)(B) will apply, for example, if the offense involved the 'layering' of transactions, i.e., the creation of two or more levels of transaction that were intended to appear legitimate, or if the offense involved the use of individuals or organizations engaged in the business of money laundering, i.e., those who receive payment or other benefit for conducting or assisting in the transaction.

6. The lower offense level provided by the special instruction in subsection (c) is reserved for offenses which meet the specified criteria. First, the defendant's money laundering conduct must be limited solely to the deposit of the unlawful proceeds into a domestic financial institution account that is readily identifiable as belonging to the person who committed the specified unlawful activity. Second, the offense cannot have been intended or designed, either in whole or in part, to conceal or disguise the nature, location, source, ownership, or control of the proceeds of the specified unlawful activity, to violate section 7201 or 7206 of the Internal Revenue Code of 1986, or to avoid a transaction reporting requirement under State or Federal law. Finally, the underlying unlawful activity must not have involved a matter of national security or munitions control, a crime of violence, a firearm, an explosive, the sexual exploitation of children, or the manufacture, importation, or distribution of a controlled substance.

For example, a defendant who deposits a check constituting the proceeds of his or her spouse's specified unlawful activity into the spouse's account would qualify for the reduced level of subsection (c) if all the other limitations are present.''.

Food and Drug Offenses

*Chapter Two, Parts D (Offenses Involving Drugs), F (Offenses Involving Fraud or Deceit), and N (Offenses Involving Food, Drugs, Agricultural Products, and Odometer Laws); Chapter Eight, Part C (Fines)*

3. Synopsis of Proposed Amendment: In 1993, the Commission established a Food and Drug Working Group to study the application of the guidelines to food and drug offenses and to assess the feasibility of developing organizational guidelines for offenses covered by § 2N2.1. During the first year of its work, the group studied food and drug offenses and the operation of § 2N2.1 as it applied to individual defendants. In its second year, the group focussed its attention on the development of organizational guidelines for these offenses. In February 1995, a final report was submitted to the Commission outlining the group's findings and conclusions. The report is available for inspection at the Commission or through the Depository Library System of the U.S. Government Printing Office. The report also can be downloaded through USSC OnLine, the Commission's public access electronic bulletin board, by dialing (202) 273–4709.

On September 5, 1995, the Commission voted to publish for comment the working group's proposals for handling food and drug offenses under the guidelines. With minor changes to the fraud guideline (§ 2F1.1), the working group determined that food and drug cases for individuals and organizations could appropriately be sentenced under that guideline. The working group's proposal would delete existing § 2N2.1 (Violations of Statutes and Regulations Dealing With Any Food, Drug, Biological Product, Device, Cosmetic, or Agricultural Product) in its entirety and replace references to that guideline in the statutory index with references to § 2F1.1. To address concerns about risk of harm associated with these offenses, the working group recommended adding an application note to § 2F1.1 inviting an upward departure in circumstances in which the offense placed a large number of persons at risk of serious bodily injury.

*(A) Proposed Amendment—Consolidation of §§ 2F1.1 and 2N2.1*

Section 2N2.1 is deleted in its entirety.

Section 2F1.1 is amended in the title by inserting ''; Violations of Statutes and Regulations Dealing With Any Food, Drug, Biological Product, Device, Cosmetic, or Agricultural Product'' at the end thereof.

The Commentary to § 2F1.1 captioned ''Statutory Provisions'' is amended by inserting ''21 U.S.C. §§ 101–105, 111, 115, 117, 120– 122, 124, 126, 134(a)–(e), 135a, 141, 143–145, 151–158, 331, 333(a)(1)–(2), 333(b), 458–461, 463, 466, 610–611, 614, 617, 619– 620, 642–644, 676'' immediately following ''2315''.

The Commentary to § 8C2.1 captioned ''Application Notes'' is amended in Note 2 by deleting the second sentence.

Appendix A is amended as follows:

in the line beginning ''7 U.S.C. § 87b'' by deleting ''2N2.1'' and inserting in lieu thereof ''2F1.1'';

in the lines beginning ''7 U.S.C. § 149'' through ''7 U.S.C. § 195'' by deleting ''2N2.1'' and inserting in lieu thereof ''2F1.1'';

in the lines beginning ''7 U.S.C. § 281'' through ''7 U.S.C. § 516'' by deleting ''2N2.1'' and inserting in lieu thereof ''2F1.1'';

in the lines beginning ''21 U.S.C. § 101'' through ''21 U.S.C. § 333(a)(1)'' by deleting ''2N2.1'' and inserting in lieu thereof ''2F1.1'';

in the line beginning ''21 U.S.C. § 333(a)(2)'' by deleting '', 2N2.1'';

in the lines beginning ''21 U.S.C. § 333(b)'' through ''21 U.S.C. § 620'' by deleting ''2N2.1'' and inserting in lieu thereof ''2F1.1'';

in the lines beginning ''21 U.S.C. § 642'' through ''21 U.S.C. § 644'' by deleting ''2N2.1'' and inserting in lieu thereof ''2F1.1'';

in the line beginning ''21 U.S.C. § 676'' by deleting ''2N2.1'' and inserting in lieu thereof ''2F1.1'';

in the line beginning ''42 U.S.C. § 262'' by deleting ''2N2.1'' and inserting in lieu thereof ''2F1.1''.

*(B) Proposed Amendment—Upward Departures for Offenses Involving Risk to a Large Number of Persons*

The Commentary to § 2F1.1 captioned ''Application Notes'' is amended by inserting the following additional note:

''11. Subsection (b)(4) applies when the offense caused a conscious or reckless risk of serious bodily injury to one or more persons. If the risk affected a large number of persons, an upward departure may be warranted.''

and by renumbering notes 11–18 as 12–19, respectively.

*(C) Additional Issue for Comment*

The Commission invites comment as to whether ''gain'' should be a substitute for ''loss'' when the essence of the offense is fraud against regulatory authorities with no economic loss. Currently, Application Note 8 of § 2F1.1 provides that gain realized from a covered offense is an alternative estimate that ordinarily will underestimate the loss. The Fourth and Seventh Circuits have held, however, that when a case involves no loss, the defendant's gain may not be used to calculate loss under § 2F1.1. See United States v. Chatterji, 46 F. 3d 1336 (4th Cir. 1995) and *United States* v. *Anderson,* 45 F. 3d 217 (7th Cir. 1995).

[FR Doc. 95–31570 Filed 12–29–95; 8:45 am]
BILLING CODE 2210–40–P

Federal Register

Tuesday
January 2, 1996

Part II

# Department of Justice

**Bureau of Prisons**

**28 CFR Parts 540, 542, and 545**
**Inmate Control, Custody, Care, etc.; Rules and Proposed Rule**

**DEPARTMENT OF JUSTICE**

**Bureau of Prisons**

**28 CFR Part 542**

**[BOP–1014–F]**

**RIN 1120–AA20**

## Administrative Remedy Program

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

**ACTION:** Final rule.

**SUMMARY:** In this document, the Bureau of Prisons is revising 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 changes are deemed necessary in order to attend to increased numbers of remedy requests occasioned by the continued growth of the inmate population. Specific 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.

**EFFECTIVE DATE:** February 5, 1996.

**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 (Bureau) is amending its regulations on the Administrative Remedy Procedure for Inmates. A proposed rule on this subject was published in the Federal Register on October 3, 1994 (59 FR 50179). The Bureau received comment from six individuals. In general, the comments expressed dissatisfaction in varying degrees on the following points: informal resolution, time limits, handling of appeals and responses by staff, and administrative matters (such as the posting of the proposed rule at the institution). A summary of the comments and the Bureau's responses follow.

The proposed rule had included increased time limits for submission of an initial remedy request by an inmate (20 calendar days following the date on which the basis for the request had occurred, rather than the 15 calendar days then currently specified). The proposed rule also increased the time limits for agency responses at the institution level (20 rather than 15 calendar days) and at the Central Office level (40 rather than 30 calendar days).

There were no objections to the increased time limit for submission of an initial remedy request by an inmate. Several commenters, however, objected to the extension of the time limits for Bureau response, stating these were too long, or were ''slanted completely in favor of the BOP.''

Commenters recommended a variety of procedural changes intended to extend the effective filing time for submission of inmate appeals by linking the filing time to an event other than the date of the Bureau's response. For example, commenters suggested that the filing time should exclude any time past the date the appeal is handed over to the institution mailroom, or the filing time for an appeal should not begin until the inmate has actually received a Bureau response.

The Bureau believes it is not currently practicable to date stamp outgoing mail or to verify the date inmates receive Bureau responses. The proposed filing times include adequate adjustment for mail time. The Bureau also believes that the extended response times for its staff are realistic and reasonable. Good reason exists for the different filing time limits. While the inmate is responsible for preparing his or her individual request(s) or appeal(s), Bureau staff must prepare responses to whatever requests or appeals have been submitted from the inmate population. Furthermore, in those instances where staff need more time to respond to an appeal, staff may currently claim an extension as allowed by the regulations (see § 542.14). In claiming the extension, staff notify the inmate in writing. Increasing the initial time limit for response should reduce the necessity for claiming extensions. In either case, the actual time taken to respond would likely be the same. With the increased time limit, staff would spend less time completing the administrative paperwork necessary for claiming extensions.

Some commenters expressed the belief that the mandatory filing of a complaint initially at the institutional level was cumbersome and unnecessary. One commenter recommended that an inmate be allowed to make an appeal ''directly to the level of management that has jurisdiction and the authority to make the decision.''

The Bureau believes that such amendment is not necessary. The principle underlying the administrative remedy procedure is that the resolution of problems can be remedied at the lowest possible level. If informal resolution is successful, the formal administrative remedy procedure would not be necessary. Moreover, those few issues that can only be remedied at certain levels are permitted, per policy, to go directly to that level. Similarly, responses to emergency appeals are expedited. The administrative remedy procedure typically is used to address questions regarding the application of policy to individual inmates. Provisions for appeal help ensure consistency in application and can also serve to measure the adequacy of policy. The primary vehicle for inmate participation in the general formulation of Bureau policy remains through the rulemaking process (for example, through comment on the October 3, 1994 proposed rule).

Some commenters recommended that either a receipt for a filed complaint be given by the correctional counselor who ''accepts'' the complaint or that the inmate be allowed to file the initial request with the institution's administrative remedy coordinator. These commenters expressed the concern that extensive delays may occur before the counselor forwards the administrative remedy to the institution's administrative remedy coordinator. The Bureau believes that no change is necessary, as the counselor is responsible for forwarding the administrative remedy to the appropriate staff in a timely manner and internal instructions to staff require that this occur ordinarily no later than the next business day.

Two commenters objected to the form of receipt acknowledgements or responses returned to the inmate. One of these commenters expressed concern that because the receipt acknowledgements are not signed, these receipts do not prove that the appeals ever left the institution. In response, the Bureau notes that receipts from the regional and central offices are generated electronically from those offices. Therefore, a receipt acknowledgement indicates that the administrative remedy reached its intended destination.

The second commenter objected to the provisions in § 542.11(a)(4) relating to the delegation of signatory authority, which had been previously issued as an administrative amendment. This commenter stated that, at a minimum, the regulation should require that the name and title of the person signing the response be typed below the signature rather than have the person sign ''for'' the official as is the Bureau's practice in this administrative detail. The commenter presumably believes this change is important in the pursuit of further judicial action involving an

inmate's complaint. The Bureau believes its standard procedures for the exercise of delegated authority is adequate and no further amendment is necessary in this matter.

One commenter objected to the omission of a requirement that staff responses be in good faith, honest, and straightforward, as is required for inmate submissions (see § 542.11(b)). There is no necessity to address this matter in these regulations because Bureau staff are trained professionals governed by the Standards of Conduct for Bureau employees, which are sufficient to support the integrity of staff responses.

One commenter objected to a variety of specific administrative procedures. Section 542.14(c)(2) states that the inmate shall place a single complaint or a reasonable number of closely related issues on the appropriate form. This is intended to facilitate indexing of remedy requests and to simplify the resolution process by presenting remedy requests as discrete matters. The commenter claimed that inmate access to forms at one institution was limited by requiring one form to be filled out and submitted before staff would issue another to the same inmate. We note that this institution practice does not necessarily limit access (i.e., it merely requires the inmate to follow through on one complaint before starting another). Nevertheless, because the Bureau does not wish to encourage such a perception, the Bureau is issuing internal instructions to staff advising against such institutional administrative practice.

This same commenter also objected to limiting the length of inmate complaints by only allowing one additional page per form. The Bureau believes that limiting additions to one page is useful and reasonable. This emphasis on brevity along with the above-mentioned requirement limiting the inmate to the presentation of a single complaint or a reasonable number of closely related issues is intended to encourage inmates to submit their concerns in a straightforward manner. The commenter also objected to requirements in § 542.14(c)(3) regarding the submission of exhibits with a request. The commenter suggested that the provision was ambiguous as to the number of required copies at different stages of the remedy appeals process. The Bureau's procedure is to require only one copy of an exhibit with the request. If the inmate appeals a response, the inmate is responsible for furnishing a copy of the exhibit with the appeal along with copies of the previously-submitted complaints.

One commentator objected to the provision in § 542.17 allowing the administrative remedy coordinator at any level to reject a request or appeal. This commenter, presumably focusing on an example at the institution level, stated that only the Warden may sign responses and consequently should be the only one to reject the request or appeal. The Bureau wishes to note that the very purpose of § 542.17 is to provide the administrative remedy coordinator with this authority. Paragraph (b) of this section provides the inmate with the opportunity to correct the defects, when possible, so that the matter can be resubmitted.

Three commenters raised questions about the lack of detail provided in these regulations for the informal resolution of complaints. Two commenters objected to the lack of a specified time limit for informal resolution. One commenter recommended 48 hours as a reasonable time period for that purpose. Another commenter stated that paperwork associated with informal resolution at one particular institution appeared to be duplicative of the paperwork generated for an initial request submitted after an adverse decision on the informal resolution.

In response, the Bureau notes that by its very definition, procedures for informal resolution should not be formalized. The informal resolution policy is not explicitly detailed in these regulations in order to preserve maximum flexibility for institution staff in attempting to resolve complaints. As for the particular informal resolution procedures at particular institutions, the Bureau wishes to preserve the Warden's discretion in formulating these procedures and adds language to the rule providing for the exercise of the Warden's discretion.

In response to the concerns over the lack of a specified time limit for informal resolution, the Bureau has revised the provisions in § 542.14(a) to include informal resolution under the deadline for the submission of an initial filing. This is intended to encourage quick informal resolution. Because a lengthy period of time for attempted informal resolution constitutes a valid reason for the granting of an extension in filing time, including informal resolution under this deadline should not unduly impair the inmate's ability to file the initial request in instances where the informal resolution attempt has failed.

Two commenters raised concerns about the posting of the proposed rule changes at one particular Bureau institution, stating that their access to the proposed rule, and consequently their ability to timely comment on it, were intentionally hindered. We have been assured by institution staff that pursuant to Bureau policy, the proposed rule was posted in the inmate law library and was also maintained by unit case managers. Inmates at this institution were advised through postings in their housing units that they could review the proposed rule either in the inmate law library or through a request to the case manager. The two commenters stated that their requests to review the proposed rule were not answered in a timely fashion. The Bureau believes that the institution's posting procedures do not constitute intentional hinderance to public comment. The two requests in question came from inmates in the same housing areas, which suggests that any problem was of a local, not systemic, nature. In addition, the proposed rule was also available at the institution's law library. In any event, the Bureau has considered these comments in finalizing these regulations.

One commenter, expressing general dissatisfaction with Bureau regulations, stated that Bureau regulations were so poorly written that two different institutions would interpret them differently on the same day to fit their particular desire. It is the Bureau's intent that the Administrative Remedy Program helps to ensure the consistent application of Bureau rules and policies by allowing for hierarchial review of inmate complaints.

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.

List of Subjects in 28 CFR Part 542

Prisoners.

Kathleen M. Hawk,

*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 amend 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 institutions operated by the Bureau of Prisons, 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. Each Warden shall establish procedures to allow for the informal resolution of inmate complaints.

(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.* The deadline for completion of informal resolution and submission of a formal written Administrative Remedy Request, on the appropriate form (BP–9), is 20 calendar days following 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 was delayed.

(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 (8½'' by 11'') continuation page. The inmate must provide an additional copy 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'' x 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 Administrator, 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 by an inmate 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 level. 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).

[FR Doc. 95–31496 Filed 12–29–95; 8:45 am]
BILLING CODE 4410–05–P

## DEPARTMENT OF JUSTICE

### Bureau of Prisons

### 28 CFR Parts 540 and 545

**[BOP–1049–I]**

**RIN 1120–AA39**

### Telephone Regulations and Inmate Financial Responsibility

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

**ACTION:** Interim Rule With Request for Comments, and Withdrawal of Effective Date-Delayed Provisions.

**SUMMARY:** In this document, the Bureau of Prisons (Bureau) is withdrawing the provisions in its regulations relating to limitations on telephone privileges for inmates who have refused participation in the inmate financial responsibility program, (IFRP) which were to become effective January 4, 1996. In addition, the Bureau is increasing to $75.00 the amount of money to be excluded from assessment in an inmate's financial responsibility plan. These actions are made pursuant to the terms of a settlement approved by the District Court in a nationwide federal prisoner class action, *Washington v. Reno,* Nos. 93–217, 93–290 (E.D.KY.).

**DATES:** The withdrawal of 28 CFR 540.105(c) and 545.11(d)(10), and the amendment to 28 CFR 540.100(a) is effective January 2, 1996; the amendment to 28 CFR 545.11(b) introductory text is effective January 3, 1996. Comments on 28 CFR 545.11(b) are due on March 4, 1996.

**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, telephone (202) 514–6655.

**SUPPLEMENTARY INFORMATION:** The Bureau of Prisons (Bureau) is withdrawing certain provisions in its rules on telephone regulations and on the inmate financial responsibility program (IFRP) which were published in the Federal Register on April 4, 1994 (59 FR 15812).

In the April 4, 1994, revision of its rules on telephone regulations and on the IFRP, the Bureau delayed the effective date for provisions in §§ 540.105(c) and 545.11(d)(10) which imposed limitations on the telephone privileges of inmates refusing to participate in the IFRP. These provisions were to become effective January 3, 1995. Due to ongoing litigation in *Washington v. Reno,* the effective date for these provisions was further delayed until January 4, 1996 (60 FR 240). In accordance with the Court-approved settlement in *Washington v. Reno,* the Bureau is withdrawing these provisions and the reference to the IFRP telephone restrictions contained in 28 CFR 540.100(a), and is publishing elsewhere in today's Federal Register a new proposed rule to impose a different restriction on the telephone privileges of inmates who refuse to participate in the IFRP.

In accordance with the settlement in *Washington v. Reno,* the Bureau is also amending, on an interim basis with request for comments, the provision in 28 CFR 545.11(b) which relates to the exclusion of certain funds from an inmate's financial responsibility plan. Under this provision, unit team staff currently exclude $50.00 per month from assessment in developing the inmate's payment plan in the IFRP. This provision is revised to raise the exclusion to $75.00 per month, per the terms of the settlement in *Washington v. Reno* and, for clarification purposes, the third and fourth sentences of this paragraph are being combined into one sentence.

Because the revisions to 28 CFR 545.11(b) are made pursuant to the court-approved settlement in *Washington v. Reno,* the Bureau is issuing the revisions as an interim rule pursuant to the ''good cause'' exemption of 5 U.S.C. 553(d)(3). Interested persons may participate in this 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 on the interim rule provisions 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 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 has not been reviewed by the Office of Management and Budget pursuant to E.O. 12866. 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.

List of Subjects in 28 CFR Parts 540 and 545

Prisoners.

Kathleen M. Hawk,

*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), parts 540 and 545 in subchapter C of 28 CFR, chapter V are amended as set forth below.

**SUBCHAPTER C—INSTITUTIONAL MANAGEMENT**

## PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. The authority citation for 28 CFR part 540 continues to read as follows:

Authority: 5 U.S.C. 301, 551, 552a; 18 U.S.C. 1791, 3013, 3571, 3572, 3621, 3622, 3624, 3663, 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.

2. In § 540.100, paragraph (a) is amended by revising the fifth sentence to read as follows:

**§ 540.100 Purpose and scope.**

* * * * *

(a) * * * In addition to the procedures set forth in this subpart, inmate telephone use is subject to those limitations which the Warden determines are necessary to ensure the security or good order, including discipline, of the institution or to protect the public. * * *

**§ 540.105 [Amended]**

3. In § 540.105, paragraph (c), which was previously to become effective January 4, 1996, (59 FR 15824, 60 FR 240) is removed and reserved.

## PART 545—WORK AND COMPENSATION

4. The authority citation for 28 CFR part 545 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3013, 3571, 3572, 3621, 3622, 3624, 3663, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4126, 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.

5. In § 545.11, the introductory text of paragraph (b) is amended by revising the dollar amount ''$50.00'' in the fifth sentence to read ''$75.00''; by removing the third and fourth sentences; by adding a new third sentence to read as follows; and in addition, paragraph (d)(10), which was to become effective January 4, 1996, (59 FR 15825, 60 FR 240) is removed and reserved.

**§ 545.11 Procedures.**

* * * * *

(b) Payment. * * * In developing an inmate's financial plan, the unit team shall exclude from its assessment $75.00 a month deposited into the inmate's trust fund account after subtracting from the trust fund account the inmate's IFRP minimum payment schedule for UNICOR or non-UNICOR work assignments, set forth below in paragraph (b)(1) and (b)(2) of this section.

* * * * *

[FR Doc. 95–31497 Filed 12–29–95; 8:45 am]

BILLING CODE 4410–05–P

**DEPARTMENT OF JUSTICE**

**Bureau of Prisons**

**28 CFR Parts 540 and 545**

**[BOP–1050–P]**

**RIN 1120–AA49**

## Telephone Regulations and Inmate Financial Responsibility

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

**ACTION:** Proposed Rule.

**SUMMARY:** In this document, the Bureau of Prisons (Bureau) is proposing to limit telephone privileges to 60 minutes of debit calls per month for inmates who refuse to participate in the inmate financial responsibility program (IFRP). Additionally, the Bureau proposes to impose a $25 per month spending limitation upon the commissary purchases of IFRP refusees, excluding the purchase of stamps and telephone credits. These actions are made pursuant to the terms of a settlement approved by the District Court in a nation-wide federal prisoner class action, *Washington* v. *Reno,* Nos. 93–217, 93–290 (E.D. KY), and are intended to continue encouraging inmates to participate in the IFRP.

**DATES:** Comments are due on March 4, 1996.

**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, telephone (202) 514–6655.

**SUPPLEMENTARY INFORMATION:** The Bureau of Prisons (Bureau) is proposing to amend its rules on telephone regulations (28 CFR part 540, subpart I) and on the inmate financial responsibility program (IFRP) (28 CFR part 545, subpart B) which were published in the Federal Register on April 4, 1994 (59 FR 15812).

In the April 4, 1994, revision of its rules on telephone regulations and on the IFRP, the Bureau delayed the effective date for provisions in §§ 540.105(c) and 545.11(d)(10) which imposed limitations on the telephone privileges of inmates refusing to participate in the IFRP. These provisions were to become effective January 3, 1995. Due to ongoing litigation in *Washington* v. *Reno,* the effective date for these provisions was further delayed until January 4, 1996. See 60 FR 240. In accordance with the court-approved settlement in *Washington* v. *Reno,* Nos. 93–217, 93–290 (E.D. KY), the Bureau has withdrawn those provisions in a document published elsewhere in today's Federal Register.

Also in accordance with provisions of the settlement in *Washington* v. *Reno,* this proposed rule specifies providing only debit telephone calling privileges for inmates who refuse to participate in the IFRP and to limit such debit calling privileges to 60 minutes of debit calls per month. This proposed limitation will not take effect until installation of the new nation-wide telephone system, per terms of the settlement in *Washington* v. *Reno.*

Local institution guidelines continue to govern the duration of each individual call. As with all inmate telephone privileges, the Warden retains the discretion to further limit the debit calling privileges of inmates who refuse to participate in the IFRP to ensure the security or good order, including discipline of the institution or to protect the public, 28 CFR § 540.100. Telephone privileges of inmates who refuse to participate in the IFRP may also be further limited as a disciplinary sanction, 28 CFR part 541.

Additionally, the Bureau is proposing to amend the provision in 28 CFR 545.11(d) which relates to the monthly commissary spending limitation imposed upon inmates who refuse to participate in the IFRP. Specifically, under 28 CFR 545.11(d)(6), IFRP refusees currently are not permitted to purchase any items in excess of the monthly spending limitation for all inmates, including special purchase items like sports equipment, hobby crafts, etc. The Bureau proposes to revise this provision to impose upon IFRP refusees a more stringent monthly spending limitation than that imposed upon all inmates. Pursuant to the terms of the settlement in *Washington* v. *Reno,* the proposed rule specifies that the monthly spending limitation upon IFRP refusees shall be at least $25 per month and excludes purchases of stamps and telephone credits.

Interested persons may participate in this 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 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 has not been reviewed by the Office of Management and Budget pursuant to E.O. 12866. 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.

List of Subjects in 28 CFR Part 540 and 545

Prisoners.

Kathleen M. Hawk,

*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), parts 540 and 545 in subchapter C of 28 CFR, chapter V are proposed to be amended as set forth below.

**SUBCHAPTER C—INSTITUTIONAL MANAGEMENT**

## PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. The authority citation for 28 CFR part 540 continues to read as follows:

Authority: 5 U.S.C. 301, 551, 552a; 18 U.S.C. 1791, 3013, 3571, 3572, 3621, 3622, 3624, 3663, 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.

2. In § 540.105, paragraph (c) is added to read as follows:

**§ 540.105 Expenses of inmate telephone use.**

* * * * *

(c) The Warden shall limit the telephone privileges (collect and debit calls) of an inmate who has refused to participate in the Inmate Financial Responsibility Program (IFRP) as specified in 28 CFR part 545.

* * * * *

## PART 545—WORK AND COMPENSATION

1. The authority citation for 28 CFR part 545 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3013, 3571, 3572, 3621, 3622, 3624, 3663, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4126, 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.

2. In § 545.11, paragraph (d)(6) is revised, and paragraph (d)(10) is added, to read as follows:

**§ 545.11 Procedures.**

* * * * *

(d) * * *

(6) The inmate shall be subject to a monthly commissary spending limitation more stringent than the monthly commissary spending limitation set for all inmates. This more stringent commissary spending limitation for IFRP refusees shall be at least $25 per month, excluding purchases of stamps and telephone credits.

* * * * *

(10) The inmate is restricted to the use of debit telephone calls and will be allowed to make 60 minutes of debit telephone calls per month, unless the Warden further limits the inmate's telephone privileges to ensure the security or good order, including discipline of the institution, or to protect the public, pursuant to 28 CFR § 540.100, or the inmate's telephone privileges are restricted as a disciplinary sanction under 28 CFR, part 541. Any exception to this provision requires approval of the Warden and is to be based on compelling circumstances.

* * * * *

[FR Doc. 95–31498 Filed 12–29–95; 8:45 am]

BILLING CODE 4410–05–P

Federal Register

Tuesday
January 2, 1996

Part III

# Department of Agriculture

**Cooperative State Research, Education, and Extension Service**

**Rangeland Research Grants Program for Fiscal Year 1996; Solicitation of Applications; Notice**

## DEPARTMENT OF AGRICULTURE

### Cooperative State Research, Education, and Extension Service

### Rangeland Research Grants Program for Fiscal Year 1996; Solicitation of Applications

Notice is hereby given that under the authority in section 1480 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3333), the Cooperative State Research, Education, and Extension Service (CSREES) of the United States Department of Agriculture (USDA) will award standard grants for basic studies in certain areas of rangeland research. No more than $80,000 will be awarded for the support of any one project, regardless of the amount requested. The total amount of funds available for grants under the Rangeland Research Grants Program during fiscal year 1996 is $451,535.

Eligibility and Limitations on Use of Funds

Under this program, subject to the availability of funds, the Secretary may award grants to land-grant colleges and universities, State agricultural experiment stations, and to colleges, universities, and Federal laboratories having a demonstrable capacity in rangeland research, as determined by the Secretary. Except in the case of Federal laboratories, each grant recipient shall match the Federal funds expended on a research project based on a formula of 50 percent Federal and 50 percent non-Federal funding. Proposals received from scientists at non-United States organizations or institutions will not be considered for support. Section 712 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1996, Pub. L. No. 104–37, prohibits CSREES from paying indirect costs on research grants that exceed 14 percent of total Federal funds provided under each award. In addition, section 716 of that Act provides that, in the case of any equipment or product that may be authorized to be purchased with funds appropriated under that Act, entities receiving such funds are encouraged to use such funds to purchase only American-made equipment or products.

Pursuant to section 1473 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3319), funds made available under this program to recipients other than Federal laboratories shall not be subject to reduction for indirect costs or for tuition remission costs. Since these costs are not allowable costs for purposes of this program, such costs incurred by a grant recipient may not be used to meet the matching fund requirement.

Applicable Regulations

This program is subject to the provisions found in 7 CFR part 3401, as amended (58 FR 21852, April 23, 1993), which sets forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, processes regarding the awarding of grants, and regulations relating to the post-award administration of grant projects. In addition, the USDA Uniform Federal Assistance Regulations, 7 CFR part 3015, as amended; the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 7 CFR part 3016, as amended; the regulations governing Governmentwide Debarment and Suspension (Nonprocurement) and the Governmentwide Requirements for Drug-Free Workplace (Grants), 7 CFR part 3017, as amended; the New Restrictions on Lobbying, 7 CFR part 3018; the Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations, 7 CFR part 3019; the Audits of Institutions of Higher Education and Other Nonprofit Institutions, 7 CFR part 3051; and the CSREES regulations implementing the National Environmental Policy Act of 1969, 7 CFR part 3407, apply to this program.

Specific Areas of Research To Be Supported in Fiscal Year 1996

Standard grants will be awarded to support basic research in certain areas of rangeland research. Proposals will be considered in the following specific areas: (1) Management of rangelands and agricultural land as integrated systems for more efficient utilization of crops and waste products in the production of food and fiber; (2) methods of managing rangeland watersheds to maximize efficient use of water and improve water yield, water quality, and water conservation, to protect against onsite and offsite damage to rangeland resources from floods, erosion, and other detrimental influences, and to remedy unsatisfactory and unstable rangeland conditions; and (3) revegetation and rehabilitation of rangelands including the control of undesirable species of plants.

*For Further Information Contact:* Program related questions should be directed to Dr. Paul F. McCawley, CSREES–USDA; telephone: (202) 401–5351.

Compliance With the National Environmental Policy Act (NEPA)

As outlined in 7 CFR part 3407 (the CSREES regulations implementing the National Environmental Policy Act of 1969), environmental data for any proposed project is to be provided to CSREES so that CSREES may determine whether any further action is needed. The applicant shall review the following categorical exclusions and determine if the proposed project may fall within one or more of the categories.

*(1) Department of Agriculture Categorical Exclusions (7 CFR 1b.3)*

(i) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes, or similar administrative functions;

(ii) Activities which deal solely with the functions of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(iii) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(iv) Educational and informational programs and activities;

(v) Civil and criminal law enforcement and investigative activities;

(vi) Activities which are advisory and consultative to other agencies and public and private entities; and

(vii) Activities related to trade representation and market development activities abroad.

*(2) CSREES Categorical Exclusions (7 CFR 3407.6(a)(2))*

Based on previous experience, the following categories of CSREES actions are excluded because they have been found to have limited scope and intensity and to have no significant individual or cumulative impacts on the quality of the human environment:

(i) The following categories of research programs or projects of limited size and magnitude or with only short-term effects on the environment:

(A) Research conducted within any laboratory, greenhouse, or other contained facility where research practices and safeguards prevent environmental impacts;

(B) Surveys, inventories, and similar studies that have limited context and minimal intensity in terms of changes in the environment; and

(C) Testing outside of the laboratory, such as in small isolated field plots,

which involves the routine use of familiar chemicals or biological materials.

(ii) Routine renovation, rehabilitation, or revitalization of physical facilities, including the acquisition and installation of equipment, where such activity is limited in scope and intensity.

In order for CSREES to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, Form CSREES–1234, ''NEPA Exclusions Form'' (copy enclosed), must be included in the proposal indicating whether the applicant is of the opinion that the project falls within one or more of the categorical exclusions and the reasons therefore. If it is the applicant's opinion that the proposed projects falls within one or more of the categorical exclusions, the specific exclusion(s) must be identified. The information submitted shall be identified in the Table of Contents as ''NEPA Considerations'' and Form CSREES–1234 and supporting documentation shall be placed after the Form CSREES–661, ''Application for Funding,'' in the proposal.

Even though a project may fall within one or more of the categorical exclusions, CSREES may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for a proposed project if substantial controversy on environmental grounds exist or if other extraordinary conditions or circumstances are present that may cause such activity to have a significant environmental effect.

*Addresses:*

How To Obtain Application Materials

Copies of this solicitation, the Application Kit, and the Administrative Provisions for this program (7 CFR Part 3401) may be obtained by writing to the address or calling the telephone number which follows: Proposal Services; Grants Management Branch; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; Ag Box 2245; Washington, DC 20250–2245; Telephone: (202) 401–5048.

These materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and phone number, to psb@morrill.esusda.gov which states that you want a copy of the application materials for the Fiscal Year 1996 Rangeland Research Grants Program. The materials will then be mailed to you (not e-mailed) as quickly as possible.

What To Submit

An original and nine copies of each proposal must be submitted. This number of copies is necessary to permit thorough, objective merit evaluation of all proposals received before funding decisions are made.

Every effort should be made to ensure that the proposal contains all pertinent information when submitted. Prior to mailing, compare your proposal with the guidelines contained in the Administrative Provisions which govern the Rangeland Research Grants Program, 7 CFR Part 3401. Proposals submitted by organizations other than Federal laboratories shall state that the 50 percent non-Federal funding requirement will be met.

Each copy of each proposal must include a Form CSREES–661, ''Application for Funding,'' Applicants should note that one copy of this form, preferably the original, must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative. (Form CSREES–661 and the other required forms and certifications are contained in the Application Kit).

Grant proposals shall be limited to 10 pages (single-spaced and typed on one side of the page only), exclusive of required forms, bibliography and vitae of the principal investigator(s), senior associate(s), and other professional personnel.

All copies of each proposal shall be mailed in one package. Please make sure that each copy of each proposal is stapled securely in the upper left-hand corner. DO NOT BIND.

One copy of each proposal not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Where and When To Submit Applications for Funding

To be considered for funding during Fiscal Year 1996, proposals must be submitted by February 29, 1996.

*Proposals submitted through the regular mail* must be postmarked by February 29, 1996, and should be sent to the following address: Proposal Services; Grants Management Branch; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; Ag Box 2245; Washington, D.C. 20250–2245. The telephone number is: (202) 401–5048.

*Hand-delivered proposals*, including those submitted by express mail or a courier service, must be received at the following address by February 29, 1996: Proposal Services; Grants Management Branch; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, S.W.; Washington, D.C. 20024. The telephone number is: (202) 401–5048.

*Supplementary Information:* The Rangeland Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the Final Rule-related Notice to 7 CFR Part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3504(h)), the collection of information requirements contained in this notice have been approved under OMB Document Nos. 0524–0022 and 0524–0033.

Done at Washington, D.C., this 21st day of December 1995.

Colien Hefferan,

*Acting Administrator, Cooperative State Research, Education, and Extension Service.*

BILLING CODE 3410–22–M

UNITED STATES DEPARTMENT OF AGRICULTURE
COOPERATIVE STATE RESEARCH, EDUCATION, AND EXTENSION SERVICE

OMB Approved 0524-0033
Expires 6/97

## National Environmental Policy Act Exclusions Form

| Principal Investigator/Project Director Name | Institution |
|---|---|
| Address | |

Under 7 CFR Part 3407 (CSREES's implementing regulations of the National Environmental Policy Act of 1969 (NEPA)), environmental data or documentation is required in order to assist CSREES in carrying out its responsibilities under NEPA, which includes determining whether proposed research requires the preparation of an environmental assessment or an environmental impact statement, or whether such research can be excluded from this requirement on the basis of several categories. Therefore, it is necessary for the applicant to advise CSREES whether the proposed research falls into one of the following Department of Agriculture or CSREES categorical exclusions, or whether the research does not fall into one of these exclusions (in which case the preparation of an environmental assessment or an environmental impact statement may be required). Even though the applicant considers that a proposed project may or may not fall within a categorical exclusion, CSREES may determine that an environmental assessment or an environmental impact statement is necessary for a proposed project should substantial controversy on environmental grounds exist or if other extraordinary conditions or circumstances are present that may cause such activity to have a significant environmental effect.

### Please Read All of the Following and Check All Which Apply

☐ **The proposed research falls under the categorical exclusion(s) indicated below:**

**Department of Agriculture Categorical Exclusions**
(found at 7 CFR 1b.3 and restated at 7CFR 3407.6 (a)(1)(i) through (vii))

☐ (i) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes, or similar administrative functions

☐ (ii) Activities that deal solely with the functions of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds

☐ (iii) Inventories, research activities, and studies such as resource inventories and routine data collection when such actions are clearly limited in context and intensity

☐ (iv) Educational and informational programs and activities

☐ (v) Civil and criminal law enforcement and investigative activities

☐ (vi) Activities that are advisory and consultative to other agencies and public and private entities, such as legal counseling and representation

☐ (vii) Activities related to trade representation and market development activities abroad

**CSREES Categorical Exclusions**
(found at 7 CFR 3407.6(a)(2)(i) through (ii))

The following categories of CSREES actions are excluded because they have been found to have limited scope and intensity and to have no significant individual or cumulative impacts on the quality of the human environment:

(i) The following categories of research programs or projects of limited size and magnitude or with only short-term effects on the environment:

☐ (A) Research conducted within any laboratory, greenhouse, or other contained facility where research practices and safeguards prevent environmental impacts

☐ (B) Surveys, inventories, and similar studies that have limited context and minimal intensity in terms of changes in the environment

☐ (C) Testing outside of the laboratory, such as in small isolated field plots, which involves the routine use of familiar chemicals or biological materials

☐ (ii) Routine renovation, rehabilitation, or revitalization of physical facilities, including the acquisition and installation of equipment, where such activity is limited in scope and intensity

**OR**

☐ **Proposed research does *not* fall into one of the above categorical exclusions**
(**NOTE**: If checked, please attach an explanation of the potential environmental impacts of the proposed research. May require completion of an environmental assessment or an environmental impact statement.)

Form CSREES-1234 (4/94)

[FR Doc. 95–31539 Filed 12–29–95; 8:45 am]
BILLING CODE 3410–22–C

# Reader Aids

Federal Register

Vol. 61, No. 1

Tuesday, January 2, 1996

## CUSTOMER SERVICE AND INFORMATION

**Federal Register/Code of Federal Regulations**

General Information, indexes and other finding aids **202–523–5227**

Public inspection announcement line **523–5215**

**Laws**

Public Laws Update Services (numbers, dates, etc.) **523–6641**

For additional information **523–5227**

**Presidential Documents**

Executive orders and proclamations **523–5227**

**The United States Government Manual** **523–5227**

**Other Services**

Electronic and on-line services (voice) **523–4534**

Privacy Act Compilation **523–3187**

TDD for the hearing impaired **523–5229**

### ELECTRONIC BULLETIN BOARD

Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. **202–275–0920**

### FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: **301–713–6905**

## FEDERAL REGISTER PAGES AND DATES, JANUARY

1–98.....2

## CFR PARTS AFFECTED DURING JANUARY

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.

**5 CFR**

1201.....1

**7 CFR**

**Proposed Rules:**

930.....21

1789.....21

**10 CFR**

**Proposed Rules:**

26.....27

**14 CFR**

23.....1

71.....3

73.....4

**21 CFR**

573.....5

**26 CFR**

1.....6

602.....6

**Proposed Rules:**

1.....28

**28 CFR**

540.....90

542.....86

545.....90

**Proposed Rules:**

540.....92

545.....92

**33 CFR**

Ch. 1.....8

81.....8

**Proposed Rules:**

207.....33

**41 CFR**

201–1.....10

201–2.....10

201–3.....10

201–4.....10

201–6.....10

201–7.....10

201–17.....10

201–18.....10

201–20.....10

201–21.....10

201–22.....10

201–24.....10

201–39.....10

**50 CFR**

222.....17

227.....17

641.....17

675.....20

**Proposed Rules:**

17.....35

## REMINDERS

The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

### Rules Going Into Effect Today

**ENVIRONMENTAL PROTECTION AGENCY**

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:

Montana et al.; published 11-3-95

**FEDERAL COMMUNICATIONS COMMISSION**

Radio services, special:

Private land mobile services--

900 MHz SMR systems frequency band; correction; published 11-30-95

Radio stations; table of assignments:

Pennsylvania; published 12-5-95

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Freedom of Information Act; implementation; published 11-30-95

**FEDERAL EMERGENCY MANAGEMENT AGENCY**

Flood insurance program:

Buildings or mobile homes located in special flood hazard area; contested determinations; published 12-5-95

**FEDERAL TRADE COMMISSION**

Competition and consumer protection orders duration; policy statement; published 11-28-95

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Food additives:

Menadione nicotinamide bisulfite; published 1-2-96

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Health Care Financing Administration**

Medicaid:

Nurse-midwife services; published 11-30-95

**HOUSING AND URBAN DEVELOPMENT DEPARTMENT**

Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac):

Secretary's regulatory authorities; published 12-1-95

**INTERIOR DEPARTMENT**

**Land Management Bureau**

Wildlife management:

Protection and preservation of natural values; CFR part removed; published 11-30-95

**JUSTICE DEPARTMENT**

**Prisons Bureau**

Inmate control, custody, care, etc.:

Telephone regulations and inmate financial responsibility; published 1-2-96

**LIBRARY OF CONGRESS**

**Copyright Office, Library of Congress**

Digital audio recording devices and media:

Representation for claiming DART royalties in musical works; published 12-1-95

**MERIT SYSTEMS PROTECTION BOARD**

Practices and procedures:

Statutory and regulatory citations for various appealable personnel actions; update; published 1-2-96

**NATIONAL TRANSPORTATION SAFETY BOARD**

Organization, functions, and authority delegations; published 11-30-95

**TRANSPORTATION DEPARTMENT**

**Coast Guard**

Ports and waterways safety:

Bellingham Bay, WA; safety zone; published 11-30-95

Commencement Bay, Wa; safety zone; published 11-30-95

Elliott Bay, WA; safety zone; published 11-30-95

Lake Union, WA; safety zone; published 11-30-95

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:

McDonnell Douglas; published 12-1-95

**TREASURY DEPARTMENT**

**Fiscal Service**

Collection by administrative offset; CFR part removed; published 12-20-95¶

## Comments Due Next Week

**AGRICULTURE DEPARTMENT**

**Agricultural Marketing Service**

Okra (frozen); grade standards; comments due by 1-8-96; published 12-7-95

Onions grown in--

Texas; comments due by 1-11-96; published 12-12-95

Peas, field and black-eye (frozen); grade standards; comments due by 1-8-96; published 12-7-95

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Fishery conservation and management:

Bering Sea and Aleutian Islands groundfish; comments due by 1-10-96; published 12-11-95

**COMMODITY FUTURES TRADING COMMISSION**

Commodity Exchange Act:

Futures commission merchants; minimum financial requirements, subordinated debt prepayment, and gross collection of exchange-set margin for omnibus accounts; comments due by 1-12-96; published 12-13-95

**DEFENSE DEPARTMENT**

Acquisition regulations:

Ground and aircraft flight risk; comments due by 1-12-96; published 11-13-95

Multiyear contracting and other miscellaneous provisions; comments due by 1-12-96; published 11-13-95

Federal Acquisition Regulation (FAR):

Contingent fee representation; comments due by 1-12-96; published 11-13-95

Employee stock ownership plans; comments due by 1-8-96; published 11-7-95

**EDUCATION DEPARTMENT**

Postsecondary education:

Student support services program; clarification and simplification; comments due by 1-12-96; published 12-13-95

**ENERGY DEPARTMENT**

**Federal Energy Regulatory Commission**

Natural gas companies (Natural Gas Act):

Outer Continental Shelf; gas pipeline facilities and services; agency's jurisdiction; comments due by 1-12-96; published 12-11-95

**ENVIRONMENTAL PROTECTION AGENCY**

Air pollutants, hazardous; national emission standards:

Chromium emissions from hard and decorative chromium electroplating and anodizing tanks, etc.; comments due by 1-12-96; published 12-13-95

Air quality implementation plans; approval and promulgation; various States:

Pennsylvania; comments due by 1-12-96; published 12-13-95

South Carolina; comments due by 1-10-96; published 12-11-95

Washington; comments due by 1-8-96; published 12-8-95

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:

Florida; comments due by 1-8-96; published 12-7-95

New Jersey; comments due by 1-8-96; published 12-7-95

Clean Air Act:

State operating permits programs--

California; comments due by 1-8-96; published 12-7-95

California; comments due by 1-8-96; published 12-7-95

California; comments due by 1-8-96; published 12-7-95

California; comments due by 1-8-96; published 12-7-95

Hazardous waste:

Military munitions rule; explosives emergencies; redefinition of on-site; comments due by 1-8-96; published 11-8-95

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Imidacloprid; comments due by 1-12-96; published 12-13-95

Superfund program:

National oil and hazardous substances contingency plan--

National priorities list update; comments due by 1-11-96; published 12-20-95

Toxic substances:

Significant new uses--

Ethane, 1,1,1,2,2-pentafluoro-; comments due by 1-12-96; published 12-13-95

**FEDERAL COMMUNICATIONS COMMISSION**

Common carrier services:

Hearing aid compatible wireline telephones in workplaces, confined settings, etc.; comments due by 1-12-96; published 12-12-95

Radio stations; table of assignments:

Maine; comments due by 1-8-96; published 12-4-95

Television broadcasting:

Cable Television Consumer Protection and Competition Act of 1992--

Rate regulation; comments due by 1-12-96; published 12-11-95

**FEDERAL EMERGENCY MANAGEMENT AGENCY**

Flood insurance programs:

Insurance coverage and rates; comments due by 1-8-96; published 11-9-95

**FEDERAL RESERVE SYSTEM**

Transactions with affiliates; conformity of capital stock and surplus definition to unimpaired capital stock and surplus definition, etc.; comments due by 1-8-96; published 12-4-95

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Medical devices:

Medical device user facilities and manufacturers; adverse events reporting; certification and registration; comments due by 1-10-96; published 12-11-95

**INTERIOR DEPARTMENT**

**Surface Mining Reclamation and Enforcement Office**

Indian lands program:

Abandoned mine land reclamation plan--

Hopi Tribe; comments due by 1-8-96; published 12-7-95

Permanent program and abandoned mine land reclamation plan submissions:

Colorado; comments due by 1-8-96; published 12-7-95

**LABOR DEPARTMENT**

**Occupational Safety and Health Administration**

Safety and health standards, etc.:

Respiratory protection; comments due by 1-8-96; published 11-7-95

**PERSONNEL MANAGEMENT OFFICE**

Federal claims collection:

Claims collections standards; delegation of authority; comments due by 1-8-96; published 11-9-95

**POSTAL RATE COMMISSION**

Practice and procedure rules:

Rate and classification changes; expedition, flexibility, and innovation; comments due by 1-8-96; published 12-18-95

**TRANSPORTATION DEPARTMENT**

**Coast Guard**

Anchorage regulations:

Louisiana; comments due by 1-12-96; published 11-13-95

International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW 78)

Comment request; comments due by 1-12-96; published 11-13-95

Ports and waterways safety:

Boon Island, ME; sunken vessel M/V EMPIRE KNIGHT; safety zone; comments due by 1-12-96; published 11-13-95

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:

de Havilland; comments due by 1-12-96; published 11-14-95

Airbus; comments due by 1-8-96; published 11-9-95

British Aerospace; comments due by 1-12-96; published 11-13-95

Fokker; comments due by 1-8-96; published 11-28-95

Hamilton; comments due by 1-8-96; published 11-8-95

Teledyne Continental Motors; comments due by 1-12-96; published 11-13-95

Airworthiness standards:

Special conditions--

Beech model 200 airplane, etc.; comments due by 1-8-96; published 12-7-95

Class E airspace; comments due by 1-8-96; published 12-1-95

Rulemaking petitions; summary and disposition; comments due by 1-8-96; published 11-8-95

**TRANSPORTATION DEPARTMENT**

**Federal Highway Administration**

Engineering and traffic operations:

Emergency relief program; comments due by 1-12-96; published 11-13-95

**TRANSPORTATION DEPARTMENT**

**National Highway Traffic Safety Administration**

Motor vehicle safety standards:

Child restraint systems--

Booster seat safety; comments due by 1-11-96; published 12-12-95

## CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $883.00 domestic, $220.75 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, or Master Card). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at **(202) 512–1800** from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to **(202) 512-2233**.

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| **1, 2 (2** Reserved) | (869–026–00001–8) | $5.00 | Jan. 1, 1995 |
| **3** (1994 Compilation and Parts 100 and 101) | (869–026–00002–6) | 40.00 | [1] Jan. 1, 1995 |
| **4** | (869–026–00003–4) | 5.50 | Jan. 1, 1995 |
| **5 Parts:** | | | |
| 1–699 | (869–026–00004–2) | 23.00 | Jan. 1, 1995 |
| 700–1199 | (869–026–00005–1) | 20.00 | Jan. 1, 1995 |
| 1200–End, 6 (6 Reserved) | (869–026–00006–9) | 23.00 | Jan. 1, 1995 |
| **7 Parts:** | | | |
| 0–26 | (869–026–00007–7) | 21.00 | Jan. 1, 1995 |
| 27–45 | (869–026–00008–5) | 14.00 | Jan. 1, 1995 |
| 46–51 | (869–026–00009–3) | 21.00 | Jan. 1, 1995 |
| 52 | (869–026–00010–7) | 30.00 | Jan. 1, 1995 |
| 53–209 | (869–026–00011–5) | 25.00 | Jan. 1, 1995 |
| 210–299 | (869–026–00012–3) | 34.00 | Jan. 1, 1995 |
| 300–399 | (869–026–00013–1) | 16.00 | Jan. 1, 1995 |
| 400–699 | (869–026–00014–0) | 21.00 | Jan. 1, 1995 |
| 700–899 | (869–026–00015–8) | 23.00 | Jan. 1, 1995 |
| 900–999 | (869–026–00016–6) | 32.00 | Jan. 1, 1995 |
| 1000–1059 | (869–026–00017–4) | 23.00 | Jan. 1, 1995 |
| 1060–1119 | (869–026–00018–2) | 15.00 | Jan. 1, 1995 |
| 1120–1199 | (869–026–00019–1) | 12.00 | Jan. 1, 1995 |
| 1200–1499 | (869–026–00020–4) | 32.00 | Jan. 1, 1995 |
| 1500–1899 | (869–026–00021–2) | 35.00 | Jan. 1, 1995 |
| 1900–1939 | (869–026–00022–1) | 16.00 | Jan. 1, 1995 |
| 1940–1949 | (869–026–00023–9) | 30.00 | Jan. 1, 1995 |
| 1950–1999 | (869–026–00024–7) | 40.00 | Jan. 1, 1995 |
| 2000–End | (869–026–00025–5) | 14.00 | Jan. 1, 1995 |
| **8** | (869–026–00026–3) | 23.00 | Jan. 1, 1995 |
| **9 Parts:** | | | |
| 1–199 | (869–026–00027–1) | 30.00 | Jan. 1, 1995 |
| 200–End | (869–026–00028–0) | 23.00 | Jan. 1, 1995 |
| **10 Parts:** | | | |
| 0–50 | (869–026–00029–8) | 30.00 | Jan. 1, 1995 |
| 51–199 | (869–026–00030–1) | 23.00 | Jan. 1, 1995 |
| 200–399 | (869–026–00031–0) | 15.00 | [6] Jan. 1, 1993 |
| 400–499 | (869–026–00032–8) | 21.00 | Jan. 1, 1995 |
| 500–End | (869–026–00033–6) | 39.00 | Jan. 1, 1995 |
| **11** | (869–026–00034–4) | 14.00 | Jan. 1, 1995 |
| **12 Parts:** | | | |
| 1–199 | (869–026–00035–2) | 12.00 | Jan. 1, 1995 |
| 200–219 | (869–026–00036–1) | 16.00 | Jan. 1, 1995 |
| 220–299 | (869–026–00037–9) | 28.00 | Jan. 1, 1995 |
| 300–499 | (869–026–00038–7) | 23.00 | Jan. 1, 1995 |
| 500–599 | (869–026–00039–5) | 19.00 | Jan. 1, 1995 |
| 600–End | (869–026–00040–9) | 35.00 | Jan. 1, 1995 |
| **13** | (869–026–00041–7) | 32.00 | Jan. 1, 1995 |
| **14 Parts:** | | | |
| 1–59 | (869–026–00042–5) | 33.00 | Jan. 1, 1995 |
| 60–139 | (869–026–00043–3) | 27.00 | Jan. 1, 1995 |
| 140–199 | (869–026–00044–1) | 13.00 | Jan. 1, 1995 |
| 200–1199 | (869–026–00045–0) | 23.00 | Jan. 1, 1995 |
| 1200–End | (869–026–00046–8) | 16.00 | Jan. 1, 1995 |
| **15 Parts:** | | | |
| 0–299 | (869–026–00047–6) | 15.00 | Jan. 1, 1995 |
| 300–799 | (869–026–00048–4) | 26.00 | Jan. 1, 1995 |
| 800–End | (869–026–00049–2) | 21.00 | Jan. 1, 1995 |
| **16 Parts:** | | | |
| 0–149 | (869–026–00050–6) | 7.00 | Jan. 1, 1995 |
| 150–999 | (869–026–00051–4) | 19.00 | Jan. 1, 1995 |
| 1000–End | (869–026–00052–2) | 25.00 | Jan. 1, 1995 |
| **17 Parts:** | | | |
| 1–199 | (869–026–00054–9) | 20.00 | Apr. 1, 1995 |
| 200–239 | (869–026–00055–7) | 24.00 | Apr. 1, 1995 |
| 240–End | (869–026–00056–5) | 30.00 | Apr. 1, 1995 |
| **18 Parts:** | | | |
| 1–149 | (869–026–00057–3) | 16.00 | Apr. 1, 1995 |
| 150–279 | (869–026–00058–1) | 13.00 | Apr. 1, 1995 |
| 280–399 | (869–026–00059–0) | 13.00 | Apr. 1, 1995 |
| 400–End | (869–026–00060–3) | 11.00 | Apr. 1, 1995 |
| **19 Parts:** | | | |
| 1–140 | (869–026–00061–1) | 25.00 | Apr. 1, 1995 |
| 141–199 | (869–026–00062–0) | 21.00 | Apr. 1, 1995 |
| 200–End | (869–026–00063–8) | 12.00 | Apr. 1, 1995 |
| **20 Parts:** | | | |
| 1–399 | (869–026–00064–6) | 20.00 | Apr. 1, 1995 |
| 400–499 | (869–026–00065–4) | 34.00 | Apr. 1, 1995 |
| 500–End | (869–026–00066–2) | 34.00 | Apr. 1, 1995 |
| **21 Parts:** | | | |
| 1–99 | (869–026–00067–1) | 16.00 | Apr. 1, 1995 |
| 100–169 | (869–026–00068–9) | 21.00 | Apr. 1, 1995 |
| 170–199 | (869–026–00069–7) | 22.00 | Apr. 1, 1995 |
| 200–299 | (869–026–00070–1) | 7.00 | Apr. 1, 1995 |
| 300–499 | (869–026–00071–9) | 39.00 | Apr. 1, 1995 |
| 500–599 | (869–026–00072–7) | 22.00 | Apr. 1, 1995 |
| 600–799 | (869–026–00073–5) | 9.50 | Apr. 1, 1995 |
| 800–1299 | (869–026–00074–3) | 23.00 | Apr. 1, 1995 |
| 1300–End | (869–026–00075–1) | 13.00 | Apr. 1, 1995 |
| **22 Parts:** | | | |
| 1–299 | (869–026–00076–0) | 33.00 | Apr. 1, 1995 |
| 300–End | (869–026–00077–8) | 24.00 | Apr. 1, 1995 |
| **23** | (869–026–00078–6) | 22.00 | Apr. 1, 1995 |
| **24 Parts:** | | | |
| 0–199 | (869–026–00079–4) | 40.00 | Apr. 1, 1995 |
| 200–219 | (869–026–00080–8) | 19.00 | Apr. 1, 1995 |
| 220–499 | (869–026–00081–6) | 23.00 | Apr. 1, 1995 |
| 500–699 | (869–026–00082–4) | 20.00 | Apr. 1, 1995 |
| 700–899 | (869–026–00083–2) | 24.00 | Apr. 1, 1995 |
| 900–1699 | (869–026–00084–1) | 24.00 | Apr. 1, 1995 |
| 1700–End | (869–026–00085–9) | 17.00 | Apr. 1, 1995 |
| **25** | (869–026–00086–7) | 32.00 | Apr. 1, 1995 |
| **26 Parts:** | | | |
| §§ 1.0-1–1.60 | (869–026–00087–5) | 21.00 | Apr. 1, 1995 |
| §§ 1.61–1.169 | (869–026–00088–3) | 34.00 | Apr. 1, 1995 |
| §§ 1.170–1.300 | (869–026–00089–1) | 24.00 | Apr. 1, 1995 |
| §§ 1.301–1.400 | (869–026–00090–5) | 17.00 | Apr. 1, 1995 |
| §§ 1.401–1.440 | (869–026–00091–3) | 30.00 | Apr. 1, 1995 |
| §§ 1.441-1.500 | (869-026-00092-1) | 22.00 | Apr. 1, 1995 |
| §§ 1.501–1.640 | (869–026–00093–0) | 21.00 | Apr. 1, 1995 |
| §§ 1.641–1.850 | (869–026–00094–8) | 25.00 | Apr. 1, 1995 |
| §§ 1.851–1.907 | (869–026–00095–6) | 26.00 | Apr. 1, 1995 |
| §§ 1.908–1.1000 | (869–026–00096–4) | 27.00 | Apr. 1, 1995 |
| §§ 1.1001–1.1400 | (869–026–00097–2) | 25.00 | Apr. 1, 1995 |
| §§ 1.1401–End | (869–026–00098–1) | 33.00 | Apr. 1, 1995 |
| 2–29 | (869–026–00099–9) | 25.00 | Apr. 1, 1995 |
| 30–39 | (869–026–00100–6) | 18.00 | Apr. 1, 1995 |
| 40–49 | (869–026–00101–4) | 14.00 | Apr. 1, 1995 |

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| 50–299 | (869–026–00102–2) | 14.00 | Apr. 1, 1995 |
| 300–499 | (869–026–00103–1) | 24.00 | Apr. 1, 1995 |
| 500–599 | (869–026–00104–9) | 6.00 | [4] Apr. 1, 1990 |
| 600–End | (869–026–00105–7) | 8.00 | Apr. 1, 1995 |
| **27 Parts:** | | | |
| 1–199 | (869–026–00106–5) | 37.00 | Apr. 1, 1995 |
| 200–End | (869–026–00107–3) | 13.00 | [8] Apr. 1, 1994 |
| **28 Parts:** | | | |
| 1-42 | (869–026–00108–1) | 27.00 | July 1, 1995 |
| 43-end | (869-026-00109-0) | 22.00 | July 1, 1995 |
| **29 Parts:** | | | |
| 0–99 | (869–026–00110–3) | 21.00 | July 1, 1995 |
| 100–499 | (869–026–00111–1) | 9.50 | July 1, 1995 |
| 500–899 | (869–026–00112–0) | 36.00 | July 1, 1995 |
| 900–1899 | (869–026–00113–8) | 17.00 | July 1, 1995 |
| 1900–1910 (§§ 1901.1 to 1910.999) | (869–026–00114–6) | 33.00 | July 1, 1995 |
| 1910 (§§ 1910.1000 to end) | (869–026–00115–4) | 22.00 | July 1, 1995 |
| 1911–1925 | (869–026–00116–2) | 27.00 | July 1, 1995 |
| 1926 | (869–026–00117–1) | 35.00 | July 1, 1995 |
| 1927–End | (869–026–00118–9) | 36.00 | July 1, 1995 |
| **30 Parts:** | | | |
| 1–199 | (869–026–00119–7) | 25.00 | July 1, 1995 |
| 200–699 | (869–026–00120–1) | 20.00 | July 1, 1995 |
| 700–End | (869–026–00121–9) | 30.00 | July 1, 1995 |
| **31 Parts:** | | | |
| 0–199 | (869–026–00122–7) | 15.00 | July 1, 1995 |
| 200–End | (869–026–00123–5) | 25.00 | July 1, 1995 |
| **32 Parts:** | | | |
| 1–39, Vol. I | | 15.00 | [2] July 1, 1984 |
| 1–39, Vol. II | | 19.00 | [2] July 1, 1984 |
| 1–39, Vol. III | | 18.00 | [2] July 1, 1984 |
| 1–190 | (869–026–00124–3) | 32.00 | July 1, 1995 |
| 191–399 | (869–026–00125–1) | 38.00 | July 1, 1995 |
| 400–629 | (869–026–00126–0) | 26.00 | July 1, 1995 |
| 630–699 | (869–026–00127–8) | 14.00 | [5] July 1, 1991 |
| 700–799 | (869–026–00128–6) | 21.00 | July 1, 1995 |
| 800–End | (869–026–00129–4) | 22.00 | July 1, 1995 |
| **33 Parts:** | | | |
| 1–124 | (869–026–00130–8) | 20.00 | July 1, 1995 |
| 125–199 | (869–026–00131–6) | 27.00 | July 1, 1995 |
| 200–End | (869–026–00132–4) | 24.00 | July 1, 1995 |
| **34 Parts:** | | | |
| 1–299 | (869–026–00133–2) | 25.00 | July 1, 1995 |
| 300–399 | (869–026–00134–1) | 21.00 | July 1, 1995 |
| 400–End | (869–026–00135–9) | 37.00 | July 5, 1995 |
| **35** | (869–026–00136–7) | 12.00 | July 1, 1995 |
| **36 Parts** | | | |
| 1–199 | (869–026–00137–5) | 15.00 | July 1, 1995 |
| 200–End | (869–026–00138–3) | 37.00 | July 1, 1995 |
| **37** | (869–026–00139–1) | 20.00 | July 1, 1995 |
| **38 Parts:** | | | |
| 0–17 | (869–026–00140–5) | 30.00 | July 1, 1995 |
| 18–End | (869–026–00141–3) | 30.00 | July 1, 1995 |
| **39** | (869–026–00142–1) | 17.00 | July 1, 1995 |
| **40 Parts:** | | | |
| 1–51 | (869–026–00143–0) | 40.00 | July 1, 1995 |
| 52 | (869–026–00144–8) | 39.00 | July 1, 1995 |
| 53–59 | (869–026–00145–6) | 11.00 | July 1, 1995 |
| 60 | (869-026-00146-4) | 36.00 | July 1, 1995 |
| 61–71 | (869–026–00147–2) | 36.00 | July 1, 1995 |
| 81–85 | (869–022–00145–1) | 23.00 | July 1, 1994 |
| *86 | (869–026–00149–9) | 40.00 | July 1, 1995 |
| 87–149 | (869–026–00150–2) | 41.00 | July 1, 1995 |
| 150–189 | (869–026–00151–1) | 25.00 | July 1, 1995 |
| 190–259 | (869–026–00152–9) | 17.00 | July 1, 1995 |
| 260–299 | (869–026–00153–7) | 40.00 | July 1, 1995 |
| 300–399 | (869–026–00154–5) | 21.00 | July 1, 1995 |
| 400–424 | (869–026–00155–3) | 26.00 | July 1, 1995 |
| 425–699 | (869–026–00156–1) | 30.00 | July 1, 1995 |
| 700–789 | (869–026–00157–0) | 25.00 | July 1, 1995 |
| 790–End | (869–026–00158–8) | 15.00 | July 1, 1995 |
| **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 | (869–026–00159–6) | 9.50 | July 1, 1995 |
| 101 | (869–026–00160–0) | 29.00 | July 1, 1995 |
| 102–200 | (869–026–00161–8) | 15.00 | July 1, 1995 |
| 201–End | (869–026–00162–6) | 13.00 | July 1, 1995 |
| **42 Parts:** | | | |
| 1–399 | (869–022–00160–4) | 24.00 | Oct. 1, 1994 |
| 400–429 | (869–022–00161–2) | 26.00 | Oct. 1, 1994 |
| 430–End | (869–022–00162–1) | 36.00 | Oct. 1, 1994 |
| **43 Parts:** | | | |
| 1–999 | (869–022–00163–9) | 23.00 | Oct. 1, 1994 |
| 1000–3999 | (869–022–00164–7) | 31.00 | Oct. 1, 1994 |
| *4000–End | (869–026–00168–5) | 15.00 | Oct. 1, 1995 |
| **44** | (869–022–00166–3) | 27.00 | Oct. 1, 1994 |
| **45 Parts:** | | | |
| 1–199 | (869–022–00167–1) | 22.00 | Oct. 1, 1994 |
| *200–499 | (869–026–00171–5) | 14.00 | Oct. 1, 1995 |
| 500–1199 | (869–026–00172–3) | 23.00 | Oct. 1, 1995 |
| 1200–End | (869–022–00170–1) | 26.00 | Oct. 1, 1994 |
| **46 Parts:** | | | |
| 1–40 | (869–022–00171–0) | 20.00 | Oct. 1, 1994 |
| 41–69 | (869–022–00172–8) | 16.00 | Oct. 1, 1994 |
| 70–89 | (869–022–00173–6) | 8.50 | Oct. 1, 1994 |
| 90–139 | (869–022–00174–4) | 15.00 | Oct. 1, 1994 |
| 140–155 | (869–022–00175–2) | 12.00 | Oct. 1, 1994 |
| 156–165 | (869–022–00176–1) | 17.00 | [7] Oct. 1, 1993 |
| 166–199 | (869–022–00177–9) | 17.00 | Oct. 1, 1994 |
| 200–499 | (869–022–00178–7) | 21.00 | Oct. 1, 1994 |
| 500–End | (869–022–00179–5) | 15.00 | Oct. 1, 1994 |
| **47 Parts:** | | | |
| 0–19 | (869–022–00180–9) | 25.00 | Oct. 1, 1994 |
| 20–39 | (869–022–00181–7) | 20.00 | Oct. 1, 1994 |
| 40–69 | (869–022–00182–5) | 14.00 | Oct. 1, 1994 |
| 70–79 | (869–022–00183–3) | 24.00 | Oct. 1, 1994 |
| 80–End | (869–022–00184–1) | 26.00 | Oct. 1, 1994 |
| **48 Chapters:** | | | |
| 1 (Parts 1–51) | (869–022–00185–0) | 36.00 | Oct. 1, 1994 |
| 1 (Parts 52–99) | (869–022–00186–8) | 23.00 | Oct. 1, 1994 |
| 2 (Parts 201–251) | (869–022–00187–6) | 16.00 | Oct. 1, 1994 |
| 2 (Parts 252–299) | (869–022–00188–4) | 13.00 | Oct. 1, 1994 |
| 3–6 | (869–022–00189–2) | 23.00 | Oct. 1, 1994 |
| 7–14 | (869–022–00190–6) | 30.00 | Oct. 1, 1994 |
| 15–28 | (869–022–00191–4) | 32.00 | Oct. 1, 1994 |
| 29–End | (869–022–00192–2) | 17.00 | Oct. 1, 1994 |
| **49 Parts:** | | | |
| *1–99 | (869–026–00196–1) | 25.00 | Oct. 1, 1995 |
| 100–177 | (869–022–00194–9) | 30.00 | Oct. 1, 1994 |
| 178–199 | (869–022–00195–7) | 21.00 | Oct. 1, 1994 |
| 200–399 | (869–022–00196–5) | 30.00 | Oct. 1, 1994 |
| 400–999 | (869–022–00197–3) | 35.00 | Oct. 1, 1994 |
| 1000–1199 | (869–026–00201–1) | 18.00 | Oct. 1, 1995 |
| *1200–End | (869–026–00202–9) | 15.00 | Oct. 1, 1995 |
| **50 Parts:** | | | |
| 1–199 | (869–022–00200–7) | 25.00 | Oct. 1, 1994 |
| 200–599 | (869–022–00201–5) | 22.00 | Oct. 1, 1994 |
| 600–End | (869–022–00202–3) | 27.00 | Oct. 1, 1994 |

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| CFR Index and Findings Aids | (869–026–00053–1) | 36.00 | Jan. 1, 1995 |
| Complete 1996 CFR set | | 883.00 | 1996 |
| Microfiche CFR Edition: | | | |
| Subscription (mailed as issued) | | 264.00 | 1996 |
| Individual copies | | 1.00 | 1996 |
| Complete set (one-time mailing) | | 264.00 | 1995 |
| Complete set (one-time mailing) | | 244.00 | 1994 |
| Complete set (one-time mailing) | | 223.00 | 1993 |

[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, 1995. 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, 1995. 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, 1994. The CFR volume issued January 1, 1993, should be retained.

[7] No amendments to this volume were promulgated during the period October 1, 1993, to September 30, 1994. The CFR volume issued October 1, 1993, should be retained.

[8] No amendments to this volume were promulgated during the period April 1, 1994 to March 31, 1995. The CFR volume issued April 1, 1994, should be retained.

## TABLE OF EFFECTIVE DATES AND TIME PERIODS—JANUARY 1996

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 |
|---|---|---|---|---|---|
| January 2 | January 17 | February 1 | February 16 | March 4 | April 1 |
| January 3 | January 18 | February 2 | February 20 | March 4 | April 2 |
| January 4 | January 19 | February 5 | February 20 | March 4 | April 3 |
| January 5 | January 22 | February 5 | February 20 | March 5 | April 4 |
| January 8 | January 23 | February 7 | February 22 | March 8 | April 8 |
| January 9 | January 24 | February 8 | February 23 | March 11 | April 8 |
| January 10 | January 25 | February 9 | February 26 | March 11 | April 9 |
| January 11 | January 26 | February 12 | February 26 | March 11 | April 10 |
| January 12 | January 29 | February 12 | February 26 | March 12 | April 11 |
| January 16 | January 31 | February 15 | March 1 | March 18 | April 15 |
| January 17 | February 1 | February 16 | March 4 | March 18 | April 16 |
| January 18 | February 2 | February 20 | March 4 | March 18 | April 17 |
| January 19 | February 5 | February 20 | March 4 | March 19 | April 18 |
| January 22 | February 6 | February 21 | March 7 | March 22 | April 22 |
| January 23 | February 7 | February 22 | March 8 | March 25 | April 22 |
| January 24 | February 8 | February 23 | March 11 | March 25 | April 23 |
| January 25 | February 9 | February 26 | March 11 | March 25 | April 24 |
| January 26 | February 12 | February 26 | March 11 | March 26 | April 25 |
| January 29 | February 13 | February 28 | March 14 | March 29 | April 29 |
| January 30 | February 14 | February 29 | March 15 | April 1 | April 29 |
| January 31 | February 15 | March 1 | March 18 | April 1 | April 30 |