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January 17, 1992

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

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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: 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

WHEN: January 31, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.
DIRECTIONS: North on 11th Street from Metro Center to southwest corner of 11th and L Streets

Contents

Federal Register
Vol. 57, No. 12
Friday, January 17, 1992

Agency for International Development
NOTICES
Meetings:
International Food and Agricultural Development and Economic Cooperation Board, 2112

Agriculture Department
See Animal and Plant Health Inspection Service; Federal Crop Insurance Corporation; Food and Nutrition Service

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Federal agency urine drug testing; certified laboratories meeting minimum standards, list
Reinstatements, 2106

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Ports designation—
Santa Teresa, NM, 2009

Blind and Other Severely Handicapped, Committee for Purchase From
See Committee for Purchase From the Blind and Other Severely Handicapped

Centers for Disease Control
NOTICES
Grants and cooperative agreements; availability, etc.:
Human immunodeficiency virus (HIV) prevention—
Minority and other community-based projects program; correction, 2135
Public health conference support program; correction, 2135

Coast Guard
RULES
Ports and waterways safety:
Safety and security zones, etc.; list of temporary rules, 2020

Commerce Department
See Export Administration Bureau; International Trade Administration; Minority Business Development Agency; National Oceanic and Atmospheric Administration; Patent and Trademark Office; Technology Administration

Committee for Purchase From the Blind and Other Severely Handicapped
NOTICES
Procurement list; additions and deletions, 2080, 2081 (2 documents)

Conservation and Renewable Energy Office
PROPOSED RULES
Weatherization assistance program for low-income persons, 2060

Customs Service
RULES
Articles conditionally free, subject to a reduced rate, etc.:
Generalized System of Preferences direct importation requirement, 2016

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Olefsky, Alan H., M.D.; correction, 2136

Education Department
RULES
Postsecondary education:
Pell grant program; correction, 2021
NOTICES
Grants and cooperative agreements; availability, etc.:
Rehabilitation long-term training program, 2081
School dropout demonstration assistance program, 2081
Privacy Act:
Systems of records, 2083

Employment and Training Administration
NOTICES
Adjustment assistance:
Atlas Wireline Services et al., 2115
Meetings:
Achieving Necessary Skills Commission, 2116
Apprenticeship Federal Committee, 2116

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 2117

Energy Department
See also Conservation and Renewable Energy Office; Energy Information Administration; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department
NOTICES
Grant and cooperative agreement awards:
LWT Systems, Inc., 2086
Southern States Energy Board, 2086

Energy Information Administration
NOTICES
Agency information collection activities under OMB review, 2087

Environmental Protection Agency
RULES
Water pollution control:
Ocean dumping; site designations—
Brazos Island Harbor, TX, 2036
PROPOSED RULES
Air programs; fuel and fuel additives:
Reformulated gasoline standards—
Complex emissions model development workshop, 2068

Toxic substances:
Testing requirements—
Aryl phosphate base stocks, 2138
NOTICES
Agency information collection activities under OMB review, 2091
Clean Air Act:
Air docket; temporary closing, 2092
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 2092
Weekly receipts, 2093
Meetings:
Clean Air Act Advisory Committee; correction, 2135
Science Advisory Board, 2093

Executive Office of the President
See Management and Budget Office; National Education Goals Panel

Export Administration Bureau
NOTICES
Meetings:
Electronics Technical Advisory Committee, 2077

Federal Aviation Administration
RULES
Airworthiness directives:
McDonnell Douglas, 2013, 2014
(2 documents)
NOTICES
Environmental statements; availability, etc.:
San Diego International Airport-Lindbergh Field, CA, 2128
Meetings:
Aeronautics Radio Technical Commission, 2129
Aviation Rulemaking Advisory Committee, 2129

Federal Crop Insurance Corporation
RULES
Crop insurance endorsements, etc.:
Corn, grain sorghum, and soybeans, 2007
Flaxseed, etc., 2007

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 2134

Federal Energy Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
East Tennessee Natural Gas Co., 2087
Iroquois Gas Transmission System, L.P., 2088
Midwestern Gas Transmission Co., 2088
Northern Natural Gas Co., 2088
Texas Eastern Transmission Corp., 2089
Williams Natural Gas Co., 2089

Federal Maritime Commission
PROPOSED RULES
Maritime carriers in foreign commerce:
Conditions favorable to shipping, actions to adjust or meet—
United States/Venezuela trade, 2070

Federal Reserve System
RULES
Bank holding companies and change in bank control (Regulations H and Y):
Capital adequacy· risk-based capital guidelines, 2010
NOTICES
Agency information collection activities under OMB review, 2094, 2096
(2 documents)
Meetings; Sunshine Act, 2134
Applications, hearings, determinations, etc.:
Long Term Credit Bank of Japan, 2098
Saban, S.A., et al., 2098

Federal Trade Commission
NOTICES
Premerger notification waiting periods; early terminations, 2099
Prohibited trade practices:
Body Glove International, 2100
Onax, Inc., 2101
Tech Spray, Inc., and Richard Russell, 2101

Fish and Wildlife Service
RULES
Endangered and threatened species:
Ute ladies'-tresses, 2048
PROPOSED RULES
Endangered and threatened species:
Lee County cave isopod, 2075
NOTICES
Environmental statements; availability, etc.:
Cresta Verde Development Project, CA, 2110
Migratory bird hunting and conservation stamp (Duck Stamp) contest, 2110

Food and Drug Administration
RULES
Biological products:
Pertussis vaccine; additional standards; correction, 2135
Food additives:
Adjuvants, production aids, and sanitizers—
1,3,5-Tris(3,5-di-tert-butyl-4-hydroxybenzyl)-s-triazine-2,4,6-(1H,3H, 5H)trione, 2019
Human drugs:
Dandruff, seborrheic dermatitis, and psoriasis products (OTC); final monograph; correction, 2136
PROPOSED RULES
Human drugs; and animal drugs, feeds, and related products:
Current good manufacturing practices—
Aseptic processing and terminal sterilization; correction, 2136
NOTICES
Biological product licenses:
Community Blood Bank of Southern New Jersey, Inc.; correction, 2135
Food additive petitions:
Hoechst Celanese Corp., 2106
Meetings:
Advisory committees, panels, etc.; correction, 2135

Food and Nutrition Service
NOTICES
Child nutrition programs:
Summer food service program; reimbursement rates, 2077

Health and Human Services Department
See also Alcohol, Drug Abuse, and Mental Health Administration; Centers for Disease Control; Food and Drug Administration; National Institutes of Health; Social Security Administration

NOTICES
Organization, functions, and authority delegations:
Health Care Financing Administration, 2103
Privacy Act:
Systems of records, 2104

Hearings and Appeals Office, Energy Department
NOTICES
Decisions and orders, 2089

Housing and Urban Development Department
RULES
Public and Indian housing:
Public housing management assessment program, 2160
NOTICES
Agency information collection activities under OMB review, 2203
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 2107

Immigration and Naturalization Service
PROPOSED RULES
Freedom of Information Act; implementation, 2057

Interior Department
See Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
NOTICES
Organization, functions, and authority delegations:
Forms Standardization Project Office; Form Design Group, 2133

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
NOTICES
Antidumping:
Nepheline syenite from Canada, 2078
Racing plates (aluminum horseshoes) from Canada, 2078

Interstate Commerce Commission
NOTICES
Motor carriers:
Agricultural cooperative transportation filing notices, 2112
Railroad operation, acquisition, construction, etc.:
Dearness, Peter M., et al., 2112
Peninsula Corridor Joint Powers Board, 2113
Peninsula Corridor Joint Powers Board et al., 2113
Quincy Bay Terminal Co., 2114
Southern Pacific Transportation Co., 2114
Railroad services abandonment:
CSX Transportation, Inc., 2114

Justice Department
See Drug Enforcement Administration; Immigration and Naturalization Service; Prisons Bureau

Labor Department
See Employment and Training Administration; Employment Standards Administration

Land Management Bureau
RULES
Minerals management:
Onshore oil and gas operations; Federal and Indian oil and gas leases—
Order No. 6; hydrogen sulfide; correction, 2039, 2136 (2 documents)
NOTICES
Environmental statements; availability, etc.:
California Desert Conservation Area, CA, 2109
Realty actions; sales, leases, etc.:
Washington, 2109
Withdrawal and reservation of lands:
California, 2110

Management and Budget Office
NOTICES
Budget rescissions and deferrals
Cumulative reports, 2208

Minerals Management Service
NOTICES
Environmental statements; availability, etc.:
Gulf of Mexico OCS—
Oil and gas operations, 2111
Meetings:
Outer Continental Shelf Advisory Board, 2111

Minority Business Development Agency
NOTICES
Business development center program applications:
Pennsylvania, 2079

National Archives and Records Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Publications Subvention Advisory Committee, 2118

National Education Goals Panel
NOTICES
Meetings, 2118

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Nonconforming vehicles importation—
Safety, bumper, and theft prevention standards, 2043
Theft protection; key-locking and transmission shift locking systems, 2039
PROPOSED RULES
Motor vehicle safety standards; and motor vehicle theft prevention standard:
Vehicles and equipment importation, 2071
NOTICES
Motor vehicle defect proceedings; petitions, etc.:
Center for Auto Safety, 2129
Motor vehicle safety standards; exemption petitions, etc.:
Philatron International, 2130

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Institutes of Health
NOTICES
Meetings:
National Center for Nursing Research, 2106

National Oceanic and Atmospheric Administration
RULES
Pacific Salmon Commission:
Fraser River sockeye and pink salmon, 2054

National Science Foundation
NOTICES
Grants and cooperative agreements; availability, etc.:
Human resource development for minorities in science and engineering, 2118
Meetings:
Chemistry Special Emphasis Panel, 2118
Engineering Centers Division Advisory Panel, 2118, 2119 (3 documents)
Mechanical and Structural Systems Special Emphasis Panel, 2119

Nuclear Regulatory Commission
PROPOSED RULES
Rulemaking petitions:
North Carolina Public Staff Utility Commission, 2059

Office of Management and Budget
See Management and Budget Office

Patent and Trademark Office
RULES
Patent cases:
Duty of disclosure amendments, 2021

President's Education Policy Advisory Committee
NOTICES
Meetings, 2119

Prisons Bureau
NOTICES
Environmental statements; availability, etc.:
Forrest City, AR, 2115

Public Health Service
See Alcohol, Drug Abuse, and Mental Health Administration; Centers for Disease Control; Food and Drug Administration; National Institutes of Health

Research and Special Programs Administration
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc., 2131, 2132 (2 documents)

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Cincinnati Stock Exchange, Inc., 2120
New York Stock Exchange, Inc., 2121
Pacific Stock Exchange, Inc., 2122
Self-regulatory organizations; unlisted trading privileges:
Pacific Stock Exchange, Inc., 2123
Applications, hearings, determinations, etc.:
Coltec Holdings, Inc., 2124
Public utility holding company filings, 2124
TRC Companies, Inc., 2127

Social Security Administration
NOTICES
Agency information collection activities under OMB review, 2107

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Initial and permanent regulatory programs:
Surface coal mining and reclamation operations—
Previously mined area definition; and off-site coal preparation plants; performance standards, 2065
Permanent program and abandoned mine land reclamation plan submissions:
Ohio, 2066
Utah, 2067

Technology Administration
PROPOSED RULES
Firearms, toy, look-alike, and imitation; marking requirements, 2065

Thrift Supervision Office
PROPOSED RULES
Savings associations:
Voluntary supervisory conversions, 2061

Transportation Department
See also Coast Guard; Federal Aviation Administration; National Highway Traffic Safety Administration; Research and Special Programs Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 2127
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 2128
Hearings, etc.—
Airline of the Americas, Inc., et al., 2128

Treasury Department
See also Customs Service; Internal Revenue Service; Thrift Supervision Office
NOTICES
Agency information collection activities under OMB review; correction, 2136

Separate Parts In This Issue

Part II
Environmental Protection Agency, 2138

Part III
Department of Housing and Urban Development, 2160

Part IV
Office of Management and Budget, 2208

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.

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.

7 CFR
401 (2 documents)..... 2007

8 CFR
Proposed Rules:
103..... 2057

9 CFR
92..... 2009

10 CFR
Proposed Rules:
50..... 2059
140..... 2059
440..... 2060

12 CFR
208..... 2010
225..... 2010
Proposed Rules:
563b..... 2061

14 CFR
39 (2 documents)..... 2013, 2014

15 CFR
Proposed Rules:
1150..... 2065

19 CFR
10..... 2016

21 CFR
178..... 2019
310..... 2136
358..... 2136
620..... 2135
Proposed Rules:
211..... 2136
314..... 2136
514..... 2136

24 CFR
901..... 2160

30 CFR
Proposed Rules:
700..... 2065
785..... 2065
827..... 2065
935..... 2066
944..... 2067

33 CFR
100..... 2020
165..... 2020

34 CFR
690..... 2021

37 CFR
1..... 2021
10..... 2021

40 CFR
228..... 2036
Proposed Rules:
80..... 2068
704..... 2138
799..... 2138

43 CFR
3160 (2 documents)..... 2039, 2136

46 CFR
Proposed Rules:
586..... 2070

49 CFR
571..... 2039
591..... 2043
Proposed Rules:
591..... 2071

50 CFR
17..... 2048
371..... 2054
Proposed Rules:
17..... 2075

Rules and Regulations

Federal Register
Vol. 57, No. 12
Friday, January 17, 1992

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.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Document No. 0359s]

General Crop Insurance Regulations; Flaxseed; Rice; Corn Silage Option; Grain Sorghum; Corn; Texas Citrus; Wheat; Late Planting Option; Malting Barley Options; Texas Citrus Tree; Onion; and Stonefruit Endorsements

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice to extend sunset review date.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby publishes this notice to extend the sunset review date for the General Crop Insurance Regulations (7 CFR part 401) for twelve crop insurance endorsements. The intended effect of this notice is to establish the sunset review date of these regulations following a review in accordance with the provisions of Departmental Regulation 1512-1 to determine the need, currency, clarity, and effectiveness of these regulations under those procedures.

EFFECTIVE DATE: January 17, 1992.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC. 20250, telephone (703) 235-1168.

SUPPLEMENTARY INFORMATION: This action has been reviewed under the USDA procedures established by Departmental Regulation 1521-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The regulations affected by this notice are: Flaxseed Endorsement (7 CFR 401.116, which was published in the **Federal Register** of February 1, 1987 (52 FR 479); Rice Endorsement (7 CFR 401.120), which was published in the **Federal Register** of Tuesday, November 21, 1989 (54 FR 48076); Corn Silage Option Endorsement (7 CFR 401.112, which was published in the **Federal Register** of November 25, 1987 (52 FR 45145); Grain Sorghum Endorsement (7 CFR 401.113) which was published in the **Federal Register** of November 25, 1987 (52 FR 45149); Texas Citrus Endorsement (7 CFR 401.115) which was published in the **Federal Register** of September 18, 1987 (52 FR 35267); Wheat Endorsement (7 CFR 401.101) which was published in the **Federal Register** of September 22, 1988 (53 FR 36780); Late Planting Options (7 CFR 401.107) which was published in the **Federal Register** of May 17, 1989 (54 FR 21195); Malting Barley Options Endorsement (7 CFR 401.135) which was published in the **Federal Register** (53 FR 27663); Texas Citrus Tree Endorsement (7 CFR 401.134) which was published in the **Federal Register** March 21, 1988 (53 FR 1900); Onion Endorsement (7 CFR 401.126) which was published in the **Federal Register** May 27, 1988 (53 FR 19217); and Stonefruit Endorsement (7 CFR 401.122) which was published in the **Federal Register** March 2, 1988 (53 FR 6561).

The subject review date established for these regulations are listed as follows: Flaxseed Endorsement—October 1, 1997; Rice Endorsement, August 1, 1997; Corn Silage Option Endorsement—April 1, 1997; Grain Sorghum Endorsement—July 1, 1997; Texas Citrus Endorsement—October 1, 1997; Wheat Endorsement—April 1, 1997; Late Planting Options Endorsement—April 1, 1997; Malting Barley Options Endorsement—April 1, 1997; Texas Citrus Tree Endorsement—November 1, 1997; Onion Endorsement—December 1, 1997; and Stonefruit Endorsement—December 1, 1997.

Done in Washington, DC on December 31, 1991.

James E. Cason,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 92-1169 Filed 1-16-92; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 401

[Amendment No. 45; Doc. No. 0096S]

General Crop Insurance Regulations; Corn, Grain Sorghum and Soybean Endorsements

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1992 crop year only, by amending the Corn Endorsement (§ 401.111), Grain Sorghum Endorsement (§ 401.113) and the Soybean Endorsement (§ 401.117) to further extend the contract change date to February 15, 1992 for such endorsements.

The intended effect of this rule is to extend the contract change date, that date by which all contract changes must be on file in the service office, in order to provide sufficient time for FCIC to publish a final rule amending the policies for insuring corn, grain sorghum, and soybeans, to replace the current optional coverages for late and prevented planting with more effective provisions that are an integral part of the basic coverage.

DATES: This interim rule is effective on January 17, 1992. Written comments, data, and opinions on this interim rule must be submitted not later than February 3, 1992 to be sure of consideration.

ADDRESSES: Written comments on this rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (703) 235-1168.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of the Corn, Grain Sorghum, and Soybean Endorsement regulations affected by this rule under those procedures. The sunset review date established for Corn

is April 1, 1996; Soybeans, October 1, 1996; and Grain Sorghum, July 1, 1996.

James E. Cason, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith amends the General Crop Insurance Regulations (7 CFR part 401) by amending the Corn Endorsement (§ 401.111), Grain Sorghum Endorsement (§ 401.113) and the Soybean Endorsement (§ 401.117) to further extend the contract change date to February 15, 1992 for such endorsements. This action is taken in order to provide sufficient time for FCIC to publish a proposed rule for notice and comment amending the policies for insuring corn, grain sorghum, and soybeans.

The contract change date, included in the crop insurance policy, is the date by which all contract changes must be on file in the service office.

On Tuesday, November 19, 1991, FCIC published an Interim Rule in the **Federal Register** at 56 FR 58301, to extend the contract change dates for the Corn Endorsement (§ 401.111), Grain Sorghum Endorsement (§ 401.113) and the Soybean Endorsement (§ 401.117). The contract change date was established at January 31, 1992.

FCIC has under consideration a proposal to replace the current optional coverages for late and prevented planting with more effective provisions that are an integral part of the basic coverage. However, upon further consideration, is appears that additional time must be allowed for development of the provisions. It is felt that there would not be sufficient time for FCIC to publish the forthcoming additional notice of proposed rulemaking addressing the issue of Late Planting and Prevented Planting provisions; solicit public comment, and publish a final rule addressing the complete proposed rule before the January 1, 1992, extended contract change date.

Therefore, James E. Cason, Manager, FCIC, has determined that further extension of the contract change date is necessary to provide sufficient time for FCIC to complete the notice and comment process and publish a final rule amending the corn, grain sorghum, and soybean crop insurance policies for the 1992 crop year.

It is further determined that such extension will not be detrimental to any program recipient, and that publication of the further extended contract change date as a proposed rule for notice and comment is impracticable, unnecessary, and contrary to the public interest. Therefore, good cause is shown for making this rule effective upon publication.

FCIC is soliciting comments on this rule for 15 days following publication in the **Federal Register**. This rule will be scheduled for review so that any amendment made necessary by public comments may be published as soon as possible.

Written comments should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

All written comments received pursuant to this interim rule will be available for public inspection and copying in the Office of the Manager, at the above address during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop insurance; Corn, Grain sorghum, Soybeans.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the provisions of the General Crop Insurance Regulations (7 CFR part 401), effective for the 1992 crop year only, in the following instances:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Section 401.111 is amended by revising subsection 9 of the policy to read as follows:

§ 401.111 Corn endorsement.

* * * * *

9. Contract changes.

Contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date (February 15, 1992, for the 1992 crop year only), and by November 30 preceding the cancellation date (February 15, 1992, for the 1992 crop year only), for all other counties.

* * * * *

3. Section 401.113 is amended by revising subsection 9 of the policy to read as follows:

§ 401.113 Grain sorghum endorsement.

* * * * *

9. Contract changes.

Contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date (February 15, 1992, for the 1992 crop year only), and by November 30 preceding the cancellation date (February 15, 1992, for the 1992 crop year only), for all other counties.

* * * * *

4. Section 401.117 is amended by revising subsection 9 of the policy to read as follows:

§ 401.117 Soybean endorsement.

* * * * *

9. Contract changes.

Contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date (February 15, 1992, for the 1992 crop year only), and by November 30 preceding the cancellation date (February 15, 1992, for the 1992 crop year only), for all other counties.

* * * * *

Done in Washington, D.C. on December 10, 1991.

James E. Cason,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 92-1199 Filed 1-16-92; 8:45 am]

BILLING CODE 3410-08-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 91-167]

Mexican Border Ports; Santa Teresa, New Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the animal importation regulations by adding Santa Teresa, NM, to the list of Mexican border ports of entry for ruminants (animals that chew the cud, for example, cattle, goats, and sheep). Additionally, we are providing that cattle that have been exposed to splenetic, southern, or tick fever or that have been infested with or exposed to fever ticks, may, under certain conditions, be imported from Mexico through the border port of Santa Teresa, NM, for admission into the State of Texas. These actions are necessary because of the opening of a new inspection facility for cattle at Santa Teresa, NM, and the impending disuse of the current inspection facility for cattle at the El Paso, TX, border port. These actions will facilitate the importation of ruminants from Mexico while continuing to help prevent the introduction of communicable animal diseases into the United States.

DATES: Interim rule effective January 17, 1992. Consideration will be given only to comments received on or before March 17, 1992.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91-167. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel Richeson, Import-Export Animals Staff, VS, APHIS, USDA, room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8170.

SUPPLEMENTARY INFORMATION:

Background

The animal importation regulations (contained in 9 CFR part 92 and referred to below as the regulations), among other things, list ports that have inspection or quarantine facilities for animals and animal products offered for entry into the United States. Section 92.403(c) of the regulations designates Mexican land border ports for the entry of ruminants from Mexico. In accordance with § 92.426(b) of the regulations, these are ports that "are equipped with facilities necessary for proper chute inspection, dipping, and testing" of the ruminants, as required by the regulations.

Among the approved Mexican land border ports for ruminants from Mexico is El Paso, TX. We have been advised that the owner of the inspection facility used for cattle at that port will stop using the facility for that purpose in the near future. Further, the owner has built a new inspection facility nearby in Santa Teresa, NM, that will be used for cattle entering the United States from Mexico. This inspection facility is equipped "for proper chute inspection, dipping, and testing," as required by § 92.426(b) of the regulations. Therefore, we are amending § 92.403(c) of the regulations to add Santa Teresa, NM, as a Mexican land border port for ruminants and are removing El Paso, TX, from the list of Mexican land border ports. In accordance with § 92.403(f), the Secretary of the Treasury has approved the designation of the Santa Teresa, NM, port as a quarantine station.

Section 92.426(a) of the regulations provides that if ruminants offered for entry from Mexico are found to be affected with or to have been exposed to a communicable disease, or infested with fever ticks, they shall be refused entry except in accordance with § 92.427(b)(2). Section 92.427(b)(2) provides that, under certain conditions, cattle that have been exposed to splenetic, southern, or tick fever, or that have been infested with or exposed to fever ticks, may be imported from Mexico into the State of Texas.[1] Such cattle are currently being imported into Texas through land border ports on the Mexico-Texas border, including El Paso, TX. When the inspection facility at El Paso is closed for cattle, the nearest inspection facility and port of entry will be at Santa Teresa, NM. The nearest Mexican land border ports on the Texas-Mexico border, Presidio and Del Rio, are both more than 100 miles away. Santa Teresa is located less than 10 miles from El Paso, and only a few miles from the Texas State line. Therefore, we are amending § 92.427(b)(2) to allow these cattle to be imported from Mexico for admission into the State of Texas either at one of the land border ports in Texas listed in § 92.403(c) of this part, or at the port of Santa Teresa, NM. This action is necessary to facilitate the importation of cattle from Mexico while continuing to comply with our statutory authority.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity for comment. Immediate action is necessary to accommodate the large number of cattle that are now imported into the United States through El Paso, TX. We have been advised that the inspection facility for cattle at El Paso, TX, will, in the near future, no longer be used for that purpose. However, a new inspection facility for cattle has been completed at Santa Teresa, NM.

Failure to promptly approve Santa Teresa, NM, as a border port for ruminants from Mexico, could adversely affect trade between Mexico and the United States. By approving Santa Teresa, NM, as a Mexican land border port for ruminants, we continue to provide to vital service to importers. Not to provide importers the opportunity to avail themselves of this means of entry could cause a disruption in the flow of ruminants, especially cattle, from Mexico. Annually, the United States imports 1 million head of cattle from Mexico. In 1990, the United States imported 136,000 head of Mexican cattle through El Paso, TX, alone.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 for making it effective upon publication. We will consider comments received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include discussion of any comments we receive and any amendments we are making to the rule as result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have

[1] 21 U.S.C. 104, as amended January 12, 1983 (Pub. L. 97-461), provides, in part, that the Secretary of Agriculture is authorized to "permit the admission from Mexico into the State of Texas of cattle which have been infested with or exposed to ticks upon being freed therefrom".

determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This interim rule adds Santa Teresa, NM, to the list of approved Mexican land border ports for ruminants from Mexico, and permits cattle that have been exposed to splenetic, southern, or tick fever, or that have been infested with or exposed to fever ticks, to be imported from Mexico for admission into the State of Texas either across the Mexico-Texas border or through the port of Santa Teresa, NM. Santa Teresa, NM, is located less than 10 miles from El Paso, TX. Consequently, it appears that this action will have little, if any economic impact upon the importers who choose to use the Santa Teresa, NM, border port. Not adding Santa Teresa, NM, to the list of approved Mexican land border ports for ruminants from Mexico could have a significant economic impact upon importers who would have to choose from approved ports located at much greater distances from El Paso, TX. The nearest approved Mexican land border ports are Columbus, NM, and Presidio and Del Rio, TX. Columbus, NM, is 225 miles from El Paso, TX; both Presidio and Del Rio, TX, are more than 100 miles from El Paso, TX.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 92

Animal Diseases, Canada, Imports, Livestock & livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, we are amending 9 CFR part 92 as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d)

2. In § 92.403, paragraph (c) is revised to read as follows:

§ 92.403 Ports designated for the importation of ruminants.

* * * * *

(c) *Mexican border ports.* The following land border ports are designated as having the necessary inspection facilities for the entry of ruminants from Mexico: Brownsville, Hidalgo, Laredo, Eagle Pass, Del Rio, and Presidio, Texas: Douglas, Naco, Nogales, Sasabe, and San Luis, Arizona; Calexico and San Ysidro, California; and Antelope Wells, Columbus, and Santa Teresa, New Mexico.

* * * * *

3. In § 92.403, paragraph (e) is amended by adding the words "El Paso," immediately before "Galveston" and adding a "," immediately after "Galveston".

§ 92.427 [Amended]

4. In § 92.427, paragraph (b)(2) introductory text is revised to read as follows:

§ 92.427 Cattle from Mexico.

* * * * *

(b) * * *

(2) Cattle that have been exposed to splenetic, southern, or tick fever, or that have been infested with or exposed to fever ticks, may be imported from Mexico for admission into the State of Texas, except into areas quarantined because of said disease or tick infestation as specified in § 72.5 of this chapter, either at one of the land border ports in Texas listed in § 92.403(c) of this part, or at the port of Santa Teresa, NM, provided that the following conditions are strictly observed and complied with: * * *

* * * * *

Done in Washington, DC, this 13th day of January 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–1291 Filed 1–16–92; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulation H, Regulation Y; Docket No. R-0740]

Capital; Capital Adequacy Guidelines

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Revisions to Capital Adequacy Guidelines.

SUMMARY: The Board is amending its risk-based and leverage capital guidelines to remove the limit on the amount of noncumulative perpetual preferred stock bank holding companies may include in Tier 1 capital. Cumulative perpetual preferred stock will continue to be included in Tier 1 capital for bank holding companies, up to a limit of 25 percent of Tier 1 capital. This change to the guidelines will afford banking organizations greater flexibility in raising capital.

EFFECTIVE DATE: The amendments to the capital adequacy guidelines are effective January 17, 1992.

FOR FURTHER INFORMATION CONTACT: Roger T. Cole, Assistant Director (202/452–2618), Rhoger H Pugh, Manager (202/728–5883), Norah M. Barger, Supervisory Financial Analyst (202/452–2402), Robert E. Motyka, Senior Financial Analyst (202/452–3621), Division of Banking Supervision and Regulation; and Michael J. O'Rourke, Senior Attorney (202/452–3288), Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

I. Background

The international bank capital standards (Basle Accord) [1] allow banks

[1] The Basle Accord is a risk-based capital framework that was proposed by the Basle Committee on Banking Regulations and Supervisory Practices and endorsed by the central bank governors of the Group of Ten (G–10) countries in July 1988. The Committee is comprised of representatives of the central banks and

Continued

to include noncumulative perpetual preferred stock in Tier 1 capital and place no formal limit on the amount of such instruments that may be included in Tier 1.[2] The Basle framework, which by its terms applies only to internationally active banks, was adopted by the Federal Reserve for state member banks. In addition, the Board chose to apply a risk-based capital framework similar to the Basle Accord to U.S. bank holding companies generally on a consolidated basis.[3] Under the Federal Reserve's bank holding company capital guidelines, holding companies are allowed to include both noncumulative and cumulative perpetual preferred stock in Tier 1 capital, but the total of all perpetual preferred stock includable in Tier 1 capital is limited to 25 percent of Tier 1.[4] Amounts of such stock in excess of the limitation may be included in Tier 2 capital. The limit on preferred stock is consistent with the Board's long-standing view that common equity should remain the dominant form of a banking organization's capital structure.

A principal reason for the Board's decision to limit the amount of perpetual preferred stock in bank holding company Tier 1 capital is the fact that cumulative preferred, the type of perpetual preferred most prevalent in U.S. financial markets, normally involves preset dividends that can only be deferred, not cancelled. An institution that passes dividends on cumulative preferred stock must pay off any accumulated arrearages before it can resume payment of its common stock dividends. Thus, undue reliance on cumulative perpetual preferred stock and the related possibility of large dividend arrearages could complicate an organization's ability to raise new common equity in times of financial difficulty. On the other hand, dividends on noncumulative preferred, like dividends on common stock, may be cancelled. Thus, with respect to dividends, noncumulative preferred stock has characteristics that are consistent with common stock, the principal component of Tier 1 capital.

Conditions in the banking industry underscore the desirability of affording banking organizations greater flexibility in raising capital. This can assist organizations in strengthening their capital positions and expanding their ability to extend credit to sound borrowers. In view of these considerations, on October 31, 1991, the Board proposed removing the limit on the amount of noncumulative preferred stock that bank holding companies may include in Tier 1 capital. This was consistent with other steps initiated by the Federal bank regulatory agencies, in conjunction with the Treasury Department, to address concerns relating to the availability of credit to sound borrowers.

By removing the limit for noncumulative perpetual preferred stock, the Board noted, the proposal would achieve parity with regard to the treatment of noncumulative perpetual preferred stock between the U.S. risk-based capital guidelines for bank holding companies and the Basle framework for banks. Thus, the proposal would place U.S. bank holding companies on a more equal footing with foreign banks subject to the Basle Accord with regard to their ability to augment Tier 1 capital through the issuance of noncumulative perpetual preferred stock. The proposal also would conform the treatment of noncumulative preferred for holding companies to the treatment for state member banks, which, consistent with the Basle Accord, may include noncumulative perpetual preferred stock in Tier 1 without any formal limit. The Board indicated that the additional flexibility provided by this proposal could assist bank holding companies to strengthen their capital positions and expand their lending capacity.

The Board noted that, although it was proposing to remove the limit on noncumulative perpetual preferred stock, it continued to believe that bank holding companies should avoid overreliance on preferred stock within Tier 1 capital. In this regard, the Board noted that the capital structure of a bank holding company is subject to quarterly review (through the analysis of financial reports filed with the Federal Reserve), and the composition of an organization's capital base and its capital plans are subject to in-depth assessment during annual inspections and as part of the Federal Reserve's consideration of applications. The Board further stated that the language of the Federal Reserve's risk-based capital guidelines makes clear the Board's long-standing belief that banking organizations should avoid overreliance on nonvoting equity instruments, including preferred stock, in Tier 1 capital. Capital structures that are inconsistent with this principle may result in supervisory or enforcement actions, including possible denial of applications filed with the Federal Reserve. In addition, rating agencies take the amount of common equity and preferred stock an organization has, as well as the overall composition of the organization's core capital, into account in determining the organization's financial ratings. Thus, the Board concluded in its proposal that there are a number of mechanisms in place to monitor banking organizations' use of preferred stock and to discourage undue reliance on such instruments.

The comment period for this proposal ended on November 22, 1991. The Board received comments from twenty-one public respondents. None of the commenters opposed the proposal and fourteen commenters, or two-thirds of the total, supported it. Two of these commenters, however, questioned the language in the Board's proposal that overreliance by a banking organization on preferred stock and other nonvoting equity elements within Tier 1 could result in supervisory or enforcement actions. These commenters asked for specific guidance on the permissible upper limit within Tier 1 for such nonvoting instruments.

Seven commenters neither supported nor opposed the proposal but expressed the view that removal of the limitation on noncumulative preferred stock includable in Tier 1 capital would provide little or no benefit to bank holding companies' ability to raise capital because they view the market for noncumulative preferred as limited. Three of the commenters that explicitly supported the proposal expressed similar reservations on the benefits provided by the proposal. Five of the commenters that did not explicitly support the proposal put forth alternative proposals to increase this ability. One of these suggestions was the removal of the limit on cumulative perpetual preferred stock bank holding companies may include in Tier 1. Another suggestion was to include in

supervisory authorities from the G-10 countries (Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland, the United Kingdom, and the United States) and Luxembourg.

[2] Noncumulative perpetual preferred stock is perpetual preferred stock whose dividends, if missed, do not accrue and will never be paid. Cumulative perpetual preferred stock is preferred stock whose dividends, if missed because of insufficient earnings or any other reason, accumulate until all arrearages are paid out. Cumulative preferred dividends have preference over common dividends, which cannot be paid out as long as any cumulative preferred dividends remain unpaid.

[3] For bank holding companies with consolidated assets of less than $150 million in assets, the risk-based capital guidelines generally are applied on a bank-only basis.

[4] Under the risk-based capital guidelines, certain types of perpetual preferred stock do not qualify for inclusion in Tier 1 capital. For example, perpetual preferred stock in which the dividend is reset periodically based, in whole or in part, upon the banking organization's credit standing is excluded from Tier 1 capital, but may be included in Tier 2 capital.

capital some amount of identifiable intangible assets such as purchased credit card intangibles and core deposit intangibles.[5]

Based on the comments received, the Board is now issuing in final form amendments to its risk-based and capital leverage guidelines to remove the limitation on the amount of noncumulative perpetual preferred stock bank holding companies may include in Tier 1 capital. Bank holding companies will continue to be able to include cumulative perpetual preferred stock in Tier 1 capital, up to a limit of 25 percent of Tier 1. The Board believes that a limitation on cumulative perpetual preferred stock is appropriate because dividends on this type of instrument can only be deferred, not cancelled. Since the existence of large dividend arrearages could complicate an organization's ability to raise common equity in times of financial difficulty, the Board believes that the amount of cumulative preferred stock bank holding companies can include as Tier 1 capital should continue to be limited to 25 percent.

Although the Board is removing the limit on noncumulative preferred, it continues to believe that common equity should remain the dominant form of a banking organization's capital structure. Thus, the Board with retain the language in its risk-based capital guidelines stating that banking organizations should avoid overreliance on nonvoting equity instruments, including perpetual preferred stock, in their Tier 1 capital. Any determination of overreliance depends on a number of factors including the overall financial condition of the institution, the existence of multiple classes of common shareholders, the level and quality of minority interests in equity accounts of consolidated subsidiaries, and the level and quality of preferred stock. Since these factors can vary greatly among banking organizations, the Board will continue to make a final determination on overreliance on nonvoting equity elements on a case-by-case basis.

II. Effective Date

The amendments to the risk-based and leverage capital guidelines are effective upon publication. The provisions of 5 U.S.C. 553(d) generally prescribing 30 days' prior notice of the effective date of a rule have not been followed in connection with the adoption of this amendment. Section 553(d) also provides that such prior notice is not necessary whenever a rule reduces regulatory burdens or there is good cause for finding that such notice is contrary to the public interest. As noted above, by removing the limitation on the amount of noncumulative perpetual preferred stock bank holding companies may include in Tier 1 capital, this rule does reduce such a regulatory burden.

II. Regulatory Flexibility Act Analysis

The Federal Reserve Board does not believe that adoption of this proposal would have a significant economic impact on a substantial number of small business entities in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). In that regard, the proposed amendment would reduce certain regulatory burdens on bank holding companies. In addition, because the risk-based and leverage capital guidelines generally do not apply to bank holding companies with consolidated assets of less than $150 million, this proposal will not affect such companies.

List of Subjects

12 CFR Part 208

Accounting, Agricultural loan losses, Applications, Appraisals, Banks, banking, Branches, Capital adequacy, Confidential business information, Currency, Dividend payments, Federal Reserve System Flood insurance, Publication of reports of condition, Reporting and recordkeeping requirements, Securities, State member banks.

12 CFR Part 225

Administrative practice and procedure, Appraisals, Banks, banking, Capital adequacy, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities, State member banks.

For the reasons set forth in this notice, and pursuant to the Board's authority under section 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(b)), and section 910 of the International Lending Supervision Act of 1983 (12 U.S.C. 3909), the Board is amending 12 CFR Parts 208 and 225 by revising them to read as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

1. The authority citation for part 208 continues to read as follows:

Authority: Sections 9, 11(a), 11(c), 19, 21, 25, and 25(a) of the Federal Reserve Act, as amended (12 U.S.C. 321–338, 248(a), 248(c), 461, 481–486, 601, and 611, respectively); sections 4 and 13(j) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1814 and 1823(j), respectively); section 7(a) of the International Banking Act of 1978 (12 U.S.C. 3105); sections 907–910 of the International Lending Supervision Act of 1983 (12 U.S.C. 3906–3909); sections 2, 12(b), 12(g), 12(i), 15B(c) (5), 17, 17A, and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78b, 78*l*(b), 78*l*(g), 78*l*(i), 78o–4(c) (5), 78q, 78q–1, and 78w, respectively); section 5155 of the Revised Statutes (12 U.S.C. 36) as amended by the McFadden Act of 1927; and sections 1101–1122 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3310 and 3331–3351).

Appendix A—[Amended]

2. In Appendix A to part 208 footnote 6 is removed and reserved.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j) (13), 1818, 1831i, 1843(c) (8), 1844(b), 3106, 3108, 3907 3909, 3310, and 3331–3351.

Appendix A—[Amended]

2. Appendix A to part 225 is amended by revising paragraphs (ii) and (iii) and adding paragraph (iv) in II.A.1., by revising the last three sentences of the third paragraph and the entire fourth paragraph in II.A.1.b., by revising the third entry under the heading and by adding a new entry directly after the newly revised third entry in Attachment II, and by revising footnote 1 in Attachment VI, to read as follows:

II. * * *

A. * * *

1. * * *

(i) * * *

(ii) Qualifying noncumulative perpetual preferred stock (including related surplus).

(iii) Qualifying cumulative perpetual preferred stock (including related surplus), subject to certain limitations described below.

(iv) Minority interest in the equity accounts of consolidated subsidiaries.

a. * * *

b. * * *

However, the aggregate amount of cumulative perpetual preferred stock that may be included in a holding company's tier 1 is limited to one-third of the sum of core capital elements, excluding the cumulative perpetual preferred stock (that is, items i ii, and iv above). Stated differently, the aggregate amount may not exceed 25 percent of the sum of all core capital elements, including cumulative perpetual preferred stock (that is, items, i, ii, iii, and iv above). Any cumulative perpetual preferred stock

[5] The Board is currently reviewing the capital treatment of intangible assets together with the other federal financial institutions regulatory agencies and will address this matter separately at a later date.

outstanding in excess of this limit may be included in tier 2 capital without any sublimits within that tier (see discussion below).

While the guidelines allow for the inclusion of noncumulative perpetual preferred stock and limited amounts of cumulative perpetual preferred stock in tier 1, it is desirable from a supervisory standpoint that voting common equity remain the dominant form of tier 1 capital. Thus, bank holding companies should avoid overreliance on preferred stock or nonvoting equity elements within tier 1.

* * * * *

Attachment II * * *

Components	Minimum requirements after transition period
* * *	* * *
Qualifying noncumulative perpetual preferred stock.	No limit.
Qualifying cumulative perpetual preferred stock.	Limited to 25% of the sum of common stock, qualifying perpetual preferred stock, and minority interests.
* * *	* * *

Attachment VI. * * *

* * * * *

[1] Cumulative perpetual preferred stock is limited within tier 1 to 25% of the sum of common stockholders' equity, qualifying perpetual preferred stock, and minority interests.

Appendix D—[Amended]

3. Appendix D to part 225 is amended by revising the first two sentences in footnote 3 to read as follows:

* * * * *

[3] At the end of 1992, Tier 1 capital for bank holding companies includes common equity, minority interest in the equity accounts of consolidated subsidiaries, qualifying noncumulative perpetual preferred stock, and qualifying cumulative perpetual preferred stock. (Cumulative perpetual preferred stock is limited to 25 percent of Tier 1 capital.)

* * *

Board of Governors of the Federal Reserve System, January 13, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-1253 Filed 1-16-92; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-01-AD; Amendment 39-8155; AD 92-03-01]

Airworthiness Directives; McDonnell Douglas Model DC-9-10 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to McDonnell Douglas Model DC-9-10 series airplanes. This action requires a revision to the Airplane Flight Manual (AFM) which specifies that takeoff may not be initiated unless the flight crew verifies that a visual and physical check of the leading edge and upper wing surfaces have been accomplished and that the wing is clear of ice/frost/snow accumulation. This amendment is prompted by several accidents in which airplanes experienced loss of lift when attempting takeoff with ice contamination on their wings. The actions specified in this AD are intended to prevent ice contamination, which could result in the degradation of wing lift, and stall at lower than normal angles-of-attack during takeoff.

DATES: Effective January 17, 1992.

Comments for inclusion in the Rules Docket must be received on or before March 16, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-01-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

FOR FURTHER INFORMATION CONTACT: Mr. James Webre, Los Angeles Aircraft Certification Office, ANM-160L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5364; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: The FAA has received reports of five accidents involving McDonnell Douglas Model DC-9-10 series airplanes that were apparently caused by ice contamination on the wing surfaces. Four of the airplanes involved were not de-iced prior to attempting takeoff. In the fifth accident, the airplane was de-iced; however, it was on the ground for 27 minutes in icing conditions prior to an attempted takeoff. Although Federal Aviation Regulations 91.527 and 121.629 prohibit takeoff with ice, frost, or snow on the wings, in each reported accident, it was apparent that ice buildup on the wings was not noticed or detected by the flight crew prior to takeoff. Consequently, the ice build-up on the wing leading edge contributed to degradation of lift of the airplane.

The McDonnell Douglas Model DC-9-10 series airplane has a wing design with no leading edge high lift devices, such as slats. Wings without leading edge devices are particularly susceptible to loss of lift due to wing icing. Minute amounts of ice or other contamination (equivalent to medium grit sandpaper) on the leading edges or wing upper surfaces can cause degradation of wing lift, and can cause the airplane to stall at lower than normal angles-of-attack during takeoff. Stall speeds can be increased up to 30 knots, which would be well above the stall warning (stick shaker) activation speed.

Since the unsafe condition described is likely to exist or develop on other McDonnell Douglas DC-9-10 series airplanes of the same type design, this AD is being issued to prevent ice contamination which could result in the degradation of wing lift and stall at lower than normal angles-to-attack during takeoff. This AD requires a revision to the Airplane Flight Manual (AFM) which specifies that takeoff may not be initiated unless the flight crew verifies that a visual check and a physical (hands-on) check of the leading edge and upper wing surfaces have been accomplished, and that the wing is clear of ice/frost/snow accumulation.

This is considered to be an interim action. The manufacturer has advised the FAA that it is developing a modification which will assist in eliminating the wing leading edge icing problem by providing leading edge heating during ground operation. Once this modification is approved and available, the FAA may consider further rulemaking.

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

Comments Invited

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

are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-01-AD." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

92-03-01. McDonnell Douglas: Amendment 39-8155. Docket 92-NM-01-AD.

Applicability: Model DC-9-11, -12, -13, -14, -15, and -15F series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of lift due to ice accumulation on the wing leading edge and upper surface, accomplish the following:

(a) Within 10 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

"Wing De-icing Prior to Takeoff

CAUTION

The Model DC-9-10 series airplane has a wing design with no leading edge high lift devices, such as slats. Wings without leading edge devices are particularly susceptible to loss of lift due to wing icing. Minute amounts of ice or other contamination (equivalent to medium grit sandpaper) on the leading edges or wing upper surfaces can cause a significant reduction in the stall angle-of-attack. This can increase the stall speed up to 30 knots. The increased stall speed can be well above the stall warning (stick shaker) activation speed. [END OF CAUTIONARY NOTE]

The leading edge and upper wing surfaces must be physically checked for ice/frost when the airplane has been exposed to conditions conducive to ice/frost formation. Takeoff may not be initiated unless the flight crew verifies that a visual check and a physical (hands-on) check of the leading edge and upper wing surfaces have been accomplished, and that the wing is clear of ice/frost/snow accumulation. Icing/frost/snow conditions exist when the Outside Air Temperature (OAT) is below 6 degrees C (42 degrees F); and either the difference between the dew point temperature and OAT is less than 3 degrees C (5 degrees F), or visible moisture (rain, drizzle, sleet, snow, fog, etc.) is present.

NOTE

This limitation does not relieve the requirement that aircraft surfaces are free of ice, frost, and snow accumulation as required by Federal Aviation Regulations §§ 91.527 and 121.629. [END OF NOTE]"

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance or Operations Inspector, as appropriate, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment (39-8155), AD 92-03-01, becomes effective January 17, 1992.

Issued in Renton, Washington, on January 3, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-1463 Filed 1-15-92; 4:15 pm]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-02-AD; Amendment 39-8156; AD 92-03-02]

Airworthiness Directives; McDonnell Douglas Models DC-9-80 Series Airplanes and Model MD-88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to McDonnell Douglas Model DC-9-80 series airplanes and Model MD-88 airplanes. This action requires a revision to the Airplane Flight Manual (AFM) which specifies that takeoff may not be initiated unless the flight crew verifies that a visual check and a physical check of the wing upper surfaces have been accomplished, and that the wing is clear of ice accumulation. This action also requires installation of tufts and triangular decals on the inboard side of wing upper surfaces. This amendment is prompted by several incidents in which ice build-up on wing upper surfaces may have shed into the engines during takeoff, causing damage to the engine. This

condition, if not corrected, could cause loss of thrust on one or both engines.

DATES: Effective January 17, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 17, 1992.

Comments for inclusion in the Rules Docket must be received on or before March 16, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-02-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications, C1-HDR (54-60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. James Webre, Los Angeles Aircraft Certification Office, ANM-160L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5364; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: There have been reports of ice forming on the wing upper surfaces of McDonnell Douglas Models DC-9-80 series and Model MD-88 series airplanes in icing conditions, and shedding during takeoff. In some cases, the shedding ice has been ingested into the engines, causing damage to one or both engines. Although Federal Aviation Regulations Sections 91.527 and 121.629 prohibit takeoff with ice, frost, or snow on the wings, in each reported case, it was apparent that ice build-up on the wings was not noticed or detected by the flight crew prior to takeoff.

The formation of ice can occur on wing surfaces during exposure of the airplane to normal icing conditions. Clear ice can also occur on the wings' upper surfaces when cold-soaked fuel is in the main wing fuel tanks, and the airplane is exposed to conditions of high humidity, rain, drizzle, or fog at ambient temperatures well above freezing. The presence of clear ice can be extremely difficult to detect on smooth surfaces even under the best lighting conditions. Ice accumulation on the wind surfaces, if not detected and removed prior to takeoff, could result in ice shedding from the wing and causing damage to one or both engines, possibly leading to surge, vibration, or loss of thrust.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin 30-59, dated September 18, 1989; Revision 1, dated January 5, 1990; and Revision 2, dated August 15, 1990; which describe procedures for installing tufts (short lengths of string) and triangular decals on the inboard side of wings' upper surfaces. These items will help in determining the presence of clear ice.

Since the unsafe condition described is likely to exist or develop on other McDonnell Douglas Model DC-9-80 series and Model MD-88 airplanes of the same type design, this AD is being issued to prevent damage to one or both engines, caused by ice shedding from the wings. This AD requires a revision to the Airplane Flight Manual (AFM) which specifies that takeoff may not be initiated unless the flight crew verifies that a visual check and a physical (hands on) check of the wing upper surfaces have been accomplished, and that the wing is clear of ice accumulation. The AD also requires installation of tufts and triangular decals on the inboard side of wing upper surfaces, in accordance with the service bulletin previously described. Further, this AD requires a revision to the Configuration Deviation List (CDL) of the AFM relative to criteria for operating when certain numbers of triangular decals and/or tufts are missing.

This is considered to be interim action. The FAA is considering additional rulemaking to require the installation of an ice/foreign object damage (FOD) alert system (reference McDonnell Douglas MD-80 Service Bulletin 30-64), which will assist in determining the presence of ice on the wing; and installation of an inboard refueling system (reference McDonnell Douglas MD-80 Service Bulletin 28-59), which will permit warmer fuel from ground storage facilities to be loaded into the wing tank in the area where ice shedding from the wind could be ingested into the engine.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-02-AD." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory

Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

92-03-02. McDonnell Douglas: Amendment 39-8156. Docket 92-NM-02-AD.

Applicability: Model DC-9-81, -82, -83, and -87 series airplanes, and Model MD-88 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of engine thrust, accomplish the following:

(a) Within 10 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

"Ice on Wing Upper Surfaces

CAUTION

Ice shedding from the wing upper surface during takeoff can cause severe damage to one or both engines, leading to surge, vibration, and complete thrust loss. The formation of ice can occur on wing surfaces during exposure of the airplane to normal icing conditions. Clear ice can also occur on the wing upper surfaces when cold-soaked fuel is in the main wing fuel tanks, and the airplane is exposed to conditions of high humidity, rain, drizzle, or fog at ambient temperatures well above freezing. Often, the ice accumulation is clear and difficult to detect visually. The ice forms most frequently on the inboard, aft corner of the main wing tanks. [END OF CAUTIONARY NOTE]

The wing upper surfaces must be physically checked for ice when the airplane has been exposed to conditions conducive to ice formation. Takeoff may not be initiated unless the flight crew verifies that a visual check and a physical (hands-on) check of the wing upper surfaces have been accomplished, and that the wing is clear of ice accumulation when any of the following conditions occur:

(1) When the ambient temperature is less than 50 degrees F and high-humidity or visible moisture (rain, drizzle, sleet, snow, fog, etc.) is present;

(2) When frost or ice is present on the lower surface of either wing;

(3) After completion of de-icing.

When tufts and triangular decals are installed in accordance with McDonnell Douglas MD-80 Service Bulletin 30-59, the physical check may be made by assuring that all installed tufts move freely.

NOTE

This limitation does not relieve the requirement that aircraft surfaces are free of frost, snow, and ice accumulation, as required by Federal Aviation Regulations §§ 91.527 and 121.629. [END OF NOTE]"

(b) Within 10 days after the effective date of this AD, revise the Configuration Deviation List (CDL) Appendix of the AFM to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

"30-80-01 Triangular Decal and Tuft Assemblies

Up to two (2) decals or tufts per side may be missing, provided:

(a) At least one decal and tuft on each side is located along the aft spar line; and

(b) The tufts are used for performing the physical check to determine that the upper wing is free of ice by observing that the tufts move freely.

Up to eight (8) decals and/or tufts may be missing, provided:

(a) Takeoff may not be initiated unless the flight crew verifies that a physical (hands-on) check is made of the upper wing in the location of the missing decals and/or tufts to assure that there is no ice on the wing when icing conditions exist;

OR

(b) When the ambient temperature is more than 50 degrees F."

(c) Within 30 days after the effective date of this AD, install tufts and triangular decals on the inboard side of the wings' upper surfaces, in accordance with McDonnell Douglas Service Bulletin 30-59, dated September 18, 1989; Revision 1, dated January 5, 1990; or Revision 2, dated August 15, 1990.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance or Operations Inspector, as appropriate, who may concur or comment and then send it to the Manager, Los Angeles ACO.

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

(f) The installation required by this AD shall be done in accordance with McDonnell Douglas Service Bulletin 30-59, dated September 18, 1989; Revision 1, dated January 5, 1990; or Revision 2, dated August 15, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications, C1-HDR (54-60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, D.C.

(g) This amendment (39-8156), AD 92-03-02, becomes effective January 17, 1992.

Issued in Renton, Washington, on January 3, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-1447 Filed 1-15-92; 4:15 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 92-6]

Customs Regulations Amendment Relating to the Generalized System of Preferences Direct Importation Requirement

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulation; solicitation of comments.

SUMMARY: This document expands the "imported directly" definition in the Customs Regulations pertaining to the Generalized System of Preferences (GSP) to allow goods produced in a member of a GSP-designated association of countries to be shipped through, and subjected to limited processing operations in, another member of the same association whose designation as a member of that association for GSP purposes was terminated by the President. The amendment supports the overall goals of the GSP program which include fostering the continued economic development and integration of association members.

DATES: Interim rule effective January 17, 1992. Comments must be received on or before March 17, 1992.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Craig Walker, Office of Regulations and Rulings (202-566-2938).

SUPPLEMENTARY INFORMATION:

Background

Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461-2465), authorizes the President to establish a Generalized System of Preferences (GSP) to provide duty-free treatment for articles which (1) are designated by the President as eligible articles for purposes of the GSP, (2) are the growth, product, or manufacture of a country designated by the President as a beneficiary developing country (BDC) for purposes of the GSP, (3) have at least 35 percent of their appraised value attributable to the cost or value of materials produced in the BDC and/or the direct costs of processing operations performed in the BDC, and (4) are imported directly from the BDC into the Customs territory of the United States. The Customs Regulations implementing the GSP are contained in §§ 10.171-10.178 (19 CFR 10.171-10.178).

Section 10.175 of the Customs Regulations (19 CFR 10.175) defines the expression "imported directly" for purposes of the GSP. Paragraph (a) provides the most restrictive definition (that is, direct shipment from the BDC to the United States without passing through the territory of any other country), and paragraphs (b)-(d) set forth certain limited derogations from the strict rule contained in paragraph (a).

Paragraph (b) refers to shipment from the BDC to the United States through the territory of any other country under circumstances in which the merchandise in the shipment does not enter into the commerce of the intermediate country while en route to the United States, and the invoice, bills of lading, and other shipping documents show the United States as the final destination.

Paragraph (c) covers merchandise shipped from the BDC to the United States through a free trade zone in a BDC and sets forth the following principal conditions: (1) The merchandise shall not enter into the commerce of the country maintaining the free trade zone, (2) the merchandise must not undergo any operations other than sorting, grading, testing, packing, unpacking, repacking, decanting, affixing marks or labels or the like if incidental to other operations permitted under the paragraph, and operations necessary to preserve the merchandise in its condition as introduced into the free trade zone, (3) the merchandise may be purchased and resold, other than at retail, for export within the free trade zone, and (4) an additional Certificate of Origin Form A, declaring what operations, if any, were performed on the merchandise in the free trade zone, shall be prepared and submitted to Custom with the original Certificate of Origin.

Paragraph (d) refers to a shipment from a BDC to the United States through the territory of any other country under circumstances in which the invoices and other documents do not show the United States as the final destination and states that the articles in the shipment are imported directly only if: (1) The articles remained under the control of the customs authority in the intermediate country, (2) the articles did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the district director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent, and (3) the articles were not subjected to operations other than loading and unloading and other activities necessary to preserve the articles in good condition.

Each of the above exceptions to the strict "imported directly" rule was designed to address potential or known problems that could otherwise interfere with the goals of the GSP program, such as geographical limitations (for example, a landlocked BDC needing access to a seaport located in a neighboring country) and regional or product-specific marketing or distribution requirements. The documentary requirements and other conditions set forth in each of these transshipment exceptions were specifically designed to ensure that Customs would still be able to trace the imported goods to their true country of origin, in recognition of the fact that the real function of the direct importation requirement is to assist in establishing compliance with the basic GSP origin requirements.

In Proclamation 5805 of April 29, 1988, published at 53 FR 15785 on May 4, 1988, the President pursuant to 19 U.S.C. 2464 terminated the designation of Singapore and Brunei Darussalam as BDCs for purposes of the GSP, thus removing them both from the list of independent countries entitled to GSP benefits and from the list of members of the Association of South East Asian Nations (ASEAN) treated as one BDC for GSP purposes. The action with regard to Singapore was based on a determination that Singapore was sufficiently advanced in economic development and improved in trade competitiveness that continued preferential treatment under the GSP was not warranted. The action as regards Brunei Darussalam was based on a determination that its per capita gross national product had exceeded the applicable limit for GSP designation provided in 19 U.S.C. 2464(f). The principal intended effect of the Presidential action was (1) to exclude from GSP duty-free treatment all articles produced in Singapore or in Brunei Darussalam, and (2) in the case of an article produced in another ASEAN member country, to preclude counting any cost or value of materials or direct costs of processing operations attributable to Singapore or Brunei Darussalam in order to meet the GSP 35 percent value-added requirement under the cumulation of value provision applicable to members of an association of countries treated as one country under the GSP.

However, the Presidential Proclamation also has had the collateral effect of excluding from GSP duty-free treatment articles produced in any remaining GSP-eligible ASEAN member country (Indonesia, Malaysia, the Philippines, or Thailand) and shipped to Singapore or Brunei Darussalam where unpacking, testing, labeling, repacking and other minimal operations are performed on such articles prior to final shipment to the United States. This results from the fact that, by removing Singapore and Brunei Darussalam from the list of ASEAN member countries treated as one country for GSP purposes, such an article can no longer be considered to have been directly shipped to the United States from the ASEAN and thus would not be "imported directly" within the meaning of the GSP statute. Moreover, none of the above-described exceptions to the strict "imported directly" rule set forth in 19 CFR 10.175 would apply in such circumstances, and in this regard the following is noted: (1) Paragraph (b) is inapplicable because testing and other operations performed on the article in Singapore or Brunei Darussalam constitute entry into the commerce of those countries; (2) paragraph (c) does not apply because the free trade zone must be located in a BDC and Singapore and Brunei Darussalam are no longer BDCs; and (3) paragraph (d) does not permit the types of operations performed on the article in Singapore or Brunei Darussalam.

The Office of the United States Trade Representative (USTR) has determined that the situation described above is having a serious negative effect on both the GSP program and the goals of the ASEAN. While the Presidential action has had the desired effect of preventing

Singapore and Brunei from benefitting from the GSP trade preference, it has also caused difficulties for the remaining GSP-eligible ASEAN member countries which, having in the past found it necessary to transship some of their products through Singapore or Brunei Darussalam for the purpose of performing testing and related minor operations and in order to facilitate marketing and distribution, are now able to do so only at the cost of losing GSP duty-free treatment on those products. Thus, in effect, GSP availability has been somewhat eroded for products of Indonesia, Malaysia, the Philippines, and Thailand, thereby frustrating the intent behind their continued designation as GSP BDCs. Moreover, by precluding Singapore or Brunei Darussalam from having such peripheral involvement with the GSP transactions of the other ASEAN members, the goal of the ASEAN, which is to further the economic integration of its members, will be frustrated. In accordance with commitments made to interested foreign governmental entities to try to find a solution to this problem, USTR therefore requested Customs to consider whether the Customs Regulations could be amended on an expedited basis to correct this situation. Customs has concluded that a regulatory amendment in this case, so long as it does not affect the President's action withdrawing direct GSP benefits from the two countries in question, would be equitable, proper and consistent with the overall objectives of the GSP program.

In order to ensure that the solution to this problem is limited to the narrow "imported directly" context under which it arose, and in keeping with the regulatory approach taken toward similar problems in the past, this document simply sets forth an amendment to 19 CFR 10.175 involving the addition of a new paragraph (e) to cover cases in which goods originating in a member of an association treated as one GSP country are shipped through the territory of a former BDC whose designation as a member of the same association was terminated by the President. The new regulatory text set forth in this document incorporates the limitations or conditions found in present paragraph (c) with respect to the general prohibition against entry into the commerce, the limited types of operations that would be permitted, the allowance of only a non-retail purchase or resale for export, and the submission of an additional Certificate of Origin Form A describing the operations performed; however, the new text is not limited to free trade zone situations as in the case of paragraph (c) because such a limitation would be overly restrictive and is unnecessary in this context. This new paragraph (e) also specifically lists Singapore and Brunei Darussalam so as to clarify the present application of the paragraph, and future amendments to this list would be made as changed circumstances may warrant.

Finally, Customs believes that the pressing need for this regulatory change as explained above, coupled with the fact that the change confers a benefit on the general public by removing a restriction, warrants immediate implementation of the change in the form of an interim rule with provision for public comments thereon.

Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments (preferably in triplicate) timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, Customs Service Headquarters, 1301 Constitution Avenue NW., Washington, DC.

Inapplicability of Notice and Delayed Effective Date Requirements

Pursuant to the provisions of 5 U.S.C. 553(a) public notice is inapplicable to this regulation because it falls within the foreign affairs function of the United States. The regulation implements commitments made to foreign governmental entities by the Executive Office of the President and accords with the President's statutory authority regarding administration of the GSP program. In addition, because this regulation is necessary to support the objectives of the existing GSP program and since it confers a benefit on the general public, it is determined pursuant to 5 U.S.C. 553(b)(B) that notice and public procedures are impracticable, unnecessary, and contrary to the public interest. Furthermore, for the above reasons, it is determined that good cause exists under the provisions of 5 U.S.C. 553(d)(3) for dispensing with a delayed effective date.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspections, Imports.

Amendment to the Regulations

For the reasons set forth above, part 10, Customs Regulations (19 CFR part 10) is amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC

1. The authority citation for part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1508, 1623, 1624.

* * * * *

2. Section 10.175 is amended by removing the period at the end of paragraph (d)(3) and adding in its place "; or", and by adding a new paragraph (e) to read as follows:

§ 10.175 Imported directly defined.

* * * * *

(e)(1) Shipment to the U.S. from a beneficiary developing country which is a member of an association of countries treated as one country under section 502(a)(3), Trade Act of 1974, as amended (19 U.S.C. 2462(a)(3)), through the territory of a former beneficiary developing country whose designation as a member of the same association for GSP purposes was terminated by the President pursuant to section 504, Trade Act of 1974, as amended (19 U.S.C. 2464), provided:

(i) The articles in the shipment did not enter into the commerce of the former beneficiary developing country except for purposes of performing one or more of the operations specified in paragraph (c)(1) of this section and except for purposes of purchase or resale, other than at retail, for export; and

(ii) The person responsible for the articles in the former beneficiary developing country, or any person having knowledge of the facts, shall prepare and sign an additional

Certificate of Origin Form A declaring what operations, if any, were performed in the former beneficiary developing country. At the request of the district director, this additional Certificate of Origin shall be presented to Customs along with the Certificate of Origin required by § 10.173(a)(1). The provisions of §§ 10.173 (a)(2), (a)(3), (a)(4) and (a)(5) are applicable to this paragraph.

(2) The designation of the following countries as members of an association of countries for GSP purposes has been terminated by the President pursuant to section 504 of the Trade Act of 1974 (19 U.S.C. 2464):

Brunei Darussalam.
Singapore.

Approved: January 13, 1992.

Michael H. Lane,

Acting Commissioner of Customs.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92-1228 Filed 1-16-92, 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 90F-0321]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

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 1,3,5-tris(3,5-di-*tert*-butyl-4-hydroxybenzyl)-*s*-triazine-2,4,6(1*H*, 3*H*, 5*H*)trione as an antioxidant for polymethylpentene homopolymers used in contact with food. This action is in response to a petition filed by Ciba-Geigy Corp.

DATES: Effective January 17, 1992; written objections by February 18, 1992.

ADDRESSES: 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: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-254-9511.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 30, 1990 (55 FR 45656), FDA announced that a food additive petition (FAP 0B4219) had been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of 1,3,5-tris(3,5-di-*tert*-butyl-4-hydroxybenzyl)-*s*-triazine-2,4,6(1*H*, 3*H*, 5*H*)trione as an antioxidant for polymethylpentene homopolymers used in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that 21 CFR 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(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 Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(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 18, 1992, 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 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 178.2010 is amended in the table in paragraph (b) for the entry 1,3,5-tris(3,5-di-*tert*-butyl-4-hydroxybenzyl)-*s*-triazine-2,4,6(1*H*, 3*H*, 5*H*)trione * * * by numerically adding a new entry "6." under the heading "Limitations" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* *	* * *
1,3,5-tris(3,5-di-*tert*-butyl-4-hydroxybenzyl)-*s*-triazine-2,4,6(1*H*, 3*H*, 5*H*) trione(CAS Reg. No. 27676-62-6).	For use only: * * * 6. At levels not to exceed 0.2 percent by weight of olefin polymers complying with § 177.1520(c)(4) of this chapter. The finished polymers may be used in contact with food under conditions of use A through H described in Table 2 of § 176.170(c) of this chapter.
* *	* * *

Dated: January 10, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-1263 Filed 1-16-92; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

CGD 92-002

Safety and Security Zones

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document gives notice of temporary safety zones, security zones, and local regulations. Periodically the Coast Guard must issue safety zones, security zones, and special local regulations for limited periods of time in limited areas. Safety zones are established around areas where there has been a marine casualty or when a vessel carrying a particularly hazardous cargo is transiting a restricted or congested area. Special local regulations are issued to assure the safety of participants and spectators of regattas and other marine events.

DATES: The following list includes safety zones, security zones, and special local regulations that were established between October 1, 1991 and December 31, 1991 and have since been terminated. Also included are several zones established earlier but inadvertently omitted from the past published list.

ADDRESSES: The complete text of any temporary regulation may be examined at, and is available on request, from Executive Secretary, Marine Safety Council (G-LRA-2), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Don Harris, Regulatory Paralegal, Marine Safety Council at (202) 267-1477 between the hours of 8 a.m. and 3:30 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: The local Captain of the Port must be immediately responsive to the safety needs of the waters within his jurisdiction; therefore, he has been delegated the authority to issue these regulations. Since events and emergencies usually take place without advance notice or warning, timely publication of notice in the **Federal Register** is often precluded. However, the affected public is informed through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is frequently provided by Coast Guard patrol vessels enforcing the restrictions imposed in the zone to keep the public informed of the regulatory activity. Because mariners are notified by Coast Guard officials on scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard publishes a periodic list of these temporary local regulations, security zones, and safety zones. Permanent safety zones are not included in this list. Permanent zones are published in their entirety in the **Federal Register** just as any other rulemaking. Temporary zones are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. Non-major safety zones, special local regulations and security zones have been exempted from review under E.O. 12291 because of their emergency nature and temporary effectiveness.

The following regulations were placed in effect temporarily during the period October 1, 1991 through December 31, 1991, unless otherwise indicated.

Docket #	Location	Type	Effective date
CGD1-91-057	Lower East River, New York	Safety	31 Dec 91.
CGD1-91-153	Lower Hudson River, NY/NJ	Safety	11 Oct 91.
CGD1-91-154	Old Rte 156 Niantic River	Safety	08 Oct 91.
CGD1-91-155	Kill Van Kull, NY/NJ	Safety	15 Oct 91.
CGD1-91-163	Shinnecock Inlet, Unexploded	Safety	22 Oct 91.
CGD1-91-164	Old Rte 156 Niantic River Bridge	Safety	29 Oct 91.
CGD1-91-166	Lower East River, NY	Security	12 Nov 91.
CGD1-91-169	Boston Inner Harbor	Safety	31 Dec 91.
CGD2-91-001	Fleur De Lis Regatta	Special	11 Oct 91.
CGD5-91-048	American Diabetes Choptank Swim	Special	19 Oct 91.
CGD7-91-105	Lauderdale Great South Florida	Special	05 Oct 91.
CGD7-91-106	Columbus Day Cruising Regatta	Special	12 Oct 91.
CGD7-91-112	Dick Misener Memorial Marathon	Special	05 Oct 91.
CGD7-91-113	Gold Cup Challenge	Special	06 Oct 91.
CGD7-91-118	1991 Offshore World Championship	Special	13 Nov 91.
CGD7-91-120	29th Annual Christmas Boat Parade	Special	15 Dec 91.
CGD7-91-123	City of Boynton Beach/Delray Beach	Special	13 Dec 91.
CGD7-91-124	Winterfest Boat Parade	Special	14 Dec 91.
CGD7-91-125	Christmas Parade of Boats	Special	07 Dec 91.
CGD8-91-023	Banana Bend Championship Outboard	Special	12 Oct 91.
Captain of the Port Regulations			
Boston 91-151	Boston Inner Harbor	Safety	12 Oct 91.
Charleston 91-102	Cooper River, SC	Safety	12 Sep 91.
Charleston 91-103	Intracoastal Waterway	Safety	15 Aug 91.
Charleston 91-104	Cooper River, SC	Emergency	17 Sep 91
Charleston 91-119	ICW/Wappoo Cut Bridge	Emergency	20 Nov 91
Chicago 09-91-17	Merrill C. Meigs Airfield	Security	20 Sep 91.
Chicago 09-91-18	Merrill C. Meigs Airfield	Security	10 Dec 91.
Hampton Rds 91-05-09	James River	Safety	23 Oct 91
Hampton Rds 91-05-11	Alligator River	Safety	27 Nov 91.
Honolulu 91-02	Honolulu & Bellows AFB	Safety	15 Nov 91.
Honolulu 91-03	Honolulu Harbor	Security	06 Dec 91.
Huntington 91-05	Kanawha River Mile 0.01.6	Safety	08 Nov 91.
Jacksonville 91-98	Florida, Fernandina	Safety	08 Sep 91.
Jacksonville 91-99	Jax Pride & Jax Mac	Safety	12 Sep 91.
Jacksonville 91-122	St. Johns River	Safety	29 Nov 91.
Jacksonville 91-128	Jacksonville Landing	Safety	07 Dec 91
Jacksonville 91-130	Hot Winter Jet Ski Race	Safety	15 Dec 91.
LA/LB 91-23	Explosive Anchorage K-5	Safety	16 Dec 91

Docket #	Location	Type	Effective date
Louisville 91-16	Calhoun, Kentucky	Safety	03 Oct 91.
Louisville 91-16	Louisville, Kentucky	Safety	04 Oct 91.
Paducah 91-13	Lower Mississippi	Safety	31 Aug 91.
Paducah 91-14	Upper Mississippi River	Safety	17 Sep 91.
Paducah 91-15	Tennessee River	Safety	30 Sep 91.
Paducah 91-16	Ohio River	Safety	01 Oct 91.
Paducah 91-17	Cumberland River	Safety	05 Oct 91.
Paducah 91-18	Tennessee River	Safety	03 Oct 91.
Pittsburgh 91-04	Allegheny River	Security	14 Aug 91.
Pittsburgh 91-05	Ohio River	Safety	28 Sep 91.
Pittsburgh 91-07	Monongahela River	Safety	29 Oct 91.
Portland 90-03	Columbia River	Safety	06 Jun 90.
Puget Sound 91-12	Lake Washington Canal	Safety	19 Aug 91.
Puget Sound 91-13	Lake Washington Canal	Safety	19 Aug 91.
Puget Sound 91-14	Elliott Bay, WA	Safety	14 Sep 91.
Puget Sound 91-16	Elliott Bay, WA	Safety	16 Sep 91.
Puget Sound 91-17	Eagle Harbor, Winslow, WA	Safety	08 Dec 91.
San Francisco 91-09	San Francisco Bay	Safety	12 Oct 91.
San Francisco 91-10	San Francisco Bay	Safety	12 Oct 91.
San Francisco 91-11	San Francisco Bay	Safety	16 Oct 91.
San Francisco 91-12	San Francisco Bay	Safety	22 Oct 91.
Savannah 91-108	Sea Island, GA	Security	28 Sep 91.
Savannah 91-109	St. Simons Island	Security	28 Sep 91.
Wilmington 91-011	Cape Fear River	Safety	01 Oct 91.
Wilmington 91-012	Cape Fear River	Safety	01 Oct 91.
Wilmington 91-013	Cape Fear River	Safety	05 Oct 91.

Dated: January 13, 1992.

D.M. Wrye,

Lieutenant Commander, USCG, Acting Executive Secretary, Marine Safety Council.

[FR Doc. 92-1289 Filed 1-16-92; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF EDUCATION

34 CFR Part 690

Pell Grant Program; Correction

AGENCY: Department of Education.

ACTION: Final regulations—correction.

SUMMARY: This document corrects the final regulations for the Pell Grant Program that were published in the **Federal Register** on November 6, 1991 at 55 FR 56912.

FOR FURTHER INFORMATION CONTACT: Joyce R. Coates, Program Specialist, Pell Grant Branch, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4318, ROB-3), Washington, DC 20202, (202) 708-7888. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: On November 6, 1991, the Secretary published final regulations in the **Federal Register** for the Pell Grant Program, 34 CFR part 690. This document corrects the Preamble of these final regulations as follows:

On page 56912, column 2, the third paragraph from the bottom is removed.

Dated: January 13, 1992.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 92-1311 Filed 1-16-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 10

[Docket No. 910764-1306]

RIN 0651-AA27

Duty of Disclosure

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of final rulemaking.

SUMMARY: The Patent and Trademark Office (Office) is amending the rules of practice in patent cases to (1) clarify the duty of disclosure for information required to be submitted to the Office; (2) provide flexible time limits for submitting information disclosure statements including the requirement for a fee in certain cases; (3) eliminate consideration of duty of disclosure issues by the Office except in disciplinary and interference proceedings, and under other limited circumstances; and (4) eliminate the striking of patent applications which are improperly executed. The Office further is amending the Patent and Trademark Office Code of Professional Responsibility to define as misconduct a failure to comply with the rules on duty of disclosure. The rules as adopted strike a balance between the need of the Office to obtain and consider all known relevant information pertaining to patentability before a patent is granted and the desire to avoid or minimize unnecessary complications in the enforcement of patents.

EFFECTIVE DATE: March 16, 1992. These rules will be applicable to all applicants and reexamination proceedings pending or filed after the effective date.

FOR FURTHER INFORMATION CONTACT: By telephone Charles E. Van Horn (703-305-9054) or J. Michael Thesz (703-305-9384) or by mail addressed to Commissioner of Patents and Trademarks, Washington, DC 20231, and marked to the attention of Charles E. Van Horn (Crystal Park 2—room 919).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking on duty of disclosure and practitioner misconduct published in the **Federal Register** at 54 FR 11334 (March 17, 1989), and in the Patent and Trademark Office Official Gazette at 1101 Off. Gaz. Pat. Off. 12 (April 4, 1989), was withdrawn. On August 6, 1991, the Office published in the **Federal Register** a notice of proposed rulemaking relating to duty of disclosure. 56 FR 37321. The notice was also published in the Official Gazette. 1129 Off. Gaz. Pat. Off. 52 (August 27, 1991). Sixty written comments were received in response to the notice of proposed rulemaking. A public hearing was held on October 8, 1991. Eleven individuals offered oral comments at the hearing. The sixty written comments and a copy of the transcript of the hearing are available for public inspection in the Office of the Assistant

Commissioner for Patents, room 919, Crystal Park II, 2121 Crystal Drive, Arlington, VA.

Familiarity with the notice of proposed rulemaking is assumed. Changes in the text of the rules published for comment in the notice of proposed rulemaking are discussed. Comments received in writing and at the public hearing in response to the notice of proposed rulemaking are discussed.

The rules as adopted shall take effect as to all applications and reexamination proceedings either pending or filed on or after the effective date of these rules. Thus, any information disclosure statement that is filed on or after that date must comply with the provisions of §§ 1.97 and 1.98 to be entitled to consideration.

Changes in Text

The final rules contain several changes to the text of the rules as proposed for comment. Those changes are discussed below.

Section 1.17(i)(1) has been changed from the proposed text to reflect the recent increase in the amount of the fee for filing a petition from $120.00 to $130.00.

Section 1.56(a) has been clarified to indicate that the duty of an individual to disclose information is based on the knowledge of that individual that the information is material to patentability. A sentence has been added to § 1.56(a) to express the principle that the Office does not condone the granting of a patent on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or international misconduct. In addition, § 1.56(a) as proposed has been changed to indicate that if all information material to patentability of any claim issued in a patent is cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)–(d) and 1.98, the Office will consider as satisfied the duty to disclose to the Office all information known to be material to patentability, as contrasted to the broader duty of candor and good faith. This rule does not attempt to define the spectrum of conduct that would lack the candor and good faith in dealing with the Office which is expected of individuals who are associated with the filing or prosecution of a patent application.

In § 1.56(b), the phrase "or being made of record" has been inserted to make it clear that information is not material to patentability within the meaning of § 1.56 if it is cumulative to either information already of record in the application or contemporaneously being made of record by applicant. For example, there would be no benefit to the Office for applicant to submit to the Office 10 different documents having the same teaching simply because the information was not cumulative to the information already of record.

The term "creates" has been replaced by the term "establishes" in § 1.56(b)(1). In addition, the definition of a prima facie case of unpatentability, as set out in the preamble of the notice of proposed rulemaking, has been incorporated into the rule itself. A prima facie case of unpatentability of a claim is established when the information compels a conclusion that the claim is unpatentable:

(1) Under the preponderance of evidence, burden-of-proof standard,

(2) Giving each term in the claim its broadest reasonable construction consistent with the specification, and

(3) Before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

This prima facie standard conforms to the standard used by an examiner to determine whether a claim is prima facie unpatentable.

Section 1.56(b)(2) has been modified from the text of the proposed rule. The focus on this paragraph has been changed so that it now relates to information which either refutes, or is inconsistent with, a position that applicant takes in either:

(1) Opposing an argument of unpatentability relied on by the Office, or

(2) Asserting an argument of patentability. The change from the proposed rule makes clear that information is material when it either refutes, or is inconsistent with, a position taken by applicant before the Office.

Section 1.97(e) has been changed from the proposed text to make it clear that a certification could contain either of two statements. One statement is that each item of information in an information disclosure statement was cited in a search report from a patent office outside the U.S. not more than three months prior to the filing date of the statement. Under this certification, it would not matter whether any individual with a duty actually knew about any of the information cited before receiving the search report. In the alternative, the certification could state that no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application or, to the knowledge of the person signing the certification after making reasonable inquiry, was known to any individual having a duty to disclose more than three months prior to the filing of the statement.

The changes to the text of § 1.97(e) as proposed place the appropriate priority on getting relevant information to the Office promptly, with minimum burden to applicant. The text of the proposal has also been changed by adding the phrase "after making reasonable inquiry" to make it clear that the individual making the certification has a duty to make reasonable inquiry regarding the facts that are being certified. For example, if an inventor gave a publication to the practitioner prosecuting an application with the intent that it be cited to the Office, the practitioner should inquire as to when that inventor became aware of the publication before submitting a certification under § 1.97(e)(ii) to the Office.

A new paragraph (h) has been added to the text of proposed § 1.97. The purpose of new paragraph (h) is to ensure that no one could construe the mere filing of an information disclosure statement as an admission that the information cited in the statement is, or is considered to be, material to patentability as defined in § 1.56(b). It is in the best interest of the Office and the public to permit and encourage individuals to cite information to the Office without fear of making an admission against interest.

In § 1.98(a)(2)(iii), the wording has been changed to make it clear that the requirement to submit a copy of each item of information listed in an information disclosure statement does not apply to the citation of a U.S. patent application.

The requirement in proposed § 1.98(a)(3) for a concise explanation of the relevance of each item of information has been substantially changed by limiting the requirement in two significant ways. First, as adopted, the requirement is limited to information that is not in the English language. Second, the explanation required is limited to the relevance as understood by the individual designated in § 1.56(c) most knowledgeable about the content of the information at the time the information is submitted to the Office. Where the information listed is not in the English language, but was cited in a search report by a foreign patent office, the requirement for a concise explanation of relevance is satisfied by submitting an English language version of the search report.

In § 1.98(d), the proposed text has been changed by adding the phrase "cited by or" to make it clear that legible copies of information listed in an information disclosure statement need not be submitted in a continuing application provided the information was either cited by or submitted to the Office in a prior application. A distinction between information cited by the Office or supplied by applicant to the Office serves no useful purpose in this situation.

The text of proposed § 1.555 has been modified to limit the definition of information material to patentability in a reexamination proceeding to the types of information that an examiner could use in a reexamination proceeding to determine whether a claim was patentable, and to adopt other changes that parallel changes made in § 1.56. Proposed § 1.555(a) has been divided into two paragraphs. Paragraph (a), as adopted, substantially parallels the text of § 1.56(a) as adopted. It indicates that the duty to disclose information to the Office in a reexamination proceeding is a part of the duty of candor and good faith that is owed to the Office by individuals transacting business with the Office. It further states one way that an individual may discharge the duty to disclose information material to patentability in a reexamination proceeding—i.e., by filing an information disclosure statement with the items listed in § 1.98(a) as applied to individuals associated with the patent owner in a reexamination proceeding. Finally, the text of the rule has been changed to add a sentence that expresses the principle that a patent should not be granted on an application in connection with which fraud was practiced or attempted on the Office or there was any violation of the duty of disclosure through bad faith or intentional misconduct.

New paragraph (b) of § 1.555 has been adopted to define information material to patentability in a reexamination proceeding. Much like the definition in § 1.56(b), information is not material when it is cumulative to information of record or being made of record in the reexamination proceeding. Information is considered material when it satisfies either or both of the definitions in § 1.555(b). Under § 1.555(b)(1), information is material when it is a patent or printed publication that establishes, by itself or in combination with other patents or printed publications, a prima facie case of unpatentability of a claim. This definition is limited to patents or printed publications because a reexamination proceeding must be based on patents or printed publications. 35 U.S.C. 302.

The definition of a prima facie case of unpatentability of a claim pending in a reexamination proceeding has been provided in the rule. A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the same principles that are applicable during ex parte examination of a patent application; namely:

(1) Under the preponderance of evidence, burden-of-proof standard,

(2) Giving each term in the claim its broadest reasonable construction consistent with the specification, and

(3) Before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

Finally, the definition of information material to patentability in § 1555(b)(2) has been added to parallel the provision in § 1.56(b)(2).

After reviewing the Office policy on whether to consider duty of disclosure and other inequitable conduct issues in interference proceedings under 35 U.S.C. 135(a), including comments from the public directed to the statement in the notice of proposed rulemaking that the Office will not consider, evaluate, or decide fraud or other inequitable conduct issues during an interference proceeding, a new Office policy has been adopted. Effective October 24, 1991, fraud and inequitable conduct issues will be considered when properly raised inter partes in patent interference cases. 1132 Off. Gaz. Pat. Off. 33 (November 19, 1991). In addition, the Chairman of the Board of Patent Appeals and Interferences has issued a notice that provides guidance on how an issue of fraud or other inequitable conduct can be raised in an interference proceeding. 1133 Off. Gaz. Pat. Off. 21 (December 10, 1991).

Response to and Analysis of Comments

Sixty (60) written comments were received in response to the notice of proposed rulemaking. These comments, along with those made at the public hearing, have been analyzed. Some suggestions made in the comments have been adopted and others have been rejected. Responses to the comments follow.

Comment 1. Nine comments indicated that the Office should not amend § 1.56 since it is presently in conformance to the materiality standard being applied by the Court of Appeals for the Federal Circuit. One comment questioned what practical value of the proposed rule would justify the burden of the change.

Reply: The amendment to § 1.56 was proposed to address criticism concerning a perceived lack of certainty in the materiality standard. The rule as promulgated will provide greater clarity and hopefully minimize the burden of litigation on the question of inequitable conduct before the Office, while providing the Office with the information necessary for effective and efficient examination of patent applications.

Comment 2. One comment stated that the present rules should be maintained and strengthened since the public interest is hurt more by an unjustly issued patent than by an unjustly denied patent. Another comment disagreed and argued that an unjustly denied patent can do great harm to society.

Reply: The Office strives to issue valid patents. The Office has both an obligation not to unjustly issue patents and an obligation not to unjustly deny patents. Innovation and technological advancement are best served when an inventor is issued a patent with the scope of protection that is deserved. The rules as adopted serve to remind individuals associated with the preparation and prosecution of patent applications of their duty of candor and good faith in their dealings with the Office, and will aid the Office in receiving, in a timely manner, the information it needs to carry out effective and efficient examination of patent applications.

Comment 3. Two comments stated that the rule should not permit applicants to draft claims and a specification to avoid a prima facie case of obviousness over a reference and then to be able to withhold the reference from the examiner.

Reply: The comments reflect a correct reading of the rule in that information is not material unless it comes within the definition of § 1.56(b) (1) or (2). If information is not material, there is no duty to disclose the information to the Office. The Office believes that most applicants will wish to submit the information, however, even though they may not be required to do so, to strengthen the patent and avoid the risks of an incorrect judgment on their part on materiality or that it may be held that there was an intent to deceive the Office.

Comment 4. One comment stated that promulgation of the proposed rule would result in a significant decrease in the quantity of art cited to the Office because there will be no duty to cite art relevant to a pending claim.

Reply: The Office does not anticipate any significant change in the quantity of

information cited to the Office after promulgation of amended § 1.56. Presumably, applicants will continue to submit information for consideration by the Office in applications rather than making and relying on their own determinations of materiality. An incentive remains to submit the information to the Office because it will result in a strengthened patent and will avoid later questions of materiality and intent to deceive. In addition, the new rules will actually facilitate the filing of information since the burden of submitting information to the Office has been reduced by eliminating, in most cases, the requirement for a concise statement of the relevance of each item of information listed in an information disclosure statement.

Comment 5. Several comments stated that an objective "but for" standard would be preferable to the proposed rule. The objective "but for" standard would presumably consider information as a court does in an infringement proceeding with a clear and convincing, burden-of-proof standard, giving the terms in each claim a narrow construction where necessary to uphold validity.

Reply: The Office believes that amended § 1.56 will provide a reasonable balance between the needs of applicants and of the Office. The suggested "but for" standard would not cause the Office to obtain the information it needs to evaluate patentability so that its decisions may be presumed correct by the courts. If the Office does not have needed information, meaningful examination of patent applications will take place for the first time in an infringement case before a district court. Courts will become increasingly less confident of the Office's product if they get the impression that practitioners and inventors can routinely withhold information from the Office, or that practitioners and inventors can make up their own minds about what is patentable. The Office should decide, in the first instance, what is patentable and any decision should be made with the best information available, including that known by the applicant. The Office notes that the House of Delegates of the American Bar Association twice, once in 1990 and again in 1991, refused to adopt a resolution favoring adoption of the "but for" standard.

Comment 6. One comment argued that proposed § 1.56 does not relate to "the conduct of proceedings in the Patent and Trademark Office" (35 U.S.C. 6(a)) since the Office does not intend to reject applications as indicated by the cancellation of paragraphs (c) through (i) of current § 1.56.

Reply: The amendment to § 1.56 comes within the authority of the Commissioner for establishing regulations. *Norton* v. *Curtiss,* 433 F.2d 779, 167 USPQ 532 (CCPA 1970). The Office has reserved its inherent authority to reject an application under appropriate circumstances where fraud or other inequitable conduct has occurred. Also, the Office will consider fraud and inequitable conduct when properly raised in interference proceedings under 35 U.S.C. 135(a). The Office will also consider fraud and inequitable conduct in connection with attorney conduct under § 10.23(c).

Comment 7. One comment stated that § 1.56 should require only anticipatory art to be submitted during examination of an application, with a procedure such as reexamination being used after discovery in any litigation on the patent has revealed all available art.

Reply: An application is examined under all appropriate sections of Title 35, United States Code, and a presumption of validity attaches to a patent with regard to all aspects of patentability, including anticipation. 35 U.S.C. 282. Therefore, § 1.56 should address more than just the submission of anticipatory information, including information relevant to patentability under 35 U.S.C. 103 and 35 U.S.C. 112.

Comment 8. One comment suggested that proposed § 1.56 has some dangerous implications since courts are going to find violations of the duty of disclosure if §§ 1.97 and 1.98 are not complied with completely.

Reply: Section 1.56 provides that the duty of disclosure can be met by submitting information to the Office in the manner prescribed by §§ 1.97 and 1.98. Sections 1.97 and 1.98 are being amended so that information will be submitted to the Office in the manner and at the time which will facilitate consideration by the examiner. Applicants are provided certainty as to when information will be considered, and applicants will be informed when information is not considered. The Office does not believe that courts should, or will, find violations of the duty of disclosure because of unintentional non-compliance with §§ 1.97 and 1.98. If the non-compliance is intentional, however, the applicant will have assumed the risk that the failure to submit the information in a manner that will result in its being considered by the examiner may be held to be a violation.

Comment 9. Two comments stated that the Office should not delete the offense of attempted fraud from the § 1.56. The comments stated that elimination of the reference to "gross negligence" in current § 1.56 would be sufficient to protect the practitioner who delays submission of information with no intent to deceive the Office. One of the comments stated that the disciplinary rules alone are not sufficient to deter attempted fraud or inequitable conduct.

Reply: The language of §§ 1.56(a) and 1.555(a) has been modified to retain the provisions of prior § 1.56(d) to indicate that the Office does not condone fraud, attempted fraud, or violation of the duty of disclosure through bad faith or intentional misconduct.

Comment 10. One comment stated that the appropriate standards for the duty of candor are analogous to fiduciary law which requires the fiduciary to disclose not only known facts, but also facts which it should have known, i.e., a negligence standard. The comment argued that it was undesirable to measure duty of candor or fraud by a reduced measure of "intent" instead of an objective negligence standard since the Office is not bound by the U.S. Court of Appeals for the Federal Circuit decision in *Kingsdown Medical Consultants, Ltd.* v. *Hollister, Inc.,* 863 F.2d 867, 9 USPQ2d 1384 (Fed. Cir. 1988) (*en banc*), *cert. denied,* 490 U.S. 1067 (1989), and since the proposed standard is no more objective than alternative standards but is simply narrower and more certain. Another comment suggested that the Office should indicate that there is no intention to change the Kingsdown ruling.

Reply: Section 1.56 has been amended to present a clearer and more objective definition of what information the Office considers material to patentability. The rules do not define fraud or inequitable conduct which have elements both of materiality and of intent. The Office does not advocate any change to the Kingsdown ruling.

Comment 11. Two comments stated that the proposed modification of § 1.56 would make submission of information to the Office an implied admission of the prima facie unpatentability of a claim. Several comments suggested that a sentence should be added to proposed § 1.56 to specify that submission of information to the Office under this section shall not be deemed to be an admission or representation that the information is material to patentability.

Reply: The suggestions in the comments have been adopted by modifying § 1.97 which deals with submission of information to the Office. Paragraph (h) of § 1.97 now provides

that the filing of an information disclosure statement shall not be considered to be an admission that the information cited in the statement is, or is to be considered to be, material to patentability as defined in § 1.56.

Comment 12. One comment stated that the proposed § 1.56 definition would be difficult to apply in litigation in which a different burden-of-proof standard is applied.

Reply: The definition of information material to patentability includes standards which are familiar to the Federal courts and which are capable of being handled like other issues.

Comment 13. One comment suggested that the last sentence of proposed § 1.56(a), in which the Office encourages applicants to carefully examine prior art cited in foreign search reports and the closest known information, be removed from the rule and be placed in the preamble discussion so as to avoid the interpretation that the sentence creates a duty for applicants.

Reply: The suggestion is not adopted. The sentence does not create any new duty for applicants, but is placed in the text of the rule as helpful guidance to individuals who file and prosecute patent applications.

Comment 14. Three comments stated that the language of proposed § 1.56(a) required revision to remove all statements or suggestions which might allow a court to consider a pending (i.e., unissued) claim for the purpose of determining whether the duty of disclosure requirement was met in view of the fact that the proposed rule was intended to indicate that there is no duty to disclose information which is material to a pending claim unless that claim ultimately issues in a patent. One comment argued that a court might interpret "the duty of candor and good faith" to be broader than the particular duty of disclosure specified in other portions of the proposed rule.

Reply: The language of §§ 1.56 and 1.555 has been modified to emphasize that there is a duty of candor and good faith which is broader than the duty to disclose material information. Section 1.56 further states that "no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct."

Comment 15. One comment suggested that proposed § 1.56(a) be modified to clarify that both information and its materiality must be known before there is a duty to disclose the information.

Reply: The Office considers the language of 1.56(a) to be sufficiently clear in referring to a "duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section." If information is known to be material, it inherently must be known. Likewise, if information is not known to an individual, there is no duty to disclose the information whether it is material or not.

Comment 16. One comment stated that it should be made clear that "known" is limited to contemporaneous knowledge since a practitioner may have known something ten years ago but may not remember it presently.

Reply: Section 1.56 states that each individual associated with the filing and prosecution of a patent application has a duty to disclose all information known to that individual to be material to patentability as defined in the section. Thus, the duty applies to contemporaneously or presently known information. The fact that information was known years ago does not mean that it was recognized that the information is material to the present application.

Comment 17. One comment suggested that proposed § 1.56(a) be modified to state that the duty of disclosure ends when an application becomes abandoned or allowed.

Reply: Paragraph (a) of § 1.56 states that the duty to disclose information exists until the application becomes abandoned. The duty to disclose information, however, does not end when an application becomes allowed but extends until a patent is granted on that application. The rules provide for information being considered after a notice of allowance is mailed and before the issue fee is paid (§ 1.97(d)) and for an application to be withdrawn from issue after the issue fee has been paid. An application may be withdrawn from issue because one or more claims are unpatentable (§ 1.313(b)(3)) or an application may be withdrawn from issue and abandoned so that information may be considered in a continuing application before a patent issues (§ 1.313(b)(5)).

Comment 18. Three comments stated that the first two sentences of proposed § 1.56(a) should be deleted since rules should simply instruct practitioners what to do without discussion of why they should do it or the philosophy involved.

Reply: The suggestion has not been adopted since the sentences aid in the understanding of the rule and will provide those involved in enforcing patents with an indication of the policy on which the rule is based.

Comment 19. One comment stated that §§ 1.56 (a)(2) and (c) should be modified to refer to "individuals substantively associated with" the filing or prosecution of the patent application.

Reply: The suggestion is not adopted since the proposed rule language is clear and the suggested modification would create a redundancy with the language of § 1.56(c)(3). The individuals designated in §§ 1.56(c) (1) and (2) as being associated with the filing or prosecution of a patent application within the meaning of the section are inherently substantively involved in the preparation or prosecution of the application.

Comment 20. One comment stated that proposed § 1.56(b) should be modified to clarify that information is not material if it is cumulative to information already of record in an application or to information concurrently being made of record.

Reply: The suggestion has been adopted by adding a reference to information being made of record with regard to cumulative information in §§ 1.56(b) and 1.555(b).

Comment 21. One comment stated that the preamble discussion (of § 1.56(b)) should indicate that test results in situations such as tests involving biological systems may properly be submitted as averages rather than as individual test runs.

Reply: Whether test results can be submitted as averages rather than as individual test runs depends on whether doing so would provide to the Office the information needed to make a proper determination on patentability. If the actual results are provided, the examiner can make an independent determination on whether some rejection is appropriate. In some cases providing averages might be misleading, but in other cases providing averages might be appropriate.

Comment 22. One comment stated that the definition of materiality in proposed § 1.56(b) imposes substantial new burdens on applicants who would be required to disclose failed experiments, papers published less than one year prior to filing and experimental public uses even if they clearly are refutable and will not affect patentability. One comment stated that the proposed rule would require applicants to incur added expense for affidavits and comparison tests. Five comments stated that the Office should not require applicants to present results from clearly invalid tests since this would be contrary to usual scientific practice. One comment argued that information should not be required to be submitted if there was no doubt that it would not preclude patentability, e.g.,

where common ownership existed so that the exception of 35 U.S.C. 103, second paragraph, would apply.

Reply: The definition of materiality in § 1.56 does not impose substantial new burdens on applicants, but is intended to provide the Office with the information it needs to make a proper and independent determination on patentability. It is the patent examiner who should make the determination after considering all the facts involved in the particular case. The comments reflect that the Office objective of clarifying what information the Office considers to be material has been accomplished by the amendment of the rules.

Comment 23. One comment suggested that § 1.56 should confine the duty of disclosure to references known to applicant or the practitioner representing applicant and not found in prior art materials in the Office.

Reply: This suggestion is not adopted since information may be in the Office but not in the application file. It is not reasonable to assume that an examiner knows of a particular item of information or appreciates its relevance to a particular invention simply because it exists somewhere in the Office.

Comment 24. One comment stated that the language "or in combination with other information" should be removed from proposed § 1.56(b)(1) because it was unworkable to require an applicant to combine references against its own claims, especially since, according to the commentator, examiners and the Board of Patent Appeals and Interferences frequently misapply the law. Another comment stated that the language creates an open field for litigators to claim that an inordinate number of references could be combined.

Reply: The rule does not require an applicant to combine references against its own claims. The applicant can submit information to the Office for the examiner's consideration whether the information is considered material or not. The fact that the teachings of a large number of references must be combined for a prima facie case of obviousness does not by itself weigh against a holding of obviousness. See *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991).

Comment 25. Four comments stated that the definition of "prima facie case of unpatentability" (§ 1.56(b)(1)) should be included in the rule itself. One comment said that the definition should not be included in the rule.

Reply: The definition has been included in the rule for clarity.

Comment 26. One comment stated that the proposed § 1.56(b)(1) placed a burden on the practitioner to analyze references that is inappropriate and contradictory to a practitioner's responsibility to his client.

Reply: The rule itself does not place a burden on the practitioner to analyze references. Information can be submitted to the Office in accordance with §§ 1.97 and 1.98, and the examiner will consider the references.

Comment 27. One comment questioned whether an applicant would be charged with withholding material information if the "other information" (§ 1.56(b)(1)) necessary to cause an undisclosed reference to become material is unknown to the applicant. Another comment suggested that the language should be changed to read "other known information" to show that the information must be known to applicant to give rise to a duty of disclosure.

Reply: Paragraph (b) of § 1.56 defines information material to patentability. While information may be material under the definition, there is no duty on an individual to disclose the information if the information is unknown to the individual (§ 1.56(a)).

Comment 28. One comment suggested that defining materiality in § 1.56(b) in terms of prima facie unpatentability would permit a conspiracy of silence in which (1) the applicant knows of information but is incapable of making the legal analysis to determine whether the information is material and (2) the patent practitioner, who is equipped to determine whether information is material, does not know of the information and does not ask. Thus, it is argued there would be no violation of the duty of disclosure which requires knowledge of both information and its materiality.

Reply: The Office has set forth what information should be submitted so that the Office can make a proper determination on patentability. The term "conspiracy" has the connotation of unlawfulness which would not be consistent with the duty of candor and good faith required in dealings with the Office.

Comment 29. One comment suggested that proposed § 1.56(b)(1) should be revised to read "in combination with other information already of record in the application" to avoid the possibility that undisclosed material could be considered material in subsequent litigation when combined with information not known at the time of the prosecution to any person substantively involved in the preparation or prosecution of the application.

Reply: Paragraph (a) of § 1.56 makes it clear that the Office recognizes that the duty to disclose material information is limited to such information which is known by an individual substantively involved in the preparation or prosecution of the application. Thus, while information may be material under the definition of § 1.56(b)(1), there can be no duty to disclose the information if it is material only in combination with unknown information.

Comment 30. One comment stated that proposed § 1.56(b) should be modified so that paragraph (b)(1) refers to information that renders a claim unpatentable ("but for"), paragraph (b)(2) remains as proposed, and a paragraph (b)(3) is added to include the definition of materiality as "the closest information over which any pending claim patentably defines." This comment suggested that this modified definition would have the advantage of not requiring the applicant to submit references which applicant knows are immaterial and to then engage in "straw man" arguments based on such references.

Reply: The suggested modification to § 1.56 has not been adopted. The suggested language would seemingly require information to be filed in each application, whether the information is relevant or not, since the "closest information" would be required. Section 1.56 does not require information which is not relevant to be submitted, but only information which meets the definition of material as set out in the rule.

Comment 31. One comment stated that if proposed § 1.56(b)(1) is promulgated, there would be no need for proposed § 1.56(b)(2) with regard to information which would make a prima facie case of unpatentability and other information required by paragraph (b)(2) might be obscure. Another comment argued that paragraph (b)(2) was unnecessary, confusing and ambiguous and suggested changes in the language to make the requirement clear and less ambiguous.

Reply: The suggestion as to the language change to § 1.56(b)(2) has been adopted. The final rule language avoids the perceived problem of requiring an applicant to submit information supporting a position taken by the examiner. It is not appropriate, however, to eliminate paragraph (b)(2) because it is an essential part of the definition of information material to patentability and will help to ensure that all material facts are brought to the attention of the examiner during the examination process.

Comment 32. One comment questioned the language of proposed § 1.56(b)(2) as to how an applicant could consider a prior art reference as supporting a position of unpatentability taken by the Office while at the same time disputing that interpretation.

Reply: The language of § 1.56(b)(2) has been modified to clarify that information is material to patentability if it refutes, or is inconsistent with, a position the applicant takes in (1) opposing an argument of unpatentability relied on by the Office, or (2) asserting an argument of patentability.

Comment 33. One comment stated that § 1.56(b)(2) was flawed in requiring a duty to conduct a file search to make sure that no information exists which even arguably contradicts a position taken or to be taken in response to the examiner, or which supports the examiner's position which may be improper.

Reply: Section 1.56(b)(2) does not require a search of files. Under § 1.56(a), the duty of disclosure is confined to that information which is known to an individual to be material as defined in paragraph (b).

Comment 34. One comment stated that proposed § 1.56(c) should be modified so that the duty of any individual designated as having a duty of disclosure would terminate when such individual ceases to be substantively involved in the preparation or prosecution of the application. The comment used, as an example, an inventor who would not be aware of art cited by the examiner which would cause information known to the inventor to fall within the definition of materiality for the first time.

Reply: The suggestion in the comment is not adopted. The duty to disclose information material to patentability rests on the individuals designated in § 1.56(c) until the application issues as a patent or becomes abandoned. Paragraph (a) of § 1.56 makes it clear, however, that each individual has a duty to disclose only information which is known to that individual to be material.

Comment 35. One comment stated that proposed § 1.56(c)(3) should not include the assignee, or anyone to whom there is an obligation to assign the application, in the class of those who have a duty to disclose material information since there might be a "witch hunt" during litigation to find one employee with knowledge of, or possession of, information that should have been disclosed.

Reply: No modification to § 1.56(c)(3) is needed since § 1.56 sets forth that only individuals who are associated with the filing and prosecution of a patent application have a duty of candor and good faith, including a duty to disclose to the Office all information known to be material to patentability.

Comment 36. One comment stated that proposed § 1.56(d) should be revised to expressly allow an inventor to satisfy the duty by disclosing information to the practitioner who prepares or prosecutes the application so that redundant information disclosure statements will not be required from both the inventor and the attorney or agent.

Reply: The suggestion in the comment is not adopted since the duty as described in § 1.56 will be met as long as the information in question was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)–(d) and 1.98 before issuance of the patent. Statements from both an inventor and the practitioner are not required to be submitted.

Comment 37. One comment stated that proposed §§ 1.52(c) and 1.67(c) should be modified to either (1) expressly permit alterations to be made in an application subsequent to the signing of the oath or declaration if a supplemental oath or declaration is later submitted, or (2) more properly, prohibit such alterations since if alterations are desirable, they can be made and the application can be filed with an unsigned oath or declaration. Another comment stated that willfully filling out false oaths should never be condoned.

Reply: The Office does not condone willfully filling out false oaths. Further, § 10.23(c)(11) indicates that the Office considers it misconduct for a practitioner to knowingly file or cause to be filed an application containing a material alteration made after the signing of an accompanying oath or declaration without identifying the alteration. The Office will not consider striking an application in which an alteration was made, but a supplemental oath or declaration is required to be filed in an application containing alterations made after the signing of the oath or declaration.

Comment 38. One comment stated that the implementation of proposed §§ 1.63(b)(3) and 1.175(a)(7) allows for a two-month delay in the deadline for requiring declarations complying therewith.

Reply: The averments in oath or declaration forms presently in use that comply with the previous § 1.63 or § 1.175 will also comply with the requirements of the new rules. Therefore, the Office will continue to accept the old oath or declaration forms as complying with the new rules.

Comment 39. Five comments questioned the need for the proposed rules since statistics show that information disclosure statements are submitted early in prosecution and questioned what new service is being provided for the proposed fee in § 1.97.

Reply: The Office desires to continue to encourage information to be submitted promptly so that it can be considered by the examiner when the first Office action is prepared. Some people have expressed a desire to have the option of waiting to submit information until after the first Office action, without concern that they will be subject to a charge of inequitable conduct. Section 1.97(c), as amended, will provide this option to applicants in that information will be considered later than three months after the filing date of the application (§ 1.97(a) prior to amendment) without a showing of promptness (prior § 1.99). The fee will compensate the Office for the added expense caused by the late submission of the information and will serve as a disincentive to the intentional withholding of information even for a short period of time.

Comment 40. Two comments suggested that proposed § 1.97(a) be modified so that the mechanism of proposed § 1.98 would not be the only acceptable technique for submitting information.

Reply: The Office has set forth the minimum requirements for information to be considered in §§ 1.97 and 1.98. These rules will provide certainty for the public of exactly what the requirements are, when the Office will consider information and when the Office will not consider information. Thus, applicants are provided with means for complying with the duty of disclosure by following the rules. If information is submitted in a manner so that it is not considered by the Office, applicant will assume the risk that a court might find a violation of the duty of candor and good faith which includes the duty to disclose material information.

Comment 41. Four comments suggested that information which is recognized by applicant as being material after the period set in proposed § 1.97(b) as the result of prior art cited by the examiner should be permitted to be submitted to the Office without the fee set forth in 1.17(p), the certification or the petition fee required by § 1.97.

Reply: The suggestion in the comments is not adopted since it would require a certification, e.g., why the information was just recognized as being material, and would unduly complicate the rules and the procedures

for considering information submitted by applicant. Applicants can avoid or, at least, minimize the problem by submitting information which is known to be relevant to the application even though it is not yet recognized as being required to be submitted because it is material to patentability. The fees charged are to compensate the Office for the additional work that will be necessary when information is submitted during an advanced stage of the examination process.

Comment 42. Two comments suggested that the period for submitting information set in proposed § 1.97(b) be changed to be two months from the issuance of the Official Filing Receipt to avoid information disclosure statements being misrouted in the Office.

Reply: The suggestion in the comment is not adopted. The date that the Filing Receipt is mailed is not maintained in the application file so there would be administrative difficulty in determining when a fee or certification is required to be filed under the new rule. An application can be filed with a self-addressed return postcard so that applicant can obtain the serial number assigned to the application very soon after filing. Further, information may be filed under § 1.97(b) before the mailing of a first Office action on the merits even if this occurs later than three months after the application filing date.

Comment 43. One comment questions whether § 1.97(b) or § 1.97(d) applies in the event of issuance of a final rejection within three months of the filing of an application. The comment indicated that paragraph (b) should apply in this situation.

Reply: Paragraph (b) would apply in this situation since the paragraph specifies that information may be filed within three months of the filing date of the application or before the mailing date of a first Office action on the merits, whichever event occurs last. Thus, information would be considered pursuant to § 1.97(b) if it was filed within three months of the filing date of the application even if a final rejection was mailed prior to three months from the filing date.

Comment 44. One comment stated that proposed § 1.97(b)(1) should be clarified to indicate that "the filing of a national application" includes "a continuing application which replaces the original application."

Reply: The suggested modification has not been adopted since it is not necessary for clarity. The term "national application" includes continuing applications in this and the other patent rules. It is not desirable to add the suggested language to all occurrences of the term "application" in the rules or to raise the implication that continuing applications are not included in the term in other rules by adding the suggested language to this rule.

Comment 45. One comment stated that proposed § 1.97 should be changed to state that if a responsible party becomes aware of material information less than three months before issuance of an Office action, that information will be considered timely filed if it is submitted together with response to the action. The comment also stated that the Office could go farther and implement a rule which specifies that such information will be considered timely submitted if it reaches the examiner before the response to the Office action is taken up for consideration. Three other comments stated that the Office should accept information disclosure statements with responses to Office actions, with one comment arguing that there is no benefit in submitting two papers where one would suffice.

Reply: The suggestions in the comments are not adopted. The rule as proposed and promulgated has the advantage of being relatively easy to comply with and administer. Information should be submitted promptly so that the examiner will have the option of reviewing the information and withdrawing or revising the Office action. Requiring information to be submitted promptly contributes to the efficiency of the examination process.

Comment 46. One comment stated that there should be no fee in § 1.97 associated with the filing of an information disclosure statement since this might impact negatively on the submission of material information; rather, it would be sufficient to permit material information submitted subsequent to a non-final action to support a final rejection in the next action, in the absence of the certification proposed in the rules. Another comment, however, stated that the proposed fee requirement would not be a disincentive to submission of prior art, but would force examiners to consider certain art which under current practice often is not made of record, but instead, requires the filing of a continuation application.

Reply: The fee required in the rule will serve both to cover additional expense caused the Office by the late submission of information and will also serve as a disincentive to failing to cooperate in submitting information early in the prosecution of an application rather than as a disincentive to submitting information at all.

Comment 47. One comment questioned whether information in an information disclosure statement submitted during the period set forth proposed § 1.97(c) could be used by a examiner to make the next action fin the statement was submitted with a certification under § 1.97(e).

Reply: Information submitted with certification during the period set for in § 1.97(c) will not be used to make t next Office action final on unamende claims since in this situation it is clea that applicant has submitted the information to the Office promptly af it has become known and the information is being submitted prior t final determination on patentability b the Office.

Comment 48. One comment stated that it was unfair for the Office to require a fee for considering informat pursuant to proposed § 1.97(c) and th also be able to use the information in making the Office action final.

Reply: The policy is not considere be unfair. If information is submitted during the period set forth in § 1.97(c without the certification, the fee will compensate the Office for extra worl that may be caused by the failure to submit information promptly. If the c for this extra work were not placed upon the applicant in this situation, t cost would have to be borne by all applicants through payment of highe fees. The possibility that the next Of action may be made final will furthe encourage prompt disclosure of information to the Office.

Comment 49. One comment sugges that information should be considere (§ 1.97(c)) after final rejection, since is different from after allowance wh the Office would have to go back an reconsider its work. Two comments stated that proposed § 1.97(c)(1) sho not penalize applicants who receive foreign search report after a final rejection is made in the application that the certification under § 1.97(e) should be available until an advisor action after final rejection or a notic allowability occurs in the applicatio Another comment stated that final action may not even be on the merit but merely administrative.

Reply: The suggestions in the comments are not adopted. Both a notice of allowance and final rejecti represent a final Office decision on patentability. Information considere after either of these actions may req the Office to alter its position. After either of these actions, information be considered only if it is submitted promptly in accordance with § 1.97(is submitted in a refiled application. should be noted that information cit in a foreign search report, if cited to Office within three months of the da

on the search report, will be considered by the Office if filed before payment of the issue fee.

Comment 50. One comment stated that proposed § 1.97(d) would result in unequal treatment of U.S. inventors who file first in the Office as compared to foreign inventors who file first in a foreign country since the latter will have the results of the search made by the foreign examining country earlier in the pendency of the U.S. application. Six comments suggested that a U.S. inventor should have the ability to make the certification of § 1.97(e) and to have the Office consider the information, regardless of the stage of prosecution at which information from a foreign office is submitted.

Reply: It should be noted that the certification of § 1.97(e) can be made and information considered by the Office until the issue fee is paid on the application. After the issue fee has been paid on an application, it is impractical for the Office to attempt to consider newly submitted information. The application may be withdrawn from issue at this point, however, pursuant to § 1.313(b)(5) so that the information can be considered in a continuing application, or pursuant to § 1.313(b)(3) if applicant states that one or more claims are unpatentable over the information that is cited. It is further noted that it is applicants, not the Office, who make decisions on when and in which countries to file an application. U.S. inventors who may desire to seek patent protection in foreign countries have the ability to utilize the provisions of the Patent Cooperation Treaty and to delay the requirement to enter the national stage until after a search report on the invention is made.

Comment 51. One comment questioned whether a certification under § 1.97(e) could properly be made in situations where information known by the applicant but not considered material is cited by a foreign patent office more than three months later than the first knowledge by applicant.

Reply: The language of § 1.97(e) has been modified to permit a certification to be made in the situation described in the comment. If an item of information is submitted within three months of being cited in a communication from a foreign patent office in a counterpart foreign patent application, the certification can be properly made regardless of any individual's previous knowledge of the information.

Comment 52. One comment stated that the three-month time period for submitting information from foreign patent offices under proposed § 1.97(e) might be too short because not all foreign offices provide copies of references and that the Office should provide for a petition in unusual circumstances. Five comments stated that a three-month time limit for filing foreign search reports is not reasonable but rather that six months would be more reasonable.

Reply: The Office has chosen the three month time period as appropriate in view of all the factors involved in obtaining information and in the examination process. It should be noted that Office actions typically set a three-month shortened statutory period for response. A response to an Office action generally requires more time for preparation than is involved in the submitting of a foreign search report and copies of the documents cited.

Comment 53. Five comments suggested that § 1.97(e) should permit a certification to be made if an individual knew of information for more than three months before it was filed but did not recognize its materiality or relevance to the application.

Reply: The suggestion in the comments is not adopted. The Office desires to encourage prompt evaluation of information as to materiality by applicants and the Office so as to contribute to the efficiency and effectiveness of the examination process. It should be noted that an applicant is not required to delay the submission of information while evaluating materiality, but can submit the information pursuant to §§ 1.97 and 1.98.

Comment 54. One comment stated that proposed § 1.97(e) should be clarified to specify that the certificates can be made regardless of the source of the information being submitted, so long as it is disclosed within three months of receipt. One comment stated that the three-month period of proposed § 1.97(e) should be measured from the receipt date of a communication from a foreign patent office.

Reply: A certification under § 1.97(e) can be made if each item of information was cited in a communication from a foreign patent office in a counterpart foreign application not more than three months prior to filing the statement. A certification can also be made if no item of information was cited in a communication from a foreign patent office in a counterpart foreign application or was known to any individual designated in § 1.56(c) more than three months prior to filing the information disclosure statement. The Office wishes to encourage prompt evaluation of the relevance of information and to have a date certain for determining if a certification can properly be made. Although it is recognized that an individual actually becomes aware of the information in the communication from a foreign patent office sometime after it was mailed, the mailing date of such a communication, if it occurs prior to a first awareness of the same information, would determine the date for filing of an information disclosure statement without a fee. The Office is willing to absorb any additional cost in considering such information relevant to patentability after the time set in proposed paragraph (b) only when it is clear that an applicant is diligent in providing the information to the Office.

Comment 55. One comment stated that the cost of making a certification under § 1.97(e) would be more than the $200.00 fee proposed where no certification is made due to difficulties in obtaining information from foreign clients. The comment suggested that the rule provide for (1) the opportunity to provide documentation (as opposed to certification) illustrating when the information was received, and (2) the opportunity to submit information with increasing fees depending on when in the periods of § 1.97 (c) and (d) the information is submitted.

Reply: The suggestions in the comment are not adopted since they would add undue complexity to the rules and procedures. Further, the suggested provision of documentation, which presumably would be reviewed by someone in the Office, would probably add considerably to the overall expenses of filing an information disclosure statement. No other comments indicated a desire for increasing fees depending on when the information is submitted.

Comment 56. Two comments stated that proposed § 1.97(e) is ambiguous in using the language "to the knowledge of the person signing the certification" in that it could refer to "information and belief," "actual knowledge of the facts" or "no knowledge to the contrary." One comment stated that certifications should be able to be made on information and belief by a U.S. attorney or agent submitting a material reference received from a foreign patent attorney or agent, rather than requiring a certification from the foreign individual. Another comment suggested that the period should be calculated from when the applicant either knew or could have known of the reference because the U.S. attorney should not be penalized for delays from their foreign patent associates.

Reply: The certification under § 1.97(e) should be made by a person who has knowledge of the facts being certified. The certification can be made by a practitioner who represents a foreign client and who relies on statements made by the foreign client as to the date the information first became known. A practitioner who receives information from a client without being informed whether the information was known for more than three months, however, cannot make the certification without making a reasonable inquiry.

Comment 57. One comment stated that the language of proposed § 1.97(e) would preclude the use of the certification in an application by corporations whose practitioners have over the years reviewed thousands of patents and technical publications, even though they are unaware of the relevance of any one thereof to the application.

Reply: The language of § 1.97(e) is not intended to preclude use of the certification by representatives of corporations. The certification can be based on present, good faith knowledge about when information became known without a search of files being made. The Office, however, does desire to have information considered promptly by applicants as to materiality and to have information submitted to the Office early in the prosecution of an application.

Comment 58. One comment suggested that proposed § 1.97(e) should permit certification only as to information submitted within four months of receipt from a foreign patent office, with all other late-submitted information requiring a fee so as to not open a legal quagmire implicit in the proposed certification requirement.

Reply: The suggestion in the comment is not adopted. The certification set forth in § 1.97(e) is preferable since it provides the avoidance of the payment of a fee by a person who is submitting information promptly to the Office. An applicant has the option under the circumstances described in § 1.97(c), however, to not make the certification and to pay the fee instead if so desired.

Comment 59. One comment suggested that proposed § 1.97(f) be modified to specify that not less than one month will be given if a bona fide attempt is made to comply with § 1.98 but part of the required content is omitted. Another comment suggested that § 1.97(f) should state that the Office will give (rather than may give) additional time for compliance with § 1.98.

Reply: The suggestions in the comments are not adopted. The language of § 1.97(f) parallels present § 1.135(c) since the practice and considerations are similar for both rules. The Office intends to provide one month to comply with § 1.98 where a bona fide attempt has been made to do so.

Comment 60. One comment stated that proposed § 1.97(f) should specify that the Office shall inform the applicant if a reference will not be considered due to noncompliance with § 1.98 so as to avoid any argument in litigation that a certain reference was not considered due to clerical noncompliance.

Reply: The Office plans to notify applicants in accordance with §§ 1.97 (f) and (i) is submitted information will not be considered. The examiner will also indicate in the application record what information has been considered. Further details will appear in the Manual of Patent Examining Procedure in due course.

Comment 61. One comment suggested that proposed § 1.97(g) should be modified to state that the filing of an information disclosure statement shall not be construed as a representation that no other material information exists such as is set forth in current § 1.97(b).

Reply: The suggestion in the comment has not been adopted since referring to "no other material information" would imply that the information being submitted was admitted to be material. There is no requirement that information being submitted be material to the application.

Comment 62. One comment suggested that proposed § 1.97(h) be modified to state that information not considered by the Office will be deemed in all respects to have not been submitted by the applicant since this would make a noncompliant submission clearly not a fulfillment of the duty of candor.

Reply: The suggestion in the comment is not adopted. The Office has no need or desire to rule on lack of fulfillment of the duty of candor in such a situation. The rules are drafted such that § 1.56 sets forth what information is material to patentability and § § 1.97 and 1.98 set forth procedures to assure consideration of information by the Office.

Comment 63. One comment stated the Office has a duty to consider information even if this involves withdrawing an application from issue or publishing a cancellation notice and that proposed § 1.97(h) should be changed to so state. Another comment stated that it would be an abdication of the duty that the Office owes to the public for information in the file to be ignored since issuance of an invalid patent can be used to discourage others in the field. The comment suggested that the Office should leave in doubt whether the information will be considered or not.

Reply: It is necessary for the Office to balance its need and desire to consider all information relevant to an application with its need for an efficient operation and its capability to consider information at various stages in the prosecution of an application. The Office is setting forth when information will and will not be considered to provide certainty for the public.

Comment 64. One comment requested information on how a United States patent application or other information (§ 1.98(a)(1)(iii)) should be listed on a PTO 1449 form.

Reply: The PTO 1449 has been drafted so as to provide spaces for listing documents which are available to the public and which will be printed on the patent at issuance. Other information should be listed separately from the PTO 1449 form.

Comment 65. One comment stated that § 1.98(a)(2)(i) should not require the submission by applicants of United States patents listed in an information disclosure statement since the Office is better equipped to provide examiners with copies of those documents than inventors and their attorneys. Alternatively, the comment suggested that the Office should establish a procedure whereby an order for the Office to provide the copies of the patents at the usual fee can accompany the information disclosure statement.

Reply: At the present time, when the Automated Patent System has not been fully implemented, the overall cost of the Office obtaining copies of patents and associating them with application files would be greater than for applicants to provide copies with information disclosure statements. Presumably, the applicant would be using a copy of the patent in preparing the statement and could easily make a copy for submission to the Office.

Comment 66. One comment suggested that § 1.98(a)(2)(iii), as proposed, be clarified by substituting "except that no copy of a U.S. patent application need be included" for the proposed phrase "except a U.S. patent application."

Reply: The suggested clarification to the language of the rule has been adopted.

Comment 67. A number of comments objected to the requirement in § 1.98(a)(3) for a concise explanation of the relevance of all items of information being submitted.

Reply: In response to the comments, § 1.98(a)(3) has been modified to require a concise explanation only of patents, publications or other information listed

in an information disclosure statement that are not in the English language. Applicants may, if they wish, provide concise explanations of why English-language information is being submitted and how it is understood to be relevant. Concise explanations are helpful to the Office, particularly where documents are lengthy and complex and applicant is aware of a section that is highly relevant to patentability.

Comment 68. Five comments stated that the proposed rules should be modified to state that if information is being submitted from a foreign search report, the requirement for a concise explanation in proposed § 1.98(a)(3) may be satisfied by submitting an English-language version of the search report.

Reply: The language of § 1.98(a)(3) has been modified so that no concise explanation is required for information submitted in the English language. The concise explanation requirement for non-English language information may be met by the submission of an English language version of the search report indicating the degree of relevance found by the foreign office. It is not necessary that this detail be included in the rule.

Comment 69. Five comments questioned whether the requirement in proposed § 1.98(a)(3) would be satisfied by a statement that the references were cited in the prosecution of a parent application.

Reply: The requirement in § 1.98(a)(3) for a concise explanation of non-English language information would not be satisfied by a statement that a reference was cited in the prosecution of a parent application. The concise explanation must explain the relevance as presently understood by the person designated in § 1.56(c) most knowledgeable about the content of the information.

Comment 70. One comment suggested that proposed § 1.98(a)(3) should be modified to require a concise explanation of "what is believed to be" the relevance of information listed to avoid the accusation of violation of duty of disclosure merely because more relevant portions of the information are later found. Another comment suggested that the concise explanation should state what is "reasonably understood by the person submitting the statement." Another comment stated that the applicant should be required to explain (1) only what is understood or believed about the item of information at the time the disclosure is made, or (2) why the item is listed.

Reply: The suggestions in the comments have been substantially adopted in modifying the language of § 1.98(a)(3).

Comment 71. One comment stated that proposed § 1.98(b) should not require the date (unless material) and place of publication of journal articles since such information is not given on search reports from foreign patent offices or on journals published by the American Chemical Society, which just give the year. Another comment indicated that sometimes it is not clear where the place of publication is.

Reply: The suggestions in the comments are not adopted. The date of publication is necessary for the Office to be able to determine if the information may be used in a rejection of the claims in an application. The place of publication refers to the name of the journal, magazine or other publication in which the article was published, which should be available in the vast majority of cases.

Comment 72. One comment suggested that § 1.98(c) should not require a translation of a non-English language document to be filed if a translation is within the possession, custody or control of an individual designated in § 1.56(c) because such person may not recall that there is a translation somewhere in the records of the individual, perhaps having been made for another application years earlier.

Reply: The requirement of the rule for a translation to be submitted under limited conditions is not a change in practice. See prior §§ 1.56(j) and 1.97(b). Since the requirement has caused little, if any, problem in the past, the suggestion of the comment is not adopted.

Comment 73. One comment suggested that § 1.98(c) should be revised to make it clear that a reference that is essentially cumulative to another reference need not be listed in an information disclosure statement.

Reply: The concept that cumulative information is not material is set forth in § 1.56(b). Section 1.98 does not deal with what information must be submitted, but provides an exception for cumulative information to the requirement for a copy to be submitted of each item of information listed in an information disclosure statement.

Comment 74. One comment stated that a sentence in the preamble discussion of proposed § 1.98(c) was burdensome because it would require submission of incomplete or inexact translations which may have been made of an item of information. The sentence in question reads:

> But if the individual has the ability to translate the non-English language into English and has done so for the purposes of reviewing the information relative to the claimed invention, the translation would be considered "readily available."

Another comment stated that proposed § 1.98(c) should be modified to require a translation if the non-English language document is to be considered by the examiner since the attorney would want to prepare an accurate translation of particularly relevant references. One comment suggested that § 1.98(c), or the preamble discussion, should make it clear that an English-language translation of a foreign language material reference need not be submitted where an individual merely reads in the reference in its original language and translates it mentally but does not prepare a written translation. Five other comments requested clarification on this point.

Reply: The Office does not intend to require translations unless they have been reduced to writing and are actually translations of what is contained in the non-English language information. Applicants should note, however, that most examiners do not have the ability to understand information which is not in English and that the Office will not routinely translate information submitted in a non-English language. The examiner will consider the information insofar as it is understood on its face, e.g., drawings, chemical formulas, English-language abstracts, but will not have the information translated unless it appears to be necessary to do so. Applicants are required to aid the examiner by complying with the requirements for a concise explanation in § 1.98(a)(3) for information submitted in a non-English language.

Comment 75. One comment stated that § 1.98(d) should be clarified to state that a copy of an item of information listed in an information disclosure statement need not be submitted if the reference was cited by the Office or previously submitted to the Office in connection with a prior application.

Reply: The suggestion in the comment is adopted. The language of § 1.98(d) has been modified to state that a copy of an item of information is not required if it was previously cited by the Office or previously submitted to the Office in a prior application being relied on for an earlier filing date under 35 U.S.C. 120.

Comment 76. One comment suggested that proposed § 1.98(d) should be revised to not require the submission of a copy of the information listed in an information disclosure statement if a copy of the information has previously been submitted to the Office in a prior application, whether or not the earlier

application is being relied upon for an earlier filing date under 35 U.S.C. 120.

Reply: The suggestion in the comment is not adopted. The exception to the requirement for a copy of each item of information to be submitted has been made with regard to prior applications which will normally be available to, and considered by, the examiner. It would not be efficient for the examiner to be required to seek out unrelated application files to obtain a copy of an item of information when a copy could easily be submitted by applicant.

Comment 77. One comment questioned what would be considered "timely" under § 1.291 so that information would be considered by the examiner without payment of a fee, in contrast to proposed § 1.97 which may require a fee.

Reply: Section 1.291 has not been amended to redefine timeliness. The comment seems to imply that the fee requirements of § 1.97 can be avoided through the use of a protest submitting information, but such a course of action might raise questions regarding compliance with the duty of candor and good faith required in dealings with the Office.

Comment 78. One comment stated that the Office should not drop the acknowledgment of a protest having been filed under § 1.291 in a reissue application because the acknowledgment served as an indication that the protest had been received in the examining group from the mail room.

Reply: The suggestion in the comment is not adopted. Any perceived benefit from retaining the acknowledgment is outweighed by the administrative burden it causes. There is no good reason to treat the filing of protests in reissue applications differently from the filing of protests in original applications or from the filing of other papers in the Office.

Comment 79. One comment questioned whether an application could be withdrawn from issue pursuant to proposed § 1.313(b)(5) without admitting unpatentability.

Reply: There is no requirement that unpatentability must be admitted before an application can be withdrawn from issue pursuant to § 1.313(b)(5). The rule provides for applications to be withdrawn from issue and abandoned for consideration of information in a continuing application. This differs from a petition under § 1.313(b)(3) based on unpatentability of one or more claims.

Comment 80. One comment questioned whether, if an application is withdrawn from issue pursuant to proposed § 1.313(b)(5), an information disclosure statement can be submitted in the continuing application under § 1.97(b) without a certification.

Reply: A continuing application is treated like any other application with regard to the times set forth in § 1.97(b). Thus, for example, an information disclosure statement could be filed without a fee or certification in a continuing application within three months of the filing date of the continuing application.

Comment 81. One comment questioned whether an application withdrawn from issue pursuant to § 1.313(b)(5) could have new art and amendments considered in that application rather than in a continuing application. The comment also questioned the handling of applications withdrawn from issue pursuant to § 1.313(b)(3).

Reply: The language of § 1.313(b)(5) makes it clear that an application withdrawn from issue thereunder is to be abandoned without further prosecution. This differs from an application withdrawn from issue pursuant to § 1.313(b)(3) because applicant had admitted the unpatentability of one or more claims.

Comment 82. One comment questioned whether the continuing application mentioned in proposed § 1.313(b)(5) could be a file wrapper continuing applicants under § 1.62 and how applicants can accomplish the withdrawal from issue under proposed § 1.313(b) late in the prosecution of an application.

Reply: The continuing application mentioned in § 1.313(b)(5) can be a file wrapper continuing application under § 1.62. Even though § 1.62 requires a file wrapper continuing application to be filed before the payment of the issue fee, the Office will consider the filing of a petition to withdraw from issue under § 1.313(b)(5) as sufficient grounds to waive that requirement of § 1.62. Late in the prosecution of an application, the Office has difficulty in matching papers with the application file. Papers requesting that an application be withdrawn from issue after the issue fee is paid should be directed, or preferably hand-carried, to the Office of Petitions in the Office of the Assistant Commissioner for Patents.

Comment 83. Seven comments suggested that § 1.555(a) should not be amended to require the submission of "all information material to patentability" since a reexamination proceeding is limited to consideration of patents and printed publications.

Reply: The suggestion in the comments has been adopted. A paragraph (b), which defines what information is material to patentability in a reexamination proceeding, has been added to the rule.

Comment 84. One comment suggested that proposed § 1.555(a) should be modified to make clear that there is no duty of disclosure on employees of a corporate patent owner if the employees are not substantively involved in the preparation of the reexamination request of the reexamination proceeding.

Reply: The suggestion in the comment to modify the language in § 1.555(a) has not been adopted. The rule refers to individuals who are substantively involved on behalf of the patent owner in a reexamination proceeding.

Comment 85. Two comments stated that the Office should consider fraud or other inequitable conduct issues in interference proceedings.

Reply: The suggestion in the comments has been adopted. The Office will consider inequitable conduct issues in interference proceedings as announced on November 19, 1991, in the Official Gazette of the Patent and Trademark Office at 1132 Off. Gaz. Pat. Off. 33.

Comment 86. One comment requested more examples with regard to proposed § 10.23(c)(10) of what alteration of combination of alterations in a declaration would be considered material.

Reply: It is not the function of the rules or the rulemaking process to provide a detailed listing of what alterations may be considered to be improper. This consideration will necessarily be made in view of the totality of the circumstances involved. Practitioners would be well advised to avoid filing applications which contain alterations which have not been initialed and dated.

Comment 87. Two comments stated that § 10.23(c)(10) should be amended to prohibit knowingly attempting to mislead the Office in the drafting or prosecution of a patent application. One comment stated that attempted fraud or inequitable conduct would not be prohibited by proposed § 10.23(c)(10) because such conduct would not be a violation of proposed §§ 1.56 and 1.555.

Reply: No amendment is necessary to the language of § 10.23(c)(10). It should be noted that the duty of candor and good faith in dealing with the Office is included in §§ 1.56 and 1.555. This duty includes a prohibition against knowingly attempting to mislead the Office.

Comment 88. Five comments stated that it would be unfair to impose the new disclosure requirements and fees on applications that are pending before

the Office on the effective date of the new rule. Another comment stated that the rules should be immediately effective for all pending applications with some grace period for making the initial disclosure without penalty and without fee.

Reply: The Office will apply the new rules to all applications pending on, or filed on or after, the effective date of the rules. While this implementation may cause some burden on some applicants, other applicants will obtain benefits not otherwise available. This decision will also ease the administrative burden on the Office in implementing the new rules.

Other Considerations

The rule change is in conformity with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Small Business Administration that the rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)) because the rules as adopted do not require individuals to submit information that they are not already aware of and are not already under an obligation to provide to the Office. The rules further promote the efficiency of the examination process by encouraging a timely submission of an information disclosure statement and by substantially eliminating rejections based on inequitable conduct, thereby reducing the costs to all patent applicants.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, Federal, state or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity or innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

This rule contains a collection of information requirement subject to the Paperwork Reduction Act, which has previously been approved by the Office of Management and Budget under Control No. 0651-0011. Each information disclosure statement is estimated to take approximately 30 minutes, including time for reviewing instructions, gathering and maintaining data needed, and completing and reviewing the collection of information. The time estimate has been reduced from that stated in the proposal since the requirement for a concise explanation of the relevance of each item of information cited in an information disclosure statement has been limited to information submitted in a language other than English. Send comments regarding this burden estimate to the Patent and Trademark Office, Office of Management and Organization, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. (Attention Paper Reduction Project 0651-0011)

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Inventions and patents, Reporting and record keeping requirements, Small businesses.

37 CFR Part 10

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 37 CFR parts 1 and 10 are amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

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

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

2. In § 1.17, paragraph (i)(1) is revised and paragraph (p) is added to read as follows:

§ 1.17 Patent application processing fees.

* * * * *

(i)(1) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph—$130.00.

§ 1.12—for access to an assignment record.

§ 1.14—for access to an application.

§ 1.53—to accord a filing date.

§ 1.55—for entry of late priority papers.

§ 1.60—to accord a filing date.

§ 1.62—to accord a filing date.

§ 1.97(d)—to consider an information disclosure statement.

§ 1.103—to suspend action in application.

§ 1.177—for divisional reissues to issue separately.

§ 1.312—for amendment after payment of issue fee.

§ 1.313—to withdraw an application from issue.

§ 1.314—to defer issuance of a patent.

§ 1.334—for patent to issue to assignee, assignment recorded late.

§ 1.666(b)—for access to interference settlement agreement.

* * * * *

(p) For submission of an information disclosure statement under § 1.97(c)—$200.00.

3. Section 1.28, paragraph (d)(2) is revised to read as follows:

§ 1.28 Effect on fees of failure to establish status, or change status, as a small entity.

* * * * *

(d)(1) * * *

(2) Improperly and with intent to deceive

(i) establishing status as a small entity, or

(ii) paying fees as a small entity

shall be considered as a fraud practiced or attempted on the Office.

4. Section 1.51, paragraph (b) is revised to read as follows:

§ 1.51 General requisites of an application.

* * * * *

(b) Applicants are encouraged to file an information disclosure statement. See §§ 1.97 and 1.98.

* * * * *

5. Section 1.52, paragraph (c) is revised to read as follows:

§ 1.52 Language, paper, writing, margins.

* * * * *

(c) Any interlineation, erasure, cancellation or other alteration of the application papers filed should be made before the signing of any accompanying oath or declaration pursuant to § 1.63 referring to those application papers and should be dated and initialed or signed by the applicant on the same sheet of paper. Application papers containing alterations made after the signing of an oath or declaration referring to those application papers must be supported by a supplemental oath or declaration under § 1.67(c). After the signing of the oath or declaration referring to the application papers, amendments may be made in the manner provided by §§ 1.121 and 1.123 through 1.125.

* * * * *

6. Section 1.56 is revised to read as follows:

§ 1.56 Duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)–(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

(1) prior art cited in search reports of a foreign patent office in a counterpart application, and

(2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

(1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or

(2) It refutes, or is inconsistent with, a position the applicant takes in:

(i) Opposing an argument of unpatentability relied on by the Office, or

(ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

(1) Each inventor named in the application;

(2) Each attorney or agent who prepares or prosecutes the application; and

(3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

7. Section 1.63, paragraphs (b)(3) and (d) are revised to read as follows:

§ 1.63 Oath or declaration.

* * * * *

(b) * * *

(3) Acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in § 1.56.

* * * * *

(d) In any continuation-in-part application filed under the conditions specified in 35 U.S.C. 120 which discloses and claims subject matter in addition to that disclosed in the prior copending application, the oath or declaration must also state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in § 1.56, which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

8. Section 1.67 is amended by adding a new paragraph (c) to read as follows:

§ 1.67 Supplemental oath or declaration.

* * * * *

(c) A supplemental oath or declaration meeting the requirements of § 1.63 must also be filed if the application was altered after the oath or declaration was signed or if the oath or declaration was signed:

(1) In blank;

(2) Without review thereof by the person making the oath or declaration; or

(3) Without review of the specification, including the claims, as required by § 1.63(b)(1).

9. Section 1.97 is revised to read as follows:

§ 1.97 Filing of information disclosure statement.

(a) In order to have information considered by the Office during the pendency of a patent application, an information disclosure statement in compliance with § 1.98 should be filed in accordance with this section.

(b) An information disclosure statement shall be considered by the Office if filed:

(1) Within three months of the filing date of a national application;

(2) Within three months of the date of entry of the national stage as set forth in § 1.491 in an international application; or

(3) Before the mailing date of a first Office action on the merits,

whichever event occurs last.

(c) An information disclosure statement shall be considered by the Office if filed after the period specified in paragraph (b) of this section, but before the mailing date of either:

(1) A final action under § 1.113 or

(2) A notice of allowance under § 1.311,

whichever occurs first, provided the statement is accompanied by either a certification as specified in paragraph (3) of this section or the fee set forth in § 1.17(p).

(d) An information disclosure statement shall be considered by the Office if filed after the mailing date of either:

(1) A final action under § 1.113 or

(2) A notice of allowance under § 1.311,

whichever occurs first, but before payment of the issue fee, provided the statement is accompanied by:

(i) A certification as specified in paragraph (e) of this section,

(ii) A petition requesting consideration of the information disclosure statement, and

(iii) The petition fee set forth in § 1.17(i)(1).

(e) A certification under this section must state either:

(1) That each item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the statement, or

(2) That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application or, to the knowledge of the person signing the certification after making reasonable inquiry, was known to any individual designated in § 1.56(c) more than three months prior to the filing of the statement.

(f) No extensions of time for filing an information disclosure statement are permitted under § 1.136. If a bona fide attempt is made to comply with § 1.98, but part of the required content is inadvertently omitted, additional time may be given to enable full compliance.

(g) An information disclosure statement filed in accordance with this section shall not be construed as a representation that a search has been made.

(h) The filing of an information disclosure statement shall not be construed to be an admission that the information cited in the statement is, or is considered to be, material to patentability as defined in § 1.56(b).

(i) Information disclosure statements, filed before the grant of a patent, which do not comply with this section and § 1.98 will be placed in the file, but will not be considered by the Office.

10. Section 1.98 is revised to read as follows:

§ 1.98 Content of information disclosure statement.

(a) Any information disclosure statement filed under § 1.97 shall include:

(1) A list of all patents, publications, or other information submitted for consideration by the Office;

(2) A legible copy of:

(i) Each U.S. and foreign patent;

(ii) Each publication or that portion which caused it to be listed; and

(iii) All other information or that portion which caused it to be listed, except that no copy of a U.S. patent application need be included; and

(3) A concise explanation of the relevance, as it is presently understood by the individual designated in § 1.56(c) most knowledgeable about the content of the information, of each patent, publication, or other information listed that is not in the English language. The concise explanation may be either separate from the specification or incorporated therein.

(b) Each U.S. patent listed in an information disclosure statement shall be identified by patentee, patent number and issue date. Each foreign patent or published foreign patent application shall be identified by the country or patent office which issued the patent or published the application, an appropriate document number, and the publication date indicated on the patent or published application. Each publication shall be identified by author (if any), title, relevant pages of the publication, date and place of publication.

(c) When the disclosures of two or more patents or publications listed in an information disclosure statement are substantively cumulative, a copy of one of the patents or publications may be submitted without copies of the other patents or publications provided that a statement is made that these other patents or publications are cumulative. If a written English-language translation of a non-English language document, or portion thereof, is within the possession, custody or control of, or is readily available to any individual designated in § 1.56(c), a copy of the translation shall accompany the statement.

(d) A copy of any patent, publication or other information listed in an information disclosure statement is not required to be provided if it was previously cited by or submitted to the Office in a prior application, provided that the prior application is properly identified in the statement and relied upon for an earlier filing date under 35 U.S.C. 120.

§ 1.99 [Removed]

11. Section 1.99 is removed and reserved.

12. Section 1.175, paragraph (a)(7), is revised to read as follows:

§ 1.175 Reissue oath or declaration.

(a) * * *

(7) Acknowledging the duty to disclose to the Office all information known to applicants to be material to patentability as defined in § 1.56.

* * * * *

§ 1.193 [Amended]

13. Section 1.193(c) is removed and reserved.

14. Section 1.291, paragraphs (a) and (c), are revised to read as follows:

§ 1.291 Protests by the public against pending applications.

(a) Protests by a member of the public against pending applications will be referred to the examiner having charge of the subject matter involved. A protest specifically identifying the application to which the protest is directed will be entered in the application file if:

(1) The protest is timely submitted; and

(2) The protest is either served upon the applicant in accordance with § 1.248, or filed with the Office in duplicate in the event service is not possible.

Protests raising fraud or other inequitable conduct issues will be entered in the application file, generally without comment on those issues. Protests which do not adequately identify a pending patent application will be disposed of and will not be considered by the Office.

* * * * *

(c) A member of the public filing a protest in an application under paragraph (a) of this section will not receive any communications from the Office relating to the protest, other than the return of a self-addressed postcard which the member of the public may include with the protest in order to receive an acknowledgment by the Office that the protest has been received. The Office may communicate with the applicant regarding any protest and may require the applicant to respond to specific questions raised by the protest. In the absence of a request by the Office, an applicant has no duty to, and need not, respond to a protest. The limited involvement of the member of the public filing a protest pursuant to paragraph (a) of this section ends with the filing of the protest, and no further submission on behalf of the protestor will be considered unless such submission raises new issues which could not have been earlier presented.

15. Section 1.313, paragraph (b), is revised to read as follows:

§ 1.313 Withdrawal from issue.

* * * * *

(b) When the issue fee has been paid, the application will not be withdrawn from issue for any reason except:

(1) A mistake on the part of the Office;

(2) A violation of § 1.56 or illegality in the application;

(3) Unpatentability of one or more claims;

(4) For interference; or

(5) For abandonment to permit consideration of an information disclosure statement under § 1.97 in a continuing application.

16. Section 1.555 is revised to read as follows:

§ 1.555 Information material to patentability in reexamination proceedings.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective reexamination occurs when, at the time a reexamination proceeding is being conducted, the Office is aware of and evaluates the teachings of all information material to patentability in a reexamination proceeding. Each individual associated with the patent owner in a reexamination proceeding has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability in a reexamination proceeding. The individuals who have a duty to disclose to the Office all information known to them to be material to patentability in a reexamination proceeding are the patent owner, each attorney or agent who represents the patent owner, and every other individual who is substantively involved on behalf of the patent owner in a reexamination proceeding. The duty to disclose the information exists with respect to each claim pending in the reexamination proceeding until the claim is cancelled. Information material to the patentability of a cancelled claim need not be submitted if the information is not material to patentability of any claim remaining under consideration in the reexamination proceeding. The duty to disclose all information known to be material to patentability in a reexamination proceeding is deemed to be satisfied if all information known to be material to patentability of any claim in the patent after issuance of the reexamination certificate was cited by the Office or submitted to the Office in an information disclosure statement. However, the duties of candor, good faith, and disclosure have not been complied with if any fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct by, or on behalf of, the patent owner in the reexamination proceeding. Any information disclosure statement must be filed with the items listed in § 1.98(a) as applied to individuals associated with the patent owner in a reexamination proceeding, and should be filed within two months of the date of the order for reexamination, or as soon thereafter as possible.

(b) Under this section, information is material to patentability in a reexamination proceeding when it is not cumulative to information of record or being made of record in the reexamination proceeding, and

(1) It is a patent or printed publication that establishes, by itself or in combination with other patents or printed publications, a prima facie case of unpatentability of a claim; or

(2) It refutes, or is inconsistent with, a position the patent owner takes in:

(i) Opposing an argument of unpatentability relied on by the Office, or

(ii) Asserting an argument of patentability.

A prima facie case of unpatentability of a claim pending in a reexamination proceeding is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) The responsibility for compliance with this section rests upon the individuals designated in paragraph (a) of this section and no evaluation will be made by the Office in the reexamination proceeding as to compliance with this section. If questions of compliance with this section are discovered during a reexamination proceeding, they will be noted as unresolved questions in accordance with § 1.552(c).

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

17. The authority citation for part 10 continues to read as follows:

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 6, 31, 32, 41.

18. Section 10.23, paragraphs (c)(10) and (c)(11) are revised to read as follows:

§ 10.23 Misconduct.

* * * * *

(c) * * *

(10) Knowingly violating or causing to be violated the requirements of § 1.56 or § 1.555 of this subchapter.

(11) Knowingly filing or causing to be filed an application containing any material alteration made in the application papers after the signing of the accompanying oath or declaration without identifying the alteration at the time of filing the application papers

Dated: January 9, 1992.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 91-1064 Filed 1-16-92; 8:45 am]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-4094-7]

Ocean Dumping: Designation of Site, Brazos Island Harbor, TX

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates a dredged material disposal site located in the Gulf of Mexico offshore of Port Isabel, Texas for the one time disposal of construction material dredged from the enlargement of the Brazos Island Harbor Entrance Channel. This action is necessary to provide an acceptable ocean dumping site for the disposal of material from the Army Corps of Engineers 42-Foot Project at Brazos Island Harbor. This final site designation is for an indefinite period of time but the site is subject to monitoring to insure that unacceptable adverse environmental impacts do not occur.

EFFECTIVE DATES: This designation shall become effective February 18, 1992.

ADDRESSES: Norm Thomas, Chief, Federal Activities Branch (6E-F), U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202-2733.

The file supporting this designation and the letters of comment are available for public inspection at the following locations: EPA, Region 6, 1445 Ross Avenue, 9th Floor, Dallas, Texas, and Corps of Engineers, Galveston District, 444 Baracuda Avenue, Galveston, Texas.

FOR FURTHER INFORMATION CONTACT: Norm Thomas 214/655-2260 or FTS/255-2260.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of

the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR chapter I, subchapter H, 228.4) state that ocean dumping sites will be designated by publication in part 228. This site designation is being published as final rulemaking in accordance with § 228.4(e) of the regulations, which permits the designation of ocean disposal sites for dredged material.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare Environmental Impact Statements (EISs) on proposals for major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean dumping site designations such as this (39 FR 16186, May 7, 1974).

EPA has prepared a Final Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Brazos Island Harbor 42-Foot Project Ocean Dredged Material Disposal Site Designation." On November 22, 1991, a notice of availability of the Final EIS for public review and comment was published in the **Federal Register.** The public comment period on this Final EIS closed on December 23, 1991. No comments on the Final EIS were received.

The action discussed in the EIS is designation of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis.

The EIS discusses the need for the action and examines ocean disposal sites and alternatives to the proposed action. Land based disposal alternatives were examined in a previously published EIS prepared by the Corps of Engineers (COE) and re-evaluated in EPA's EIS. The nearest available land disposal area is 82 acres in size and is located 5 miles away from the seaward end of the project. The volume of this disposal site is needed for construction and future maintenance of the inland portions of the channel and is not available for the disposal of construction material from offshore areas. Also since the surrounding land areas are wetlands or shallow bay habitats, development and use of a suitably sized replacement area would likely result in a significant loss of quality wetlands or bay bottoms. A land-based alternative would offer no environmental benefit to ocean disposal.

Five ocean disposal alternatives—three nearshore sites (including the proposed site), a mid-shelf site and a deepwater site—were evaluated. Both the mid-shelf and deepwater sites were eliminated due to limited feasibility for monitoring, increased transportation costs and safety risks and the lack of any environmental benefits by utilizing sites that far offshore.

Ocean disposal sites were identified by determining a zone of siting feasibility (ZSF) and then screening out those sites which impacted biologically sensitive areas, beaches and recreational areas, the navigation channel, cultural or historical resources, etc.

Evaluation of the historically-used disposal site and the routine maintenance disposal site showed that both these nearshore sites were located within the navigational fairways and contained inappropriate grain-size regimes. Because of these reasons the historically-used and routine maintenance sites were not selected for disposal of the construction material. However, the routine maintenance material site, which was designated by EPA in September 1990, will receive routine maintenance material from the 42-Foot Project.

The selected ocean disposal site for the construction (virgin) material is located in the 60-foot isobath and in the sandy silt regime. The size of the virgin ocean dredged material disposal site (ODMDS) was determined, based on models of the ocean discharge of dredged material, to be 5,300 feet in a direction parallel to the channel (east/west) and 2,895 feet in a direction perpendicular to the channel (south/north).

EPA has determined that its site designation action will not adversely affect any listed endangered or threatened species. EPA is coordinating its determination with the National Marine Fisheries Service in accordance with the requirements of section 7 of the Endangered Species Act. EPA is also coordinating, as a part of the NEPA/EIS process, with the State of Texas regarding any requirement under the Coastal Zone Management Act.

C. Site Designation

On June 10, 1991, EPA proposed designation of this site for the disposal of construction material from the Brazos Island Harbor 42-Foot Project. The public comment period on this proposed action closed on July 24, 1991. No comments on the proposed rule were received.

The disposal site is located about four miles from the coast and occupies an area of 0.42 square nautical miles. Water depths within the area range from 60–67 feet. The coordinates of the rectangular-shaped site are as follows: 26°04'47" N, 97°05'07" W; 26°05'16" N, 97°05'04" W; 26°05'10" N, 97°04'06" W; 26°04'42" N, 97°04'09" W.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at an interim site cause unacceptable adverse impacts, the use of that site will be terminated as soon as suitable alternate disposal sites can be designated. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; Section 228.6 lists eleven specific factors used in evaluating a disposal site to assure that the general criteria are met.

The site, as discussed below under the eleven specific factors, is acceptable under the five general criteria. EPA has determined, based on the information presented in the Draft and Final EISs, that a site off the Continental Shelf is not feasible due to monitoring difficulties, increased transportation costs and greater safety risks. No environmental benefit would be obtained by selecting such a site. The characteristics of the selected site are reviewed below in terms of the eleven factors.

1. *Geographical position, depth of water, bottom topography and distance from coast.* [40 CFR 228.6(a)(1).]

Geographical position, water depth, and distance from the coast for the disposal site are given above. Bottom topography is flat with no unique features or relief.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* [40 CFR 228.6(a)(2).]

Living resources' breeding, spawning, nursery and passage areas in the project area were identified as excluded areas during the siting feasibility process and eliminated from consideration. To the west of the site, there is a fish haven which is excluded, as are the jetties, including buffer zones of 630 feet. The

jetties provide a migratory passage for white shrimp, brown shrimp, blue crab, drum, sheepshead and southern flounder. Also excluded are partially submerged shipwrecks which improve fishing.

3. *Location in relation to beaches and other amenity areas.* [40 CFR 228.6(a)(3).]

The site is approximately 4 miles from any beach or other amenity area.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the wastes, if any.* [40 CFR 228.6(a)(4).]

Approximately 1,325,000 cubic yards of construction material will be discharged into the disposal site. Construction disposal is expected to last for a period of two years or less. This material will be transported by hopper dredges.

5. *Feasibility of surveillance and monitoring.* [40 CFR 228.6(a)(5).]

The site is amenable to surveillance and monitoring. The proposed monitoring and surveillance program consists of (1) a method for recording the location of each discharge; (2) bathymetric surveys; and (3) grain-size analysis, sediment chemistry characterization and benthic infaunal analysis at selected stations.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* [40 CFR 228.6(a)(6).]

Physical oceanographic parameters including dispersal, horizontal transport and vertical mixing characteristics were used: (1) To develop the necessary buffer zones for the siting feasibility analysis; and (2) to determine the minimum size of the site. Predominant longshore currents, and thus predominant longshore transport, are to the north. Long-term mounding has not historically occurred. Therefore, steady longshore transport and occasional storms, including hurricanes, may remove the disposed material from the site.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* [40 CFR 228.6(a)(7).]

Chemical and bioassay testing of past maintenance material and material from the historically-used disposal site plus chemical analyses of water from the area concluded that there are no indications of water or sediment quality problems. Testing of past maintenance material indicated that it was acceptable for ocean disposal under 40 CFR part 227. Based on current direction and modeling of the virgin material, the site was situated to prevent discharged material from re-entering the channel and to ensure that any mounding poses no obstruction to navigation.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean.* [40 CFR 228.6(a)(8).]

Impacts to shipping, mineral extraction, commercial and recreational fishing, recreational areas and historic sites have been evaluated for the Brazos Island Harbor 42-Foot Project site designation. The site will not interfere with these or other legitimate uses of the ocean because the siting feasibility process was designed to reduce the possibility of a site which would interfere. Disposal operations in the past have not interfered with other uses.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* [40 CFR 228.6(a)(9).]

Monitoring studies at other locations have shown only short-term water-column perturbations of turbidity, and perhaps increased chemical oxygen demand (COD), resulted from disposal operations. No short-term sediment quality perturbation has been directly related to disposal operations. In general, the water and sediment quality is good throughout the area and there have been no long-term adverse impacts on water and sediment quality from past disposal operations. No long-term impacts on the benthos at the historically-used site were apparent.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* [40 CFR 228.6(a)(10).]

With a disturbance to any benthic community, initial recolonization will be by opportunistic species. However, these species are not nuisance species in the sense that they would interfere with other legitimate uses of the ocean or that they are human pathogens. The disposal of maintenance material in the past has not and the disposal of construction material in the future should not attract nor promote the development or recruitment of nuisance species.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.* [40 CFR 228.6(a)(11).]

Areas and features of historical importance were evaluated during the siting feasibility process. The nearest site of historical importance is located near the jetties as is well within the buffer zone surrounding the jetties. Use of the site would not impact any known historical or cultural sites.

E. Action

Based on the Draft and Final EISs, EPA concludes that the site may appropriately be designated for use. The site is compatible with the five general criteria and eleven specific factors used for site evaluation. The designation of the Brazos Island Harbor 42-Foot Project site as an EPA approved ocean dumping site is being published as final rulemaking.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. Before ocean dumping of dredged material at the site may occur, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping. While the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a permit would be required.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: January 9, 1992.

Joe D. Winkle,

Acting Regional Administrator of Region 6.

In consideration of the foregoing, subchapter H of chapter I of title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by adding paragraph (b)(91) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(91) Brazos Island Harbor (42-Foot Project), Texas—Region 6.

Location: 26°04'47" N, 97°05'07" W; 26°05'16" N, 97°05'04" W; 26°05'10" N, 97°04'06" W; 26°04'42" N, 97°04'09" W.

Size: 0.42 square nautical miles.

Depth: Ranges from 60–67 feet.

Primary Use: Dredged material.

Period of Use: Indefinite period of time.

Restriction: Disposal shall be limited to construction material dredged from the Brazos Island Harbor Entrance Channel, Texas.

[FR Doc. 92-1412 Filed 1-16-92; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[WO-610-4111-02 24 1A; Circular No. 2630]

RIN 1004-AA 67

Onshore Oil and Gas Order No. 6, Hydrogen Sulfide Operations; Correction

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Final rule; correction.

SUMMARY: This document corrects typographical and editorial errors in the final rule implementing Onshore Oil and Gas Order No. 6, Hydrogen Sulfide Operations, published in the **Federal Register** on November 23, 1990 (55 FR 48958).

EFFECTIVE DATES: November 23, 1990.

FOR FURTHER INFORMATION CONTACT: Hank Symanski.

The following typographical and editorial corrections are made in the final rule implementing Onshore Oil and Gas Order No. 6, Hydrogen Sulfide Operations, published in the **Federal Register** on November 23, 1990 (55 FR 48958):

1. On page 48968, first column, in the Authority paragraph, the fifth line, the phrase "Act of May 31, 1930" is revised to read "Act of May 21, 1990."

1a. On page 48968, second column, second full paragraph, is revised to read: "The authorized officer may, pursuant to 43 CFR 3164.1 and 3164.2, after notice and comment, issue onshore oil and gas orders when necessary to implement and supplement the regulations contained in 43 CFR 3160, and issue notices to lessees and operators (NTL's) when necessary to implement onshore oil and gas orders and the regulations. Pursuant to Section IV of this Order, the authorized officer may approve a variance from the requirements prescribed herein to accommodate special conditions on a State or area-wide basis".

2. On page 48968, third column, line 11, is revised to read: "Upon release, could constitute a".

3. On page 48969, second column, under the definition of radius of exposure (item 1), change the exponent in the equation from "(0.625)" to "(0.6258)".

4. On page 48969, second column, under the definition of radius of exposure (item 2), delete the term "(percent)".

5. On page 48969, second column, under the definition of radius of exposure (item 3), insert the word "and" between "complex terrain" and "other dispersion".

6. On page 48969, third column, under III. Requirements, line 4, insert the word "typically" between "as" and "major".

7. On page 48970, first column, first paragraph, line 6, insert the word "the" between "stream," and "H_2S".

8. On page 48970, third column, paragraph c., line 6, is revised to read: "under section III.A.2.a.,".

9. On page 48971, first column, paragraph c., lines 3 and 4, are revised to read: "facilities or roads are principally maintained for public use".

10. On page 48971, third column, under paragraph c., change "(i)" to "i".

11. On page 48972, first column, last line, change "API-RP49" to "API RP-49".

12. On page 48972, third column, under section c. H_2S Detection and Monitoring Equipment, line 5, insert the word "of" between "air concentration" and "H_2S".

13. On page 48973, first column, paragraph iv., lines 5 and 6, are revised to read: "feet from the well site and at a location which allows vehicles to turn around at a safe".

14. On page 48973, second column, under section 4.a.i., line 10 revise to read: "water- or oil-based mud and mud shall".

15. On page 48974, first column, paragraph b.i., lines 7 and 8, are revised to read: "conditions or mud types justify to the authorized officer a lesser pH level is necessary".

16. On page 48974, first column, last paragraph, line 11, change "MR-01-75" to "MR 0175-90".

17. On page 48974, third column, first paragraph c., violation section, line 1, is revised to read: "Major, if the authorized officer determines that a health or safety".

18. On page 48975, second column, paragraph c., line 1, is revised to read: "Fencing and gate(s), as specified in section".

19. On page 48975, second column, paragraph g., in line 2 change "a" to "the" and in line 4 change "MR-01-75" to "MR 0175-90".

Dated: December 18, 1991.

Richard Roldan,

Deputy Assistant Secretary of the Interior.

[FR Doc. 92-1336 Filed 1-16-92; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 1-21; Notice 11]

RIN 2127-AE13

Federal Motor Vehicle Safety Standards; Theft Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: In mid-1990, this agency published a final rule amending certain provisions in Standard No. 114, *Theft Protection,* to protect against injuries caused by vehicle rollaway in vehicles with automatic transmissions. In March 1991, in response to petitions for reconsideration, the agency published a final rule amending certain of the requirements to provide manufacturers with greater flexibility in designing key-locking and transmission shift locking systems while ensuring that theft protection is provided and vehicle rollaway is prevented. This notice responds to petitions for reconsideration of the March 1991 final rule submitted by Toyota and Honda. In response to those petitions, the notice further amends the requirements to provide

manufacturers appropriate flexibility while continuing to meet the need for safety. In addition, the notice denies some portions of Toyota's petition, but provides an extra year's leadtime to comply with the requirement for inaccessibility for the emergency release button on the transmission shift override device.

DATES: *Effective Date:* This final rule is effective September 1, 1992, except for S4.2.2(b)(2) which is effective September 1, 1993.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than February 18, 1992.

ADDRESSES: Petitions for reconsideration must refer to the docket and notice numbers set forth at the beginning of this notice and be submitted to the following: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday. It is requested, but not required, that 10 copies of the petition be submitted.

FOR FURTHER INFORMATION CONTACT: Mr. Jere Medlin, Office of Vehicle Safety Standards, NRM-11, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Medlin's telephone number is (202) 366-5307.

SUPPLEMENTARY INFORMATION:

Background

On May 30, 1990, NHTSA published in the **Federal Register** (55 FR 21868) a final rule amending certain provisions of Standard No. 114, *Theft Protection,* to protect against injuries caused by vehicle rollaway in vehicles with automatic transmissions. The amendments specified that each automatic transmission vehicle with a "park" position must have a key-locking system that prevents removal of the key unless the transmission or transmission shift lever is locked in "park" or becomes locked in "park" as the direct result of removing the key.

In response to petitions for reconsideration, on March 26, 1991, NHTSA published in the **Federal Register** (56 FR 12464) a final rule amending those requirements to provide manufacturers with greater flexibility in designing key-locking and transmission shift locking systems while ensuring that theft protection is provided and vehicle rollaway is prevented.

Among other things, the notice responded to petitioners' arguments that certain exceptions to the May 1990 requirements were necessary in light of electrical designs. First, petitioners stated that certain electrical transmission shift lock systems might have problems complying with the requirement for a transmission shift lock. While these systems include a transmission shift lock, they also include an override device to enable a vehicle to be moved in the case of electrical failure, such as a run-down battery. In the absence of an override device, it would not be possible to shift the transmission of such a vehicle out of park.

The May 1990 final rule permitted only key-based override systems. In response to petitions for reconsideration, NHTSA also decided to permit key-less overrides that are not visible and are "child-proof." The agency rejected requests to permit exposed override devices. NHTSA acknowledged that vehicles with steering locks would protect against theft, even with an exposed transmission shift override device. However, the agency emphasized that such systems would not protect against the safety risks posed by vehicle rollaway, which can occur when children playing in an unattended vehicle shift the transmission lever out of park. Accordingly, the agency decided to permit key-less override devices only if they are covered by a non-transparent surface which, when in place, prevents sight of and activation of the device and which is removable only by use of a screwdriver or other tool.

Petitioners also stated that certain electrical key locking systems might have difficulty complying with the requirements concerning key removal. Some such systems include a solenoid that prevents key removal upon electrical failure, such as that caused by a run-down battery. The petitioners indicated that mechanical emergency key release is needed so that the driver of a disabled vehicle can remove the key and lock the vehicle before leaving it unattended.

In light of this concern, NHTSA decided to permit a device which permits key removal while the transmission is in any position, provided that the following conditions are met. First, steering must be prevented upon key removal to ensure that Standard No. 114's theft protection aspects are not jeopardized. Second, the emergency device permitting key removal while the transmission is in a position other than "park" should not be accessible during normal operation or else rollaway might occur. Third, to limit access to the emergency key release, the device must be covered by a surface that prevents access to it except by use of a tool, such as a screwdriver. The agency determined that limiting access to the emergency key release was necessary to make it likely that such key removal occurs only during unusual situations such as electrical failure. In addition, while NHTSA noted that it is rare to have power failure when the transmission is in a position other than "park," it believed that it would be beneficial for the owner of a disabled vehicle to be able to remove the key and lock the vehicle if he or she must leave the vehicle to seek help. Accordingly, in the final rule of March 26, 1991, an exception to S4.2.1 was created to allow the key release device.

Petitions for Reconsideration of March 1991 Final Rule NHTSA received petitions for reconsideration of the March 1991 final rule from Toyota and Honda. Both companies requested that the agency expand the exception to the requirements concerning key removal by allowing an automatic key release feature upon electrical failure, regardless of transmission position. Toyota also requested that the agency expand the exceptions to the requirements concerning transmission shift lock to permit a visible override device if it requires simultaneous two-handed operation. Toyota also stated that it cannot modify its current design by the September 1, 1992 effective date and stated that an additional year of leadtime would be required.

As discussed below, after considering Toyota's and Honda's petitions, NHTSA has decided to amend the text of Standard No. 114 to make it clear that an automatic key release feature upon electrical failure is permitted, regardless of transmission position. The agency believes that this provides manufacturers appropriate flexibility while continuing to meet the need for safety. NHTSA is denying Toyota's petition with respect to permitting a visible override device to the transmission shift lock, but it providing an extra year's leadtime for the emergency release button inaccessibility requirement.

Key Removal Requirements

Toyota indicated in its petition for reconsideration that its key lock system employs the use of solenoid to prevent removal of the key unless the transmission is locked in "park." Since electrical power is required to activate the solenoid to prevent key removal, if the vehicle's battery should become completely discharged, the solenoid would release, allowing removal of the key regardless of the transmission shift lever position. Similarly, Honda's

system uses an electrical solenoid to activate the key/steering column interlock. The interrelationship between the shift lever and key interlock solenoid is such that if an electrical malfunction occurs or the battery dies, the key can be removed from the ignition regardless of the shift lever position.

Honda stated in its petition that the March 1991 final rule was ambiguous with respect to whether its system was permitted. It requested that the standard be amended to make it clear that key removal is permitted in the unusual circumstance of electrical failure when the vehicle's transmission is not in park. Toyota expressed concern that the March 1991 final rule would result in a system in which the driver would have to leave the key in the ignition of vehicle whose battery had gone dead, or require an additional key lock override to avoid this circumstance. It requested that the standard be amended to indicate that key removal prevention is not required after battery discharge.

NHTSA believes that there is an interpretation issue concerning whether the March 1991 amendments permit key removal after battery discharge. For example, the Honda system ordinarily prevents key removal unless the transmission is locked in park, as required by the amendments. Only under a failure condition, battery failure, is it possible to remove the key when the vehicle's transmission is not in park. It could be argued that a non-failed battery is an assumed test condition for the requirement and that Honda's system therefore, meets the requirement as written.

The agency notes that this is a different situation than that addressed by the March 1991 amendment permitting override devices. That amendment was issued in light of designs that have a solenoid which prevents key removal upon battery failure. As discussed above, the purpose of the override device is to enable the driver to remove the key when a battery failure occurs. However, it is possible for a driver to use the override device in the absence of a failure condition. Therefore, there was no ambiguity concerning whether such a device was permitted, absent the March 1991 amendment. Further, the agency had to consider the safety consequences that might result if the device was used under non-failure conditions, and therefore established requirements to make it likely that key removal occurs only during unusual situations such as electrical failure. See 56 FR 12467.

The agency has decided to resolve the issue raised by Honda and Toyota by making it clear in the text of the standard that key removal is permitted in the circumstance of electrical failure when the vehicle's transmission is not in park. NHTSA is adopting an amendment similar to that suggested by Honda. This decision is consistent with NHTSA's March 1991 final rule which permitted a device which permits key removal while the transmission shift lever is in any position. NHTSA's position in the March 1991 final rule was that while it is rare to have power failure when the transmission is in a position other than "park," it is beneficial for the owner of a disabled vehicle to be able to remove the key and lock the vehicle if he or she must leave the vehicle to seek help. Consistent with NHTSA's March 1991 position, the Honda and Toyota systems facilitate key removal by owners, in the event of electrical failure. Since the exception established by the amendment is specifically limited to the situation of electrical failure, it is unnecessary to adopt additional requirements to ensure that key removal occurs only during such unusual situations. The agency therefore has determined that providing manufacturers this additional design flexibility for their electrical transmission systems is warranted and will not harm Standard No. 114's safety or theft protection concerns.

NHTSA notes that, in a submission dated September 5, 1990, Toyota described an additional feature of its use of a key ignition solenoid. That company stated that since the solenoid would be active were the engine shut off and the transmission shift lever not moved to park, eventually depleting the battery, a timer is employed to release power to the solenoid after 60 minutes under such circumstances. Thus, after 60 minutes, the key would automatically be released regardless of transmission shift lever position. The vehicle would then be in noncompliance with Standard No. 114 because the transmission would not be locked in "PARK". When this condition exists, rollaway of the parked vehicle is possible. A major purpose of this revised rule is to prevent rollaway from occurring.

While automatic key release upon electrical failure would be permitted, the above described timing system utilized by Toyota that allows key removal regardless of transmission shift lever position would not be permitted. The agency does not believe it is necessary to create an additional exception to permit such a timing device. Drivers rarely leave the keys in the ignition when the transmission is not in park, and a buzzer can be used by manufacturers to warn drivers of current draw on the battery. Should a driver leave the keys, then return more than an hour later, after realizing that the keys were missing, the keys could be removed without placing the transmission in "PARK". It would remain this way until the next driver used the vehicle. During that period the vehicle could roll away and as a result small children who may be inside are at risk of being involved in a rollaway accident. Standard No. 114 already requires that a warning to the driver be activated when the key is left in the locking system and the driver's door is opened, and this system could be used to warn the driver about current draw of the key lock solenoid when the engine is turned off.

Transmission Shift Lock Requirements

In its petition for reconsideration of the March 1991 final rule, Toyota asked for the following additional amendment to Standard No. 114.

As indicated above, the March 1991 final rule requires, for automatic transmission vehicles, any manual override of the transmission shift lock to be "covered by a non-transparent surface which, when installed, prevents sight of an activation of the device and which is removable only by use of a screwdriver or other similar tool." Toyota petitioned for an amendment that would, in addition to covered devices, allow noncovered override devices which must be operated while shifting. In its September 5, 1990 submission, Toyota had described its manual override of the transmission shift lever lock as having an override button located on the floor console. In order for the device to be activated, the override button must be released with one hand while the other hand simultaneously depresses the transmission button and moves the lever from the "park" position.

For the following reasons, the agency denies the portion of Toyota's petition that requests allowing the uncovered transmission shift override device that is operated simultaneously with two hands. In the preamble to the March 1991 final rule, the agency reiterated its rationale for not permitting exposed override devices. As indicated above, NHTSA acknowledged that vehicles with steering locks would protect against theft, even with an exposed transmission shift override device. However, the agency emphasized that such systems would not protect against the safety risks posed by vehicle rollaway, which can occur when children playing in an unattended vehicle shift the transmission lever out

of park. In its previous rulemaking notices of May 1990 and March 1991 on Standard No. 114, the agency has discussed the problem of children being injured when they shift the transmission lever out of "park" and the vehicle rolls down an incline.

NHTSA reaffirms its previous position that if a vehicle is equipped with a transmission shift override, it should be designed to ensure that children cannot see or easily gain access to the override, thus limiting the possibility of rollaway. Toyota addressed the rollaway prevention issue by stating that with Toyota's manual override control, two actions would have to be accomplished simultaneously, and with two hands, since the override release must be held down with one hand while releasing the transmission shift lever with the other.

However, Toyota acknowledged that its uncovered override button is on the floor console, immediately next to the transmission shift lever. The agency believes that a cover over the override button is necessary because, without a cover over the button, a child left alone in a vehicle may have time to play with an exposed override button, especially when in such close proximity, and discover that it works in conjunction with the transmission shift lever. The proximity of the override button to the transmission shift lever makes it easier for a child to either unintentionally or intentionally operate them simultaneously, resulting in a shifting of the transmission, and rollaway.

Leadtime

The final rule of May 1990 provided over two years of leadtime to comply with the amendments, until September 1, 1992. In the March 1991 final rule, the agency denied the portion of Nissan's petition for reconsideration that requested an additional year of leadtime before the amendments became effective. NHTSA's rationale for this denial was that the agency believed that manufacturers will not have to undertake extensive revisions to their systems to comply with Standard No. 114, and thus did not anticipate the need for any extensive retoolings or redesigns.

In its petition for reconsideration of the March 1991 final rule, Toyota also requested an additional year of leadtime, until September 1, 1993, before the amendments became effective. This request for additional leadtime by Toyota was in the part of Toyota's petition that requested the agency allow, on automatic transmission vehicles, automatic release of the key upon electrical failure. Toyota stated that the additional time was necessary since Toyota could not modify its lock and solenoid by the amendment's effective date. As was earlier discussed, the agency has decided to allow automatic release of the key upon electrical failure. There should, therefore, be no need for Toyota to modify its lock and solenoid from its existing system. As for the timer connected to the solenoid, Toyota can either remove it or render it inoperative. Neither action should require an additional year before the amendments to Standard No. 114 become effective.

The agency is, however, interested in reasonably accommodating manufacturers' concerns regarding compliance with child-proof emergency override buttons for transmission lock systems voluntarily, to prevent "unintended acceleration" incidents. This is a commendable effort on their part to prevent unexplained incidents of "unintended" acceleration. The agency understands their concern, i.e., that they must again, modify the redesignated transmission lock in such a short time frame, to accommodate rollaway prevention features. After reconsideration of the design changes, needed, NHTS has decided to provide an additional year's lead time. This will lessen the impacts associated with such redesign of the emergency override buttons of these systems on many car lines. A September 1, 1993 effective date will now be required for compliance with the emergency release button inaccessibility requirement.

NHTSA believes this is a reasonable response to Toyota's petition for reconsideration of this override button cover requirement. The agency does not believe it appropriate, in the long run, to permit exposed transmission lock emergency release buttons because children can push exposed buttons located in the vicinity of the transmission shift lever and shift the vehicle's gears. Thus, while the agency believes a "childproof" system is important to reduce "rollaway accidents," it also believes an additional year's leadtime for the transmission lock system override button cover is appropriate.

Consequently, the agency had determined that the effective date of September 1, 1992 continues to be appropriate for this rulemaking, except that a September 1, 1993 effective date is now in effect for the requirement of inaccessibility of the override button pursuant to S4.2.2(b).

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and procedures

NHTSA has analyzed this notice responding to the petitions for reconsideration to the amendments to Standard No. 114 and determined that it is not "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. For the May 30, 1990 final rule, the agency prepared a Final Regulatory Evaluation (FRE) which provides the details of the cost and benefit estimates, and a copy of the FRE was placed in the docket. NHTSA does not believe that this final rule which permits, in automatic transmission vehicles, the release of the key in the unlikely event of an electrical failure, would affect the impacts described in the March 1991 final rule amending Standard No. 114. Accordingly, a separate regulatory evaluation has not been prepared for this final rule.

Regulatory Flexibility Act

NHTSA has considered the effects of this rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a significant number of small entities. Few, if any, vehicle manufacturers are small businesses. Small nonprofit organizations and small governmental entities will not be significantly affected by this rule. Although such groups purchase vehicles with automatic transmissions, the agency anticipates no price changes as a result of the amendment to Standard No. 114.

Executive Order 12612 (Federalism)

NHTSA has considered the federalism implications of this final rule, as required by Executive order 12612. NHTSA is unaware of any existing State requirements that will be preempted by this rule. After considering this rule in accordance with the principles and criteria contained in Executive Order 12612, NHTSA has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this rule and determined that it will not have a significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, Federal Motor Vehicle Safety Standard No. 114, *Theft Protection* (49 CFR § 571.114), is amended as set forth below:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.114 [Amended]

2. The first sentence of S4.2.2(a) is revised to read as follows:

* * * * *

S4.2.2(a) Notwithstanding S4.2.1, provided that steering is prevented upon the key's removal, each vehicle specified therein may permit key removal when electrical failure of this system (including battery discharge) occurs, or may have a device which, when activated, permits key removal. * * *

* * * * *

3. S4.2.2(b) is revised to read as follows:

* * * * *

(b)(1) Notwithstanding S4.2.1, each vehicle specified therein may have a device which, when activated, permits moving the transmission shift lever from "park" after the removal of the key provided that steering is prevented when the key is removed.

(2) For vehicles manufactured on or after September 1, 1993, the means for activating the device shall either be operable by the key, as defined in S3, or by another means which is covered by a non-transparent surface which, when installed, prevents sight of and activation of the device and which is removable only by use of a screwdriver or other similar tool.

* * * * *

Issued on: January 14, 1992.

Jerry Ralph Curry,

Administrator.

[FR Doc. 92-1344 Filed 1-16-92; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 591

[Docket No. 89-5; Notice 9]

RIN 2127-AD00

Importation of Motor Vehicles and Equipment Subject to Federal Safety, Bumper, and Theft Prevention Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends 49 CFR part 591 to require that persons (other than original motor vehicle manufacturers who certify compliance to all applicable Federal motor vehicle safety standards) who wish to import nonconforming vehicles or equipment items for purposes of research, investigation, studies, demonstrations or training, or competitive racing events, submit, in advance of such importation, information in support of a request for admission, and obtain a letter of permission from NHTSA.

The purpose of the requirement is to ensure that the request to import nonconforming vehicles and equipment for these purposes is, in fact, not a subterfuge. In addition, if the requester intends to use the vehicle on the public roads, (s)he would have to obtain written permission from NHTSA for such use.

DATES: The effective date of the final rule is February 18, 1992.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (202-366-5263).

SUPPLEMENTARY INFORMATION: On January 29, 1991, NHTSA published a notice of proposed rulemaking on which this final rule is based (56 FR 3236). As the preamble explained, under 15 U.S.C. 1397(j) NHTSA may allow the importation into the United States of any motor vehicle or item of motor vehicle equipment that does not conform to all applicable Federal motor vehicle safety standards "upon such terms and conditions as [NHTSA] may find necessary solely for the purpose of research, investigation, studies, demonstrations or training, or competitive racing events."

On April 25, 1989, in prospective implementation of section 1397(j), NHTSA proposed 49 CFR 591.5(j), which, in essence, proposed the adoption of the previously existing requirement in 19 CFR 12.80(b)(1)(vii), the joint importation regulations of the U.S. Customs Service and NHTSA, that an appropriate information statement accompany declarations of entry for purposes of test, experiment, repairs or alterations, show, or competition (54 FR 17772). However, in developing the final rule, NHTSA realized that it had no authority of its own to seize motor vehicles entered pursuant to false declarations. It therefore sought a means to ensure the bona fide nature of imports under § 591.5(j) before they entered the United States and passed out of the agency's control. This effort was necessary because there is no requirement that these vehicles enter under a conformance bond. NHTSA was particularly concerned because the volume of imports under § 12.80(b)(1)(vii) during 1989 was approaching the number of nonconforming vehicles for which conformance verification is required. Further, with the restrictions placed upon nonconforming vehicles by amendments (Pub. L. 100-562, The Imported Vehicle Safety Compliance Act) to the National Traffic and Motor Vehicle Safety Act intended to reduce the number of "grey market" cars, the agency envisioned that a greater proportion of people would attempt to enter vehicles under claims that importation was for the purpose of tests, experiments, demonstrations and the like. NHTSA recalled that some importers seeking vehicle entry under § 12.80(b)(2)(vii) had submitted statements of purpose whose truthfulness the agency had questioned. In those instances, the agency could only object to the entry under § 12.80(b)(2)(vii), and request Customs to require reentry of the nonconforming vehicle under § 12.80(b)(2)(iii), the declaration that the nonconforming vehicle would be brought into conformance.

At the conclusion of this review, the agency determined that NHTSA's authority to exempt a nonconforming vehicle from the importation prohibitions for reasons of testing, experimentation, etc., would be better exercised before vehicle entry rather than after, and that it could adopt a pre-approval requirement as one of the "terms and conditions" authorized by the 1988 Act. Accordingly, when the final rule was published on September 29, 1989 (54 FR 40069), § 591.5(j) required that the importer's declaration at the time of entry include a statement that the importer had previously received written permission from NHTSA. Section 591.6(f) set forth the requirement that the prospective importer submit in advance of such importation a written request containing the information previously required to accompany the declaration

Petitions for reconsideration of this requirement were received, commenters claiming that the requirement was unduly burdensome and objecting to the fact that the requirement had been adopted without a specific proposal for it. In response to these petitions, the agency rescinded the requirement for prior approval, and issued its April 1989 proposal which continued the existing practice of simultaneous submission. This action occurred on February 5, 1990 (55 FR 3742).

In developing the proposal published in January of this year, the agency reviewed the substantive arguments that the petitioners had raised, and tried to accommodate their concerns. NHTSA realized that the inclusiveness of the former requirement for prior approval of importation might indeed create an unnecessary burden upon original manufacturers of motor vehicles who sell their products in the United States, and who, in the course of product development and evaluation, are accustomed to importing prototypes, or completed vehicles manufactured by their foreign subsidiaries, joint venturers, or other unrelated vehicle manufacturers. NHTSA had no wish to encumber petitioners such as Volkswagen, Mazda, GM, and others, who are "original manufacturers" as that term is defined in part 591, and whose purpose in importation is directly related to legitimate business concerns of research, studies, and the other categories listed in section 108(j). Given that such manufacturers have been meeting NHTSA's requirements over the years and given the certain continuity and high public visibility of their activities, NHTSA believed it reasonable to expect that importations by them will be in good faith. Therefore, it appeared that there wasn't any need to require prior approval for their vehicle importations.

However, since adoption of § 591.5(j), NHTSA has noted an increasing number of importations, both accomplished and attempted, of personal vehicles by private importers under test declarations. Once a vehicle has been admitted by Customs under § 591.5(j) (Box 7 on importation Form HS-7), there is no DOT bond or other enforcement mechanism available to the agency (other than a possible civil penalty of up to $1,000) to compel the importer either to conform it or to export it.

Accordingly, NHTSA did not propose that the current requirement be changed for original manufacturers of motor vehicles that are certified as conforming to all applicable Federal motor vehicle safety standards, and who wish to import a motor vehicle of the same type that they manufacture (though such vehicle may be of a type the manufacturer does not sell in the United States). However, it did propose that any other person wishing to import a vehicle pursuant to section 591.5(j) obtain prior approval.

NHTSA also proposed reinstatement of the previous restriction upon importation (§ 591.7(c)) that a vehicle imported pursuant to § 591.5(j) may not be used on the public roads without the written approval of the Administrator, and added to it the proposed requirement that the importer retain title to the vehicle at all times that it is in the United States, and, further, that it not lease it during that time.

Comments on the Proposal

Seven comments were received in response to the proposal, five from major motor vehicle manufacturers, one from a motor vehicle trade organization, and one from a law firm. These were, respectively, Mazda Research & Development of North America, Inc., Volkswagen of America, Inc., Ford Motor Company, Chrysler Corporation, General Motors Corporation, Motor Vehicle Manufacturers Association, and Pillsbury, Madison & Sutro. Under the proposal, modifications would be made in §§ 591.5, 591.6, and 591.7. With respect to each of these sections, a discussion follows on the comments received and their resolution.

Proposed Section 591.5(j)(1)

A. Omission of Reference to Theft Prevention Standard

This declaration begins with the statement that "the vehicle or equipment item does not conform with all applicable Federal motor vehicle safety and bumper standards." Ford called attention to omission of reference to the theft prevention standard in the declaration. This omission of previously existing language was deliberate. Whereas all imported vehicles are required to conform to safety and bumper standards, only those that have been designated by the agency as high theft are required to meet the theft prevention standard. Thus, the standard does not apply *ab initio* to all motor vehicles. It does apply, however, to foreign-manufactured counterparts of vehicles certified by their manufacturers as meeting U.S. safety and bumper standards, and which the agency has designated as a high theft line. For example, the agency has designated the BMW 3 series as a high theft line. This designation also applies to 3 series cars manufactured for markets other than the United States. If a 3 series car is offered for importation under section 108(j), and does not comply with the theft prevention standard at the time it is offered for importation, it cannot be admitted. Under 15 U.S.C. 2027, vehicles and equipment that are subject to the Theft Prevention Standard and that do not conform to it may not be imported under any circumstances. However, NHTSA believes that the type of vehicle most likely to be imported for the purposes of section 108(j) will not be grey market vehicles with U.S. high theft line counterparts, but vehicles of an experimental nature or of types and models which are not substantially similar to U.S.-certified vehicles. Therefore, the omission of a declaration of noncompliance with the Theft Prevention Standard should not create difficulty.

B. No Allowance or Importation for Display

Section 591.5(j) allows importation of nonconforming vehicles and equipment for a temporary period solely for the purpose of research, investigations, studies, demonstrations or training, or competitive racing events. Pillsbury requested that the provision be expanded to allow importation for a further category, display, in order to be consistent with EPA requirements. The law firm argued that the 1988 amendments to the Vehicle Safety Act provide sufficient safeguards against abuse of a display-only exemption, and that NHTSA could provide that the vehicle not be sold until an appropriate certificate of conformity was received.

In promulgating part 591, NHTSA explained that, although the previous importation regulation permitted importation for "show", Congress did not include this category in 15 U.S.C. 1397(j), the authority for importations under § 591.5(j). The agency has previously stated (54 FR at 17776 and 55 FR 40876) that § 591.5(j) does not preclude original vehicle manufacturers who import nonconforming vehicles for display at auto shows to gauge public reaction to new styling or engineering features from declaring that such importation is for "research" or "demonstrations." But in the absence of specific authority from Congress to allow importations for show or display, the agency has adopted a conservative attitude towards entities other than original vehicle or vehicle equipment manufacturers who wish to import nonconforming vehicles for "research" or "demonstrations."

NHTSA is aware that there is an interest in the general public in

importing vehicles for static display that may not have reached the 25-year age mark entitling them under 15 U.S.C. 1397(i) to entry without conformance. According, it has begun to examine the statutory language to see if a sufficient set of safeguards can be devised, with a view towards proposing a regulation sufficient to accommodate importation of vehicles for display purposes, by persons other than original vehicle manufacturers.

Proposed Section 591.5(j)(2)(ii)

A. Breadth of Term "Original Manufacturer"

A declarant under subparagraph (j)(2)(ii) is an "original vehicle manufacturer of motor vehicles that are certified to comply with all applicable Federal motor vehicle safety standards." Mazda and Volkswagen were concerned that "original manufacturer" might be construed so narrowly that subsidiaries, distributors, and marketing arms owned or controlled by them would not be included in the term, and hence, would be subject to the more restrictive importation requirements proposed.

NHTSA wishes to reassure the industry that this requirement was not intended to exclude United States subsidiaries of foreign manufacturers who sell their products in the United States. The agency regards entities that are wholly owned by original motor vehicle manufacturers (including subsidiaries that are distributors or marketing arms) as standing in the shoes of their corporate parent. For example, it regards Mazda Research & Development of North America as having the same right as its corporate parent, Mazda Motor Corporation, to import vehicles under § 591.5(j) as an "original vehicle manufacturer." By the same token, it regards Volkswagen of America as an "original manufacturer of motor vehicles", and entitled to import vehicles made by Volkswagen de Mexico or other companies in which Volkswagen A.G. may have an interest, without the necessity of obtaining prior approval from NHTSA. Therefore, the agency is amending this subsection to add "(or wholly owned subsidiary thereof)" after the words "original vehicle manufacturer." However, if a prospective importer is not 100 percent owned by an original vehicle manufacturer, the agency is not prepared, absent a convincing argument regarding the nexus between the person and the vehicle assembler, to interpret the term, "original vehicle manufacturer," to include sucn person. NHTSA will be willing to consider each such case on the merits.

Volkswagen has requested the name and telephone number of an individual or office to which inquiries on importations under § 591.5(j) may be addressed. For an interpretation of regulatory language, the reader may call Taylor Vinson, Office of Chief Counsel, 202-366-5263. (NB: Requests for interpretation generally should be in writing. Further, with the exception of routine issues, requests for interpretation are answered in writing only.) For questions regarding implementation of import procedures such as submission of documentation, or for advice on the actual importation of a vehicle, the reader should call Ted Bayler, Office of Enforcement, 202-366-5306.

B. Omission of Manufacturer of "Motor Vehicle Equipment"

Subparagraph (j)(2)(ii) extends only to manufacturers of motor vehicles. Volkswagen and Ford note the omission of original equipment manufacturers, and believe that they should be added for consistency and clarity.

The purpose of this subparagraph is to relieve original manufacturers of motor vehicles from a requirement to obtain prior approval from NHTSA for importation and use on the public roads of nonconforming motor vehicles. As such, the subparagraph does not apply either to original manufacturers of motor vehicle equipment, or motor vehicle equipment. Thus, manufacturers of original motor vehicle equipment who wish to import motor vehicles must obtain prior approval. In the absence of any request from an equipment manufacturer for inclusion, the agency has not made the change suggested by Ford and Volkswagen.

C. Ambiguity of Term "Type of Motor Vehicle"

Under the remainder of the declaration in subparagraph (j)(2)(ii), the motor vehicle manufacturer-importer avers that it is "a manufacturer of the (same) type of motor vehicle as the motor vehicle it seeks to import." Chrysler commented that there is a potential for misinterpretation in the term "type of motor vehicle" because it was not defined, and that delays are likely to result at the time of importation because of ambiguities. In addition, both Chrysler and Mazda argued that original manufacturers should not be restricted in the kinds of nonconforming motor vehicles they import.

The purpose of this proposed language was to foreclose the possibility that, say, a manufacturer of heavy trailers might wish to import a 200 mph passenger car without obtaining prior approval by NHTSA. Importation of such a disparate vehicle on its face appears unrelated to the manufacturer's business needs arising from manufacturing truck trailers. However, balancing the desirability that original vehicle manufacturers not be restricted in the types of vehicles they import for § 591.5(j) purposes against the possibility that they will abuse the privilege, NHTSA finds it in the public interest to adopt subparagraph (j)(2)(ii) without the type similarity declaration proposed. If an abuse appears to exist, NHTSA will demand reentry under an appropriate provision as it has heretofore done.

Proposed Section 591.5(j)(3)

A. Documentary Proof of Export or Destruction

Subparagraph (j)(3) would require all importers under § 591.5(j) to provide NHTSA with documentary proof of export or destruction not later than 30 days following the end of the period for which the vehicle has been admitted into the United States.

This proposed new requirement that would apply to original vehicle manufacturers as well as other importers was objected to by Mazda, Volkswagen, Motor Vehicle Manufacturers Association (and by endorsement, Ford and GM) insofar as it would be a requirement for original manufacturers. VW suggested that manufacturers could retain appropriate documentation for 3 years. Mazda argued that sufficient safeguards exist under Customs regulations because destruction of nonconforming vehicles admitted pursuant to Temporary Importation Bonds is documented on Customs Form 3499. Conversely, copies of shipping documents evidencing export are provided to Customs when an importer requests release of the Temporary Importation Bond under which the vehicle entered.

The documentation referenced by Mazda is not furnished to NHTSA but to another Federal agency, the Customs Service. Further, this documentation does not address the situation in which the vehicle remains in the United States after liquidation of the Temporary Importation Bond through payment of duty, and for such longer period of time as NHTSA may allow. After payment of duty, Customs ceases to have any jurisdiction over the vehicle, and will have no concern over its eventual disposition. Under all these circumstances, NHTSA must insist upon documentary proof of export or

destruction. Therefore, subparagraph (j)(3) is adopted as proposed.

B. Inoperability as a Substitute for Destruction

Subparagraph (j)(3), in effect, requires that a nonconforming vehicle either be destroyed or exported at the end of the period for which it is admitted. Chrysler asked whether the requirement for destruction would be satisfied by rendering a vehicle permanently inoperable before its donation for educational purposes to a bona fide educational institution.

Earlier in this notice, the agency stated its interest in reviewing the statutory provisions relating to the possible allowance of importation for display purposes. As the operability of a vehicle may bear some relation to a decision to allow importation for display purposes, NHTSA will consider Chrysler's question regarding destructability at that time.

Proposed Section 591.6(g)(1): Acceptability of Post-Test Conformity

Under this proposed section, information to be submitted by an importer includes a statement of "the intended means of final disposition (and disposition date) of the vehicle or equipment item after completion of the purpose for which it is imported." Chrysler interprets the proposed language as contemplating conformity as an option to export or destruction at the end of the importation period. It asks for clarification of this point, believing that it should be an option for original vehicle manufacturers.

This question cannot be answered in a vacuum. By analogy, the Safety Act provides the Administrator with authority to grant temporary exemptions if they will facilitate the development and field evaluation of new motor vehicle safety features providing a level of safety at least equivalent to the standard from which exemption is sought. It is therefore possible that an original vehicle manufacturer would wish to import one of its vehicles that is technically noncompliant with a standard in order to test an innovative feature relating to that standard, and, after testing, to bring the vehicle into compliance with it. Under this circumstance, NHTSA might be amenable to accepting a statement from an original vehicle manufacturer that the intended means of disposition of the vehicle is post-test conformity. On the other hand, if the noncompliant aspects of the vehicle are unrelated to the purpose for which it is imported, and at the time of entry the importer announces an intent to conform it at the end of the importation period, NHTSA believes that the vehicle ought to be manufactured to conform, or be conformed immediately after its importation by a registered importer, in order that full protection may be provided the public during the time the vehicle is operated on the public roads.

Proposed Section 591.6(g)(2): Clarification of Ambiguity

As proposed, this section would require that original manufacturer declarations be accompanied by a written statement containing the information required in (g)(1). One of the items specified in (g)(1) is a letter from the Administrator authorizing importation, i.e., a letter of prior approval. MVMA (and by endorsement, Ford and Chrysler) asked for a clarification that NHTSA does not intend to require original manufacturers to obtain prior approval. NHTSA regrets this inadvertent ambiguity, and is amending subsection (g)(2) to clarify that the information required of original manufacturers does not include a prior approval statement.

Existing Sections 591.7 (a) and (b): Congruity of Importation Periods

Volkswagen and Ford commented that vehicles imported pursuant to Customs Temporary Importation Bonds (TIBs) may not remain in the U.S. longer than three years, while those for which duty has been paid may remain longer. Ford asked for an amendment of subsection (a) that would extend the three-year period upon written approval from NHTSA. It recommended a similar amendment to subsection (e). Volkswagen recommended that NHTSA ask Customs to amend its TIB provisions to be identical with the NHTSA time frame. Ford would also amend subsection (b) to clarify that the permission in writing is that specified in subsection (e).

It is not legally possible for either NHTSA or the U.S. Customs Service to grant these requests, as NHTSA learned when developing the regulation. Under the Tariff Schedules established by Congress, merchandise (including motor vehicles) may be conditionally admitted under TIBs for a period not to exceed 3 years. Thus, only Congress can extend the time period. Neither NHTSA nor Customs has the regulatory authority to do so.

Upon review of Ford's request to amend subsection (b) to reflect subsection (e), NHTSA has found a certain degree of redundancy, and is therefore amending subsection (b) to incorporate the non-redundant portions of subsection (e).

Proposed Section 591.7(c)

A. Restriction Upon Leasing Imported Vehicles

Under the proposal, a motor vehicle imported pursuant to § 591.5(j) could not be leased. Chrysler, Ford, and MVMA opposed this prohibition, and recommended that it not be adopted, or at least that it exclude original vehicle manufacturers from its coverage.

NHTSA proposed the leasing restriction as an effort to ensure that importers retain both title and possession of motor vehicles. However, in some situations the purposes of experimentation may not be fully realized unless a fleet of test vehicles is fielded over an extended period of time, and in these situations, a lease may be desirable. Accordingly, the requirement adopted will allow original vehicle manufacturers to lease vehicles they have imported under § 591.5(j).

B. Administrator's Prior Approval for On-Road Use

As proposed, vehicles imported pursuant to § 591.5(j) may be used on the public roads only if permission has been obtained in writing from NHTSA. Ford requested a clarification as to whether this applied to original vehicle manufacturers. MVMA (and by endorsement, GM) stated that § 591.6(g)(1) already controls the use on the public roads of grey market vehicles, and that such a requirement would be burdensome on original manufacturers of vehicles.

NHTSA has no intention of placing such a requirement on original vehicle manufacturers. Accordingly, it is clarifying in the final rule that the written permission referenced in subsection (c) for on road use is required for vehicles that have entered under the declaration that the importer has received written permission from NHTSA for the importation (subsection (j)(2)(i)). This declaration does not apply to original vehicle manufacturers who are permitted to enter their vehicles without written permission (subsection (j)(2)(ii)).

Proposed Section 591.7(e)

A. Addition of "Equipment Item"

This section begins "If the importer of a vehicle under section 591.5(j) does not intend to export or destroy the vehicle or equipment item", and Ford suggested adding "equipment item" after the initial reference to "vehicle." The agency has done so.

B. Addition and Deletion of Language

As proposed, subsection (e) requires an importer to request permission in writing to allow retention of a vehicle or equipment item in the U.S. beyond the three-year period "subject to the limitations of" subsection (b). Ford suggested adding language that identifies those limitations, and strikes the reference to subsection (b). As NHTSA has noted previously, proposed subsection (e) has been incorporated into subsection (b).

Rulemaking Analyses

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the economic impacts of this rule and determined that it is not major within the meaning of E.O. 12291 nor significant under Department of Transportation policies and procedures. There is no substantial impact upon a major transportation safety program, and the action does not involve any substantial public interest or controversy. The impact upon the Federal government is that it would be required, in certain instances, to issue written approvals to original manufacturers who are importers of nonconforming vehicles and wish to use them on the public roads, and to other importers who are not original manufacturers. There should be little impact upon those who will have to seek prior approval. These importers need not wait until their vehicles arrive, but any apply to NHTSA is advance of the shipping date, and NHTSA will respond in two to five working days. Therefore, preparation of a full regulatory evaluation is not warranted.

National Environmental Policy Act

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act. The rule will not have a significant effect upon the environment.

Regulatory Flexibility Act

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. Since the impact of this rule will be minimal (the writing of a letter and the response to it), I certify that this rule would not have a significant economic impact upon a substantial number of small entities. There would be no substantial effect on state and local governments who purchase new vehicles since the affected vehicles are not imported for resale. Accordingly, no initial regulatory flexibility analysis has been prepared.

Paperwork Reduction Act

The declaration requirements and submittal of written statements to NHTSA are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. However, they were previously approved by OMB for inclusion in § 591.6(f) in the final rule published on September 29, 1989 (OMB Approval Number 2127–0002).

Executive Order 12612 (Federalism)

This rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 591

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, title 49 Code of Federal Regulations part 591 is amended as follows:

1. The authority citation for part 591 continues to read as follows:

Authority: Pub. L. 100–562, 15 U.S.C. 1401, 1407, 1912, 1916, 2022, 2027; delegations of authority at 49 CFR 1.50 and 501.8

2. Section 591.5(j) is revised to read:

§ 591.5 Declarations required for importation.

* * * * *

(j)(1) The vehicle or equipment item does not conform with all applicable Federal motor vehicle safety and bumper standards, but is being imported for a temporary period solely for the purpose of:

(i) research;

(ii) investigations;

(iii) studies;

(iv) demonstrations or training; or

(v) competitive racing events;

(2)(i) The importer has received written permission from NHTSA; or

(ii) The importer is an original manufacturer of motor vehicles (or a wholly owned subsidiary thereof) that are certified to comply with all applicable Federal motor vehicle safety standards; and

(3) The importer will provide the Administrator with documentary proof of export or destruction not later than 30 days following the end of the period for which the vehicle has been admitted into the United States.

* * * * *

3. Section 591.6(g) is revised to read:

§ 591.6 Documents accompanying declarations.

* * * * *

(g) A declaration made pursuant to § 591.5(j) shall be accompanied by the following documentation:

(1) A declaration made pursuant to § 591.5(j)(2)(i) shall be accompanied by a letter from the Administrator authorizing importation pursuant to that section. (Any person seeking to import a motor vehicle or item of motor vehicle equipment pursuant to that section shall submit, in advance of such importation, a written request to the Administrator containing a full and complete statement identifying the vehicle or equipment item, its make, model, model year or date of manufacture, VIN if a motor vehicle, and the specific purpose(s) of importation. The discussion of purpose(s) shall include a description of the use to be made of the vehicle or equipment item. If use on the public roads is an integral part of the purpose for which the vehicle or equipment item is imported, the statement shall request permission for use on the public roads, describing the purpose which makes such use necessary, and stating the estimated period of time during which use of the vehicle or equipment item on the public roads is necessary. The request shall also state the intended means of final disposition (and disposition date) of the vehicle or equipment item after completion of the purpose for which it is imported.)

(2) A declaration made pursuant to § 591.5(j)(2)(ii) shall be accompanied by the written statement of its importer describing the use to be made of the vehicle or equipment item. If use on the public roads is an integral part of the purpose for which the vehicle or equipment item is imported, the statement shall describe the purpose which makes such use necessary, state the estimated period of time during which use of the vehicle or equipment item on the public roads is necessary, and state the intended means of final disposition (and disposition date) of the vehicle or equipment item after completion of the purpose for which it is imported.

4. Section 591.7(b) is revised to read:

* * * * *

§ 591.7 Restrictions on importations.

(b) If the importer of a vehicle or equipment item under § 591.5(j) does not intend to export or destroy the vehicle or equipment item not later than 3 years after the date of entry, and intends to pay duty to the U.S. Customs Service on such vehicle or equipment item, the importer shall request permission in

writing from the Administrator for the vehicle or equipment item to remain in the United States for an additional period of time not to exceed 5 years from the date of entry. Such a request must be received not later than 60 days before the date that is 3 years after the date of entry. Such vehicle or equipment item shall not remain in the United States for a period that exceeds 5 years from the date of entry, unless further written permission has been obtained from the Administrator.

5. Section 591.7(c) and (d) are added to read.

* * * * *

(c) An importer of a vehicle which has entered the United States under a declaration made pursuant to § 591.5(j)(2)(i) shall at all times retain title to and possession of it, shall not lease it, and may use it on the public roads only if written permission has been granted by the Administrator, pursuant to § 591.6(g)(1). An importer of a vehicle which has entered the United States under a declaration made pursuant to § 591.5(j)(2)(ii) shall at all times retain title to it.

(d) Any violation of a term or condition imposed by the Administrator in a letter authorizing importation or on-road use under § 591.5(j) shall be considered a violation of 15 U.S.C. 1397(a)(1)(A) for which a civil penalty may be imposed.

Issued on: January 3, 1992.

Jerry Ralph Curry,

Administrator.

[FR Doc. 92-537 Filed 1-16-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB52

Endangered and Threatened Wildlife and Plants; Final Rule To List the Plant Spiranthes Diluvialis (Ute Ladies'-Tresses) as a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the plant *Spiranthes diluvialis* (Ute ladies'-tresses) to be a threatened Species under the authority of the Endangered Species Act of 1973 (Act), as amended. *S. diluvialis* was historically found in riparian areas in Colorado, Utah, and Nevada. It is presently found in relatively undisturbed riparian areas in the greater Denver metropolitan area, Colorado (two populations); in wetlands near Utah Lake in northern Utah (two populations); and in low elevation riparian areas in the Colorado River drainage in eastern Utah (six populations). This species is threatened primarily by habitat loss and modification, though its small populations and low reproductive rate make it vulnerable to other threats also. This determination that *S. diluvialis* is a threatened species protects it under the authority of the Act.

EFFECTIVE DATE: February 18, 1992.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Fish and Wildlife Enhancement Field Office, U.S. Fish and Wildlife Service, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104.

FOR FURTHER INFORMATION CONTACT: John L. England at the above address, telephone 801/524-4430 or FTS 588-4430.

SUPPLEMENTARY INFORMATION:

Background

In 1981, live plants belonging to the genus *Spiranthes* were collected in Colorado by W.G. Gambill and W.F. Jennings and sent to C.J. Sheviak for examination. The following year, additional specimens were collected in meadows along Clear Creek in Colorado, and from similar habitat in Utah. After examining these and other specimens from Colorado, Utah, and Nevada (some of which were assigned in the past to other *Spiranthes* species), Sheviak described a new species, *Spiranthes diluvialis* (Sheviak 1984). The type locality is along Clear Creek in Golden, Colorado.

Current and historic populations of *S. diluvialis* in Colorado and Utah were confused with other species of *Spiranthes* with distributions far removed from this region including: *S. cernua* (Arnow et al. 1980, Correll 1950, Holmgren in Cronquist et al. 1977, and Higgins in Welsh et al. 1987), *S. porrifolia* or *S. romanzoffiana* var. *porrifolia* (Rydberg 1906, Correll 1950, Holmgren in Cronquist et al. 1977, Luer 1975, Goodrich and Neese 1986, and Higgins in Welsh et al. 1987), and *S. magnicamporum* (Luer 1975). These species differ significantly, morphologically, and cytologically, from *S. diluvialis*. The confusion of *S. cernua*, *S. magnicamporum*, and *S. porrifolia* with *S. diluvialis* stems from these species differing from the widespread *S. romanzoffiana* (which occurs in Colorado and Utah at high elevations) in their suppression of the pandurate (violin shaped) form of the lip, which is the distinctive feature of *S. romanzoffiana*.

Spiranthes diluvialis is a perennial, terrestrial orchid with stems 20 to 50 centimeters (cm) (8 to 20 in.) tall arising from tuberously thickened roots. Its narrow leaves are about 28 cm (11 in.) long at the base of the stem and become reduced in size going up the stem. The flowers consist of 3 to 15 small white or ivory colored flowers clustered into a spike arrangement at the top of the stem. The species is characterized by whitish, stout, ringent (gaping at the mouth) flowers. The sepals and petals, except for the lip, are rather straight, although the lateral sepals are variably oriented, with these often spreading abruptly from the base of the flower. Sepals are sometimes free to the base. The lip lacks a dense cushion of trichomes on the upper surface near the apex. The rachis is sparsely to densely pubescent with the longest trichomes 0.2 mm (0.008 in.) long or longer, usually much longer. The chromosome number is 2n=74. It typically blooms from late July through August, in some cases through September. Blooms were recorded as early as early July and as late as early October (Sheviak 1984, Coyner 1990, Jennings 1989).

Spiranthes diluvialis is endemic to moist soils in mesic or wet meadows near springs, lakes, or perennial streams. The species occurs primarily in areas where the vegetation is relatively open and not overly dense, overgrown, or overgrazed (Coyner 1989, 1990; Jennings 1989, 1990). Populations of *S. diluvialis* occur in relatively low elevation riparian meadows in three general areas of the interior Western United States.

The two eastern populations are located in mesic riparian meadows in relict tall grass prairie areas near Boulder Creek in the City of Boulder, Boulder County, Colorado, and in mesic meadows in the riparian woodland understory along Clear Creek in adjacent Jefferson County, Colorado. The Boulder population is one of the largest known populations. The Clear Creek population has one site in the City of Golden and a second in the City of Wheat Ridge (Jennings 1989). No other populations of the species are currently known from Colorado, though historic collections were made from either Weld or Morgan County in the Platte River valley in 1856, and at Camp Harding in El Paso County in 1896 (Jennings 1989, 1990).

The central populations of *S. diluvialis* are in wet or mesic riparian

meadows or in understory meadows of riparian woodlands in the Colorado River drainage of eastern Utah. Six separate populations are known: (1) Along the Green River in Browns Park in Daggett County; (2) in the Cub Creek drainage in Dinosaur National Monument in Uintah County; (3) along the Uinta and Whiterocks Rivers near Whiterocks in Duchesne and Uintah Counties (one of the largest populations); (4) along the Duchesne River near Duchesne in Duchesne County; (5) along the Fremont River in Capitol Reef National Park in Wayne County; and (6) along Deer Creek in Garfield County. All these populations were discovered since 1977 (Coyner 1989, 1990; Heil 1988; Jennings 1989; U.S. Fish and Wildlife Service 1991).

The western populations of *S. diluvialis* occur in riparian, lake, and spring-side wet or mesic meadows in the eastern Great Basin of western Utah and adjacent Nevada. Two existing populations are known, both in wetlands adjacent to Utah Lake in Utah County, Utah. Five additional populations were known:

(1) "Ogden" in Weber County, Utah—specimens from this population were collected in 1887 but no plants have been observed since then; (2) wetlands in the Jordan River drainage in Salt Lake County, Utah—specimens from this population were last collected in 1953; (3) Red Butte Canyon near Salt Lake City—plants in this population were last observed in 1966; (4) Willow Springs near the town of Callao in Tooele County, Utah—specimens from this population were last collected in 1956; and (5) wet meadow in the drainage of Meadow Valley Wash near the town of Panaca in Lincoln County, Nevada—specimens from this population were last collected in 1936. Recent searches for *S. diluvialis* in the Great Basin failed to rediscover any of the species' historic populations, except for those near Utah Lake, and recent rare plant inventories have not discovered any new Great Basin populations (Coyner 1989, 1990; Jennings 1989; U.S. Fish and Wildlife Service 1991).

Most of the populations in Colorado occur on city park and greenbelt areas owned by the Cities of Boulder and Wheat Ridge. Existing populations in Utah primarily occur on lands managed by the Bureau of Land Management, the National Park Service, and the Forest Service. One Utah population occurs on Ute Indian Tribal land within the boundary of the Uintah and Ouray Reservation. Two Utah populations occur on private land. Though all populations are relict in nature, the largest populations occur in Boulder County, Colorado, and along the Uinta River in Utah.

Federal action on this species began on September 27, 1985, when the Service published a notice of review of candidate plants for listing as endangered or threatened species, which included *S. diluvialis* as a category 2 species (50 FR 39526). Category 2 comprises taxa for which the Service has information indicating the appropriateness of a proposal to list the taxa as endangered or threatened but for which more substantial data are needed on biological vulnerability and threats.

After a review of status information acquired since 1985 (Coyner 1989, Heil 1988, Jennings 1989), the Service upgraded *S. diluvialis* to category 1 in the plant notice of review published in the **Federal Register** on February 21, 1990 (55 FR 6184). Category 1 comprises those taxa for which the Service has on file substantial information on the biological vulnerability and threats to support the appropriateness of proposing to list them as endangered or threatened species.

In the 1990 notice, *S. diluvialis* was given the common name "plateau lady's tresses" to provide the public a convenient reference. However, the Service will henceforth use "Ute ladies'-tresses" as the species' common name in recognition of the fact that the species' historic range coincides with the ancestral home of the Ute Indian Tribe.

On November 13, 1990, the Service published in the **Federal Register** (55 FR 47347) a proposed rule to list *S. diluvialis* as a threatened species. That proposal constituted the final finding for this species.

Summary of Comments and Recommendations

In the November 13, 1990, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. A newspaper notice concerning this proposed action was published in the following papers during the period December 1, 1990, to December 6, 1990: The Salt Lake Tribune, the Desert News, the Tooele Transcript-Bulletin, the Uintah Basin Standard, The Daily Herald, The Standard-Examiner, The Vernal Express, The Denver Post, the Las Vegas Review-Journal, The Boulder Daily Camera, the Garfield County News, the Lincoln County Record, and the Richfield Reaper. The original comment period extended from November 13, 1990, to January 14, 1991. A notice published in the **Federal Register** (56 FR 4028) on February 1, 1991, extended the comment period from February 1, 1991, until March 15, 1991. Appropriate State agencies, county governments, Federal Agencies, scientific organizations, and other interested parties were contacted and requested to comment.

During the comment period (between November 13, 1990, and March 15, 1991), a total of 44 comments were received, including 8 responses from 6 Federal Agencies (includes 2 offices each from 2 Federal Agencies); 1 congressman; 3 States; 8 local governments; and 24 private organizations, companies, and individuals. Of those comments, 25 supported the listing, 6 opposed the listing, and 13 were neutral or took no position concerning the proposal.

Written comments received during the extended comment period are covered in the following summary. Comments of a similar nature or point are grouped into a number of general issues. These issues, and the Service's response to each, are discussed below:

Issue 1—Whether the species should be listed as endangered or threatened. Twelve commenters (eleven from Colorado), believed that the species should be listed as endangered. One commenter opposed listing as endangered. Seven commenters supported listing the species as threatened.

Response—Based on the best available information, including information obtained during the public comment period and from searches conducted in 1991, the Service believes that threatened is the most appropriate status. The basis for this determination is discussed under "Summary of Factors Affecting the Species."

Issue 2—Whether there are sufficient data and evidence to support listing. Two commenters challenged the adequacy of available data. One commenter indicated that there is no record of population decline in known populations. Four commenters recommended delaying listing until further survey and studies are completed.

Response—The Service is listing this species based on the best scientific and commercial information available, which is the standard required under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). General botanical inventories of riparian habitats during the past 150 years within the species' range discovered a limited number of historic populations, of which a large proportion have been extirpated, and two of the four Colorado populations appear to

Most of the species' historic western populations on the Wasatch Front and in the Great Basin are believed to have been extirpated, and two of the four Colorado populations appear to have extirpated. Most known populations contained less than 1,000 plants, when counted in 1990 or 1991. These smaller populations may not be demographically stable over the long term.

It is difficult to prove population declines when populations can fluctuate dramatically in size from year to year. For example, the primary site for the Boulder population contained 5,435 plants in 1986, 200 plants in 1987, 131 plants in 1988, 1,137 plants in 1989, 1,894 plants in 1990, and at least 80 plants in 1991 (James Crain, Director, Open Space, City of Boulder, in litt. 1991; W.F. Jennings, orchidologist, in litt. 1991; W.F. Jennings, pers. comm. 1991). Information such as this could be interpreted as indicating a downward population trend. However, the decline of the species is better evidenced by the fact that many of the historic populations (i.e., known prior to 1977) are now presumed extirpated.

As with any species that is listed or is being proposed for listing, there is always the possibility that there may be undiscovered populations. The Service welcomes any efforts by others to survey for additional populations. However, the best available information indicates that the species is rare and declining and that its habitat is threatened. Four commenters identified proposed actions in Colorado and Utah that might threaten *S. diluvialis*.

Issue 3—Four commenters expressed the opinion or noted that *S. diluvialis* was not a valid taxon, but is synonymous with *S. porrifolia* or with *S. romanzoffiana* var. *porrifolia*; thus, it is widespread and not deserving of listing. Four other commenters supported it was a valid taxon. One commenter noted that three specimens sent to the Orchid Identification Center were identified as *S. diluvialis*.

Response—The Service believes that there are sufficient morphological, life history, and cytological differences between *S. porrifolia* and *S. diluvialis* to support *S. diluvialis* as a separate species. The confusion of *S. porrifolia* with *S. diluvialis* in the Great Basin stems from both species' differing from the widespread *S. romanzoffiana* in their suppression of the pandurate form of the lip, which is the distinctive feature of *S. romanzoffiana*.

Spiranthes diluvialis is not known west of easternmost Nevada. It typically blooms from late July through August, and in some cases through September. It is characterized by whitish, stout, ringent (gaping at the mouth) flowers. The sepals and petals, except for the lip, are rather straight, although the lateral sepals are variably oriented, often spreading abruptly from the base of the flower. Sepals are sometimes free to the base. The lip lacks a dense cushion of trichomes on the upper surface near the apex. The rachis is sparsely to densely pubescent with the longest trichomes 0.2 mm (0.008 in.) long or longer, usually much longer. The chromosome number is 2n=74 (Sheviak 1984, 1990).

In contrast, *S. porrifolia* is widespread in the Pacific Northwest and is not known east of the eastern base of the Sierra Nevadas. It blooms from May through early July, rarely into early August at high elevations. It bears yellowish, slender tubular, curved flowers open only at the apices and not ringent. The sepals are fused for some length and together with the petals are connivent (joined) for much of their lengths, the apices of all segments spreading, often widely. The lip bears a dense cushion of minute trichomes on the upper surface near the apex. The rachis is glabrous (without hairs) or rarely sparsely pubescent (with hairs), the longest trichomes less than 0.15 mm (0.006 in.), usually much shorter, the glands often sessile (attached directly by the base). The chromosome number is a multiple of 22, e.g., 44, 66, or 88 (Jennings 1990; Sheviak 1989, 1990).

Spiranthes romanzoffiana occurs throughout the range of *S. diluvialis*. As with *S. porrifolia*, *S. diluvialis* is quite distinct morphologically, cytologically, and ecologically from *S. romanzoffiana*. *S. romanzoffiana* bears white to cream, stout tubular, curved flowers with a well-developed hood open only at the apices and not ringent. The sepals are fused for some length and together with the petals are connivent for much of their lengths, forming a prominent hood, the lip is strongly pandurate. The rachis is glabrous or rarely sparsely pubescent, the longest trichomes less than 0.15 mm (0.006 in.), usually much shorter, the glands often sessile. The chromosome number is typically based on 22, e.g., 44 (Sheviak 1984). *S. romanzoffiana* is a high elevation wetland plant rarely occurring below 2,600 m (8,500 ft.) elevation in Utah and Colorado. *S. diluvialis* is a low elevation (relative to the region in which it is endemic) riparian and wet meadow plant rarely occurring above 1,980 m (6,500 ft.) elevation.

Current treatments of *S. diluvialis* may be found in Albee, Shultz, and Goodrich (1988), Weber (1990), and Sheviak (1990).

Issue 4—Two commenters noted that no large-scale habitat disturbance currently is taking place in the species' remaining habitat in Utah. Threats experienced by the species along the Wasatch Front are not likely to occur in eastern Utah.

Response—*Spiranthes diluvialis* populations in eastern Utah may not be subjected to habitat loss from urbanization as occurred to populations along the Wasatch Front. However, they may be vulnerable to changes in their riparian habitat as a result of stream channelization or impoundment projects. Existing and proposed water projects in Utah have the potential to adversely affect the riparian habitat in which *S. diluvialis* is found. The eastern Utah populations are typically small in size, and all are potentially vulnerable to any impact to their riparian ecosystems. The highly disjunct nature of the known populations in eastern Utah gives rise to questions of what is the factor causing this disjunction. It is possible that local extinctions have taken place in currently unoccupied potential habitat similar to extinctions which occurred along the Wasatch Front, the Great Basin, and certain historic populations in Colorado.

Issue 5—Three commenters questioned whether livestock grazing was a threat to the species.

Response—The Service agrees that the effects of grazing are largely not known with respect to this species. The largest populations of the species, along the Uinta River and Deer Creek in Utah and along the Boulder Creek in Colorado, are grazed during the winter, when *S. diluvialis* is dormant, with no noticeable effect on the species. It is plausible that moderate winter grazing may be beneficial to or have no impact on the species. Yet, the most striking feature of the Uinta River ecosystem, which contains one of the largest *S. diluvialis* populations, is the vigor of the riparian vegetative community and its lack of degradation from heavy summer grazing. For populations on National Park Service lands, *S. diluvialis* habitat was or is in the process of being withdrawn from active grazing allotments, at least temporarily (Richard Strait, Acting Regional Director, National Park Service, in litt. 1991). The impact of grazing on the species and its ecosystem will be investigated as part of the research and recovery effort for this species.

Issue 6—One commenter noted that there is no evidence of commercial exploitation.

Response—The species has not been documented to be commercially exploited in the past. Some plants, especially orchids and cacti, are potentially vulnerable to this threat.

Those working on this species' conservation have been approached by various individuals interested in discovering the location of this species so as to acquire plants for orchid specimen wildlife gardens.

Issue 7—One commenter pointed out that the Clean Water Act would protect the species' wetland habitat adequately.

Response—The Clean Water Act offers some, but not complete, protection to the habitat of *S. diluvialis*. For example, section 404 of the Clean Water Act only regulates placement of fill material in wetlands; there are other threats to the species' wetlands habitat. Moreover, even the protection provided to wetlands by section 404 has limitations. For example, in 1990, the Corps of Engineers voluntarily protected a small population of *S. diluvialis* and its habitat during consideration of a section 10/404 (nationwide permit no. 26) permit application under the Clean Water Act, but was not legally required to do so. Had the Corps of Engineers not been alerted to the presence of this rare plant (at that time, a candidate species about to be proposed for listing) on affected wetlands habitat, this small population would be lost.

Issue 8—Two commenters expressed concern that the listing of *S. diluvialis* may impact control of noxious weeds, manipulation of riparian vegetation, and stream rehabilitation efforts.

Response—Species listing will affect only those activities covered under the scope of the interagency consultation provisions of the Endangered Species Act. (See "Available Conservation Measures.")

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Spiranthes diluvialis* should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Spiranthes diluvialis* Sheviak (Ute ladies'-tresses) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Spiranthes diluvialis has been adversely affected by modification of its riparian habitat. Most of the species' riparian habitat along the Wasatch Front in Utah has been heavily modified by urbanization, stream channelization, and construction projects in and adjacent to the Jordan and Weber Rivers and their tributaries and in wetlands and meadows adjacent to Utah Lake and the Great Salt Lake. Except for two small populations in wetlands near Utah Lake, all known historic populations of this species along the Wasatch Front in the populated north-central area of Utah are presumed extinct, as are all other known historic populations in the eastern Great Basin and two of the four known populations in Colorado. It is believed that alteration of riparian habitat caused the extinction of these populations. With the exception of the two Utah Lake populations, recent attempts to locate the Wasatch Front and eastern Great Basin populations were unsuccessful (Coyner 1989, 1990). Extant populations in eastern Utah and Colorado are typically very small and potentially vulnerable to habitat changes similar to those that appear to have eliminated the Wasatch Front and eastern Great Basin populations. Fewer than 6,000 individual plants are known to exist in the 10 known populations. Potential projects that may affect the hydrology and vegetation of the species' riparian ecosystem could have a negative impact on the species and are currently under consideration throughout the species' range. Jennings (1990) considered conversion of wild open space to developed parks a significant threat to Colorado populations. Some populations are in areas that are not overly degraded by agricultural activities, including farming and grazing. However, most of the current habitat of *S. diluvialis* is subject to livestock grazing and trampling. The full effects of livestock grazing and trampling are not known (See "C. *Disease or predation*." below).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Spiranthes diluvialis has an attractive multiflowered inflourescence with white- to cream-colored flowers. Orchidists and wildflower enthusiasts have inquired concerning the location of the species' populations and about its horticultural requirements (Coyner 1991). *S. diluvialis* populations located in or near urban areas (including the largest known population) are especially susceptible to overcollection as a convenient source of specimen plants for private orchid collections or wildflower gardens.

C. Disease or Predation

While excessive livestock grazing is thought to be detrimental to the species, mild to moderate livestock grazing may be beneficial. The plant is highly palatable and was preferentially grazed by small herbivores (James Crain, Director, Open Space, City of Boulder, in litt. 1991). All known remaining populations are relict in nature, with most in small areas where livestock grazing was less intense than in other riparian communities within the species' range.

D. The Inadequacy of Existing Regulatory Mechanisms

No Federal or State laws or regulations directly protect *S. diluvialis* or its habitat. A limited degree of habitat protection is offered by the Clean Water Act. Most of the species' Utah populations occur on lands managed by the Bureau of Land Management, the National Park Service, and the Forest Service, which offer varying, but incomplete, levels of protection. Populations located in the greenbelt areas in the City of Boulder are also provided some protection. However, many of these areas are, or were historically, subject to livestock grazing. International trade in all orchids is regulated by the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES).

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The species' low population numbers and restricted habitat makes it vulnerable to natural or human-caused disturbances. Localized catastrophic events have the potential to cause the extinction of individual populations. It is not known if any of the species' smaller scattered populations are at levels that would ensure their continued existence over the long term, particularly populations in Dinosaur National Monument and Capitol Reef National Park. Jennings (1990) believed that the planting (either intentionally or unintentionally) of exotic plant species was a threat to *S. diluvialis*. Indiscriminate use of herbicides and other chemicals has the potential to adversely impact *S. diluvialis*. The highly variable demographic structure from year to year of the species' largest known population may make it more vulnerable to extinction during years of low populations numbers. *S. diluvialis* appears to have a very low reproductive rate under natural conditions. Many orchid species take 5 to 10 years to reach reproductive maturity, and this

appears to be true for *S. diluvialis*. Reproductively mature plants do not flower every year.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Spiranthes diluvialis* as a threatened species.

As noted earlier, the species appears to have been extirpated from five of the seven historical sites in Nevada and western Utah, and two of the four historical sites in Colorado. Seven new sites were discovered in eastern Utah since 1977, but nearly all of these are very small populations containing between 20 to 500 plants. The species is rare, with fewer than 6,000 individuals in 10 known populations. Surface disturbances or changes to the water regime which eliminate or degrade the riparian habitat in which the species occurs are likely to continue in the future. Due to the species' low reproductive rate, any loss of individual plants due to collection could have a major effect on the species' survival. It is not known whether existing populations are demographically stable over the long term, due to the small size of most populations and the erratic population fluctuations noted within monitored populations.

Counterbalancing the above are the following: The species' two largest populations are in areas unlikely to be subject to acute threats from development in the near future. Two small populations occur on units of the National Park system; these populations are being managed for the species' long-term survival. There is potential for new populations to be discovered in other riparian areas within the species' range such as wetlands in eastern Nevada and adjacent Utah, but any undiscovered populations would be vulnerable to the habitat loss and modification threats described earlier.

Spiranthes diluvialis does not appear in imminent danger of extinction throughout all or a significant portion of its range, which would warrant a status of endangered. Instead, because it has the potential to become an endangered species throughout all or a significant portion of its range, it warrants threatened status. For the reasons given below, it would not be prudent to propose critical habitat.

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for *S. diluvialis*.

As discussed under Factor B in the "Summary of Factors Affecting the Species," *S. diluvialis* is an attractive wild orchid. Many individuals, including knowledgeable orchid growers, expressed an interest in obtaining living *S. diluvialis* specimen plants (Coyner 1991). All known populations in Colorado (including the largest known population) are in or near populated areas in the Denver metropolitan area. Many of the populations in Utah are accessible to the public. Publication of critical habitat descriptions and maps would make *S. diluvialis* more vulnerable to collection.

If individual plants or flowers were collected, it could adversely impact the reproductive potential of the affected population significantly. *Spiranthes diluvialis* appears to have a very low reproductive rate under natural conditions (i.e., relatively few individuals are recruited to the reproductively mature population each year) (Coyner 1991). Many orchid species take 5 to 10 years to reach reproductive maturity, and this appears to be true for *S. diluvialis*. Reproductively mature plants do not flower every year, so if flowers did appear and were taken, this would eliminate that plant's reproductive attempt for that year and probably several years thereafter. Any increase in the threat of collection would have a greater impact on *S. diluvialis* than on a more reproductively vigorous species.

The Endangered Species Act provides listed plants with limited protection from take. Specifically, the Act and its implementing regulations prohibit collecting or harm to listed plants on lands under Federal jurisdiction, and removal or harm to endangered plants on other areas in knowing violation of any State law or regulation, including State criminal trespass law. These legal protections would provide very limited protection to *S. diluvialis* after listing, and would be difficult to enforce.

For the above reasons, it would not be prudent to determine critical habitat for *S. diluvialis*. All involved parties and the major landowners were notified of the location and importance of protecting this species and its habitat. Protection of this species' habitat will be addressed through the section 7 consultation process and the recovery process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies; groups; and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal Agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal Agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal Agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal Agency must enter into formal consultation with the Service.

Much of the population of *S. diluvialis* is on Federal lands, managed by the Bureau of Land Management, the National Park Service, and the Forest Service. These Federal Agencies will be responsible for insuring that all activities and actions on lands they manage are not likely to jeopardize the continued existence of *S. diluvialis*. In addition, the Corps of Engineers, which issues Federal dredge and fill permits which can affect wetlands and riparian areas, will be required to insure permitted actions are not likely to jeopardize the continued existence of *S. diluvialis*. Several potential projects affecting the species, throughout its range, may be affected due to the necessity of securing a Corps of Engineers' permit.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and expectations that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate

or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. In addition, for endangered plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. These prohibitions may be extended to threatened species through regulation. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances.

Because of horticultural interest in *S. diluvialis*, trade permits may be sought, but few, if any, trade permits for plants of wild origin would ever be issued since the species is not common in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, room 432, 4401 N. Fairfax Drive, Arlington, Virginia 22203 (703/358-2093; FTS 921-2093).

As a member of the family Orchidaceae, *S. diluvialis* is included on Appendix II of CITES. Species on Appendix II require a permit from the country of origin prior to export. International trade in this species is most probably nonexistent.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this final rule is John L. England, botanist, U.S. Fish and Wildlife Service (see **ADDRESSES** above, telephone 801/524-4430 or FTS 588-4430).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under Orchidaceae, to the List of Endangered and threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	
Orchidaceae—Orchid family:						
*	*	*	*	*	*	
Spiranthes diluvialis	Ute ladies'-tresses	U.S.A. (CO, NV, UT)	T	458	NA	NA
*	*	*	*	*	*	

Dated: January 8, 1992.
Richard N. Smith,
Director, Fish and Wildlife Service.
[FR Doc. 92-1297 Filed 1-16-92; 8:45 am]
BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 371

Fraser River Sockeye and Pink Salmon Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of 1991 inseason orders.

SUMMARY: The Secretary of Commerce (Secretary) hereby publishes the inseason orders regulating fisheries in United States waters that were issued by the Fraser River Panel (Panel) of the Pacific Salmon Commission (Commission) and subsequently approved and issued by the Secretary during the 1991 sockeye and pink salmon fisheries within the Fraser River Panel Area (Fraser River Panel (U.S.)). These orders established fishing times, areas, and types of gear for U.S. treaty Indian and all-citizen fisheries during the period the Commission exercised jurisdiction over these fisheries.

Due to the frequency with which inseason orders are issued, publication of individual orders is impracticable. The 1991 orders are therefore being published in this notice to avoid fragmentation.

EFFECTIVE DATE: Each of the following inseason orders of the Secretary was effective upon announcement on telephone hotline as specified at 50 CFR 371.21(b)(1). See also the Supplementary Information section for the specific effective date for each inseason order.

ADDRESSES: Comments on these inseason orders may be sent to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NW., BIN C15700, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, (206) 526-6150.

SUPPLEMENTARY INFORMATION: The Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon (Treaty) was signed at Ottawa on January 28, 1985, and subsequently was given effect in the United States by the Pacific Salmon Treaty Act (Act) at 16 U.S.C. 3631-3644.

Under authority of the Act, an emergency interim rule was promulgated at 50 CFR part 371 (51 FR 23421, June 27, 1986) to provide a framework for implementation of certain regulations of the Commission and inseason orders of the Commission's Panel for sockeye and pink salmon fisheries in the Fraser River Panel Area (U.S.). The emergency interim rule was effective from June 22, 1986, and remains in effect until modified, superseded, or rescinded. It applies to fisheries for sockeye and pink salmon in the Fraser River Panel Area (U.S.) during the period each year when the Commission exercises jurisdiction over these fisheries.

The emergency interim rule closes the Fraser River Panel Area (U.S.) to sockeye and pink salmon fishing unless opened by Panel regulations or by inseason orders of the Secretary that give effect to Panel orders, unless such orders are determined not to be consistent with domestic legal obligations. During the fishing season, the Secretary may issue orders that establish fishing times and areas consistent with the annual Commission regime and inseason orders of the Panel. Such orders must be consistent with domestic legal obligations. The Secretary issues inseason orders through his delegate, the Northwest Regional Director of NMFS. Official notice of these inseason actions of the Secretary is provided by two telephone hotlines described at 50 CFR 371.21(b)(1). Inseason orders of the Secretary must be published in the **Federal Register** as soon as practicable after they are issued. Due to the frequency with which inseason orders are issued, publication of individual orders is impracticable. The 1991 orders are therefore being published in this notice to avoid fragmentation.

The following inseason orders were adopted by the Panel and issued for U.S. fisheries by the Secretary during the 1991 fishing season. The times listed are local times, and the areas designated are Puget Sound Management and Catch Reporting Areas as defined in the Washington State Administrative Code at chapter 220-22.

Order No. 1991-1: Issued 3:15 p.m., June 25, 1991.
Referred only to fishing in Canadian area Panel Waters.

Order No. 1991-2: Issued 12:15 p.m., July 8, 1991.
Referred only to fishing in Canadian area Panel Waters.

Order No. 1991-3: Issued 2:15 p.m., July 9, 1991.
Referred only to fishing in Canadian area Panel Waters.

Order No. 1991-4: Issued 10 a.m., July 10, 1991.
Treaty Indian Fishery:
Areas 7 and 7A—Net fishing open 5 a.m. to 9 a.m., July 11.
All-Citizen Fishery:
Areas 7 and 7A—
Gillnets open 1 p.m. to 8 p.m., July 11.
Purse seines open 7 a.m. to 12 noon, July 12.

Order No. 1991-5: Issued 1:40 p.m., July 26, 1991.
Treaty Indian Fishery:
Areas 4B, 5, and 6C—Drift gillnets open 12 noon, July 28 to 12 noon, August 1.

Order No. 1991-6: Issued 2:15 p.m., July 29, 1991.
Referred only to fishing in Canadian area Panel Waters.

Order No. 1991-7: Issued 12:20 p.m., August 2, 1991.
Treaty Indian Fishery:
Areas 4B, 5, and 6C—Drift gillnets open 12 noon, August 5 to 12 noon, August 7 and 4 a.m. to 4 p.m., August 8.
Areas 6, 7, and 7A—Net fishing open 4 a.m. to 4 p.m., August 8.
All-Citizen Fishery:
Areas 4B, 5, 6, 6C, 7, and 7A—
Reef nets open 6 a.m. to 9 p.m., August 6.
Purse seines open 6 a.m. to 11 a.m., August 7.
Gillnets open 12 noon to 8 p.m., August 7.

Order No. 1991-8: Issued 3:55 p.m., August 6, 1991.
Treaty Indian Fishery:
Areas 4B, 5, and 6C—Drift gillnets extended from 12 noon, August 7 to 12 noon, August 9.

Order No. 1991-9: Issued 1:40 p.m., August 9, 1991.
Treaty Indian Fishery:
Areas 4B, 5, and 6C—Drift gillnets open 12 noon, August 10 to 12 noon, August 14.
Areas 6, 7, and 7A—Net fishing open 5 p.m., August 12 to 12 noon, August 14.
All-Citizen Fishery:
Area 4 and Area 3 north of 48°00'15"N.—Commercial trolling open in waters westerly of 100-fathom contour from 12:01 a.m., August 16 to 11:59 p.m., August 19.
Areas 4B, 5, 6, 6C, 7, and 7A—
Reef nets open 5 a.m. to 9:30 p.m., August 11 and 12.
Gillnets open 6 p.m., August 14 to 9 a.m., August 15 and 6 p.m., August 15 to 9 a.m., August 16.
Purse seines open 6 a.m. to 9 p.m., August 15 and 16.

Order No. 1991-10: Issued 1:45 p.m., August 12, 1991.
Treaty Indian Fishery:
Areas 4B, 5, and 6C—Closed to drift

gillnets at 4 p.m., August 12.

Order No. 1991-11: Issued 2:20 p.m., August 16, 1991.

Treaty Indian Fishery:

Areas 4B, 5, and 6C—Drift gillnets open 6 p.m., August 19 to 11 a.m., August 20.

Areas 6, 7, and 7A—Net fishing open 5 a.m., August 19 to 11 a.m., August 20.

All-Citizen Fishery:

Areas 7 and 7A—

Gillnets open 12 noon, August 20 to 9 a.m., August 21 and 6 p.m., August 21 to 9 a.m., August 22.

Purse seines open 6 a.m. to 9 p.m., August 21.

Reef nets remain closed.

Order No. 1991-12: Issued 12:20 p.m., August 19, 1991.

All-Citizen Fishery:

Areas 7 and 7A—Cancel gillnet opening scheduled for 6 p.m., August 21 to 9 a.m., August 22.

Order No. 1991-13: Issued 5 p.m., August 19, 1991.

Treaty Indian Fishery:

Areas 4B, 5, 6, 7 and 7A—Net fishing closed effective 12 midnight, August 19.

Order No. 1991-14: Issued 2:10 p.m., August 20, 1991.

All-Citizen Fishery:

Areas 7 and 7A—Purse seines open 9 a.m. to 5 p.m., August 21.

Order No. 1991-15: Issued 3:45 p.m., August 21, 1991.

All-Citizen Fishery:

Area 4 and Area 3 north of 48°00'15"N.—Commercial trolling open in waters westerly of the 100-fathom contour from 12:01 a.m., August 23 to 11:59 p.m., August 26.

Order No. 1991-16: Issued 1:10 p.m., August 23, 1991.

All-Citizen Fishery:

Area 7A—Closed to net fishing northerly and westerly of a straight line drawn from Iwersen's Dock on Point Roberts in the State of Washington to Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

Areas 7 and 7A—

Reef nets open 5 a.m. to 9:30 p.m., August 25 and 27.

Purse seines open 9 a.m. to 4 p.m., August 26.

Order No. 1991-17: Issued 11:50 a.m., August 25, 1991.

Referred only to fishing in Canadian area Panel Waters.

Order No. 1991-18: Issued 11:50 a.m., August 26, 1991.

All-Citizen Fishery:

Areas 7 and 7A—Cancel August 27 reef net opening.

Order No. 1991-19: Issued 3:55 p.m., August 28, 1991.

All-Citizen Fishery:

Area 4 and Area 3 north of 48°00'15"N.—Commercial trolling in waters westerly of the 100-fathom contour from 12:01 a.m., August 30 to 11:59 p.m., September 2.

Order No. 1991-20: Issued 1:15 p.m., August 30, 1991.

Treaty Indian Fishery:

Areas 4B, 5, and 6C—Drift gillnets open 5 a.m., September 2 to 5 a.m., September 4.

Areas 6, 7, and 7A—Net fishing open from 5 a.m. to 5 p.m., September 2 southerly and easterly of a straight line drawn from Iwersen's Dock on Point Roberts in the State of Washington to the Georgina Point Light at the entrance to Active Pass in the Providence of British Columbia and 5 p.m., September 2 to 5 p.m., September 3 southerly and easterly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia.

All-Citizen Fishery:

Areas 7 and 7A—Reef nets open 5 a.m. to 9 p.m., September 1.

Order No. 1991-21: Issued 12:20 p.m., September 2, 1991.

All-citizen Fishery:

Areas 7 and 7A—Reef nets open 5 a.m. to 9 p.m., September 3 and 4.

Order No. 1991-22: Issued 12:20 p.m., September 3, 1991.

Treaty Indian and All-Citizen Fisheries:

Areas 7A—Closed northerly and westerly of a straight line drawn from Iwersen's Dock on Point Roberts in the State of Washington to the Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

Treaty Indian Fishery:

Areas 6 and 7, and 7A—Net fishing extended from 5 p.m., September 3 to 2 p.m., September 4.

All-Citizen Fishery:

Areas 7 and 7A—

Gillnets open 3 p.m., September 4 to 9 a.m., September 5 and 6 p.m., September 5 to 9 a.m., September 6.

Purse seines open 6 a.m. to 9 p.m., September 5 and 6 a.m. to 5 p.m., September 6.

Order No. 1991-23: Issued 3:45 p.m., September 3, 1991.

Treaty Indian Fishery:

Areas 4B, 5, and 6C—Drift gillnets extended from 5 a.m. to 9 a.m., September 4.

Order No. 1991-24: Issued 4:45 p.m., September 4, 1991.

Treaty Indian Fishery:

Areas 4B, 5, and 6C—Drift gillnets open 6 p.m., September 4 to 9 a.m., September 6.

All-Citizen Fishery:

Areas 4 and Area 3 north 48°00'15"N.—Commercial trolling open westerly of the 100-fathom contour 12:01 a.m., September 6 to 11:59 p.m., September 9.

Order No. 1991-25: Issued 3:15 p.m., September 5, 1991.

All-Citizen Fishery:

Areas 7 and 7A—Purse seines open 6 a.m. to 5 p.m., September 6 southerly and easterly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia.

Order No. 1991-26: Issued 1:10 p.m., September 6, 1991.

Treaty Indian Fishery:

Areas 6, 7, and 7A—Net fishing open 6 a.m., September 8 to 6 p.m., September 9 southerly and easterly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia.

All-Citizen Fishery:

Areas 7 and 7A—Reef nets open 5 a.m. to 9 p.m., September 7, 8, and 9.

Order No. 1991-27: Issued 12:35 p.m., September 9, 1991.

Treaty Indian Fishery:

Areas 6, 7, and 7A—Net fishing extended 6 p.m., September 9 to 9 a.m., September 11 southerly and easterly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia.

All-Citizen Fishery:

Areas 7 and 7A—

Gillnets open 3 p.m., September 11 to 7 a.m., September 12 southerly and easterly of a straight line drawn from Iwersen's Dock on Point Roberts in the State of Washington to the Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

Purse seines open 7 a.m. to 1 p.m., September 12 southerly and easterly of a straight line drawn from the low water range marker in

Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia.

Order No. 1991-28: Issued 12:40 p.m., September 11 1991.

Treaty Indian Fishery:

Areas 6, 7, and 7A—Net fishing open 8 a.m., September 13 to 6 p.m., September 15 southerly and easterly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia.

All-Citizen Fishery:

Areas 4 and Area 3 north of 48°00'15"N.—Relinquish control effective immediately.

Areas 7 and 7A—

Gillnets open 6 p.m., September 12 to 7 a.m., September 13 southerly and easterly of a straight line drawn from Iwersen's Dock on Point Roberts in the State of Washington to the Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

Purse seines open 7 a.m. to 6 p.m., September 12 southerly and easterly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia.

Reef nets open 5 a.m. to 9 p.m., September 14, 15, and 16.

Order No. 1991-29: Issued 2:10 p.m., September 13, 1991.

Treaty Indian Fishery:

Areas 4B, 5, and 6C—Relinquish regulatory control.

Areas 6, 7, and 7A—Net fishing extended from 6 p.m., September 15 to 6 p.m., September 16 southerly and easterly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia.

Order No. 1991-30: Issued 11:15 a.m., September 18, 1991.

Treaty Indian Fishery:

Areas 7 and 7A—Net fishing open 7 a.m. to 3 p.m., September 19 southerly and easterly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia.

All-Citizen Fishery:

Areas 7 and 7A—Reef nets open 5 a.m. to 9 p.m., September 20.

Order No. 1991-31: Issued 1:25 p.m., September 19, 1991.

Treaty Indian and All-Citizen Fisheries:

Areas 7 and 7A—Extend regulatory control until further notice.

Treaty Indian Fishery:

Areas 7 and 7A—Net fishing extended from 3 p.m., September 19 to 6 p.m., September 20 southerly and easterly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia.

Order No. 1991-32: Issued 3:45 p.m., September 23, 1991.

Treaty Indian and All-Citizen Fisheries:

Areas 7 and 7A—Relinquish regulatory control effective September 29 southerly and easterly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to the East Point Light on Saturna Island in the Province of British Columbia.

Order No. 1991-33: Issued 2:45 p.m., September 30, 1991.

Referred only to fishing in Canadian area Panel Waters.

Order No. 1991-34: Issued 11:45 a.m., October 4, 1991.

Treaty Indian and All-Citizen Fisheries:

Area 7A—Relinquish regulatory control of remaining areas effective, October 6.

Other Matters

This action is taken under authority of 50 CFR 371.21 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 371

Fisheries, Fishing, Pacific Salmon Commission, Treaty Indians.

Authority: 16 U.S.C. 3636(b).

Dated: January 13, 1992.

David S. Crestin,

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

[FR Doc. 92-1292 Filed 1-16-92; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 12
Friday, January 17, 1992

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 JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS No. 1316-92]

Availability of Material Under the Freedom of Information Act

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: Immigration and Naturalization Service (Service) proposes to amend regulations under 8 CFR part 103 to be consistent with the current regulations in 28 CFR as they pertain to the Freedom of Information Act (FOIA). This amendment is necessary to make editorial changes; clarify INS procedures for granting "access" to records; update the offices from which records may be requested; correct references to the 28 CFR paragraph on fees; add a reference to the 28 CFR section on "business information"; correct the reference to the form used to provide a notarized signature; and to correctly identify references to system managers as responsible officials. Also, minor technical changes have been made to help clarify paragraph references. These changes will improve our service to the public in accessing agency records.

DATES: Written comments must be received on or before February 18, 1992.

ADDRESSES: Written comments should be submitted in triplicate to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5304, Washington, DC 20536. Please include INS number 1316-91 on the mailing envelope to ensure proper handling.

FOR FURTHER INFORMATION CONTACT: Russell Powell, Chief, FOIA/PA Section, Immigration and Naturalization Service, 425 I Street, NW., room 5056, Washington, DC 20536, telephone (202) 514-1722 or (FTS) 368-1722.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986 dealt with the question of fees to be charged to requesters; and Executive Order 12600, issued on June 23, 1987, established structured procedures for notifying those who submit business information to the government when that information becomes the subject of a FOIA request. To comply with these requirements, the Department of Justice (DOJ) incorporated these changes in their regulations (28 CFR), and in doing so, caused several paragraphs to be altered and renumbered. The Service proposes to also incorporate these requirements into title 8 of the Code of Federal Regulations and, as necessary, correct the paragraph references made to Title 28 of the Code of Federal Regulations.

The Service will at its discretion determine the method of disclosure whenever access to INS records is sought for personal review. Grant of access is fulfilled when a copy is provided or on request, when the original record is made available for in-person review. In-person review will only be granted when specifically requested and when providing such access will not unreasonably disrupt the normal operations of an office. For example, a copy may be provided rather than personal review due to the lack of personnel to accompany a requester during the review process. Another case in point is when an attorney asks for personal review of his or her client's record and the location of the record is not in the same geographical location as the attorney. To prevent misplacing or losing files, the Service has adopted a policy of not transferring records to the location of the request solely to answer FOIA and Privacy Act requests; instead, the request will be transferred to the location of the record. Consequently, when the request is for personal review of the record, the Service may only provide a copy of the file. This rule therefore proposes to amend § 103 by defining the term "access" and to explain the policy of providing a copy of a file in lieu of personal review.

In accordance with 5 U.S.C. 605(b) the Commissioner of Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

This rule contains information collection requirements which have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control number for this collection is 1115-0087

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Freedom of Information/Privacy Acts.

Accordingly, part 103 of chapter 1 of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1304; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

§ 103.7 [Amended]

2. In § 103.7, paragraph (b)(2) is amended by changing the reference "28 CFR 16.9." to "28 CFR 16.10.".

3. Section 103.8 is amended by redesignating paragraphs (a), (b) and (c) as (b), (c) and (d) respectively, and by adding a new paragraph (a) to read as follows:

§ 103.8 Definitions pertaining to availability of information under the Freedom of Information Act.

* * * * *

(a) The term *access* means letting an individual see a copy of the record requested or the original record. Grant of access is fulfilled whenever a copy is provided or, at the discretion of the Service, the original record is made available for in-person review. In-person review is discretionary and will only be granted when specifically requested and when providing such access will not unreasonably disrupt the normal operations of an office.

* * * * *

4. Section 103.10 is amended by revising paragraphs (a)(1), (b)(1), (c)(2),

and (d)(1) and (e); and by adding to the end of paragraph (a)(2) the following sentence: "Individuals seeking access to records about themselves by mail shall establish their identity by submitting a notarized signature along with their address, date of birth, place of birth, and alien or employee identification number, if applicable."; by changing in paragraph (c)(1) the reference to "28 CFR 16.5(c)." to "28 CFR 16.1(d)." and in paragraph (d)(2) by changing the phrase "the Associate Commissioner, Information Systems, by a regional commissioner, by a district director, or by one of their designees." to "one of the officials specified in paragraph (b)(1) of this section" and in the fourth sentence by changing the reference to "28 CFR 16.7," to "28 CFR 16.8,"; by removing paragraph (f); and by removing and reserving paragraph (b)(2) to read as follows:

§ 103.10 Requests for records under the Freedom of Information Act.

(a) * * *

(1) *Place.* Records should be requested from the office that maintains the records sought, if known, or from the Central Office of the Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536. Records are maintained in the Central Office, regional offices, service centers, district offices and the following sub-offices: Agana, Guam; Albany, NY; Charlotte, NC; Cincinnati, OH; Hartford, CT; Indianapolis, IN; Las Vegas, NV; Louisville, KY; Memphis, TN; Milwaukee, WI; Norfolk, VA; Pittsburgh, PA; Providence, RI; Reno, NV; St. Louis, MO; Salt Lake City, UT; Spokane, WA; St. Albans, VT; and St. Paul, MN. In certain cases, a district director may designate another Service office as a file control office. For locations of Service regional offices, service centers, district offices, and sub-offices see 8 CFR 100.4.

* * * * *

(b) * * *

(1) *Grant or deny.* The Associate Commissioner for Information Systems, regional commissioners, district directors, service center directors, and heads of sub-offices specified in paragraph (a)(1) of this section, or their designees, may grant or deny requests under exemptions in 5 U.S.C. 552(b) and (c).

(2) [Reserved]

* * * * *

(c) * * *

(2) *Treatment of delay as a denial.* If no substantive reply is made at the end of the 10-day period, and/or the 10-day extension period, requesters may deem their request to be denied and exercise their right to appeal in accordance with 28 CFR 16.8 and paragraph (d)(3) of this section.

(d) * * *

(1) *Form of grant.* When a requested record is available, the responsible office shall notify the requester when and where the record is available. The notification shall also advise the requester of any applicable fees under 28 CFR 16.10. Grant of access is fulfilled whenever the original record is made available for in-person review or, at the discretion of the Service, a copy is provided. In-person review is discretionary and shall not unreasonably disrupt the normal operations of a Service office.

* * * * *

(e) *Agreement to pay fees.* In accordance with 28 CFR 16.3(c) a requester automatically agrees to pay fees up to $25.00 by filing a Freedom of Information Act request unless a waiver or reduction of fees is sought. Accordingly, all letters of acknowledgement must confirm the requester's obligation to pay.

* * * * *

5. Section 103.11 is added to read as follows:

§ 103.11 Business information.

Business information provided to the Service by a business submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with 28 CFR 16.7.

§ 103.20 [Amended]

6. Section 103.20 is amended in paragraph (a) by changing the phrase "Civil Service Commission regulations." to "regulations of the Office of Personnel Management.", and in paragraph (b) introductory text by changing the reference "16.56," to "16.58,".

7. Section 103.21, is amended by revising paragraphs (a) and (b)(2); by removing paragraph (b)(3); and by adding a new paragraph (f) to read as follows:

§ 103.21 Access by individuals to records maintained about them.

(a) *Access to available records.* An individual who seeks access to records about himself or herself in a system of records must submit a written request in person or by mail to the Freedom of Information/Privacy Act Officer at the location where the records are maintained. If the location is unknown, the request may be submitted to the nearest Service office or to the Central Office FOIA/PA Officer, 425 I Street, NW., Washington, DC 20536. The outside of the envelope should be marked "Privacy Act Request." A Form G-639, Freedom of Information/Privacy Act Request may be used for convenience and to facilitate identification of the record requested. However, a request may be made in any written form and should clearly identify the record sought by the name and any other personal identifiers for the individual (such as the alien file number or Social Security Account Number) date and place of birth, and type of file in which the record is believed to reside.

(b) * * *

(2) Individuals seeking access to records about themselves by mail shall establish their identity by submitting a notarized signature along with their address, date of birth, place of birth, and alien or employee identification number, if applicable. Form DOJ 361, Certification of Identity, may be obtained from any Service office and used to obtain the notarized signature needed to verify identity.

* * * * *

(f) *Agreement to pay fees.* In accordance with 28 CFR 16.3(c) a requester automatically agrees to pay fees up to $25.00 by filing a Privacy Act request unless a waiver or reduction of fees is sought. Accordingly, all letters of acknowledgement must confirm the requester's obligation to pay.

8. In section 103.22, paragraph (a) is revised to read as follows:

§ 103.22 Records exempt in whole or in part.

(a) When individuals request records about themselves which are exempt from access pursuant to the Privacy Act exemptions in 5 U.S.C. 552a(d)(5), (j) or (k), their requests shall also be considered under the Freedom of Information Act, 5 U.S.C. 552, and, unless the records are exempt under both Acts, the request shall be granted. If exemptions under both Acts permit the denial of the records sought and there is good reason to invoke the exemptions, the individual shall be provided a denial of his/her request in writing with the governing exemptions cited. If the mere disclosure of the existence of a criminal law enforcement proceeding record could itself interfere with a pending law enforcement proceeding of which there is reason to believe the subject is unaware, then the individual may be advised that there is no record.

* * * * *

9. Section 103.23, is amended by revising paragraph (a) to read as follows:

§ 103.23 Special access procedures.

(a) *Records of other agencies.* When information sought from a system of records of the Service includes information from other agencies or components of the Department of Justice that has been classified under Executive Order 12356, the request and the requested documents shall be referred to the appropriate agency or other component for classification review and processing. Only after consultation and with the consent of the responsible agency or component, may the requester be informed of the referral as specified in Section 3.4(f) of E.O. 12356.

* * * * *

§§ 103.23, 103.24, 103.28, 103.30 [Amended]

10. Part 103 is amended by changing the phrase "system manager" to "responsible official as specified in § 103.10(a) of this part" whenever it appears in the following sections:

Section 103.23(b)
Section 103.24
Section 103.28(b)
Section 103.28(f)
Section 103.30(a)

§ 103.25 [Amended]

11. In § 103.25, paragraph (a) is amended by removing the following phrase from the first sentence: "The system manager of the system from which information is sought or his delegate" and adding in its place "The responsible official as specified in § 103.10(a) of this chapter" and in paragraph (b) by changing the reference "28 CFR 16.45" to "28 CFR 16.1(d)".

§ 103.26 [Amended]

12. Section 103.26 is amended by changing the reference "28 CFR 16.46." to "28 CFR 16.47."

§ 103.27 [Amended]

13. Section 103.27 is amended by changing the reference to "28 CFR 16.47." to "28 CFR 16.48.".

§ 103.28 [Amended]

14. Section 103.28 is amended by revising paragraph (a); in paragraph (b) by removing the second sentence beginning with "If the record . . ." and by changing the reference "28 CFR 16.46" to "28 CFR 16.47" and "28 CFR 16.48." to "28 CFR 16.50."; and in paragraphs (c), (d), and (e) by changing the reference to "28 CFR 16.48" to "28 CFR 16.50", to read as follows:

§ 103.28 Requests for correction of records.

(a) *How made.* Unless a record is exempted from correction, a request for amendment or correction is made by the individual concerned, either in person or by mail, addressing the written request to the FOIA/PA Officer at the location where the record is maintained. The requester's identity must be established as provided in section 103.21 of this part. The request must indicate the particular record involved, the nature of the correction sought, and the justification. A request made by mail should be addressed to the FOIA/PA Officer at the location where the system of records is maintained and the request and envelope must be clearly marked "Privacy Correction Request." Where the requester cannot determine the precise location of the system of records or believes that the same record appears in more than one system, the request may be addressed to the FOIA/PA Officer, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536. That office will assist the requester in identifying the location of the records.

* * * * *

§ 103.33 [Amended]

15. Section 103.33 is amended by changing the reference "28 CFR 16.53." to "28 CFR 16.55.".

§ 103.35 [Amended]

16. Section 103.35 is amended by changing the reference "28 CFR 16.55." to "28 CFR 16.56.".

§ 103.36 [Amended]

17. Section 103.36 is amended by changing the reference "28 CFR 16.56." to "28 CFR 16.57.".

Dated: May 16, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 92-1310 Filed 1-16-92; 8:45 am]

BILLING CODE 4410-10-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 140

[Docket No. PRM-50-57]

North Carolina Public Staff Utility Commission; Filing of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of petition for rulemaking.

SUMMARY: The Commission is publishing for public comment a notice of receipt of a petition for rulemaking. The petition, dated September 25, 1991, was filed with the Commission by the North Carolina Public Staff Utility Commission and was assigned Docket No. PRM-50-57 on October 2, 1991. The petitioner requests that the Commission substantially reduce or eliminate insurance requirements for nuclear power reactors when all the nuclear reactors on a reactor station site have been shut down and are awaiting decommissioning and all the nuclear fuel has been removed from the reactor site.

DATE: Submit comments by March 17, 1992. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch, For a copy of the petition, write: Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publication Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7758 or Toll Free: 800-368-5642.

SUPPLEMENTARY INFORMATION:

Background

The Commission's regulations require that each nuclear reactor licensee, as a condition of its license, meet certain on-site property damage insurance requirements for each of its nuclear reactor station sites. Utilities licensed by the NRC to operate nuclear power plants are required by the provisions of 10 CFR 50.54(w) to maintain $1.06 billion in property insurance to cover the on-site stabilization and decontamination of the reactor facility in the event of an accident.

Each power reactor licensee also is required by 10 CFR 140.11(a)(4) to maintain primary financial protection in the amount of $200 million to cover public liability claims that may result from a nuclear incident or precautionary evacuation. In addition, § 140.11(a)(4) requires these licensees to have and maintain secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges equal to the licensee's pro rata share of the

aggregate public liability claims in excess of $200 million) for each nuclear power reactor the licensee is authorized to operate up to $63 million per nuclear incident.

The petitioner asserts that the insurance requirements of (1) $1.06 billion to stabilize and decontaminate a power reactor site and (2) $200 million per site (with an added potential $63 million per power reactor per incident) to satisfy public liability claims should be substantially reduced or eliminated in instances where all nuclear reactors on a reactor station site have been shut down and all the nuclear fuel has been removed from the site.

Basis for Petition

On-Site Property Damage

The petitioner believes that there are no health or safety reasons that would require extraordinary accident insurance protection when a reactor station is without fuel, in a shutdown or dormant condition, and the licensee holds a possession only license awaiting decommissioning. The petitioner believes that there is no risk of an empty reactor vessel or an empty fuel pool achieving criticality. Therefore, the petitioner recommends that the Commission consider reducing substantially, or eliminating entirely, the requirement that a power reactor licensee maintain "minimum coverage limit for each reactor site of either $1.06 billion or whatever amount of insurance is generally available from private sources, whichever is less." The petitioner further states that Commission regulations do not require accident insurance protection for other types of facilities that may be contaminated to some degree where the risk of criticality is absent. The petitioner also notes that the Commission regulations do not require insurance coverage for an Independent Spent Fuel Storage Installation licensed under 10 CFR part 72.

Public Liability Insurance

The petitioner states that there appears no reasonable risk of criticality which could produce a major nuclear incident, for which the $200 million of primary liability insurance protection is intended, at a shutdown or dormant reactor when no nuclear fuel remains on the reactor site. The petitioner offers that, in the absence of in-reactor or in-pool fuel, it appears to be unreasonable for the owner of a permanently shutdown reactor, during many years of reactor dormancy, to continue to be liable for retrospective premium charges for a pro-rata share of the $7.6 billion of secondary liability financial protection in the event of a nuclear accident at some operating reactor elsewhere in the industry when the occurrence of a nuclear accident is not considered possible at the dormant, unfueled reactor.

Conclusion

Because the Department of Energy does not have a facility that is ready to receive high-level radioactive waste such as commercially generated spent fuel, the petitioner states that amendment of the NRC regulations to revise both on-site property damage insurance and public liability insurance requirements is of immediate importance. The petitioner asserts that the insurance now required by the NRC during an extended period of SAFSTOR dormancy will result in significant collections from utility ratepayers during the reactor's current operating years. The petitioner believes that the cost of this insurance may discourage or preclude altogether the election of the SAFSTOR decommissioning option. The petitioner states that the SAFSTOR option could reduce worker exposure to radioactivity during decommissioning considerably and also reduce low level radioactive waste storage requirements substantially.

Proposed Amendments to 10 CFR Parts 50 and 140

The following language has been suggested by the petitioner to accomplish the desired amendments. The NRC has corrected the petitioner's suggested language by removing the term "Intermediate" and replacing it with the term "Independent." This correction is necessary to reflect the correct designation of the cited facility.

The petitioner proposes that in § 50.54 a new paragraph (w)(5) be added to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(w) * * *

(5) When all nuclear reactors on a reactor station site have been shut down and all nuclear fuel has been removed from the reactor station site except as may be stored in a licensed Independent Spent Fuel Storage Installation, the requirement of paragraph (w) that each reactor site must have insurance or equivalent protection to stabilize and decontaminate the reactor and the site in the event an accident is waived.

* * * * *

The petitioner proposes that in § 140.11, a new paragraph (c) be added to read as follows:

§ 140.11 Amounts of financial protection for certain reactors.

* * * * *

(c) In any case when all licensed electric power producing nuclear reactors at the same location have been shut down and all nuclear fuel has been removed from the location except for fuel as may be stored in a licensed Independent Spent Fuel Storage Installation, the requirement the licensees have and maintain financial protection in the amount set forth in paragraph (a)(4) of this section is waived.

Dated at Rockville, MD, this 10th day of January, 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92-1185 Filed 1-16-92; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 440

[Docket No. CE-RM-91-110]

Weatherization Assistance Program for Low-Income Persons

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Department of Energy issued a notice of proposed rulemaking for the Weatherization Assistance Program for Low-Income Persons on October 23, 1991, 56 FR 54932. The comment period was scheduled to end on January 7, 1992. The Department has decided to reopen the comment period to February 7, 1992, to accommodate additional comments from the public.

DATES: Written comments (6 copies) must be received on or before February 7, 1992.

ADDRESSES: All written comments (6 copies) should be addressed to: U.S. Department of Energy, Office of Conservation and Renewable Energy, Hearings and Dockets CE-90, room 6B-025, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-3012. In the event any person wishing to submit a written comment cannot provide six copies, alternative arrangements can be made in advance with the Hearings and Dockets Office.

FOR FURTHER INFORMATION CONTACT: James Gardner or Greg Reamy, Weatherization Assistance Program

Division, U.S. Department of Energy, Mail Stop CE-532, 5G-023, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2210.

Neal J. Strauss or Vivian Lewis, Office of General Counsel, Conservation and Regulations, Mail Stop GC-41, 6B-256, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 92-1307 Filed 1-16-92; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563b

[No. 91-428]

RIN 1550-AA45

Supervisory Conversions

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (the "OTS") proposes to amend its voluntary supervisory conversion regulations to expand the number of capital-deficient, mutual savings associations eligible to undertake voluntary supervisory mutual-to-stock conversions. The proposed amendments generally would revise the current supervisory conversion qualification standards to permit mutual associations to undertake voluntary supervisory conversions to raise additional capital without government assistance if they fail any of their minimum capital requirements and cannot meet those requirements through a standard conversion.

The proposed rule also (1) establishes required post-conversion capitalization standards; (2) revises the approval standards and identifies certain factors that may result in the denial or conditional approval of supervisory conversion applications; (3) reduces the documentary burden and expense imposed by the current regulation's requirement for interim audited balance sheets and certain accounting opinions; (4) requires the submission of appraisals in identified instances as needed to protect associations and purchasers in public offerings; and (5) requires the establishment of liquidation accounts for mutual accountholder in certain circumstances.

DATES: Comments must be received on or before February 18, 1992.

ADDRESSES: Send comments to Director, Information Services Division, Office of Communications, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at 1776 G Street, NW., Street Level.

FOR FURTHER INFORMATION CONTACT: Mary Jo Johnson, Policy Analyst, (202) 906-5739; Robyn Dennis, Program Manager, (202) 906-5751, Policy; David Sjogren, Program Manager for Corporate Analysis, (202) 906-6739, Corporate Activities Division, Supervision; James H. Underwood, Senior Attorney, (202) 906-7354; Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

A. Statutory Authority To Authorize Conversions

The proposed amendments to the current voluntary supervisory conversion regulations, 12 CFR part 563b, subpart C, are being issued pursuant to the authority of the Director (the "Director") of the Office of Thrift Supervision (the "OTS") under sections 5(i) and 5(p) of the Home Owners' Loan Act ("HOLA"),[1] which gives the Director broad statutory authority to regulate savings associations' conversion from the mutual to the stock form of organization. Section 5(i) of the HOLA, which authorizes the conversion process, specifically provides that "[n]o savings association may convert from the mutual to the stock form * * * except in accordance with the regulations of the Director." [2]

Moreover, under section 5(p) of the HOLA, the Director may authorize the conversion of a state-chartered or Federal mutual association to a Federal stock association "[n]otwithstanding any other provision of law * * *" if he determines that "severe financial conditions exist which threaten the stability of the association and that such authorization is likely to improve the financial condition of the association." [3] Section 5(p) thus authorizes the OTS to preempt state and Federal law to permit the conversion of mutual savings associations to the Federal stock form of organization.[4] Such emergency authority was intended to reduce Federal insurance fund costs by permitting an association, whose stability was threatened, to recapitalize through the conversion process before reaching the stage of financial deterioration at which government intervention or assistance was needed.[5]

Although section 5(p) contains no bright line tests pinpointing the level at which an association's capital is sufficiently low so as to support use of section 5(p) authority, the section was clearly intended to authorize conversions at a point before a conservator or receiver was appointed for an association. Given the flexibility inherent in the standards for such appointments, the Director has very substantial discretion to determine when an association lacks long-term viability and should be permitted to undertake a supervisory conversion pursuant to section 5(p).[6]

B. Current Supervisory Conversion Standards

Under the current supervisory conversion regulations, the Director may authorize the supervisory conversion of a savings association when the association's liabilities exceed its assets, as calculated under generally accepted accounting principles ("GAAP") on a going concern basis, and when the resulting association will be a viable entity.[7] Under the two-pronged viability test: (1) a converting institution must attain a level of capital representing the greater of a ratio of net worth to liabilities of 3 percent GAAP capital or its regulatory capital requirements;[8] and (2) the transaction,

[1] 12 U.S.C. 1464 (i) and (p) (1989 & Supp. 1991).

[2] See Section 5(i)(2) of the HOLA, 12 U.S.C. 5(i)(2).

[3] 12 U.S.C. 1464(p).

[4] For the Director to use his preemptive authority under section 5(p) in an association's stock conversion, the converted or resulting association must be a Federal stock association.

[5] See S. Rep. No. 536, 97th Cong., 1st Sess. 4, 8, reprinted in U.S. Code Cong. & Ad. News at 3061.

[6] Grounds for the appointment of conservators or receivers for Federal and State savings associations include: (i) Insolvency; (ii) substantial dissipation of assets; (iii) being in an unsafe or unsound condition to transact business due to having "substantially insufficient capital"; and (iv) an unsafe or unsound practice or condition that is likely to cause insolvency or substantial dissipation of assets or earnings, or is likely to weaken the condition of the association, or otherwise seriously prejudice the interests of depositors. 12 U.S.C. 1464(d)(2).

[7] See 12 CFR 563b.24 and 563b.26.

[8] The capital component of the viability test also currently includes a second standard under which the association could propose to attain a ratio of 1 percent GAAP capital to total assets and, pursuant to a five-year plan, increase its capital levels to meet regulatory requirements. In light of the higher capital standards that all savings associations must meet by January 1, 1995, this provision is no longer realistic and has been deleted as part of this proposal.

taken as a whole, must be in the best interests of, and not cause the potential for injury to, the converting association, its depositors, and the Federal deposit insurance funds. The use of this GAAP-qualification standard, however, is clearly outdated since it fails to take account of associations that are non-viable on a long-term basis under the FIRREA's more stringent capital standards, contained in section 5(t) of the HOLA. As a result, the Director has on a case-by-case basis waived this standard under the regulation's express waiver authority to permit capital-deficient thrifts, before they are GAAP-insolvent, to raise necessary capital through the supervisory conversion process without being placed into receivership or requiring government assistance.[9]

C. Need for Higher Qualification Threshold

While the current voluntary supervisory conversion regulations expressly make such conversions available for GAAP-insolvent associations, the voluntary supervisory conversion process also may be a valuable capital-raising option for other capital deficient associations that are not insolvent, but whose weakened financial condition make it infeasible to raise capital through public stock offerings in the capital markets. In appropriate circumstances, permitting such associations to undertake voluntary supervisory conversions also would aid them to raise capital and to attain capital compliance by obtaining beneficial capital infusions from parties seeking to acquire outright control of such associations.

An expanded qualification standard also would provide a much more meaningful picture of a mutual thrift's true financial condition and realistic long-term viability and would provide an enhanced opportunity for capital-deficient savings associations to raise new capital without government assistance.

II. Proposed Amendments

A. Qualification Standards

The proposed threshold qualification standard would permit associations to undertake supervisory conversions if they fail to meet any of their current minimum capital standards and demonstrate that it is not feasible for them to attain compliance with their minimum capital requirements by undertaking standard conversions.

The viability portion of the qualification standards would remain a two-part test, requiring a determination that the converting or resulting association will meet its current minimum capital requirements after conversion and that the conversion is in the best interests of the association, its accountholders, the Federal deposit insurance system and the public. The proposed amendments would also provide that the Director may determine that factors particular to an association, its conversion, or its acquirors, require an infusion of capital into the association in excess of that amount.

In this proposal, the OTS also adopts or retains a number of standards and policies that the OTS views as necessary to protect the converted or resulting association's capital position. Acquirors must demonstrate that the amount of capital being infused into associations' value prior to conversion. The OTS reserves the right to require an acceptable appraisal that supports this valuation. Finally, although the proposal does not prohibit the use of non-cash assets in supervisory conversions, associations and acquirors in such transactions bear the burden of justifying their use.

The "best-interests test" of the qualification standards, as amended, would require a transaction to be in the best interests of and not present the potential for injury or detriment to the converting association, its depositors, the Federal deposit insurance funds, and the public. This standard would continue to place the burden on the applicants to demonstrate that, based on a comprehensive assessment of all relevant facts and circumstances, a proposed conversion satisfies this best-interests test. The OTS will continue to scrutinize all aspects of an association's supervisory conversion in order to prevent potential abuse, including the potential for insiders to use their influence for personal gain to the detriment of the association.[10] The proposed rule expressly grants the Director authority to deny, or to impose conditions and restrictions on approval of, an association's supervisory conversion to ensure satisfaction of the best-interests test. The proposed rule delineates a list of factors, which is not exclusive, that may be indicative of the potential for insider overreaching and that would cause the Director to consider denying an association's supervisory conversion or imposing conditions or restrictions on the association, its officers, directors and controlling parties.

Whether conditions and restrictions should be imposed to protect an association's safety and soundness will depend upon a number of factors. It is expected, however, that the conditions and restrictions imposed to promote and preserve an association's safe and sound operation would be generally consistent with existing supervisory policies relating to the issues and problems presented.

B. Liquidation Account

The current supervisory conversion regulation does not require the establishment of a liquidation account for mutual accountholders because, under the present rule (unless exceptions are granted), qualifying associations must be GAAP-insolvent. In light of the raised qualification threshold for voluntary supervisory conversions under this proposal, however, the revised rule protects the pre-conversion status of mutual accountholders by requiring associations to establish liquidation accounts for them. Such accounts would be established in the same manner and aggregate amount, *i.e.* an association's GAAP capital, as in a standard conversion.

The proposed rule, however, will retain the policy of the current supervisory conversion regulation that in view of the absence of long-term viability of such a converting association, mutual accountholders do not automatically have any participatory role or rights in supervisory conversions, either in voting to approve the transaction or in the form of subscription rights to any of the stock sold in the conversion.

c. Application Requirements

By this proposal, the OTS seeks to facilitate associations' ability to use the supervisory conversion process by easing the burden and cross of preparing conversion documentation, and requiring the submission of only such documentary support as is needed to ensure satisfaction of the applicable standards.

The proposed rule would delete a number of documents whose preparation has been required only in connection with the conversion application, such as an audited interim balance sheet and an opinion of an

[9] See, *e.g.*, OTS Order No. 90-553, March 27, 1990 (voluntary supervisory conversion of Shadow Lawn Savings Bank, SLA).

[10] The courts have recognized that the OTS has broad authority to address these issues in the convention process, and where appropriate, to deny a conversion. *See, e.g., Charter Federal Savings and Loan Association* v. *Office of Thrift Supervision*, 912 F. 2d 1569, 1583 (11th Cir. 1990).

independent certified accountant regarding the appropriateness of the accounting treatment for the transaction. Under this proposal, many of the documentary requirements may be satisfied by the submission of documents prepared by all savings associations in the normal course of business and in reports filed with the OTS. For example, although an association must explain its computational assumptions, it need only submit its most recent Thrift Financial Report and audited balance sheet to show compliance with the qualification criteria, instead of being required to develop an interim audited balance sheet.

On the other hand, because under this proposal thrifts qualify for a supervisory conversion while they are at a higher capital level, appraisals are being required unless an association is tangibly insolvent and (i) is not undertaking a public securities offering and (ii) less than 25 percent of its conversion stock is proposed to be acquired by insiders. The OTS believes submission of appraisals is not generally needed for an insolvent association raising capital from third party acquirors in arms-length transactions. Such appraisals are necessary, however, (1) to provide sound financial records to support public securities offerings by associations failing their minimum capital requirements and (2) to ensure that associations receive full value from insiders buying substantial interests in such associations. Furthermore, requiring the submission of an appraisal by an association electing to convert in a supervisory conversion parallels the protection afforded to associations conducting standard conversions and helps to ensure the infusion of capital into such an association equals its value prior to conversion.

III. Request for Comment

The OTS seeks comment on the proposed and alternative qualification standards, as well as on the potential future use of standard, modified, and supervisory conversions.

Commenters are invited to address:

- How should the participatory roles afforded mutual account holders under the OTS proposal vary depending on the type of conversion?
- Should modified conversions be retained as an alternative to supervisory and standard conversions? If so, how should they be structured?
- Are there alternative or additional ways to ease the documentary burden in supervisory conversions while ensuring that the OTS is able to properly evaluate if a proposed conversion satisfies all applicable criteria?
- Is there a preferable appraisal submission standard that would ensure adequate capital infusions and would protect converting associations and the public, but would not impose undue burdens on capital-deficient associations? What are preferable, less-costly alternatives to the submission of full appraisals to demonstrate converting associations' market value? Is there a capital level at which the OTS should presume that associations cannot feasibly attain their minimum capital levels through standard conversions, rather than requiring associations to demonstrate such infeasibility with an appraisal?
- Should liquidation accounts in supervisory conversions be established on a different basis than in standard conversions? If so, why and how?

IV. Pre-filing Conferences

Voluntary supervisory conversions have in the past and will continue to raise novel and complex issues of law and policy. Accordingly, the OTS strongly encourages those involved in structuring a voluntary supervisory conversion to meet with OTS Regional staff before filing an application. The OT's goals for these meetings are to provide "early warning" and "front-end" issue recognition and resolution in order to simplify and expedite processing of voluntary supervisory conversions.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503, with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

The collections of information in this proposed regulation are in 12 CFR 563b.20 to 563b.32. The collection of information in the voluntary supervisory conversion regulation was previously approved under OMB Control No. 1550-0014 relating to all conversions by savings associations. With this proposed change to the supervisory conversion regulations, it became evident that this supervisory conversions should be separated from standard and modified conversions because their requirements vary and the collection should have its own control number.

The information is required by the OTS to evaluate the merits of supervisory conversion applications under applicable statutory and regulatory criteria and to determine whether to approve, conditionally approve, or deny such applications. If the information was not collected, the OTS would not have a basis for properly evaluating and deciding upon such supervisory conversion applications.

The likely respondents are savings associations applying to obtain OTS approval to undertake voluntary supervisory conversions by filing the necessary information.

Estimated total annual reporting burden: 10,000.

Estimated average annual burden hour per respondent: 500.

Estimated number of respondents: 20.

Estimated frequency of responses: 1.

Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), it is hereby certified that this proposal will not have a significant or disproportionate economic impact on a substantial number of small savings associations. Accordingly, a Regulatory Flexibility Act analysis is not required.

Executive Order 12291

The Director of the OTS has determined that this proposed regulation is not a "major rule" and therefore does not require a regulatory impact analysis.

List of Subjects in 12 CFR Part 563b

Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby proposes to amend part 563b, title 12, chapter V, Code of Federal Regulations as follows:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563b —[AMENDED]

1. The authority citation for part 563b continues to read as follows:

Authority: Secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); sec. 3, as added by sec. 301, 103 Stat 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); secs. 3, 12 14, 23, 48 Stat. 882, 892, 894–895, 901, as amended (15 U.S.C. 78c, 1–n, w).

2. Section 563b.21 is revised to read as follows:

§ 563b.21 Voluntary supervisory conversions.

(a) A voluntary supervisory conversion of a savings association pursuant to this subpart may involve the sale of a converting association's shares directly to an acquiror(s), which may be a person, company, depository institution, or depository institution holding company. The conversion may result in the converting association being merged into or consolidated with an existing or newly created depository institution, but only as authorized by and in accordance with any limitations or restrictions imposed by applicable laws and regulations.

(b) At least a majority of the directors of the converting association must adopt a plan of voluntary supervisory conversion that is in accordance with the provisions of this subpart. The members of the association have no rights of approval or participation in the voluntary supervisory conversion, or to the continuance of any legal or beneficial ownership interests in the converted association, unless otherwise determined by the Office. The members. shall have interest in a liquidation account, if one is established, pursuant to § 563b.28 of this subpart.

3. Section 563b.23 is revised to read as follows:

§ 563b.23 Authorization of supervisory conversions.

(a) The Office may authorize or order a voluntary supervisory conversion if a savings association files an application containing the information and documents specified in § 563b.27 of this subpart, in accordance with the procedures specified in § 563b.29 of this subpart, and meets the qualification standards specified in § 563b.24 of this subpart. If the Office authorizes or orders a supervisory stock conversion, the conditions specified in § 563b.30 of this subpart must be fulfilled and the resulting institution and the purchaser(s) of its conversion stock must comply with the requirements of § 563b.31 of this subpart.

(b) In connection with approval of an association's conversion, the Office may impose conditions and restrictions on the converting or resulting institution, its officers, directors, controlling party(ies), and shareholders to the extent the Office determines to be warranted to ensure the safe and sound operation of the converting association or resulting institution and to protect the deposit insurance funds and the public interest. The Office will generally exercise this authority consistent with applicable supervisory policies.

(c) Factors that may cause the Director to deny, or to impose conditions or restrictions on the approval of, an association's conversion include, without limitation:

(1) A determination by the Office that a transaction involves:

(i) Insider abuse, self-dealing, or excessive insider enrichment by management or controlling parties of a converting or resulting institution;

(ii) Continued employment of, or continued contracting with, any person determined by the Office to be responsible for the association's supervisory problems or poor condition; or

(iii) Potential for current or prospective injury or detriment to the converting association, its shareholders, its depositors, the Federal deposit insurance funds, or the public interest; and

(2) Employment contracts that fail to satisfy § 563b.32 of this subpart or contain terms that violate applicable policies of the Office.

(d) For three years following the date of completion of a voluntary supervisory conversion, neither any controlling shareholder nor the resulting institution may acquire shares from minority shareholders without first obtaining prior approval from the Office for such purchases and offering fair value, as determined through an independent appraisal acceptable to the Office.

4. Section 563b.24 is revised to read as follows:

§ 563b.24 Qualification for supervisory conversion of SAIF-insured associations.

(a) The Office in its discretion may authorize the supervisory conversion of a SAIF-insured savings association upon finding that the association:

(1) Fails any of its current minimum capital requirements, as determined in accordance with part 567 of this chapter;

(2) Demonstrates that a standard conversion that would raise sufficient capital to meet its current minimum capital requirements is not feasible; and

(3) Would be a viable entity as determined under § 563b.26 of this subpart, following the conversion.

(b) Notwithstanding any other provision of law, the Office also may authorize, (or in the case of a Federal savings association require), the conversion of a savings association into a Federal savings association pursuant to section 5(p) of the Home Owners' Loan Act, 12 U.S.C. 1464(p).

5. Section 563b.26 is amended by revising paragraph (b) to read as follows:

§ 563b.26 Viability of converted savings association.

* * * * *

(b) A converting SAIF-insured association is a "viable entity" if:

(1) As part of the plan of conversion:

(i) The capital being infused into the association through its conversion is sufficient to cause the converted or resulting association to meet all its current minimum capital requirements; provided that the OTS may require the infusion of a greater amount of capital into an association through its conversion because of risk factors particular to such association; and

(ii) The converting association, its proposed conversion, and any acquiror(s) comply with applicable supervisory policies; and

(2) The transaction taken as a whole is in the best interest of, and does not present the potential for injury or detriment to, the converting association, its depositors, the federal deposit insurance funds, and the public interest.

6. Section 563b.27 is amended by revising the introductory text, and paragraphs (a), (d), and (e); removing paragraph (1); redesignating paragraphs (m) through (s) as paragraphs (1) through (r); revising newly designating paragraphs (l), (n), and (o); and adding new paragraphs (s) and (t) to read as follows:

§ 563b.27 Application for voluntary supervisory stock conversion.

A savings association may apply for Office approval of a voluntary supervisory conversion pursuant to this subpart by filing the following information and documents in accordance with the procedures specified in § 563b.29 of this subpart:

(a) A plan of conversion adopted by a majority of the directors of the association, which shall contain at a minimum the name and address of the savings association; the names, addresses, dates and places of birth, and social security numbers of the proposed purchasers of conversion stock and their relationship to the savings association; the title, per-unit par value, number, and per-unit and aggregate offering price of shares of conversion stock to be authorized and issued; the number and percentage of shares of conversion stock to be purchased by each investor, the aggregate number and percentage of shares of conversion stock to be purchased by directors, officers and their affiliates and associates (as defined in § 563b.2(a) of this part); a description of the liquidation account, if required under § 563b.28 of this subpart

or if otherwise established; and certified copies of all resolutions of the board of directors relating to the Plan.

* * * * *

(d) A business plan, which shall contain a description of the proposed operating policies of the savings association or the resulting savings association following the conversion, including a statement as to how the conversion proceeds will be used, and a projection of the savings association's results of operations for the three-year period following completion of the conversion. The projections should show the continuing ability of the converted association to meet applicable capital requirements. The savings association shall specify the assumptions on which its projections are based.

(e) A Holding Company Act application, Control Act notice, or rebuttal submission for each proposed conversion stock acquiror as may be required under part 574 of this subchapter, if applicable, and any required prior-conduct certification pursuant to RB-20 [1] for each such acquiror.

* * * * *

(l) Information to support the value of any non-cash assets to be contributed to the savings association in connection with the voluntary supervisory conversion, if applicable. Appraisals submitted in this connection must be acceptable to the Office.

* * * * *

(n) The association's most recent audited financial statements and Thrift Financial Report with an appropriate explanation to support the determination that the association's current capital levels qualify it to undertake a supervisory conversion.

(o) *Pro forma* financial statements prepared in accordance with the regulations and policies of the Office to reflect the effects of the transaction. These *pro forma* financial statements should be supplemented to identify the converting or resulting association's tangible, core, and risk-based capital levels and show the appropriate adjustments necessary to compute such capital levels.

* * * * *

(s) An independent appraisal meeting the requirements of § 563b.7(f) of this part will be required if the association is not tangibly insolvent and any of the factors listed below are present. Such appraisal shall describe the amount of capital that the association could be expected to raise in a standard conversion offering. The appraisal shall state, and provide supporting evidence satisfactory to the Office, that the association could not meet its applicable minimum capital requirements through a standard conversion. The appraisal shall be required if:

(1) The association's conversion involves a public offering of its securities; or

(2) More than 25 percent of the stock of the converting association is to be purchased by its officers or directors, or by affiliates or affiliated persons of such persons or the association. In such case, the appraisal must demonstrate that the amount of capital to be infused by such persons through the association's conversion is, at a minumum, equal to their proportionate share of the association's fair market value.

(t) A statement of all other applications required pursuant to federal or state banking laws for transactions related to the association's conversion, copies of all decisions, orders, opinions, and other similar dispositive documents issued by such regulatory authorities deciding upon the proposed conversion and related transactions, and, if requested by the Office, copies of such applications and related documents.

§§ 563b.28 through 563b.32 [Redesignated as §§ 563b.29 through 563b.33]

7. Sections 563b.28 through 563b.32 are redesignated as §§ 563b.29 through 563b.33, respectively.

8. A new section 563b.28 is added to read as follows:

§ 563b.28 Liquidation account.

A liquidation account must be established in accordance with the requirements set forth at 563b.3(f) of this part.

9. Newly designated § 563b.29 is amended by revising paragraph (a) to read as follows:

§ 563b.29 Procedural requirements.

(a) Filing of voluntary supervisory conversion application. A savings association seeking to convert pursuant to this subpart shall file its application containing the information and documents specified in § 563b.27 of this subpart in accordance with the filing requirements of § 500.32(c)(2)(ii) of this chapter. The filing of all companion applications to the supervisory conversion application must conform to the filing requirements specified for the pertinent type of filing as set forth in § 500.32 of this chapter.

* * * * *

Dated: July 18, 1991.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92-1312 Filed 1-16-92; 8:45 am]

BILLING CODE 6720-01-M

[1] Regulatory bulletins are available at the address listed in § 500.32(c)(6) of this chapter.

DEPARTMENT OF COMMERCE

Technology Administration

15 CFR Part 1150

[Docket No. 910931-1231]

RIN 0692-AA11

Marking of Toy, Look-Alike and Imitation Firearms

AGENCY: Technology Administration, Commerce.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: This notice reopens the comment period for the proposed revision to the regulations on the "Marking of Toy, Look-Alike and Imitation Firearms" announced in the Federal Register (56 FR 56953) on November 7, 1992.

DATES: Comments on the proposed revisions must be received no later than March 17, 1992.

ADDRESSES: United States Department of Commerce, room 4410, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Bradford C. Brown, Acting Chief Counsel for Technology, telephone number (202) 377-1984, FAX (202) 377-0253.

Dated: January 10, 1992.

Robert M. White,

Under Secretary for Technology.

[FR Doc. 92-1248 Filed 1-16-92; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 785 and 827

Petition To Initiate Rulemaking; Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Definitions; Requirements for Permits for Special Categories of Mining; Coal Preparation Plants; Performance Standards; Extension of Comment Period

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

ACTION: Petition for rulemaking; extension of the public comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the Department of the Interior (DOI) extends until January 31, 1992, the public comment period on a petition for rulemaking submitted pursuant to the Surface Mining Control and Reclamation Act (SMCRA or the ACT), to amend OSM's regulations governing offsite coal preparation plants The petition was included in the comments received from the Joint NCA/AMC Committee on Surface Mining Regulations on a proposed rule to amend portions of the permanent program regulations governing coal preparation plants published in the **Federal Register** on September 25, 1991 (56 FR 48714). The notice of availability of the petition and request for comment was published in the December 18, 1991, **Federal Register** (56 FR 65716).

DATES: OSM will accept written comments on the petition until 5 p.m. Eastern time on January 31, 1992.

ADDRESSES: Mail comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 5131-L, 1951 Constitution Avenue, NW., Washington, DC 20240; or hand deliver the comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 5131-L, 1100 L Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Suzanne Hudak, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 208-2700.

SUPPLEMENTARY INFORMATION: OSM received a letter on November 22, 1991, from Stuart A. Sanderson, Senior Counsel, and Harold P. Quinn, Jr., Vice President and Counsel, representing the Joint NCA/AMC Committee on Surface Mining Regulations, Coal Building, 1130 17th St., NW., Washington, DC, as a petition for rulemaking. The petitioners requested that the agency propose for comment a rulemaking to revise the definition of "surface coal mining operations" at 30 CFR 700.5 so that the phrase "at or near the mine site" would encompass coal processing and preparation activities and, consistent with the revised definition, to also amend the rules at 30 CFR 785.21(a) and 827.1 by inserting the phrase "at or near the mine site" in those provisions where appropriate. The petition was included in the comments received from the Joint NCA/AMC Committee on a proposed rule to amend portions of OSM's permanent program regulations governing coal preparation plants published in the **Federal Register** on September 25, 1991 (56 FR 48714). OSM published the notice of availability of the petition and request for comment on December 18, 1991 (56 FR 65716).

The comment period for the petition was scheduled to close on January 17, 1992. In response to a request for more time to submit public comments on the petition, OSM is extending the comment period by 14 days. Comments will now be accepted until 5:00 p.m. local time on January 31, 1992.

Dated: January 10, 1992.

Brent Wahlquist,

Assistant Director, Reclamation and Regulatory Policy, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 92-1246 Filed 1-16-92; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 935

Ohio Regulatory Program; Revision of Administrative Rule

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

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period for Revised Program Amendment Number 53 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio has proposed further revisions to one rule in the Ohio Administrative Code concerning the characteristics of highwalls which are not entirely eliminated in areas to be covered by impoundments. The revisions concern the location of the remaining vertical portion of the highwall below the water line, the final slope of the reduced portion of the highwall, and the vegetative cover of the reduced portion of the highwall.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on February 18, 1992. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on February 1, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on February 3, 1992.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton, Road, room 202, Columbus, Ohio 43232, Telephone: (614) 866-0578.

Ohio Department of National Resources, Division of Reclamation, 1855 Fountain Square Court, Building H-3, Columbus, Ohio 43224, Telephone: (614) 265-6675.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated September 10, 1991 (Administrative Record No. OH-1581), Ohio submitted proposed program Amendment Number 53. The amendment proposed to delete Ohio Administrative Code (OAC) section 1501:13-9-04 paragraph (H)(2)(e). This paragraph currently requires operators to eliminate highwalls in areas which are to be covered by permanent impoundments. In place of this existing provision, Program Amendment Number 53 proposed a new paragraph (H)(1)(i) to OAC 1501:13-9-04. This new paragraph

would require that the vertical portion of any remaining highwall beneath the surface of impoundments shall be located far enough below the low-water line of the impoundment to provide adequate safety and access for future users of the impoundment

OSM announced receipt of proposed Program Amendment Number 53 in the October 2, 1991 **Federal Register** (56 FR 49856), and, in the same notice, opened the public hearing on the adequacy of the proposed amendment. The public comment period ended on November 1, 1991. The public hearing scheduled for November 28, 1991 was not held because no one requested an opportunity to testify.

By letter dated December 17, 1991 (Ohio Administrative Record No. OH-1617), Ohio submitted Revised Program Amendment Number 53 containing four further proposed revisions to OAC Section 1501:13-9-04. The four new revisions proposed in the December 17, 1991, submission are discussed briefly below:

1. Paragraph (H)(1)(i):

Ohio is adding the statement that "For permanent impoundments, the vertical portion of the remaining highwall shall also meet the requirements of paragraph (H)(2)(d) of this rule."

2. Paragraph (H)(2)(d):

Ohio is adding the statement that "For impoundments where the vertical portion of a highwall remains, the vertical portion shall be located at least eight feet below the low-water line."

3. Paragraph (H)(2)(g):

Ohio is adding this new paragraph to provide that the reduced portion of any remaining highwall shall have a final slope appropriate for the postmining land use and shall have a minimum static safety factor of 1.3 or a final slope that is no steeper than 3H:1V, unless the type and permeability of the spoil require a less steep slope to ensure stability.

4. Paragraph (H)(2)(h):

Ohio is adding the statement that, "The face of the reduced portion of any highwall shall be vegetated with species appropriate for the postmining land use."

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on February 3, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each public meeting will be make a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 9, 1992

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 92-1259 Filed 1-16-92; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 944

Utah Permanent Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Utah permanent regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to provisions of the Utah rules pertaining to coal mining incidental to the mining of other minerals. The amendment is intended to revise the Utah program to be consistent with the corresponding Federal regulations.

This notice sets forth the times and locations that the Utah program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.s.t. February 18, 1992. If requested, a public hearing on the proposed amendment will be held on February 11, 1992. Requests to present oral testimony at the hearing must be received by 4 p.m., m.s.t. on February 3, 1992.

ADDRESSES: Written comments should be mailed or hand delivered to Robert H. Hagen at the address listed below.

Copies of the Utah program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., suite 310, Albuquerque, NM 87102, Telephone: (505) 766-1486.

Utah Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, suite 350, Salt Lake City, UT 84180-1203, Telephone: (801) 538-5340.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, telephone: (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

By letter dated December 39, 1991 (administrative record No. UT-711), Utah submitted a proposed amendment to its program pursuant to SMCRA. Utah submitted the proposed amendment in response to OSM's 30 CFR 732 letter dated February 7, 1990, regarding coal mining incidental to the mining of other minerals. The provisions of the Utah Coal Mining Rules that Utah proposes to amend are: R614-100-200, definitions of "cumulative impact area," "cumulative measurement period," "cumulative production," "cumulative revenue," "mining area," and "other minerals;" R614-100-414, applicability; R614-106-100, scope; R614-106-200, application requirements and procedures; R614-106-300, contents of application for exemption; R614-106-400, public availability of information; R614-106-500, requirements for exemption; R614-106-600, conditions of exemption and right of inspection and entry; R614-106-700, stockpiling of minerals; R614-106-800, revocation and enforcement; R614-106-900, reporting requirements; and R614-300-211, administrative and judicial review of decisions on permits.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Utah program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m., m.s.t. on February 3, 1992. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "**FOR FURTHER INFORMATION CONTRACT**" All such meetings will be open to the public and, if possible, notices of meetings will be posed at the locations listed under "**ADDRESSES**." A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surfacing mining, Underground mining.

Dated: January 9, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 92-1260 Filed 1-16-92; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS-FRL-4093-9]

Regulation of Fuels and Fuel Additives: Standards for Reformulated Gasoline and Conventional Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public workshop.

SUMMARY: This notice announces the time and place for a public workshop related to EPA's development of the complex emissions model for reformulated gasoline.

DATES: The public workshop will be held on January 22 and January 23, 1992. It will start at 9 a.m. each day and will continue until 5 p.m. the first day and as long as necessary on the second day to complete the agenda.

ADDRESSES: The public workshop will be held at the Best Western Domino's Farms Hotel, 3600 Plymouth Road, Ann Arbor, Michigan 48105 (telephone 313-769-9800). Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A-91-02, at: Air Docket Section (LE-131), U.S. Environmental Protection Agency, Attention: Docket No. A-91-02, First Floor, Waterside Mall, rm. M-1500, 401 M Street, SW., Washington, DC 20460.

Materials related to this rulemaking have been placed in Docket A-91-02 by EPA. The docket is located at the above address and may be inspected between 8:30 a.m. and noon and between 1:30 p.m. and 3:30 p.m., Monday through Friday. EPA may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Sklar, Standards Development and Support Branch, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Telephone: (313)741-8817.

SUPPLEMENTARY INFORMATION:

Background

Section 211(k) of the Clean Air Act, as amended [1] (Act), requires that EPA promulgate regulations establishing the requirements for a reformulated gasoline program. Under this program, gasoline would be reformulated to reduce the emissions of gasoline-fueled vehicles in specified ozone nonattainment areas.

[1] Clean Air Act Amendments of 1990, 104 Stat. 2399 (1990).

Reformulated gasoline must meet certain general requirements, including restrictions on the oxygen, benzene, and heavy metals content of the gasoline, and on emissions of oxides of nitrogen. Reformulated gasoline must also comply with the move stringent of either the formula specified in section 211(k)(3)(A), or the emissions reduction performance standard specified in section 211(k)(3)(B). The performance standard requires reductions in motor vehicle emissions of ozone forming volatile organic compounds, as well as reductions in emissions of specified toxic air pollutants. Section 211(k) contains various other requirements for the reformulated gasoline program, such as certification requirements, credit programs, and expansion of the geographic scope of the program through state "opt-ins." A related provision, section 211(k)(8), establishes an anti-dumping program for all areas not included in the reformulated gasoline program.

To aid in the promulgation of the required rulemaking, EPA formed a broad based Advisory Committee pursuant to the Federal Advisory Committee Act,[2] and the Negotiated Rulemaking Act of 1990.[3] During the regulatory negotiation process, EPA issued a Notice of Proposed Rulemaking on July 9, 1991 (56 FR 31176). Shortly thereafter, on August 16, 1991, EPA and the members of the Advisory Committee signed an "Agreement in Principle" embodying the members' concurrence on an outline of the underlying principles of the reformulated gasoline and anti-dumping programs. EPA is currently preparing a Supplemental Notice of Proposed Rulemaking incorporating many aspects of the agreement.

Generally, the agreed upon reformulated gasoline program would provide refiners with two modeling options and a testing option for determining whether fuels sold in 1995 and 1996 meet the reformulated gasoline requirements. The samples of these modeling options (the simple model) will be detailed in the Supplemental Proposal described above. The agreement further committed EPA to promulgate a more complex emissions model for use as early as 1995, but which would become mandatory beginning in 1997. Under the Agreement, EPA is to proposed regulation establishing this complex model by November 30, 1992 and promulgate such regulations by March 1, 1993.

Public Workshop

Pursuant to the Agreement in Principle, EPA intends to hold a series of workshops, open to all interested parties, to expedite the development and promulgation of the rule establishing the complex emission model. The first such workshop will be held in Ann Arbor, Michigan, on Wednesday, January 22 and Thursday, January 23. The workshop will include the following topics:

—*Potential complex model fuel parameters:* This topic will include a review and discussion of the fuel parameters currently under consideration for inclusion in the complex model and the reasons for expecting such parameters to influence emissions. Parameters currently under consideration include the simple model parameters (oxygen, RVP, benzene, and aromatics) as well as sulfur, olefins, T50 (the temperature at which 50% of the fuel sample evaporates), T90, end point, vapor pressure at 130°F, and dilution and interactive effects of all considered parameters. This topic is intended to provide an opportunity to identify additional parameters that should be evaluated for inclusion in the model.

—*Information required to add fuel parameters to the complex model:* This topic will focus on the quantity and quality of data required to justify inclusion of parameters in the complex model.

—*Vehicle testing requirements:* This topic will focus on the key elements of an authoritative test program for individual parameters.

—*Computational and statistical procedures to develop 1990 model year in-use emission effects:* This topic will discuss the appropriateness of various statistical analysis procedures to determine the statistical validity of vehicle testing results. It will also review the procedures used to determine expected in-use emission effects on the 1990 model year vehicle fleet from vehicle testing data.

—*Computational and statistical methodology for combining the results of multiple studies:* This topic will focus on identifying methods to combine the results from separate studies, on the appropriate methods to determine emission effects when combining separate studies, and on appropriate statistical analysis procedures to evaluate the statistical significance of effects determined by combining separate studies.

—*Methods for coordinating complex model testing activities:* This topic will focus on the scope of current and planned vehicle testing activities in support of the development of the complex model and will discuss methods and procedures to ensure sufficient coordination of such activities.

Public Participation

As in past rulemaking actions, EPA strongly encourages full public participation in the development and assessment of information that will be used in developing a final rule. This workshop will affect the methods used by the Agency in developing the complex model rule, and EPA welcomes public input regarding which methods should be used.

EPA will make brief presentations on each of the subjects listed above. After EPA's presentations, attendees will be encouraged to make oral presentations. Questions will be taken after each presentation. Any person desiring to make such a presentation at the public workshop should notify the contact person listed above of such intent at least seven days before the workshop. The contact person also should be provided an estimate of the time required for the presentation of the testimony and notification of any need for audio/visual equipment.

EPA suggests that enough copies of the material for presentation be brought to the workshop for distribution to the audience. EPA anticipates attendance of 100 to 150 people. In addition, it will be helpful for EPA to receive an advance copy of any material for presentation before the scheduled workshop date so as to allow EPA staff to give such material full consideration. Mr. Charles Gray, Director of the Emission Control Technology Division of EPA's Office of Mobile Sources will chair the workshop. The workshop will be conducted informally, and technical rules of evidence will not apply.

Dated: January 13, 1992.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92-1299 Filed 1-16-92; 8:45 am]

BILLING CODE 6560-50-M

[2] 5 U.S.C. App. 1, *et seq.*

[3] Public Law 101-648.

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 91-22]

Petition of Total Ocean Marine Services, Inc. for Relief From Conditions Unfavorable to Shipping in the United States/Venezuela Trade; Actions To Adjust or Meet Conditions Unfavorable to Shipping

AGENCY: Federal Maritime Commission.

ACTION: Notice of intent to discontinue proceeding.

SUMMARY: A recent maritime agreement concluded between the Government of Venezuela and the Government of the United States would appear to have resolved the unfavorable shipping conditions addressed by the proposed rule issued in this proceeding. The Federal Maritime Commission is therefore giving notice of its intent to discontinue this proceeding. However, before any such final action, the Petitioner and other interested parties can comment on the discontinuance.

DATE: Comments (original and 15 copies) due on or before February 14, 1992.

ADDRESS: Send comments to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: On May 13, 1991, the Federal Maritime Commission ("Commission" or "FMC") initiated this rulemaking proceeding ("proposed rule") pursuant to section 19 of the Merchant Marine Act, 1920, 46 U.S.C. 876 ("section 19") in response to a petition ("Petition") filed by Total Ocean Marine Services, Inc. ("Total Ocean"). It appeared from the Petition, and comments on the Petition, that the laws, policies and practices of the Government of Venezuela ("GOV") reserved a substantial portion of general export and import cargo in the United States/Venezuela trade ("Trade") to carriage by national lines to the exclusion of operators of third-flag vessels. In addition, it appeared that agencies of the Government of Venezuela had withheld from the Petitioner authorization to undertake operation as a common carrier by chartering third-flag vessels.

The proposed rule would adjust or meet the apparent unfavorable conditions by imposing a per voyage fee upon certain named Venezuelan carriers. Failure to pay the fee would result in suspension of a carrier's tariffs, or denial of access to or clearance from U.S. ports. The effect of the proposed rule would be to meet unfavorable shipping conditions by imposing burdens upon Venezuelan carriers which approximate those imposed by Venezuelan law, regulation, policy and practice upon the petitioner, a potential operator of third-flag vessels.

The corrective measures advanced in the proposed rule would be applied to the following named carriers: Venezuelan Container Line, C.A. ("VCL"); Naviera Pacifico C.A. ("Naviera Pacifico"); Compania Anonima Venezolana de Navigacion ("CAVN"); Maritima Aragua, S.A. ("Maragua Line"); King Ocean Service de Venezuela, S.A. ("King Ocean"); C.A. Maritima Oceanica Granelera ("CAMOGRA"); Consorcio Naviero de Occidente C.A. ("Conaven"); Naviera Lavinel C.A.; Naviera Transpapel, C.A.; Vencaribe C.A.; Naviera Caribana C.A.; Zade, C.A.; Naviera Naviprobo, C.A.; and Inagua Line—Naviprobo.[1]

The proposed rule was published in the **Federal Register** on May 16, 1991 (56 FR 22685) and the following persons submitted comments: Total Ocean; Shippers for Competitive Ocean Transportation ("SCOT"); Inagua Lines, Inc. ("Inagua"); CAMOGRA; Naviera Pacifico; the Venezuelan American-Chamber of Commerce and Industry ("VenAmCham"); American Transport Lines, Inc. ("AmTrans"); King Ocean; CAVN; and Camara Venezolana de Armadores, the Venezuelan Chamber of Shipowners ("Chamber" or "Venezuelan Shipowners").[2] Comments were thus filed either individually (or collectively by the Chamber) on behalf of all of the Venezuelan-flag carriers named in the Proposed Rule with the exception of the following: Vencaribe; Naviera Caribana; Zade; and Naviera Naviprobo.[3] The Proposed Rule was supported by Total Ocean and SCOT and generally opposed by Venezuela shipowner interests.

The Department of State ("DOS") submitted letters dated July 3, 1991 ("July 3 Letter") and August 9, 1991 ("August 9 Letter"). In its August 9 Letter, DOS indicated that the U.S. Government was in the process of proposing an agreement to the GOV which it believed "* * * would adjust conditions in the trade in such a manner as to address the underlying access issue in the case before the Commission." DOS also reaffirmed the request made in the July 3 Letter that the Commission withhold a final determination of Total Ocean's Petition pending a report on the conclusions of the consultations.

Subsequently, an agreement between the Government of the United States and the GOV was concluded through an exchange of diplomatic notes dated October 15 and 17, 1991. A letter from DOS dated October 24, 1991 ("October 24 Letter") transmitted copies of this exchange of diplomatic notes. DOS indicated in the October 24, Letter that:

> Under the terms of the Agreement, the reserve cargo of the two countries shall be available, on an equal access basis, to the maritime carriers of the two nations for transport in vessels owned or chartered by the carriers (including third-flag chartered vessels).

The agreement is for a two-year term and excludes the defense cargoes of both countries. It supersedes a 1983 bilateral memorandum of understanding on shipping policy.

DOS provided copies of this exchange of diplomatic notes. In addition, DOS provided copies of two other documents which are relevant to this proceeding. One is a letter from Rear Admiral Luis Antonio Mareno Zambrano of the GOV Ministry of Transportation and Communications to Total Ocean dated October 17, 1991 which informs Total Ocean of the new maritime agreement and which states:

> * * * we are authorized to inform you that your firm may operate as of this date in the maritime trade between the two countries, pursuant to the conditions hereby.

The second document is a letter from Celia Benchimol of the Ministry of Transport and Communications to the National Banking Council, dated October 18, 1991, notifying the National Banking Council of the "new commercial

[1] The proposed rule indicated that the Commission was unable to determine whether the company identified as "Inagua-Naviprobo" by Total Ocean in its Petition was the same as, or distinct from, Naviera Naviprobo C.A. Proposed Rule at 28, n. 2. Accordingly, both Naviera Naviprobo and "Inagua Naviprobo" were listed as separate and distinct carriers in the Proposed Rule. By letter to the Commission dated June 17, 1991, counsel for Inagua Lines, Inc. advised that the tariff is issued by Naviera Naviprobo, and that Inagua is only an agent. Counsel further explained that: "The wording 'Inagua-Naviprobo,' is only the result of an every day common expression resulting from the usage of both companies names combined, by customers in the trade." Apparently, Inagua Lines is a U.S. company operating third-flag vessels and is not a Venezuelan-flag carrier.

[2] The Chamber identified itself as an association of Venezuelan-flag carriers in, *inter alia*, the trade between the United States and Venezuela. The seven members of the Chamber represented by the comment are: VCL; Transpapel; King Ocean; Maragua; Naviera Lavinel; Naviera Pacifico; and Conaven.

[3] According to the comment and letters submitted by Inagua Line, Naviera Naviprobo is a Venezuelan-flag carrier serving the Trade. In the affidavit of Salvador Juan attached to the comment of the Venezuelan Chamber of Shipowners, Vencaribe, Naviera Caribana and Zade are said to be Venezuelan-flag carriers with limited operations in the Trade. See Juan Affidavit at 5-6.

maritime policy" and directing Venezuelan banks not to include restrictive language in letters of credit that would require the use of the state-owned carrier or associated lines for shipments in the trade between the U.S. and Venezuela.

Subsequently, the Commission received a letter from Total Ocean dated November 4, 1991, responding to the recent diplomatic developments. Total Ocean acknowledges the receipt of a letter from Venezuela's Ministry of Transport and states that "* * * it appears that the concerns of the Petitioner in this matter may be substantially resolved." Nevertheless, Total Ocean appears to express reservation over the fact that the new agreement will expire in two years and that the authority (presumably to operate in the trade) contained in the Mininstry's letter to Total Ocean "has not yet been put into practice or tested." Total Ocean therefore requests "that a final ruling * * * in this matter be held in abeyance until a later date when these and other minor issues may be resolved." [4]

Finally, the Commission takes note of recent accounts appearing in the trade press which report that Total Ocean inaugurated a service in the Trade in December, 1991 utilizing a chartered third-flag vessel. These reports provide further indication that Total Ocean has entered the Trade and that the apparent unfavorable shipping conditions described in the Proposed Rule may be resolved.

Accordingly, based on the diplomatic developments, Total Ocean's recent letter, and press reports, it would appear that the unfavorable shipping conditions described in the Commission's Proposed Rule have been substantially alleviated. The Commission therefore is announcing its intention to discontinue this proceeding based on the apparent resolution of unfavorable shipping conditions. Total Ocean and all other interested persons can comment on this discontinuance on or before February 14, 1992.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-1217 Filed 1-16-92; 8:45 am]

BILLING CODE 6730-01-M

[4] Total Ocean sent a letter to the Commission dated November 13, 1991, certifying that a copy of the November 4, 1991 letter was served upon the participants in this proceeding.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 591

RIN 2127-AD00

[Docket No. 89-5; Notice 10]

Importation of Motor Vehicles and Equipment Subject to Federal Safety, Bumper, and Theft Prevention Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes two important amendments to the regulation governing importation of motor vehicles subject to requirements of the Department of Transportation. The first is that importers of motor vehicles who are required to furnish bonds to NHTSA upon importation of nonconforming vehicles be permitted, as an alternative to furnishing sureties, to furnish cash deposits or obligations of the United States. The proposal is intended to facilitate the importation of nonconforming vehicles. The second proposal would allow the importation of vehicles less than 25 years old for purposes of studies, provided the vehicle is one of historical or technological interest, and that the importer is, and has been for 5 years before entry of the vehicle, either a tax-exempt corporation or private foundation as recognized by the Internal Revenue Service. Under this allowance, nonconforming vehicles could be imported by museums for static display.

DATES: The comment closing date for the proposal is March 2, 1992. The effective date of the final rule would be 30 days after publication in the **Federal Register**.

ADDRESSES: Comments should refer to Docket 89-5; Notice 10, and be submitted to: Docket Section NHTSA, room 5109, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (202-366-5263).

SUPPLEMENTARY INFORMATION:

A. Allowance of Surety Equivalents

Since the initial regulations governing importation of motor vehicles subject to the Federal motor vehicle safety standards became effective in January 1968, an importer of a noncomplying vehicle has been required to furnish an appropriate bond to ensure that the vehicle will be brought into conformity with all applicable Federal motor vehicle safety standards, and, if it is not, that it will be redelivered for export. Until January 31, 1990, the bond was furnished to the U.S. Customs Service as part of that agency's general importation bond for payment of duty and conformance with other Federal regulations.

Since the amendments made to be National Traffic and Motor Vehicle Safety Act by Public Law 100-562, the Imported Vehicle Safety Compliance Act of 1988 (herein the 1988 Amendments), became effective at the end of January 1990, the bond to ensure conformance has become a separate instrument, no longer part of the general Customs bond, and is furnished directly to the Department of Transportation.

In implementation of the 1988 Amendments, NHTSA provided for importation compliance bonds in 49 CFR 591.5(f) in the form shown in appendix A, and 591.5(g) in the form shown in appendix B. Initially, bonding companies were reluctant to serve as sureties because of their lack of familiarity with the DOT bonds, and prospective importers found it difficult to obtain them for the importation of their vehicles. Although the situation has improved in general, as sureties have become more familiar with bonding requirements, the situations tend to differ at the smaller ports of entries where importation of vehicles is infrequent. NHTSA on one occasion did accept a cash deposit from an importer in lieu of a bond, when the importer pointed out that Customs itself can accept cash or securities of the United States under bond, as an alternative to providing a surety.

The agency has tentatively decided that this alternative should be formalized through an amendment to part 591. It believes that such an amendment might relieve an unintended impediment to the importation of motor vehicles when an importer is unable to find a bonding agency willing to serve as surety on DOT bonds. The benefit to DOT is that it directly holds the security for a vehicle, and will not have to go to an outside entity to foreclose on the bond in the event the terms of entry are forfeited.

Specifically, an importer could provide a bond directly to DOT, and, as surety, could submit United States money, bonds (except for savings bonds), certificates of indebtedness, and Treasury notes or bills in an amount equal to the amount of the bond. At the time of deposit of any obligation other than money the importer would execute

a power of attorney authorizing NHTSA, in the event of default, to sell the obligation and retain the proceeds. A form of power of attorney is proposed as appendix C. NHTSA's proposal is based upon the similar Customs regulation, 19 CFR 113.40.

B. Possible Expansion of Categories of Importation Under Section 108(j)

The 1988 Amendments have significantly restricted the importation of motor vehicles that were previously admissible for purposes other than general on-road use. Before January 31, 1990, NHTSA and the U.S. Customs Service had joint authority to allow the temporary admission into the United States of any motor vehicle in use (15 U.S.C. 1397(b)(4)). Pursuant to this authority, NHTSA and Customs allowed nonconforming motor vehicles to be imported "solely for the purpose of show, test, experiment, competition, repair or alteration." (19 CFR 12.80(b)(1)(vii)). However, section 1397(b)(4) was repealed by the 1988 Amendments, which added section 1397(j). This new section contains allowances comparable, but not identical, to those contained in 19 CFR 12.80. It permits the admission of nonconforming vehicles and equipment, without a time limitation, but only "upon such terms and conditions as [NHTSA] may find necessary solely for the purpose of research, investigation, studies, demonstrations or training, or competitive racing events." Congress did not include the categories of "show," and "repair or alteration" among the specific purposes for which a nonconforming vehicle could be entered, and the legislative history afforded no explanation. In enforcing the 1988 Amendments since January 31, 1990, the agency has found a continued need of importers to bring their cars to the United States for repairs and alteration, and a continued desire in the public to import cars for purposes of show. The agency promised in a previous notice to review these questions.

1. Repair or Alteration

To date, importers who wish to bring in nonconforming vehicles for repair or alteration have been found to qualify under other provisions of the Safety Act and part 591. Most frequently, these importers have been citizens of countries other than the United States, and have been able to import their vehicles as nonresidents, pursuant to 49 CFR 591.5(d). If the importer does not qualify for the nonresident exception, and the vehicle will be exported immediately upon completion of the repairs to it, NHTSA has allowed its temporary importation pursuant to § 591.5(c), the declaration that the vehicle is being importer for export, and bears a label or tag to that effect. In a third category of cases, the vehicle was found to be one needing completion, rather than repair or alteration, and eligible for entry as a vehicle requiring further manufacturing operations to perform its assigned function, under § 591.5(e). Thus, experience to date does not indicate that demonstrable hardship has been caused by a lack of a specific statutory allowance for repairs or alteration.

2. Show

The agency has previously stated (54 FR at 17776 and 55 FR 40876) that § 591.5(j) does not preclude original vehicle manufacturers who import nonconforming vehicles for display at auto shows to gauge public reaction to new styling or engineering features from declaring that such importation is for "research" or "demonstrations." But in the absence of specific authority from Congress to allow importations for show or display, the agency has adopted and maintained a conservative attitude towards entities other than original vehicle or vehicle equipment manufacturers who wish to import nonconforming vehicles for display. In short, under the 1988 Amendments, it has refused to allow them.

In commenting on a previous notice of proposed rulemaking, the law firm of Pillsbury, Madison & Sutro requested that § 591.5(j) be expanded to allow importation for an additional purpose, display, in order to be consistent with EPA requirements. The law firm argued that the 1988 Amendments provide sufficient safeguards against abuse of a display-only exemption, and that NHTSA could provide that the vehicle not be sold until an appropriate certificate of conformity was received. NHTSA responded to the law firm that it would review the issue raised.

Since the new restrictions went into effect, efforts have been made to import examples of the East German Trabant as a historical vehicle for display purposes, either by individuals purporting to represent "museums" or who wish to donate the cars to museums. Efforts have also been made to import vehicles for "show" which are of current or recent production such as the Porsche 959, but whose manufacturers have chosen not to certify them for sale in the United States. Because these vehicles are not substantially similar to certified vehicles, may not be readily capable of being brought into compliance, and have not been the subject of petitions, they are not presently eligible for entry under § 591.5(f). Offers have been made to render such vehicles incapable of operation, and to display them under conditions of static display, in "museums" or in vehicle showrooms.

Section 108(i) indirectly addresses the display issue by permitting the entry without conformance of any vehicle whose age is 25 years or greater. This permits the unrestricted importation of vehicles that were not sold in the United States, and allows them to retain their original character without modification to U.S. requirements. However, the vehicles for which entry have been sought for display are less than 25 years old. Since no specific allowance has been provided for importation for show or display, the question is whether any of the five purposes added by the 1988 Amendments can, in the context of Congress's seemingly intentional omission of the term "show", be reasonably interpreted as allowing importation of nonconforming motor vehicles for the purpose of show or display. Certainly "competitive racing events" does not connote a static display. "Research" and "investigations" indicate that the purpose of importation is test or experiment. NHTSA does not believe that it can fairly interpret "demonstrations or training" to encompass static display; a "demonstration" of a motor vehicles has traditionally involved exhibiting its operation or use, both in the showroom and on the road. "Studies", as defined by The Random House Dictionary of the English Language (1967), means "a personal effort to gain knowledge." The primary meaning of the word "study" is "the application of the mind to the acquisition of knowledge." The static display of a vehicle or equipment item could form a basis for the acquisition of knowledge if that vehicle or equipment item were of historical or technological significance. Therefore, the agency has tentatively concluded that it may be in the public interest to admit vehicles whose age is less than 25 years if their importation can be demonstrated to enhance the acquisition and application of knowledge, that is to say, that they merit admission because they are of historical or technological interest.

The agency believes that this interpretation of "studies" is in accordance with the purposes of both the National Traffic and Motor Vehicle Safety Act (the Act) and the 1988 Amendments. The stated purpose of the Act is to reduce accidents involving motor vehicles, and deaths and injuries to persons resulting from such accidents.

However, section 108(j), added in 1988, represents a concession by Congress that the interests therein enumerated, which are not safety-related, might justify the importation and use of vehicles without requiring their conformance, and provides the Administrator with discretionary authority to allow importation under such terms and conditions as may be found necessary for the purpose of these interests. Thus, the importation of vehicles for static display by a category of importer other than original manufacturer does not *per se* undermine the purposes of Congress. These purposes can be undermined, however, by importations under subterfuge, where the hidden but real intent of the importer is to operate the vehicle on the public roads for his or her private enjoyment. This is NHTSA's primary concern. The agency has no power to seize a vehicle entered under false pretenses, and the maximum civil penalty it can impose on a private importer whose declaration is not confirmed by conduct subsequent to entry is limited to $1,000 per vehicle.

As NHTSA analyses it, thee are two components relevant to importation of a vehicle or equipment item for "studies": the vehicle or item, and the nature of the importer. Occasionally, NHTSA is approached by a prospective vehicle importer who offers to remove the engine if importation will be allowed. Aside from the problems of enforcement that this would present (and NHTSA has not allowed it), NHTSA believes that if a vehicle is of sufficient historical or technological interest to be admitted for "studies", its character must not be altered. Although such offers are well-meaning, NHTSA has no intention of requiring the alteration of a motor vehicle by removal of its engine or other parts.

The agency has considered what types of motor vehicles or equipment might be considered to have sufficient historical or technological interest to be admitted for "studies". Some examples come to mind. A vehicle less than 25 years of age and which is no longer in production may be said to have entered history. The admission and exhibition of the recently discontinued Trabant might be instructive as to comparative manufacturing sophistication between the more advanced industrial nations and the lesser developed ones. Prototypes or early production examples of radial tires, which originated in Europe, or experimental headlamps found on motorshow cars, are examples of nonconforming equipment items that might be eligible for "studies".

As previously noted, these importation requirements would not apply to manufacturers of motor vehicles or equipment whose products are certified for sale in the United States. If importation were sought for "studies" by a person other than a certifying manufacturer, the written request already required before entry would be supplemented by additional information supporting the request, and the prospective importer would bear the burden of persuasion. The agency is not proposing criteria as to what may qualify as "historical" or "technological interest", as it wishes to afford prospective importers flexibility in making their arguments. However, comments are solicited on whether criteria should be adopted and, if so, what those criteria should be.

The second component to be considered is the nature of the importer. It has tentatively decided that the purpose of "studies" is more likely to be achieved if the importer is an institution providing an opportunity for the acquisition of knowledge, such as a museum or educational institution. In general, these are businesses organized other than for profit. Therefore, the agency tentatively concludes that in order to qualify as an importer for studies, an importer must be either a corporation or foundation that has been recognized, for at least 5 years before the date of entry of the vehicle, by the Internal Revenue Service under the Internal Revenue Code, as one qualifying for tax exempt status as a section 501(c)(3) corporation or foundation, or a section 509 private foundation. A section 501(c)(3) or section 509 entity is one that is "organized and operated exclusively for * * * scientific, testing for public safety, * * * or educational purposes, * * * no part of the net earnings of which inures to the benefit of any private shareholder or individual * * *." This would include universities and municipal museums. To discourage the creation of entities for the sole purpose of importing a vehicle under section 108(j), the agency is proposing that importers of such vehicles demonstrate that they have been recognized as a tax-exempt entity under section 501(c)(3) or section 509 by the Internal Revenue Service for at least 5 years before the date of entry. A special exception would be made if the importer is the National Museum of History and Technology of the Smithsonian Institution. An importer for studies could not sell or otherwise dispose of the vehicle until it passed the age required for conformity of nonconforming vehicles, 25 years.

In summary, a prospective importer for studies, other than a certifying manufacturer, would submit a written request to the Administrator, in advance of importation, presenting its views why the vehicle for which request is made is of historical or technological interest, and why its admission would be for the purpose of studies. The importer would also be required to submit proof of its tax-exempt status, and that the status had existed for at least 5 years before the date of its letter. Finally, the importer would have to agree that it would not sell, lease, or transfer either title to, or possession of, the vehicle until it was 25 years old. The agency would consider any failure to comply with the terms of entry to be a violation of the Vehicle Safety Act for which a civil penalty could be imposed, and, if occurring immediately after entry, to constitute entry under a false declaration subject to the civil and criminal sanctions of 18 U.S.C. 1001.

The agency had considered adopting a requirement under which a vehicle produced by a manufacturer doing business in the United States could only be imported by that manufacturer, as being the best judge of its historic or technological significance. However, by restricting importations for studies to corporations or foundations whose tax exempt status has been recognized by the United States for not less than 5 years. The agency hopes to minimize attempts to evade its regulations. The clear intent of the 1988 Amendments is that individuals shall not import nonconforming vehicles for their own private enjoyment on the public roads unless they are capable of being brought into conformity, as determined by the Administrator, and unless they have, in fact, been conformed.

C. Further Importation Issues Under Section 591.5(j)

Chrysler Corporation has raised a question that also bears upon the interpretation of § 591.5(j). Section 591.5(j)(3) requires that the importer of a nonconforming vehicle admitted for research, investigations, studies, demonstrations or training, or for competitive racing events, provide the Administrator with documentary proof of export or destruction not later than 30 days following the end of the period for which the vehicle has been admitted into the United States. In commenting on this requirement when it was proposed, Chrysler asked whether the destructibility requirement would be satisfied by rendering a vehicle permanently inoperable before donation for educational purposes to a bona fide

educational institution. NHTSA responded in the final rule to that proposal that it would consider Chrysler's question regarding destructibility at the same time that it addressed the question of display.

With respect to inoperability as a substitute for destruction prior to donation, Chrysler is really asking two questions: Whether inoperability of a nonconforming vehicle removes the threat it may present to the public safety, and, whether the importer may transfer title to it.

1. Whether Rendering a Vehicle Inoperable Removes a Threat to the Public

In requesting an interpretation, Chrysler did not offer a definition of inoperable. The clearest example of inoperability is, of course, removal of a vehicle's source of propulsion. Other examples of inoperability also come to mind that do not involve disabling the power source, such as removal of wheels and tires, or the vehicle body. Past experience has led NHTSA to question whether any vehicle can be made permanently inoperable. This experience concerns the disposition of surplus M151 vehicles. Because of the rollover tendency manifested by these vehicles when they are improperly driven, it has been the policy of the Department of Defense, with the concurrence of this agency, to disable the vehicles at the end of their service life, and to dispose of them for salvage. This has involved cutting the vehicles into two sections, yet instances have arisen where the vehicles are welded together and sold for on road use. Even a vehicle that has been completely disassembled into its component parts can be reassembled in time.

2. Whether an Importer May Transfer Title

The 1988 Amendments are silent as to whether an importer under § 591.5(j) may transfer title to a vehicle after its importation. Although it could be argued that such a transfer is permissible if its purpose will enable the transferee to accomplish one of the purposes of § 591.5(j), the direct authority of the Amendments does not reach the transferee because the transferee is not the importer of the vehicle. Thus the conduct of the transferee is not subject to the jurisdiction of the agency, and it may engage in conduct with impunity that might have been forbidden the transferor, such as operation of a vehicle on the public roads without the agency's permission. Because the agency has no definition of inoperability, and cannot control the actions of a transferee, it will not accept transfer of an "inoperable" vehicle as a substitute for a vehicle's export or destruction. However, it has no objection to the export of a section 108(j) vehicle, its subsequent transfer of title, and its reimportation by the transferee for a purpose consistent with section 108(j).

Rulemaking Analyses

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the economic impacts of this proposal and has made a determination that it is not major within the meaning of Executive Order 12291 nor significant under Department of Transportation policies and procedures. There is no substantial impact upon a major transportation safety program, and the action does not involve any substantial public interest or controversy. There would be no substantial effect on state and local governments who purchase new vehicles since the affected vehicles would not be imported for resale. Therefore, preparation of a full regulatory evaluation is not warranted.

Regulatory Flexibility Act

The agency has also considered the impacts of this proposed rule in relation to the Regulatory Flexibility Act. Since the impact of this proposed rule would be minimal, I certify that this proposed rule would not have a significant economic impact upon a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis has been prepared.

Executive Order 12612 (Federalism)

This agency has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this proposed rule for the purposes of the National Environmental Policy Act. The proposed rule would not have a significant effect upon the environment.

Paperwork Reduction Act

The declaration requirements and submittal of written statements to NHTSA are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. However, they were previously approved by OMB for inclusion in § 591.6 in the final rule published on September 29, 1989 (OMB Approval Number 2127-0002).

List of Subjects in 49 CFR Part 591

Imports, motor vehicle safety, motor vehicles.

In consideration of the foregoing, it is proposed that title 49 Code of Federal Regulations part 591 is amended as follows:

1. The authority section would continue to read:

Authority: Public Law 100-562, 15 U.S.C. 1401, 1407, 1912, 1916, 2022, 2027; delegations of authority at 49 CFR 1.50 and 501.8.

§ 591.6 [Amended]

2. In § 591.6(g)(1), the introductory phrase of the fourth sentence, beginning "If use on the public roads" and ending with "is imported" would be revised to read: "With respect to any vehicle or equipment item imported pursuant to §§ 591.5(j)(1) (i), (ii), or (iv), if use on the public roads is an integral part of the purpose for which the vehicle or equipment item is imported,"

§ 591.5 [Amended]

3. Section 591.5(g)(2) would be redesignated 591.5(g)(3), and new § 591.5(g)(2) would be added to read as follows:

(2) A declaration made pursuant to § 591.5(j) (2)(i) and § 591.5 (j)(1)(iii) shall be accompanied by a letter from the Administrator authorizing importation pursuant to those sections. In addition to the matters contained in paragraph (g)(1) of this section, the importer's written request shall explain why the vehicle or equipment item is of historical or technological interest, and describe the studies for which its importation is sought. The importer, if other than the National Museum of History and Technology, Smithsonian Institution, shall also provide a copy of the Determination Letter from the Internal Revenue Service approving the importer's status as a tax-exempt corporation or foundation, or private foundation, under 26 U.S.C. 501 (c)(3) or 509 respectively. The time between the date of the Letter and the date of the importer's written request to the Administrator shall be not less than 5 years. The importer shall also provide a statement that it shall not sell, or transfer possession or, or title to, the vehicle, or license it for use, or operate it on the public roads, until the vehicle is 25 or more years old.

§ 591.7 [Amended]

4. Section 591.7(e) would be added to read as follows:

(d) No vehicle or equipment item may be imported pursuant to § 591.5(j)(1)(iii) and (j)(2)(i) unless its importer has been recognized by the United States for not less than 5 years prior to the date of its written request under § 591.6(g)(2) as a tax-exempt corporation or foundation, or private foundation, under 26 U.S.C. 501(c)(3) or 509, respectively, or unless the importer is the National Museum of History and Technology, Smithsonian Institution.

5. A new § 591.10 would be added to read as follows:

§ 591.10 Offer of cash deposits or obligations of the United States in lieu of sureties on bonds.

(a) In lieu of sureties on any bond required under § 591.6(c) of this part, an importer may offer United States money, United States bonds (except for savings bonds), United States certificates of indebtedness, Treasury notes, or Treasury bills in an amount equal to the amount of the bond.

(b) At the time the importer deposits any obligation of the United States, other than United States money, with the administrator, (s)he shall deliver a duly executed power of attorney and agreement, in the form shown in appendix C of this part, authorizing the Administrator or delegate of the Administrator, in case of any default in the performance of any of the conditions of the bond, to sell the obligation so deposited, and to apply the proceeds of sale, in whole or in part, to the satisfaction of any penalties for violations of 15 U.S.C. 1397, and 15 U.S.C. 1916 arising by reason of default.

(c) If the importer deposits money of the United States with the Administrator, the Administrator or delegate may apply the cash, in whole or in part, to the satisfaction of any penalties for violations of 15 U.S.C. 3197, and 15 U.S.C. 1916 arising by reason of default.

7. Appendix C would be added to part 591 to read as follows:

Appendix C—Power of Attorney and Agreement

_____ _____ does constitute and appoint the Administrator of the National Highway Traffic Safety Administration, United States Department of Transportation, or delegate, as attorney for the undersigned, for and in the name of the undersigned to collect or to sell, assign, and transfer the securities described below as follows:

Title	Matures	Int. rate	Denom.	Serial #	Coupon/registered

The securities having been deposited by it as security for the performance of the agreements undertaken in a bond with the United States, executed on the date of ____, 199____, the terms and conditions of which are incorporated by reference into this power of attorney and agreement and made a part hereof. The undersigned agrees that in case of any default in the performance of any of the agreements the attorney shall have full power to collect the securities or any part thereof, or to sell, assign, and transfer the securities or any part thereof, or to sell, assign, and transfer the securities of any part thereof at public or private sale, without notice, free from any equity of redemption and without appraisement or valuation, notice and right to redeem being waived and to apply the proceeds of the sale or collection in whole or in part to the satisfaction of any obligation arising by reason of default. The undersigned further agrees that the authority granted by this agreement is irrevocable. The undersigned ratifies and confirms whatever the attorney shall do by virtue of this agreement. Witnessed and signed this _____ day of _____, 19____.

Before me, the undersigned, a notary public within and for the County of _____ in the State of _____, personally appeared _____ and acknowledged the execution of the foregoing power of attorney.

Witness my hand and notarial seal this _____ day of _____, 199____.

[Notarial seal]
Notary Public— _____

Issued on: September 30, 1991.

William A. Boehly,
Associate Administrator for Enforcement.

[FR Doc. 92-538 Filed 1-16-92; 8:45 am]
BILLING CODE 4510-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Meeting, Public Hearing and Extension of Comment Period on Proposed Endangered Status for the Lee County Cave Isopod (Lirceus usdagalun)

RIN 1018-AB66

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; public meeting and public hearing and reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service), under the Endangered Species Act of 1973 (Act), gives notice that a public meeting, followed by a public hearing, will be held on the proposed endangered status for the Lee County cave isopod (Lirceus usdagalun) The meeting will provide an opportunity for an informal exchange of information between the Service and the public. The hearing will allow all interested parties to submit oral or written comments on the proposal. The comment period for the original proposed rule, published in the **Federal Register** of November 15, 1991 [56 FR 58026], closes on January 14, 1992. That comment period is now reopened until February 21, 1992.

DATES: The public meeting and hearing will be held on Thursday, February 6, 1992, from 7 to 9:30 p.m. in Jonesville, Lee County, Virginia. Written comments must be received from all interested parties by February 21, 1992. Any comments received after this closing date may not be considered in the final decision on this proposal.

ADDRESSES: The public meeting and hearing will be held in the circuit courtroom of the Lee County Courthouse, Jonesville, Virginia. Written comments should be sent directly to the Field Supervisor, U.S. Fish and Wildlife Service, Annapolis, Field Office, 1825 Virginia Street, Annapolis, Maryland 21401. Comments and documents will be available for inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Judy Jacobs, Annapolis Field Office (see **ADDRESSES** Section) telephone: (410) 269-5448.

SUPPLEMENTARY INFORMATION:

Background

The Lee County cave isopod is a unique animal related to the shrimp (Class: Crustacea) that was originally known to exist in the world only in two cave systems in Lee County, Virginia. It has been extirpated from one of these systems, that is, from one half its known range, by pollution of the underground stream it inhabited. In its remaining cave system, the isopod is potentially threatened by the proposed construction of a prison facility and an airport in the cave vicinity. These construction projects could degrade groundwater quality sufficiently to threaten the isopod's survival, unless construction plans provide for its protection. The presence of the isopod is an indication of high quality, unpolluted groundwater, which is extremely important to humans as well, since the majority of the area's residents rely on springs or wells for their drinking water. Maintaining the high quality of groundwater in this portion of Lee County is especially challenging due to the fact that the area is underlain by limestone, a porous and water-soluble substrate, which facilitates the movement of potential pollutants from the surface into the groundwater.

The Lee County isopod was proposed for listing as an endangered species, with no critical habitat, in the **Federal Register** of November 15, 1991 (56 FR 58026). Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. On December 27, 1991, the Service received a written request for a public hearing from Ronald C. Flanary, Executive Director, Lenowisco, Planning District Commission.

In response to this request, the Service has scheduled a combined public meeting and hearing for February 6, 1992, in the circuit courtroom of the Lee County Courthouse, Jonesville, Virginia. The meeting will run from 7 p.m. to 8 p.m. and will be followed by a short intermission. The public hearing will begin at 8:15 p.m. During the public meeting, the Service will informally answer questions about the proposal; the meeting will not be recorded. The public hearing will provide an opportunity for people to enter formal statements into the record. Those parties wishing to make statements for the record would bring a copy of their statements to present to the Service at the start of the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the Service. The comment period for this proposal closes on February 21, 1992. Written comments not presented to the Service at the public hearing should be submitted to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is Judy Jacobs, Annapolis Field Office, U.S. Fish and Wildlife Service, (see **ADDRESSES** Section).

Authority

The authority of this action is the Endangered Species Act (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.

List of subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: January 9, 1992.

Nancy M. Kaufman,

Acting Regional Director, Region 5, U.S. Fish and Wildlife Service.

[FR Doc. 92–1157 Filed 1–16–92; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 57, No. 12
Friday, January 17, 1992

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 Nutrition Service

Summer Food Service Program for Children; Program Reimbursement for 1992

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the annual adjustments to the reimbursement rates for meals served in the Summer Food Service Program for Children (SFSP). These adjustments reflect changes in the Consumer Price Index and are required by the statute governing the Program.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 305-2620.

SUPPLEMENTARY INFORMATION: This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612) and thus is exempt from the provisions of that Act. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials, (7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

Definitions

The terms used in this notice shall have the meaning ascribed to them in the regulations governing the Summer Food Service Program for Children (7 CFR part 225).

Background

Pursuant to section 13 of the National School Lunch Act (42 U.S.C. 1761) and the regulations governing the SFSP (7 CFR part 225), notice is hereby given of adjustments in Program payments for meals served to children participating in the SFSP during the 1992 Program. Adjustments are based on changes in the food away from home series of the Consumer Price Index for All Urban Consumers for the period November 1990 through November 1991.

The new 1992 reimbursement rates in dollars are as follows:

Maximum Per Meal Reimbursement Rates

Operating Costs

Breakfast	1.12
Lunch or Supper	2.01
Supplement	.5275

Administrative Costs

a. For meals served at rural or self-preparation sites:

Breakfast	.1050
Lunch or Supper	.1900
Supplement	.0525

b. For meals served at other types of sites:

Breakfast	.0825
Lunch or Supper	.1575
Supplement	.0400

The total amount of payments to State agencies for disbursement to program sponsors will be based upon these program reimbursement rates and the number of meals for each type served. The above reimbursement rates, before being rounded-off to the nearest quarter-cent, represent a 2.9 per cent increase during 1991 (from 135.4 in November 1990 to 139.3 in November 1991) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

Dated: January 10, 1992.

Betty Jo Nelsen,

Administrator, Food and Nutrition Service.

[FR Doc. 92-1230 Filed 1-16-92; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Electronics Technical Advisory Committee; Partially Closed Meeting

A meeting of the Electronics Technical Advisory Committee will be held February 6, 1992, 9 a.m., Herbert C. Hoover Building, room 1617-F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to semiconductors and related equipment or technology.

Agenda

General Session

1. Opening Remarks by the Commerce Representative.
2. Introduction of Members and Visitors.
3. Structure of TAC and Working Groups.
4. Discussion of Enhanced Proliferation Control Initiative (EPCI).
5. Discussion of General Licensing Free World (GFW).
6. Discussion of Composite Theoretical Performance (CTP).
7. Other business.

Executive Session

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after

the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials or comments at least one week before the meeting to the address listed below:

Ms. Ruth D. Fitts, Technical Advisory Committee Unit, OTPA/EA/BXA, room 1621, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202-377-4959.

Dated: January 13, 1992.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 92-1247 Filed 1-16-92; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-122-813]

Postponement of Final Antidumping Duty Determination: Nepheline Syenite From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 17, 1992.

FOR FURTHER INFORMATION CONTACT: John Gloninger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at (202) 377-2778.

Postponement

This notice informs the public that we have received a request from Unimin Canada Limited and Unimin Corporation (Unimin) to postpone by one week the final determination in the investigation of nepheline syenite (NS) from Canada, in accordance with section 735(a)(2) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)). Unimin accounts for a significant proportion of exports of the subject merchandise from Canada to the United States. If exporters who account for a significant proportion of exports of the merchandise under investigation request an extension subsequent to an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are postponing until not later than March 10, 1992 the final determination as to whether sales of NS from Canada have occurred at less than fair value.

Public Comment

In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on the preliminary determination in the antidumping duty investigation of NS from Canada. The hearing will be held on February 21, 1992, at 9:30 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than February 14, 1992, and rebuttal briefs no later than February 19, 1992. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

The U.S. International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act. This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated: January 10, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-1315 Filed 1-16-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-050]

Racing Plates (Aluminum Horseshoes) From Canada; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from an interested party, the Department of Commerce has conducted an administrative review of the antidumping finding on racing plates (aluminum horseshoes) from Canada. The review covers one manufacturer/exporter of this merchandise to the United States, Equine Forgings Limited, and the period February 1, 1990 through January 31, 1991. We preliminarily determine the dumping margin to be 7.25 percent for the period. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 17, 1992.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein, Anne D'Alauro, or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On February 11, 1991, the Department of Commerce ("the Department") published a notice of "Opportunity to Request an Administrative Review" (56 FR 5385) of the antidumping finding on racing plates (aluminum horseshoes) from Canada (39 FR 7579; February 27, 1974). On February 20, 1991, the Victory Racing Plate Company, a U.S. producer, requested an administrative review of the antidumping finding with respect to Equine Forgings Limited. We initiated the review, covering the period February 1, 1990 through January 31, 1991, on March 15, 1991 (56 FR 11177). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by the review are shipments of racing plates (horseshoes) that are made of aluminum, may have cleats or caulks, and come in a variety of sizes. They are used on race horses, polo, jumping, hunting and other performing horses, as differentiated from pleasure and work horses. During

the review period such merchandise was classifiable under Harmonized Tariff Schedule (HTS) item number 7616.90.00. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter, Equine Forgings Ltd., of Canadian racing plates (aluminum horseshoes) and the period February 1, 1990 through January 31, 1991.

United States Price

In calculating United States prices, the Department used purchase price, as defined in section 772 of the Tariff Act, since sales to the first unrelated purchaser were made prior to importation and exporter's sales price was not otherwise indicated. Purchase price was based on the packed f.o.b. price to unrelated purchasers in the United States. We made deductions, where appropriate, for inland freight, U.S. duty, brokerage/handling charges, discounts, and rebates. We made an addition to U.S. price for Canadian Federal Sales Tax which was not collected by reason of the exportation to the United States. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value, we used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison.

Home market price was based upon the packed f.o.b. price to unrelated purchasers in Canada, with appropriate deductions for inland freight, discounts, rebates, and a circumstance-of-sale adjustment for the differences in credit and the Canadian Federal Sales Tax.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margin exists:

Manufacturer/Exporter	Period	Margin (Percent)
Equine Forgings Ltd.	02/01/90–01/31/91	7.25
All Others		7.25

Parties to the proceeding may request disclosure and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e).

The Department will publish the final results of the administrative review including the results of its analysis of issues raised in any case or rebuttal briefs or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on this exporter directly to the Customs Service.

Further, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of racing plates (aluminum horseshoes) from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the final determination in the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published in the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final result of this review, or if not covered in this review, the most recent review period or the original investigation; and (4) the cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews, and who are unrelated to the reviewed firm or any previously reviewed firm will be the "all other" rate established in the final results of this administrative review.

This rate represents the highest rate for any firm in the administrative review (whose shipments to the United States were reviewed), other than those firms receiving a rate based entirely on best information available. These deposit requirements, when imposed, shall remain in effect for all shipments of Canadian racing plates (aluminum horseshoes) entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review and shall remain in effect until the publication of the final results of next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: January 10, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92–1314 Filed 1–16–92; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

Business Development Center Applications: Pittsburgh, PA

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the U.S. Department of Commerce's Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated as $165,000 in Federal funds and a minimum of $29,118 in non-Federal (cost sharing) contributions from 08/1/92 to 07/31/93. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Pittsburgh, Pennsylvania SMSA geographic service area

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of

information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider part performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort MBDCs may charge client fees for management and technical assistance (M&TA) rendered.

Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as MBDC's performance, the availability of funds and the Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with OMB Circular A-129 "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Governmental Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, title V subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreements" and SF-LLL, the "Disclosure of Lobbying Activities" (if applicable) are required in accordance with section 319 of Public Law 101-121, which generally prohibits recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

CLOSING DATE: The closing date for applications is March 6, 1992. Applications must be postmarked on or before March 6, 1992. Proposals will be reviewed by the Chicago Regional Office. The mailing address for submission of RFA responses is:

ADDRESSES: David Vega, Regional Director, Chicago Regional Office, Minority Business Development Agency, 55 E. Monroe Street, suite 1440, Chicago, Illinois 60603.

FOR FURTHER INFORMATION CONTACT: Gina A. Sanchez, Regional Director, Washington Regional Office at (202) 377-8275.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at: U.S. Department of Commerce, Minority Business Development Agency, 14th and Constitution Avenue, NW., room 6723, Washington, DC 20230.

A pre-application conference will be held on February 5, 1992 at 9 a.m.

ADDRESS: The William S. Moorehead Federal Building, room 610, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222.

11.800 Minority Business Development (Catalog of Federal Business Domestic Assistance)

Dated: January 14, 1992.

Gina A. Sanchez,

Regional Director, Washington Regional Office.

[FR Doc. 92-1284 Filed 1-16-92; 8:45 am]

BILLING CODE 3510-21-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons with severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 18, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as

otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have severe disabilities.

It is proposed to add the following commodity and services to the Procurement List:

Commodity

Cover, Water, Canteen 8465-00-753-6490

Services

Grounds Maintenance
Fleet Combat Training Center, Dam Neck
Virginia Beach, Virginia

Janitorial/Custodial
Beale Air Force Base, California

Janitorial/Custodial
Buildings 75, 80(+ 3 adjacent trailers), 82, 83K, 93, 710, 710A and 810
Denver Federal Center
Denver, Colorado

Janitorial/Custodial
Airport Traffic Control Tower
Airway Facilities Sector Office
Flight Service Station
Automated Flight Service Station
Casper, Wyoming

Mail Room Service
U.S. Army Information Systems Command
Adelphi, Maryland

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-1425 Filed 1-16-92; 8:45 am]

BILLING CODE 6820-33-M

Procument List Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to the Procurement List a commodity to be furnished by a nonprofit agency employing persons who are blind.

EFFECTIVE DATE: Fberuary 18, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509. .

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION:

On November 8, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (56 F.R. 57323) of proposed addition to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity at a fair market price and impact of the addition on the current or more recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to the Procurement List:

Cleaning Compound, Windshield
6850-00-926-2275
(Requirements for Palmetto, GA; Fort Worth, TX; and Belle Meade, NJ Depots only)

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-1426 Filed 1-16-92; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.129A]

Rehabilitation Long-Term Training: Prosthetics and Orthotics; Notice Extending the Closing Date for Transmittal of Applications and Increasing the Available Funds for New Awards Under the Rehabilitation Long-Term Training Program in the Field of Prosthetics and Orthotics

Deadling for transmittal of applications: The closing date for applications is extended from November 22, 1991 to February 14, 1992.

Deadline for intergovernmental review: April 14, 1992.

Available funds: $525,000.

Estimated number of awards: 3.

Note: The Department is not bound by any estimates in this notice.

SUPPLEMENTARY INFORMATION: On September 20, 1991, at 56 FR 47745, a notice was published that established the closing date for transmittal of applications and funding levels for the fiscal year 1992 competitions in several fields of rehabilitation long-term training, including the field of prosthetics and orthotics. Detailed information concerning the Rehabilitation Long-Term Training Program and the Prosthetics and Orthotics competition is included in that notice. The purpose of this notice is to extend the closing date for transmittal of applications and increase the available funds and estimated number of new awards in the field of prosthetics and orthotics. These actions are taken as a result of an increase in the funds available for the Rehabilitation Training Program in fiscal year 1992.

FOR APPLICATIONS OR FURTHER INFORMATION CONTACT: Bruce Rose, U.S. Department of Education, 400 Maryland Avenue, SW., room 332, Switzer Building, Washington, DC 20202-2649. To request an application, call (202) 732-1347; to receive further information, call (202) 732-1325. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service on 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Program authority: 29 U.S.C. 774.

Dated: January 13, 1992.

Robert R. Davila,

Assistance Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92-1243 Filed 1-16-92; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.201]

School Dropout Demonstration Assistance Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1992

Purpose of Program: To provide Federal financial assistance to demonstrate effective programs to reduce the number of children who do not complete their elementary and secondary education.

Eligible applicants: The following are eligible for new awards under this competition: Local educational agencies (LEAs), community-based organizations, and educational partnerships.

Deadline for transmittal of applications: March 26, 1992.

Deadline for intergovernmental review: May 25, 1992.

Applications available: February 10, 1992.

Available funds: $10,000,000 is estimated for new awards in FY 1992.

Estimated range of awards: $250,000-$750,000.

Estimated average size of awards: $500,000.

Estimated number of awards: 20.

Note: The Department is not bound by any estimates in this notice.

Project period: Up to 36 months.

Applicable regulations: The Education Department General Administrative

Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Description of program: Title VI, parts A and C of Public Law 100–297, as amended by Public Law 102–103 (The School Dropout Demonstration Assistance Act of 1988) (20 U.S.C. 3241 *et seq.*) establishes a program of grants to eligible entities to pay the Federal share of the cost of authorized activities. This program supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by seeking to develop effective programs to prevent students from dropping out of school and to encourage those who have dropped out to reenter school. It also seeks to collect key information on the reasons for dropping out and effective prevention strategies. National Education Goal 2 specifically calls for the high school graduation rate to increase to at least 90 percent by the year 2000. While your attention is called to the text of these provisions, which will be provided in the application package, the following is a summary of some of the pertinent parts of the authorizing legislation.

Purpose

The purpose of the program is to reduce the number of children who do not complete their elementary and secondary education by providing Federal assistance to LEAs, community-based organizations, and educational partnerships to establish and demonstrate (1) effective programs to identify potential student dropouts and prevent them from dropping out; (2) effective programs to identify and encourage children who have already dropped out to reenter school and complete their elementary and secondary education; (3) effective programs for early intervention designed to identify at-risk students in elementary and early secondary schools; and (4) model systems for collecting and reporting information to local school officials on the number, ages, and grade levels of children not completing their elementary and secondary education and reasons why they have dropped out of school.

Funding Categories

The Secretary will allot FY 1992 funds in four categories as follows: (1) LEAs administering schools with a total enrollment of 100,000 or more elementary and secondary school students (25 percent of the amount appropriated, or an estimated $2,500,000 for new awards in FY 1992); (2) LEAs administering schools with a total enrollment of at least 20,000, but less than 100,000 (40 percent of the amount appropriated, or an estimated $4,000,000 for new awards in FY 1992); (3) LEAs administering schools with a total enrollment of less than 20,000 (30 percent of the amount appropriated, or an estimated $3,000,000 for new awards in FY 1992); and (4) community-based organizations (five percent of the amount appropriated, or an estimated $500,000 for new awards in FY 1992). For category (3), grants may be made to intermediate educational units and consortia of not more than five LEAs if the total enrollment of the largest of these LEAs is less than 20,000 elementary and secondary school students. In addition, not less than 20 percent of the funds in category (3) will be awarded to LEAs administering schools with a total enrollment of less than 2,000 elementary and secondary school students.

Educational Partnerships

In each of the first three categories mentioned under Funding Categories, the Secretary will allot not less than 25 percent and not more than 50 percent of the funds available to educational partnerships. An educational partnership includes: (1) An LEA; and (2) a business concern, or business organization, or, if an appropriate business concern or business organization is not available, one of the following: any community-based organization, nonprofit private organization, institution of higher education, State educational agency (SEA), State or local public agency, private industry council (established under the Job Training Partnership Act), museum, library, or educational television or broadcasting station.

Distribution of Funds

The Secretary ensures that, to the extent practicable, in approving grant applications: Grants will be equitably distributed on a geographic basis within each enrollment size category; the amount of a grant to an LEA will be proportionate to the extent and severity of the local school dropout problem; not less than 30 percent of the available funds will be used for activities related to dropout prevention; and not less than 30 percent of the funds will be used for activities related to persuading dropouts to return to school and assisting former dropouts with specialized services once they return to school.

Limitation on Costs

Not more than five percent of any grant may be used for administrative costs.

Federal Funds

The Federal share of a grant under this program will not exceed 90 percent of the total cost of a project for the first year and 75 percent of the total cost in each succeeding fiscal year. The "non-Federal" share may be paid from any source except for funds under this program, but not more than 10 percent of the "non-Federal" share may be from other Federal sources. The "non-Federal" share may be cash or in kind.

Additional Information

Additional information concerning application requirements, program requirements, and allowable activities is contained in the application package and the authorizing statute.

Priorities:

Absolute Priority

Under 34 CFR 75.105(c)(3) and section 6005(c) of the statute (20 U.S.C. 3245(c)), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Applicants must propose projects that both replicate successful programs conducted in other LEAs or expand successful programs within an LEA and reflect very high numbers or very high percentages of school dropouts in the schools of the applicant in each category described in section 6004(a) of the statute.

Competitive Priorities

Under 34 CFR 75.105(c)(2)(ii) and section 6005(d) of the statute (20 U.S.C. 3245(d)), the Secretary gives preference to applications that meet the following competitive priorities. An application that meets these competitive priorities is selected by the Secretary over applications of comparable merit that do not meet these competitive priorities. The Secretary will give competitive preference to applications that include:

(a) Provisions that emphasize early intervention services designed to identify at-risk students in elementary or early secondary schools; and

(b) Provisions for significant parental involvement.

Invitational Priority

Under 34 CFR 75.105(c)(1), the Secretary also invites applicants to propose projects that include activities designed to address the persistently high dropout rate among Hispanic Americans.

An application that meets this invitational priority does not receive competitive or absolute preference over

other applications that do not meet this invitational priority.

Federal evaluation: The Department is conducting a national evaluation of projects funded under the School Dropout Demonstration Assistance Program. A contract has been competitively awarded to conduct the evaluation. The evaluation will assess all components of the project, including those paid for with other Federal, State, or local funds. Pursuant to 34 CFR 75.591, all grantees will be required to cooperate with the national evaluation that will consist of two parts.

The first part of the evaluation will be a descriptive evaluation that involves collection of data on (1) the students being served, including socio-economic background and attendance, achievement, and retention data; (2) the services provided and cost of providing those services; (3) extent of involvement of parents, business, and community groups and the social and economic environment in which the project operates; (4) coordination with other agencies; (5) staff training and qualifications; and (6) status of program implementation. All projects will be required to collect and report data for the descriptive evaluation in collaboration with the national contractor.

The second part will be an outcome evaluation that assesses the effects of the program. For the outcome evaluation, the Department is selecting a number of sites from grants awarded in FY 1991 for in-depth study. Each remaining site, including each new grant to be awarded in FY 1992, will itself contract with a local evaluator or use district evaluation staff to conduct an outcome evaluation. These evaluation plans will be implemented only upon review and approval by the Department of Education. The local evaluators will establish control or comparison groups and collect prior and current administrative records. Each site will provide outcome data and summaries to the national evaluation contractor for inclusion in national analyses and reports. Technical assistance will be available from the national contractor to local project directors and evaluators.

In the application, each applicant must submit an assurance that it will collaborate with the national evaluation in the collection of descriptive and outcome data, as required by 34 CFR 75.591.

Evaluation by the grantee: The Secretary reminds prospective applicants that the requirements for self-evaluation in 34 CFR 75.590 apply to this program. As part of its application, an applicant must submit a self-evaluation plan that will complement the activities conducted through the national evaluation. An applicant may propose additional local evaluation activities to meet local evaluation needs as well. These evaluation plans will only be implemented upon review and approval by the Department of Education. Once a grant is awarded, the grantee will be expected to submit to the Department a copy of the report from any local evaluation implemented as part of the dropout demonstration.

Selection criteria: In evaluating applications for funds under the School Dropout Demonstration Assistance Program, the Secretary will apply the selection criteria in 34 CFR 75.210(b).

Weighting for selection criteria: Under 34 CFR 75.210(c), the Secretary is authorized to distribute an additional 15 points among the selection criteria in 34 CFR 75.210(b) to bring the total possible points for an application to a maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

Plan of operation. (§ 75.210(b)(3)). Ten (10) additional points will be added for a possible total of 25 points for this criterion.

Evaluation plan. (§ 75.210(b)(6)). Five (5) additional points will be added for a possible total of 10 points for this criterion.

For applications or information contact: John R. Fiegel, School Dropout Demonstration Assistance Program, U.S. Department of Education, 400 Maryland Avenue, SW., room 2049, Washington, DC 20202-6246. Telephone: (202) 401-1342. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m. Eastern time.

Program Authority: 20 U.S.C. 3241 *et seq.*

Dated: January 8, 1992.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 92-1245 Filed 1-16-92; 8:45 am]

BILLING CODE 4000-01-M

Privacy Act of 1974

AGENCY: Department of Education.

ACTION: Notice of an altered system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Department of Education publishes this notice proposing to revise the system of records known as the Investigative Files of the Inspector General ED/OIG (46 FR 29606-29607, June 2, 1981). This notice includes proposed new and revised routine uses for the information contained in the system. This system of records provides essential support for Department of Education (ED) Office of Inspector General (OIG) investigative activities relating to the Department's program and operations, enabling the OIG to secure and maintain the necessary information and to coordinate with other law enforcement agencies as appropriate. The Department seeks comments on the proposed routine uses for this system.

DATES: Comments on the proposed routine uses must be submitted by February 18, 1992. The Department filed a report of the revised system of records with the Chairman, Committee on Governmental Affairs, United States Senate; the Chairman, Committee on Government Operations, House of Representatives; and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on January 13, 1992. This altered system of records will become effective after the 60-day period for OMB review of the system expires on March 13, 1992, unless OMB gives specific notice within the 60 days that the amendments are not approved for implementation or requests additional time for its review. The Department will publish any changes to the routine uses that are required as a result of the comments.

ADDRESSES: Address comments to the Assistant Inspector General for Policy, Planning and Management Services, Office of Inspector General, U.S. Department of Education, 400 Maryland Avenue, SW, Mail Stop 1510, Washington, DC 20202. Interested persons are invited to submit comments and recommendations regarding the proposed routine uses in this system of records. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 4022 Switzer Building, 330 C Street, SW, Washington, DC between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John L. Horn, Assistant Inspector General for Investigation Services, Office of Inspector General, U.S. Department of Education, room 4115 Switzer Building, 330 C Street, SW, Washington, DC 20202. Telephone: (202) 732-4762. Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339

(in Washington, DC, 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 (see 5 U.S.C. 552a(e)(4)) requires the Department to publish in the **Federal Register** this notice of an altered system of records. 5 U.S.C. 552a(e) (4) and (11). The Department's regulations implementing the Privacy Act are contained in the Code of Federal Regulations (CFR) at 34 CFR part 5b.

Under the Inspector General Act of 1978, as amended, 5 U.S.C. Appendix 3, Inspectors General (IGs), including the Education Department IG, are responsible for conducting, supervising and coordinating investigations relating to programs and operations of the Federal agency for which their office is established. This system of records facilitates the OIG's performance of this statutory duty. The changes proposed in the attached notice are intended to clarify, to make the routine uses more concise and readable, to address certain recent court decisions dealing with routine uses under the Privacy Act, and to enhance the ability of the OIG to combat fraud, waste and abuse in Department programs as required by the IG Act.

The system includes records on individuals who are the subject of open or closed OIG investigations. The records contain evidence compiled by OIG investigators, investigative reports, referrals to the Department and to other investigative or prosecutorial authorities, and records of disposition of cases by this Department or other agencies and adjudicative bodies.

The information in this system of records will be used for the purposes of: (1) Conducting and documenting investigations by the OIG or other investigative agencies regarding ED programs and operations, and reporting the results of investigations to other Federal agencies, other public authorities or professional organizations which have the authority to bring criminal prosecutions or civil or administrative actions, or to impose other disciplinary sanctions; (2) documenting the outcome of OIG investigations; (3) maintaining a record of the activities which were the subject of investigations; (4) reporting investigative findings to other Departmental components for their use in operating and evaluating their programs and in imposition of civil or administrative sanctions; and (5) acting as a repository and source for information necessary to fulfill the reporting requirements of the IG Act, 5 U.S.C. Appendix 3, section 5.

Information maintained in the system of records will be accessed by name of individual or entity (e.g., school, lending institution, guaranty agency, etc.). Access will be restricted to authorized OIG staff members and other Department officials on a need-to-know basis as determined by the Inspector General. The amount of personal information maintained on each individual will be limited to the amount necessary to ensure that OIG investigative staff possess the information necessary to conduct authorized OIG activities with the greatest practicable degree of efficiency and effectiveness.

Dated: November 13, 1991.

James B. Thomas, Jr.,

Inspector General.

The Inspector General of the U.S. Department of Education publishes notice of an altered system of records to read as follows:

SYSTEM NUMBER:

18-10-0001.

SYSTEM NAME:

Investigative Files of the Inspector General ED/OIG.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Inspector General, U.S. Department of Education, Room 4200, Switzer Building, 330 C Street, SW., Washington, DC 20202

Office of Inspector General, U.S. Department of Education, Room 512, PO Box 2142, Boston, MA 02106

Office of Inspector General, U.S. Department of Education, Room 3739, 26 Federal Plaza, New York, NY 10278

Office of Inspector General, U.S. Department of Education, Room 16120, 3535 Market Street, Philadelphia, PA 19104

Office of Inspector General, U.S. Department of Education, P.O. Box 1598, Atlanta, GA 30301

Office of Inspector General, U.S. Department of Education, Room 700-G, 401 South State Street, Chicago, IL 60605

Office of Inspector General, U.S. Department of Education, Room 2130, 1200 Main Tower, Dallas, TX 75202

Office of Inspector General, U.S. Department of Education, 9th Floor, 10220 North Executive Hills Blvd., Kansas City, MO 64190

Office of Inspector General, U.S. Department of Education, Suite 210, 1244 Speer Blvd., Denver, CO 80204

Office of Inspector General, U.S. Department of Education, Room 105, 50 United Nations Plaza, San Francisco, CA 94102

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories include current and former ED employees and individuals who have any relationship to financial assistance or other educational programs administered by the Department of Education, or to management concerns of the Department, including but not limited to: Grantees, subgrantees, contractors, subcontractors, program participants, recipients of Federal funds or federally insured funds, and officers, employees or agents of institutional recipients or program participants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigation files pertaining to violations of criminal laws, fraud, waste, and abuse with respect to administration of Department programs and operations; and violations of employee Standards of Conduct as set out in 34 CFR part 73.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, as amended (5 U.S.C. Appendix 3) and 5 U.S.C. 301.

PURPOSES:

Pursuant to the Inspector General Act, the system is maintained for the purposes of: (1) Conducting and documenting investigations by the OIG or other investigative agencies regarding ED programs and operations and reporting the results of investigations to other Federal agencies, other public authorities or professional organizations which have the authority to bring criminal prosecutions or civil or administrative actions, or to impose other disciplinary sanctions; (2) documenting the outcome of OIG investigations; (3) maintaining a record of the activities which were the subject of investigations; (4) reporting investigative findings to other ED components for their use in operating and evaluating their programs or operations, and in the imposition of civil or administrative sanctions; and (5) acting as a repository and source for information necessary to fulfill the reporting requirements of the Inspector General Act, 5 U.S.C. Appendix 3, section 5.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education may disclose information contained in a record in this system of records without the consent of the individual if the disclosure is compatible with the purpose for which the record was collected, under the following routine uses:

(a) *Disclosure for use by other law enforcement agencies.* ED/OIG may disclose information from this system of records as a routine use to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation where that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility of the receiving entity.

(b) *Disclosure to public and private entities to obtain information relevant to Department of Education functions and duties.* ED/OIG may disclose information from this system of records as a routine use to public or private sources to the extent necessary to obtain information from those sources relevant to an ED/OIG investigation, audit, inspection or other inquiry.

(c) *Disclosure for use in employment, employee benefit, security clearance, and contracting decisions.*—(1) *For Decisions by ED.* ED/OIG may disclose information from this system of records as a routine use to a Federal, State, local, or foreign agency maintaining civil, criminal or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to an ED decision concerning the hiring or retention of an employee or other personnel action, the issuance or retention of a security clearance, the letter of a contract or the issuance or retention of a license, grant, or other benefit.

(2) *For decisions by other public agencies and professional organizations.* ED/OIG may disclose information from this system of records as a routine use to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance or retention of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance or retention of a license, grant or other benefit.

(d) *Disclosure to public and private sources of connection with the Higher Education Act of 1965, as amended ("HEA").* ED/OIG may disclose information from this system of records as a routine use to any accrediting agency which is or was recognized by the Secretary of Education pursuant to the HEA; to any guaranty agency which is or was a party to an agreement with the Secretary of Education pursuant to the HEA; or to any agency which is or was charged with licensing or legally authorizing the operation of any educational institution or school which was eligible, is currently eligible, or may become eligible to participate in any program of Federal student assistance authorized by the HEA.

(e) *Litigation disclosure.*—(1) *Disclosure to the Department of Justice.* If ED determines that disclosure of certain records to the Department of Justice is relevant and necessary to litigation and is compatible with the purpose for which the records were collected, ED/OIG may disclosure those records as a routine use to the Department of Justice. Such a disclosure may be made in the event that one of the parties listed below is involved in the litigation, or has an interest in the litigation:

(i) ED, or any component of the Department;

(ii) Any employee of ED in his or her official capacity;

(iii) Any employee of ED in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(iv) The United States, where ED determines that the litigation is likely to affect the Department or any of its components.

(2) *Other disclosure.* If ED determines that disclosure of certain records to a court, adjudicative body before which ED is authorized to appear, individual or entity designated by ED or otherwise empowered to resolve disputes, counsel, or other representative, or potential witness is relevant and necessary to litigation and is compatible with the purpose for which the records were collected, ED/OIG may disclose those records as a routine use to the court, adjudicative body, individual or entity, counsel or other representative, or witness. Such a disclosure may be made in the event that one of the parties listed below is involved in the litigation, or has an interest in the litigation:

(i) ED, or any component of the Department;

(ii) Any employee of ED in his or her official capacity;

(iii) Any employee of ED in his or her individual capacity where the Department has agreed to represent the employee; or

(iv) The United States, where ED determines that the litigation is likely to affect the Department or any of its components.

(f) *Disclosure to contractors and consultants.* ED/OIG may disclose information from this system of records as a routine use to a private firm with which ED/OIG contemplates it will contract or with which it has contracted for the purpose of performing any functions or analyses that facilitate or are relevant to an OIG investigation, audit, inspection, or other inquiry. Such contractor or private firm shall be required to maintain Privacy Act safeguards with respect to such information.

(g) *Debarment and suspension disclosure.* ED/OIG may disclose information from this system of records as a routine use to another Federal agency considering suspension or debarment action where the information is relevant to the suspension or debarment action.

(h) *Disclosure to the Department of Justice.* ED/OIG may disclose information from this system of records as a routine use to the Department of Justice, to the extent necessary for obtaining its advice on any matter relevant to Department of Education operations.

(i) *Congressional member disclosure.* ED/OIG may disclose information from this system of records as a routine use from the record of an individual in response to an inquiry from the Member of Congress made at the request of that individual; however the Member's right to the information is no greater than the right of the individual who requested it.

(j) *Computer matching disclosure.* ED/OIG may disclose information from this system of records as a routine use to a Federal, State, local, or foreign agency, or other public authority, for use in computer matching programs to prevent and detect fraud and abuse in benefit programs administered by any agency, to support civil and criminal law enforcement activities of any agency and its components, and to collect debts and overpayments owed to any agency and its components.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

The records are maintained on index cards, investigative reports, micro-

computer disks, computer mainframe files and computer-printed listings.

RETRIEVABILITY:

The records are retrieved by manual or computer search of alphabetical indices or cross-indices. Indices list names of individuals, companies and organizations.

SAFEGUARDS:

Access is restricted to authorized staff members of the Office of Inspector General and other officials of the Education Department on a need-to-know basis as determined by the Inspector General. Written documents and computer disks are maintained in secure rooms, in security-type safes or in bar-lock file cabinets with manipulation-proof combination locks. Computer mainframe files are on-line in guarded, combination locked computer rooms.

RETENTION AND DISPOSAL:

Investigative files are retained for 10 years after completion of the investigation and/or actions based thereon. Paper and computer indices are retained permanently. The records control schedule and disposal standards may be obtained by writing to the System Manager at the address below.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Investigation Services, U.S. Department of Education, Room 4200, Switzer Building, 330 C Street, SW, Washington, DC 20202-1510.

NOTIFICATION PROCEDURE:

See "system exempted," below. As provided in 34 CFR 5b.11 (b)(2) and (c)(1), the notification procedure is not applicable to criminal investigative files except at the discretion of the Inspector General. To the extent that this procedure may apply to criminal investigative files, it is governed by 34 CFR 5b.5. The notification procedure is applicable to non-criminal investigative files under the conditions defined by 34 CFR 5b.11(c). Under those conditions it is governed by 34 CFR 5b.5.

RECORD ACCESS PROCEDURES:

See "system exempted," below. As provided in 34 CFR 5b.11 (b)(2) and (c)(1), the record access procedure is not applicable to criminal investigative files except at the discretion of the Inspector General. To the extent that this procedure may apply to criminal investigative files, it is governed by 34 CFR 5b.5. The record access procedure is applicable to non-criminal investigative files under the conditions defined by 34 CFR 5b.11(c). Under those conditions it is governed by 34 CFR 5b.5.

CONTESTING RECORD PROCEDURES:

Not applicable. See "system exempted," below.

RECORD SOURCE CATEGORIES:

Departmental and other Federal, State and local government records; interviews of witnesses; documents and other material furnished by nongovernmental sources. Sources may include confidential sources.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to the general authority in the Privacy Act in 5 U.S.C. section 552a(j)(2), the Secretary has by regulation exempted the Investigative Files of the inspector General ED/OIG from the following subsections of the Privacy Act:

5 U.S.C. 552a(c)(3)—access to accounting of disclosure;

5 U.S.C. 552a(d)(1)-(4) and (f)—procedures for notification of, access to, and correction or amendment of records;

5 U.S.C. 552(e)(3)—notice to an individual who is required to provide information to the Department;

5 U.S.C. 552a(e)(4)(G), (H)—inclusion of information on Department procedures on notification of, access to, correction or amendment of records, in the system in the system of records notice.

These exemptions are stated in 34 CFR 5b.11.

[FR Doc. 92-1244 Filed 1-16-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award, Intent To Award Grant to LWT Systems, Inc.

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to LWT Systems, Incorporated under Grant No. DE-FG01-92CE15505. The proposed grant will provide funding in the estimated amount of $88,200 for LWT Systems, Inc., to design, fabricate, and assemble a small 1 kW single-blade wind turbine, which will subsequently be tested in the 10-foot wind tunnel at the Graduate Aeronautical Laboratories of the California Institute of Technology in Pasadena, CA. It is estimated that the 20,000 units, which may be sold in the present market, can save the nation 60,000 barrels of oil annually.

The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by the Energy Concepts Company is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. Mr. Kenneth Liljegren is the founder and president of LWT Systems, Inc. He is a retired ordinance engineer with some patents to his credit. He also is the patent holder of record for this wind turbine technology.

The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy-Related Inventions Programs (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

The anticipated term of the proposed grant is 24 months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, attn: Bernard G. Canlas, PR-322.2 1000 Independence Avenue, SW., Washington, DC 20585.

Scott Sheffield,

Acting Director Operations Division "B", Office of Placement and Administration.

[FR Doc. 92-1309 Filed 1-16-92; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award, Intent To Award a Grant to Southern States Energy Board

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.7(b)(2)(i)(A), it is making a noncompetitive financial assistance award based on an unsolicited application satisfying the criteria of 10 CFR 600.14(e)(1). This award will be made under Grant Number DE-FG01-92FE62466 to the Southern States Energy Board. The financial assistance will support a regional effort to promote the

increased use of U.S. coal in domestic and international markets.

SCOPE: The grant will provide $137,217 in funding to the Southern States Energy Board (SSEB) to support a regional effort to promote the increased use of U.S. Coal and Clean Coal Technology transfer. The underlying goal of the project is the identification and removal of institutional barriers to the commercial deployment of clean coal technologies by the nation's electric utilities. The grant will allow DOE and SSEB to fashion a long-term program of public outreach and participation with sufficient flexibility to develop new tasks and activities as dictated by the needs of the clean coal program and the interests of SSEB member States. This grant will provide the opportunity for the SSEB to continue studies initiated under Grant DE-FG01-85FE60765 as well as begin new studies.

ELIGIBILITY: Based on the receipt of an unsolicited proposal, eligibility for this award is being limited to the Southern States Energy Board. DOE support of this action will benefit the public by promoting the increased use of U.S. goal and Clean Coal Technology Transfer. DOE knows of no other entity which is conducting or planning such a program.

The term of the grant shall be five years from the date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy Office of Placement and Administration Attn: Gracie Narcho, 1000 Independence Avenue, SW. Washington, DC 20585

Arnold A. Gjerstad,

Acting Director Operations Division "B", Office of Placement and Administration.

[FR Doc. 92-1306 Filed 1-16-92; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Public Law No. 96-511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (a DOE component which term includes the Federal Energy Regulatory Commission (FERC)); (2) collection number(s); (3) current OMB docket number (if applicable); (4) collection title; (5) type of request, e.g., new, revision, extension, or reinstatement; (6) frequency of collection; (7) response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) affected public; (9) an estimate of the number of respondents per report period; (10) an estimate of the number of responses per respondent annually; (11) an estimate of the average hours per response; (12) the estimated total annual respondent burden; and (13) a brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before February 3, 1992. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254-5348.

SUPPLEMENTARY INFORMATION:

The first energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC-566
3. 1902-0114
4. Annual Report of Utility's Twenty Largest Purchasers
5. Extension
6. Annually
7. Mandatory
8. Businesses or other for-profit; Small businesses or organizations
9. 175 respondents
10. 1 response
11. 6 hours per response
12. 1,050 hours
13. The information collected is required by the Federal Power Act section 305(c)(2)(D) as implemented by 18 CFR 46.3. It is used to monitor the holding of interlocking directorate positions between public utilities and their twenty largest purchasers. The information identifies large purchasers of electric energy and possible conflicts of interest.

The second energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC-525
3. 1902-0092
4. Financial Audits
5. Extension
6. Other (3 to 5 year cycle depending on size and complexity of audit)
7. Mandatory
8. Businesses or other for-profit
9. 83 respondents
10. 1 response
11. 193.25 hours per response
12. 16,040 hours
13. The information collected on FERC financial compliance audits is needed to determine the companies' compliance with the Commission's accounting, ratemaking and related regulations, and the Commission's reporting requirements. The Commission issues letter orders to the companies based on the results of the audits.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Public Law No. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, January 13, 1992.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 92-1308 Filed 1-16-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

East Tennessee Natural Gas Co.; Corrections to Prior Filings

January 10, 1992

Take notice that on December 18, 1991, East Tennessee Natural Gas Company (East Tennessee), filed a letter with the Federal Energy Regulatory Commission stating that in its motion to place settlement rates into effect, filed on November 21, 1991, in Docket No.

RP90-111-014, East Tennessee inadvertently failed to properly reflect the cumulative gas cost adjustment to Sheet Nos. 4 and 5, of its FERC Gas Tariff, First Revised Volume No. 1.

East Tennessee states that it is submitting for filing Substitute Second Revised Twelfth Revised Sheet Nos. 4 and 5, to be effective December 1, 1991, which appropriately reflect the cumulative gas cost adjustment.

East Tennessee also submits Substitute Thirteenth Revised Sheet Nos. 4 and 5 to reflect the Docket No. RP90-111 motion rates in its Docket No. TA92-1-2 filing to be effective January 1, 1992. East Tennessee also submits Third Revised Sheet Nos. 6 and 7 to reflect a change to the GRI charge which was inadvertently omitted from its filing in Docket No. TA92-1-2.

East Tennessee states that copies of the filing have been served upon each person on the official service list in the above referenced proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1235 Filed 1-16-92; 8:45 am]

BILLING CODE 6717-M

[Docket Nos. RP92-25-003 and MT92-1-002]

Iroquois Gas Transmission System, L.P.; Compliance Filing

January 10, 1992.

Take notice that Iroquois Gas Transmission System, L.P. (Iroquois) on January 6, 1992, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, revised tariff sheets effective as indicated on the tariff sheets.

Iroquois states that it is filing revised tariff sheets in compliance with the Commission's order issued December 6, 1991 in the above referenced proceeding.

Iroquois states that copies of the filing were served upon Iroquois' jurisdictional customers, interested state regulatory commissions, and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Louis D. Cashell,

Secretary.

[FR Doc. 92-1236 Filed 1-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-189-002]

Midwestern Gas Transmission Co.; Motion To Place Tariff Sheets Into Effect

January 10, 1992.

Take notice that on December 31, 1991, Midwestern Gas Transmission Company (Midwestern) tendered for filing a motion to move rates into effect. Midwestern moves that the rates shown on the tariff sheet attached to the filing be allowed to become effective January 1, 1992.

Midwestern states that the rates in the above referenced proceeding were accepted and suspended, subject to refund and condition, by Commission order dated July 31, 1991. Midwestern also states that the Commission accepted Midwestern's latest effective PGA change on December 18, 1991.

Midwestern further states that it has evaluated the impact on its rates of utilizing both (1) the actual plant balances at the end of the test period, and (2) actual, end of test period demand determinants.

Midwestern states that copies of the filing have been served upon each person designated on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1237 Filed 1-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TF92-1-59-001 and TA91-1-59-003]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

January 10, 1992.

Take notice that Northern Natural Gas Company (Northern), on January 3, 1992, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2 the following tariff sheets with a proposed effective date of January 1, 1992:

2nd Sub Alt 109 Revised Sheet No. 1C
Sub One Hundred Tenth Revised Sheet No. 1C

Northern states that on December 31, 1991, Northern filed revised tariff sheets in an flex PGA filing in accordance with Section 154.308 of the Commission's Regulations. Northern states that certain tariff sheets reflected an effective date of January 1, 1991, rather than January 1, 1992. Northern states that it is filing the above-referenced revised tariff sheets to reflect the proper effective date of January 1, 1992.

Northern states that copies of the filing were served upon Northern's jurisdictional sales customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before January 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-1238 Filed 1-16-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-81-001]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 10, 1992.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 6, 1992 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume 1, six copies of the following tariff sheets:

Sub Sixth Revised Sheet No. 494
Sub Fifth Revised Sheet No. 507

Texas Eastern states that on January 3, 1991, Texas Eastern submitted for filing eight tariff sheets, including Sixth Revised Sheet No. 494 and Fifth Revised Sheet No. 507, in compliance with the Commission's Final Rule, issued on September 20, 1991, in Docket Nos. RM90-7-000, *et al.* (Order No. 537). In the January 3 filing, Texas Eastern inadvertently failed to modify a relevant portion of Sixth Revised Sheet No. 494 and Fifth Revised Sheet No. 507; Texas Eastern herewith tenders substitute tariff sheets in lieu thereof.

Texas Eastern states that subject to the Commission's acceptance of Sub Sixth Revised Sheet No. 494 and Sub Fifth Revised Sheet No. 507, Texas Eastern withdraws Sixth Revised Sheet No. 494 and Fifth Revised Sheet No. 507.

The proposed effective date of the above tariff sheets is February 3, 1992.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions, and all Rate Schedule FT-1 and IT-1 shippers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before January 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 92-1239 Filed 1-16-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP92-87-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

Janaury 10, 1992.

Take notice that Williams Natural Gas Company (WNG) on January 6, 1992 tendered for filing the following tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1:

First Revised Sheet No. 246

The proposed effective date of this tariff sheet is February 6, 1992.

WNG states that the purpose of this filing is to add new tariff language to clarify that WNG may require certifications from shippers to verify that certain transportation qualifies under NGPA Section 311, in compliance with 18 CFR Section 284.102(e). This clarification is provided on First Revised Sheet No. 246.

WNG states that copies of its filing were served on all jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 17, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 92-1240 Filed 1-16-92; 8:45 am]
BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of December 2 through December 6, 1991

During the week of December 2 through December 6, 1991, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Aratex Services, Inc., 12/4/91, RA272-45

The DOE issued a Supplemental Order correcting a misstatement contained in a Decision and Order dated November 21, 1991, granting a refund to Aratex Services, Inc. (Aratex), Case No. RF272-25306. In that Decision, the DOE granted Aratex a refund of $263,404 based on its purchases of 329,255,560 gallons of petroleum products. While the amount of the refund was stated correctly in the body of the Decision, Paragraph (3) of the Order mistakenly directed that a refund check in the amount of $17,506 be made payable to Aratex. Therefore, to correct this error, the DOE rescinded Paragraph (3) of the November 21, 1991 Decision, and replaced it with a new paragraph containing the correct refund amount.

Carey Cadillac Renting Co. Inc., 12/6/91, RF272-74489

The DOE issued a Decision and Order concerning the Application for Refund filed by Carey Cadillac Renting Co., Inc. (Carey Cadillac) on July 26, 1988 for a refund in the subpart V crude oil refund proceeding. Carey Cadillac purchased refined petroleum products during the period of crude oil price controls for use in its "chauffeur limousine rental." However, the firm did not provide sufficient information on the nature of its business operations, specifically whether it acted more in the nature of a for-hire carrier or in the nature of a rental car company, to allow the DOE to determine whether the firm would be subject to the injury showing requirement applicable to retailers in the crude oil refund proceeding. The DOE was unable to contact the applicant to solicit this additional information and thus the Application for Refund was denied.

Eli Lilly and Company, 12/3/91, RF272-23220, RD272-23220

The DOE issued a Decision and Order granting an Application for Refund filed by Eli Lilly & Company, a manufacturer of medical and agricultural products, in the subpart V crude oil refund proceeding. A group of States and Territories (States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. In support of their objection, the States asserted that Lilly's net earnings rose during the period of price controls, and submitted an affidavit of an economist stating that in general, the pharmaceutical industry was able to pass through increased petroleum costs. The DOE determined that the evidence

offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. With respect to four products which has not previously been considered in the crude oil refund proceeding, Lilly was found to be ineligible for a refund for its purchases of tetrahydrofuran, triethylamine, and dimethylformamid, but was granted a refund for its purchases of panasol. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was $101,956.

Gulf Oil Corporation/P.H. Abernathy Farm, 12/6/91, RF300-13790

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. Based on the information that the applicant provided, the DOE determined that its gallonage claim for 9,617,023 gallons was not reasonable. Accordingly, the Application for Refund was denied.

Shell Oil Company/Cooperativa Del Turabo Shell, 12/5/91, RF315-9043

The DOE issued a Decision and Order concerning the Application for Refund filed in the Shell Oil Company special refund proceeding by Cooperativa del Turabo Shell. A cooperative in Puerto Rico, Cooperativa del Turabo Shell has certified that it will pass through the refund to its members. The total refund granted in this Decision is $4,019 (comprised of $2,871 in principal and $1,148 in interest).

Texaco Inc./Paul's Texaco, 12/6/91, RF321-18075

The DOE rescinded a refund granted to Paul's Texaco on November 18, 1991 in the Texaco Inc. refund proceeding. The November 18 Decision concerned the second Application for Refund filed by Paul's Texaco, a retailer of Texaco products. The first application filed by Mr. Paul Hobbs, the owner of Paul's Texaco, had been dismissed when he filed the second application. Subsequently, on November 26, Mr. Hobbs filed a third refund application. In that application, he stated incorrectly that his first application had been dismissed because he had failed to provide evidence of his Texaco purchase volumes. In addition, he falsely certified that he had filed no other applications in the Texaco refund proceeding other than the first application. Moreover, while the refund granted in the November 18 Decision was based upon his claim that he operated the station from October 1973 to October 1984, he stated in the third application that he did not know the dates that he operated the station. In view of the false certification and the doubts raised by the third application concerning his dates of ownership, the DOE found that the refund granted in the November 18 Decision should be rescinded. Furthermore, the DOE stated that the third application will be denied unless Mr. Hobbs explains his multiple filings and submits documentary evidence concerning the dates of ownership.

Wardair Canada, Inc., 12/3/91, RF272-19369, RD272-19369

Wardair Canada, Inc. (Wardair), a foreign airline, filed an Application for Refund in the subpart V crude oil refund proceeding based upon its United States purchases of non-bonded aviation fuel which was consumed by its planes. A group of thirty States and two Territories of the United States (collectively "the States") filed an objection opposing the receipt of a refund by Wardair, on the basis that: (i) Sales of non-bonded aviation fuel to foreign airlines were price-exempt "export sales" under 10 CFR 212.53 and, as a matter of law, foreign firms cannot claim refunds since they never were intended to benefit under DOE's price control program, and (ii) as a factual matter, the foreign airlines were able to pass through a substantial part of increased fuel costs by virtue of regulations administered by the Civil Aeronautics Board (CAB) and therefore were not injured by crude oil overcharges. In connection with their objection, the States also filed a Motion of Discovery. In considering the States' objection, the DOE determined that: (i) sales of non-bonded aviation fuel were specifically excluded from the "export sales" exemption under 10 CFR 212.53(c), and Wardair was not disqualified from receiving a refund simply because of its foreign status, and (ii) the CAB regulations cited by the States did not constitute a means to automatically pass through increased fuel costs; nor had the States established that foreign airlines systematically passed through increased fuel costs as a matter of industry practice. On the basis of these determinations, the DOE further determined that the States had failed to justify discovery with respect to Wardair's refund claim. Accordingly, Wardair's Application for Refund was approved and the State's Motion for Discovery was denied. The amount of the refund granted in this decision was $33,159.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Armored Transport, Inc. *et al* John P. Weyer, Inc.	RE272-65630 RD272-68275	12/04/91
Atlantic Richfield Company/C & C Oil Co., Inc.	RR304-14	12/05/91
Atlantic Richfield Company/Maxwell Oil Company	RF304-12621	12/02/91
Atlantic Richfield Company/Skepis Arco *et al*	RF304-3713	12/06/91
Atlantic Richfield Company/Smokes 24-Hour Auto Repair *et al*	RF304-10081	12/06/91
Atlantic Richfield Company/Wash-N-Go *et al*	RF304-12571	12/05/91
Bluffton Ex. Village School District *et al*	RF272-83401	12/06/91
Circle Line Sightseeing Yachts Inc.	RF272-89906	12/05/91
Citronelle-Mobile Gathering/American Biltrite Inc. Rhode Island College	RF336-37 RF336-39	12/05/91
Citronelle-Mobile Gathering/Federal Paper Board Company, Inc.	RF336-34	12/04/91
City of Andalusia *et al*	RF272-83203	12/06/91
City of Edgewood *et al*	RF272-83601	12/06/91
Columbia County Board of Education	RA272-43	12/05/91
Enron Corporation/McManus Oil & L.P. Gas Company Inc.	RF340-10	12/04/91
Enron Corporation/Texaco Inc. Texaco Refining & Marketing Inc.	RF340-11 RF340-25	12/06/91
Enron Corporation/Union Carbide Chemicals and Plastics Company Inc.	RF340-22	12/05/91

Farmington School R VII *et al*	RF272-83409	12/02/91
Fomentos Armadora S.A. *et al*	RC272-141	12/06/91
Gulf Oil Corporation/Cagle Gulf *et al*	RF300-14091	12/06/91
Gulf Oil Corporation/Dendy Lumber Company *et al*	RF300-12577	12/03/91
Gulf Oil Corporation/Griffin's Gulf *et al*	RF300-13508	12/06/91
Gulf Oil Corporation/Thomlinson & McWhite Inc.	RR300-64	12/03/91
Murphy Oil Corp./Otis' Spur	RF309-1422	12/06/91
Old Fort Finishing Plant	RF272-74447	12/05/91
Old Fort Finishing Plant	RD272-74447	
Puregro Company	RF272-65886	12/04/91
Tesoro Petroleum Corporation	RF272-68242	12/04/91
Texaco Inc./Dave's Texaco of Marion *et al*	RF321-2224	12/06/91
Texaco Inc./John B. Walker, Inc.	RF321-11837	12/02/91
Texaco Inc./Operators Heat, Inc. *et al*	RF321-12601	12/02/91
TSC Express Co.	RF272-69178	12/03/91
United Refining Company/Petroleum Electronics, Inc.	RF333-11	12/04/91
Jobbers Buying Group, Inc.	RF333-12	
Crago & Cook Enterprises, Inc.	RF333-13	
Everdyke Oil Co.	RF333-15	
Waverly Mineral Products	RF272-82389	12/02/91
Well Tech, Inc.	RF272-63692	12/03/91
Well Tech, Inc.	RF272-63692	
Willy's Express	RF272-74482	12/06/91

Dismissals

The following submissions were dismissed:

Name	Case No.
B. Lloyd's Pecan Products, Inc	RF321-17951
Belltown Service Station	RF321-6329
Black Gold	RF304-8364
Brazos, Inc	RF321-17814
Broadway Gulf	RF300-8861
Campbell's Junction Exxon	RF307-10191
Clardy Oil Company	RF319-4
Clarks Camelot Texaco	RF321-17952
Eddie Texaco Service	RF321-6385
Emporia Gas & Oil Co., Inc	RF300-12590
Farmers Union Oil of Great Falls	RF272-90285
Frank Pratko, Jr	RF307-10198
Garden City Texaco	RF321-17880
Genes Exxon	RF307-10199
Genstar Stone Products	RD272-74240
Gohmann Asphalt & Construction	RF272-73790
Green Lake County, WI	RF272-85236
Harwell Texaco	RF321-1954
Heyward's Texaco	RF321-3190
Hillside Colony	RF321-17954
Jadon Texaco	RF321-2642
James White Co	RF304-8365
Jones Texaco	RF321-17862
Justice, IL	RF272-86430
L K, Inc	RF272-77315
Leslie F. Russell	RF300-12765
Lincrest Exxon	RF307-10194
Mallard & Mallard, Inc	RF321-17822
Marauder Marine Transport, Inc	RF272-64153
Medical Center at Princeton	RF272-85361
Melton's Texaco	RF321-17955
Montana Highway Patrol	RF321-17812
National Motor Fleets Inc	RF321-17820
Needham Texaco	RF321-2135
Perfection Finishing Co	RF321-17819
Placer County, CA	RF272-86859
Pozzi Bros. Transportation, Inc	RF321-17817
Raymond Service Station	RF300-12684
Redding Dump Truck Service	RF321-17818
Ritze's Texaco	RF321-17853
Rock Products Company Inc	RF321-17821
Scenic Exxon	RF307-10197
Shelby Gravel, Inc	RF321-17813
South Putnam Community Schools	RF272-79352
Southern California Edison Company.	RF304-3879
The Arundel Corporation	RD272-72080
The City of Clinton	RF321-88303
The Sico Company	RF319-7
Tolson Motors	RF321-6073
Tom's Texaco	RF321-2008
Villa Park Fuel Oil	RF319-2
Village/Town of Mount Kisco	RF272-61041
Wakefield Taxi	RF321-17816
Ward Parkway Texaco Service	RF321-11299
Western Mechanical, Inc	RF321-17815
Winnebago County, IA	RF272-85809

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: January 13, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-1305 Filed 1-16-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. 4093-7]

Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 18, 1992.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Superfund Site Evaluation and Hazard Ranking System, EPA ICR #1488.02. This ICR requests renewal of a currently approved collection (OMB #2050-0095).

Abstract: Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 1980 and 1986) amends the National Oil and Hazardous Substances Contingency Plan (NCP) to include criteria prioritizing releases throughout the U.S. before undertaking remedial action at uncontrolled hazardous waste sites. The Hazard Ranking System (HRS) is a model that is used to evaluate the relative risk to human health or the environment posed by actual or potential releases of hazardous substances, pollutants, and contaminants. The HRS criteria take into account the population at risk, the hazard potential of the substances, as well as the potential for contamination of drinking water supplies, direct human contact, destruction of sensitive

ecosystems, damage to natural resources affecting the human food chain, contamination of surface water used for recreation or potable water consumption, and contamination of ambient air.

Under this ICR States will apply the HRS by identifying and classifying those releases that warrant further investigation in anticipation of remedial response. The HRS score is crucial since it is the primary mechanism used to determine whether a site is to be included on the National Priorities List (NPL). Only sites on the NPL are eligible for Superfund-financed remedial actions.

HRS scores are derived from the sources described in this information collection, including field reconnaissance, taking samples at the site, and reviewing available reports and documents. States record the collected information on HRS documentation worksheets and include this in the supporting reference package. States then send the package to the EPA region for a completeness and accuracy review, and the Region then sends it to EPA Headquarters for a final quality assurance review. If the site scores above the NPL designated cutoff value, and if it meets the other criteria for listing, it is then proposed for the NPL.

Burden Statement: The estimated annual reporting burden for this collection of information is estimated to average 1,020 hours per site, including time for workplan preparation, data collection, sampling, fieldwork, data validation, score development and report preparation.

Estimated No. of Respondents: 25 States.

Estimated Total Annual Burden on Respondents: 25,500 hours.

Frequency of Collection: One time; section 116(b) requires an HRS evaluation within four years of the site's entry into CERCLIS.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460 and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: January 9, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-1301 Filed 1-16-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4094-1]

Clean Air Act; Air Docket Closing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of temporary closing of Air Docket.

SUMMARY: To accommodate the installation of new file storage cabinets, the EPA Air Docket will be closed from January 21, 1992, through January 23, 1992.

The following actions will be undergoing public comment while the docket is closed:

FR/Date	Docket No.	Title	Close Date
56 FR 63002 (12/03/91)	A-91-69 A-91-68 A-91-43 A-90-51 A-90-38	40 CFR parts 72, 73, 75 and 77 Acid Rain Programs: Permits, Allowance System, Continuous Emissions Monitoring, Excess Emissions, and Core Rules.	02-03-92
56 FR 63774 (12/05/91)	A-91-76	40 CFR part 55 Outer Continental Shelf Air	02-03-92
56 FR 64382 (12/09/92)	A-88-11	40 CFR part 63 NESHAPS for Source Categories: Perchloroethylene Emissions from Dry Cleaning Facilities	02-07-92
56 FR 64785 (12/12/91)	A-91-38	Control Techniques Guideline Document: Reactor Processes and Distillation Operations in the Synthetic Organic Chemical Manufacturing Industry.	02-10-92
56 FR 65608 (12/17/91)	A-89-18	40 CFR parts 80 and 86 Evaporative Emission for Gasoline- and Methanol-Fueled Vehicles	01-22-92
56 FR 65461 (12/17/91)	A-91-32	40 CFR part 73 Delegation Proposals to Administer the Auctions and Direct Sales	02-21-92

Written comments may be delivered to the Air Docket, room M-1500, Waterside Mall, January 22-29, 1992, but Docket records will not be available for viewing during this time.

The Air Docket will reopen January 30, 1992, and will be open to the public 8:30 a.m.-noon and 1:30-3:30 p.m., Monday to Friday.

For further information contact Jacqueline Brown, Air Docket Manager, LE-131, 401 M Street, SW., Washington, DC 20460 (202-260-7548).

Raymond B. Ludwiszewski,

Acting General Counsel.

[FR Doc. 92-1298 Filed 1-16-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4094-4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 30, 1991 through January 03, 1992 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 05, 1991 (56 FR 14096).

DRAFT EISs

ERP No. D-AFS-L65155-00 Rating EC2, Northern Spotted Owl Management Plan in the National Forests, Implementation, CA, OR and WA.

SUMMARY:

EPA expressed concern regarding the presentation of alternatives, water quality and fish habitat in the Forest Services management plan for the Northern Spotted Owl. Additional information is requested on potential impacts to fisheries and the spotted owl, including the cumulative effects of timber management on other federal, state, and private lands.

ERP No. D-AFS-L65158-OR Rating E02, Big Bend Timber Sale and Road

Construction Implementation, Umpqua National Forest, North Umpqua Ranger District, Douglas and Lane Counties, OR.

SUMMARY:

EPA expressed environmental objections based on the potential for the Big Ben Timber Sale to have adverse air quality impacts on two Class I airsheds and proposed removal of habitat of a federally listed threatened species (Northern Spotted Owl).

ERP No. D-GSA-E81030-GA Rating EC2, Internal Revenue Service, Service Center Annex Consolidation, Construction, Chamblee, GA.

SUMMARY:

EPA believes that a mobile source dispersion model is needed in order to determine carbon monoxide concentrations in the vicinity of the proposed facility.

Dated: January 13, 1992.

Anne Norton Miller,

FALD Director, Office of Federal Activities.

[FR Doc. 92-1321 Filed 1-16-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4094-3]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 260-5073 OR (202) 260-5075.

Availability of Environmental Impact Statements Filed January 06, 1992 Through January 10, 1992 Pursuant to 40 CFR 1506.9.

EIS No. 920002, FINAL EIS, FAA, TX, Dallas/Fort Worth International Airport, Construction and Operation, Runway 16/34 East and Runway 16/34 West, Airport Layout Plan, Approval and Funding, Cities of Dallas and Fort Worth, TX, Due: February 17, 1992, Contact: Ms. Mo Keane (817) 624-5610.

EIS No. 920003, FINAL EIS, COE, FL, Central and Southern Florida Flood Control Project Restoration of the Upper Kissimmee River Basin, through the Headwater Revitalization Project and the Lower Kissimmee River Basin, through the Level II Backfilling Plan, Implementation, Osceola, Glades, Highlands, Polk, Okeechobee and Orange Counties, FL, Due: February 17, 1992, Contact: Russell V. Reed (904) 791-3506.

EIS No. 920004, FINAL EIS, CDB, NY, Northeast Middle School Project Construction and Operation, Site Approval and CDB Grant, City of Rochester, Monroe County, NY, Due: February 17, 1992, Contact: Larry Stid (716) 428-6924.

EIS No. 920005, REVISED DRAFT EIS, AFS, VA, WV, George Washington National Forest, Oil and Gas Land/Resource Management Plan Revision, Alleghany Front Lease Area, Several Counties, WV and VA, Due: April 17, 1992, Contact: George W. Kelley (703) 433-2491.

EIS No. 920006, DRAFT EIS, FHW, NV, Southern Segment of the Las Vegas Beltway Construction, US 93/Boulder Highway in the City of Henderson to the Intersection of Durango Drive and Tropicana Avenue on the West. Funding, Section 10 and 404 Permits, Clark County, NV, Due: March 06, 1992, Contact: A.J. Horner (702) 687-5320.

EIS No. 920007, DRAFT EIS, NOA, Atlantic Ocean Sharks Fishery Management Plan (FMP), Implementation, Possible NPDES, COE and Coast Guard Permits, Exclusive Economic Zone (EEZ) Gulf of Mexico, Atlantic Ocean and the Caribbean Sea, Due: March 02, 1992, Contact: Andrew J. Kemmerer (813) 893-3141.

EIS No. 920008, DRAFT EIS, AFS, ID, Lockwood and North Round Valley Timber Sales and Road Construction, Implementation, Payette National Forest, New Meadows Ranger, Adams County, ID, Due: March 02, 1992, Contact: Pete Walker (208) 634-0629.

EIS No. 920009, DRAFT EIS, UAF, CA, Norton Air Force Base (AFB) Disposal and Reuse, Implementation, San Bernardino, CA, Due: March 09, 1992, Contact: Ltc. Thomas J. Bartol (714) 382-4891.

EIS No. 920010, FINAL EIS, UAF, ID, Air Force in Idaho Proposal, Mountain Home AFB Composite Wing Establishment, Modification of Airspace to Accommodate Air Force and Air National Guard Flying Activities; and Air-to-Ground Training Range Establishment, Elmore County, ID, Due: February 17, 1992, Contact: Ltc. Thomas J. Bartol (714) 382-4891.

EIS No. 920011, DRAFT EIS, BLM, WY, West Rocky Butt (WRB) Tract Coal Mine combined with the Rocky Butt Tract (WYW-78633), Logical Mining Unit (LMU), Mine Leasing and Land Acquisition, Power River Basin, Campbell County, WY, Due: March 16, 1992, Contact: Roger Wickstrom (307) 329-6106.

Dated: January 14, 1992.

Anne Norton Miller,

FALD Director, Office of Federal Activities.

[FR Doc. 92-1322 Filed 1-16-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL 4093-8]

Science Advisory Board; Environmental Engineering Committee Bioremediation Research Review Subcommittee Open Meeting; February 10-11, 1992

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Science Advisory Board's (SAB's) Bioremediation Research Review Subcommittee (BRRS) of the Environmental Engineering Committee (EEC), will meet on Monday, February 10, and Tuesday, February 11, 1992. The meeting will be at the U.S. Environmental Protection Agency Headquarters, Administrator's Conference Room #1103 West Tower, 401 M Street, SW., Washington, DC 20460. The meeting will begin at 9 a.m. on Monday, February 10th and 8:30 a.m. on Tuesday, February 11th and will adjourn no later than 4:00 p.m. on February 11th.

At this meeting, the BRRS will receive briefings from Agency staff, and comment on the December 1991 draft report on the Agency's Bioremediation Research Program Strategy, which was prepared by the Agency's Biosystems Technology Development Steering Committee. The proposed charge to the SAB's BRRS from the Agency's Office of Research and Development (ORD) is to review the research strategy document and provide comments to a number of specific questions related to guiding research to develop the scientific and engineering information necessary to allow the appropriate use of bioremediation techniques. Some of the specific questions to be addressed deal with whether a site-directed approach is appropriate for focusing the Agency's bioremediation research program, and whether it will adequately address application problems that limit its use in the field; whether the waste types and site matrices targeted in the research program strategy as priority site categories are the most appropriate for focusing research efforts; whether the major scientific and engineering gaps and consensus knowledge rankings are reasonable and adequately cover the problems associated with bioremediation; and whether the research outputs will provide adequate guidance to the Agency and the bioremediation industry users for effective and appropriate use of bioremediation in the field.

The meeting is open to the public. Any member of the public wishing further information, such as a proposed agenda

on the meeting or those who wish to submit written comments should contact Dr. K. Jack Kooyoomjian, Designated Federal Official, or Mrs. Diana L. Pozun, Secretary, Science Advisory Board (A101F), U.S. Environmental Protection Agency, Washington, DC 20460, at 202/260-6552 by February 3, 1992. Copies of the December 1991 draft report on the Agency's Bioremediation Research Program Strategy may be obtained by contacting Mr. Thomas Baugh of the U.S. Environmental Protection Agency, Office of Research and Development, Office of Environmental Engineering and Technology Demonstration (RD-681), 401 M Street, SW., Washington, DC 20460 or calling at (202) 260-5747 (FTS 260-5747). Seating will be on a first come basis.

Dated: January 9, 1992.

Donald G. Barnes,

Staff Director, Science Advisory Board (A101F).

[FR Doc. 92-1300 Filed 1-16-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

[Docket No. 7100-0124 (FR Y-6) and 7100-0128 (FR Y11I)]

Bank Holding Company Reporting Requirements

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim approval of agency forms.

BACKGROUND: Notice is hereby given of approval, on an interim basis, by the Board of Governors of the Federal Reserve System of changes to the bank holding company reporting requirements identified below, under delegated authority from the Office of Management and Budget (OMB), as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public.) The changes to the reporting requirements are to be effective with the December 31, 1991, reporting date. The Board will consider all public comments and determine, on the basis of those comments, whether the changes approved on an interim basis should become final.

DATES: Comments must be submitted on or before February 18, 1992.

ADDRESSES: Comments, which should refer to the OMB Docket number, should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.8(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

SUMMARY: Under the Bank Holding Company Act of 1956, as amended, the Board of Governors of the Federal Reserve System is responsible for the supervision and regulation of all bank holding companies. The Board has granted approval, on an interim basis, to the revisions of the Annual Report of Bank Holding Companies (FR Y-6; OMB No. 7100-0124) and the Annual Report of Selected Financial Data for Nonbank Subsidiaries of Bank Holding Companies (FR Y-11I; OMB No. 7100-0218).

The Annual Report of Bank Holding Companies (FR Y-6) is filed annually as of the holding company's fiscal year-end by top-tier bank holding companies. It contains financial statements for the consolidated company, parent company only, and the holding company's nonbank subsidiaries, all in the company's own format; and list of the officers, directors, and shareholders, and their percentage ownership of the holding company; and details on insider lending by the bank holding company. Currently, a bank holding company with total consolidated assets of $150 million or more is required to have the financial statements that are submitted with the FR Y-6 certified by an independent public accountant. Only two minor revisions to the FR Y-6 are being proposed at this time. The first revision would require bank holding companies to list changes, during the fiscal year, in shareholders that own or control five percent or more of any class of voting securities in the bank holding company. The second revision would require a bank holding company to report as a supplement to its organizational chart a list of banking companies in which it holds 25 percent or more of the nonvoting equity shares and which would not otherwise be controlled as subsidiaries.

The Annual Report of Selected Financial Data for Nonbank Subsidiaries of Bank Holding Companies (FR Y-11I) is submitted annually by all bank holding companies and provides selected balance sheet and income information on the nonbank subsidiaries of the bank holding company. The following revisions to the FR Y-11I reporting form and instructions are being proposed:

1. Clarification of instructions and reporting form to indicate that inactive subsidiaries are only reportable if the subsidiary previously conducted an activity (i.e., is temporarily inactive or in the process of liquidation). Those subsidiaries that have never engaged in any business activity are not reportable.

2. Clarification of the reporting instructions to indicate that financial data for mortgage banking and consumer finance organizations should only be consolidated in instances where the bank holding company has established separate corporations in various state in order to operate offices in those states. That is, financial data should only be consolidated for organizations that are the functional equivalent of branches.

3. Elimination of the Supplemental Cover Sheet for tiered bank holding companies.

Revisions Approved on an Interim Basis Under OMB Delegated Authority of the Following Reports

1. *FR Y-6* (OMB No. 7100-0124), Annual Report of Bank Holding Companies;

This report is to be filed by all top-tier bank holding companies. The following bank holding companies re exempt from filing the FR Y-6, unless the Board specifically requires an exempt company to file the report: bank holding companies that have been granted a hardship exemption by the Board under section 4(d) of the Bank Holding Company Act; and foreign banking organizations as defined by section 211.23(b) of Regulation K. The revised report is to be implemented on an annual basis as of December 31, 1991; reports are to be submitted 90 days after the "as of" date.

Report Title: Annual Report of Bank Holding Companies
Agency Form Number: FR Y-6
OMB Docket Number: 7100-0124
Frequency: Annual
Reporters: Bank Holding Companies
Annual Reporting Hours: 44,784
Estimated Average Hours per Response: 8.0
Number of Respondents: 5,598
Small businesses are affected

The information collection is mandatory [12 U.S.C. 1844]. Confidential treatment is not routinely given to the information filed. However, confidential treatment for the information, in whole or in part, can be requested in accordance with the instructions to the form.

2. *FR Y-11I* (OMB No. 7100-0128), Annual Report of Selected Financial Data for Nonbank Subsidiaries of Bank Holding Companies;

This report is to be filed by all bank holding companies that have nonbank subsidiaries. The report is filed for each individual nonbank subsidiary of the holding company. The following bank holding companies re exempt from filing the FR Y-11I, unless the Broad specifically requires an

exempt company to file the report: bank holding companies that have been granted a hardship exemption by the Board under section 4(d) of the Bank holding Company Act and foreign banking organizations as defined by section 211.23(b) of Regulation K. The revised report is to be implemented on a quarterly basis as of December 31, 1991, with a submission date of 60 days after the "as of" date.

Report Title: Annual Report of Selected Financial Data for Nonbank Subsidiaries of Bank Holding Companies
Agency Form Number: FR Y-11I
OMB Docket Number: 7100-0128
Frequency: Annual
Reporters: Bank Holding Companies
Annual Reporting Hours: 1,693
Estimated Average Hours per Response: 0.6
Number of Respondents: 2,822
Small businesses are affected

The information collection is mandatory (12 U.S.C. 1844). Confidential treatment is not routinely given to the information on the form. However, confidential treatment for the information can be requested in accordance with the instructions to the form.

FOR FURTHER INFORMATION CONTACT: Stephen M. Lovette, Manager, Policy Implementation, Division of Banking Supervision and Regulation (202/452-3622) or Alison J. Waldron, Senior Financial Analyst, Division of Banking Supervision and Regulation (202/452-2538). The following individuals may be contacted with respect to issues related to the Paperwork Reduction Act of 1980: Stephen Siciliano, Special Assistant to the General Counsel for Administrative Law, Legal Division, (202/452-3920); Frederick J. Schroeder, Chief, Financial Reports, Division of Research and Statistics (202/452-3829); and Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: The Board of Governors of the Federal Reserve System has granted approval, on an interim basis, under delegated authority from the Office of Management and Budget (OMB) to the revisions in the following reports.

1. *FR Y-6* (OMB No. 7100-0124), Annual Report of Bank Holding Companies;
2. *FR Y-11I* (OMB No. 7100-0128), Annual Report of Selected Financial Data for Nonbank Subsidiaries of Bank Holding Companies;

FR Y-6

The FY Y-6 is an annual report filed by top-tier bank holding companies. It consists of financial statements for the consolidated entity (when the total consolidated assets of the company are $150 million or more) and the parent company only statement for all holding companies in the company's own format. The Form 10-K filed with the SEC usually satisfies the requirement for the consolidated statement. Additionally, financial statements for the nonbank subsidiaries of the holding company and information on the identity, percentage ownership, and businesss interests of principal shareholders, directors, and executive officers are included in the report. Amendments to the organizational documents, information on insider loans, and an organization chart are also required.

The Annual Report of Bank Holding Companies (FR Y-6) is the Federal Reserve's principal source of internally generated and independently audited financial data on individual bank holding companies, their banking and nonbanking subsidiaries, and their other regulated investments. The external audit by an independent public accountant, which is required in connection with this report for holding companies with total consolidated assets of $150 million or more, promotes continued safe and sound operations. The report enables the Federal Reserve (1) to monitor holding company operations and to ensure that the operations are conducted in a safe and sound manner; and (2) to determine holding company compliance with the provisions of the Bank Holding Company Act and Regulation Y (12 CFR part 225).

The information collected by the FR Y-6 on the identity, percentage ownership, and business interests of principal shareholders, directors, and executive officers is also important for supervisory purposes. First, data on outside business interests (including interests in other financial institutions) aid in identifying chain banking organizations by indicating when an individual owns 25 percent or more of each of two or more banking organizations. Second, information on the principal owners and directors is of critical supervisory importance since these individuals have a significant impact on the policies and condition of banking organizations. Experience has shown that this information is extremely valuable in identifying potential problem situations and in developing supervisory follow-up programs. Third, information on the outside business interests of insiders can be useful in uncovering situations that involve a conflict of interest or preferential treatment in the granting of credit. Information on significant borrowings by holding company insiders assists in highlighting situations involving potential insider abuse. Finally, information on ownership helps the Federal Reserve monitor compliance with the Change in Bank Control Act (12 U.S.C. 1817(j)(13)).

Annual reporting of this information in the FR Y-6 is essential for supervisory purposes because it provides information between bank holding company inspections. The timely collection of these data in a supervisory report enhances the Federal Reserve's efforts to monitor the activities of bank holding companies.

FR Y-11I

The FR Y-11I consists of 13 selected financial items and certain other information collected annually from individual nonbank subsidiaries. The FR Y-11I must be submitted for each directly or indirectly held nonbank subsidiary. A subsidiary, for purposes of this report, is defined by § 225.2 of Regulation Y (12 CFR 225.2), which includes companies 25 percent or more owned or controlled by another company. Edge or Agreement corporations, foreign subsidiaries, and nonbank subsidiaries held directly by a bank are exempt from FR Y-11I reporting.

The information collected on this report is used by the Federal Reserve to assess the financial condition of individual nonbank subsidiaries and their impact on the consolidated financial entity.

The FR Y-11I is the only source of standardized financial information on individual nonbank subsidiaries of bank holding companies. This information is essential in light of their potential impact on the subsidiary bank's condition; the different types and degrees of risk inherent in these activities; the trend toward nonbank deregulation; and the potential for nonbank holding company entities to have an adverse impact on affiliated banks due to the volume of intercompany transactions and the complex inter-relationships that can exist between holding companies and their bank and nonbank affiliates.

The Federal Reserve has an increasing interest in and a need for information on the nonbank operations of bank holding companies. Experience has shown that nonbank problems can cause funding, earnings, and asset quality problems for the consolidated holding company, and that nonbank subsidiaries can create serious supervisory problems in bnak subsidiaries. Consolidated reports do not reveal the extent of the problems of

nonbank subsidiaries because the size of the subsidiary bank can obscure the operations of nonbank subsidiaries at the consolidated level. Consequently, a principal focus of the holding company supervisory effort is to evaluate the condition of nonbank companies and their potential impact on affiliated subsidiary banks.

Annual reporting on the FR Y-11I enables the Federal Reserve to place an emphasis on monitoring the capitalization and leverage of the nonbank subsidiaries in relation to industry norms and applicable regulations. In addition, the data submitted on the FR Y-11I are also frequently used to respond to requests from Congress and from the public for information on nonbank subsidiaries.

Report Form Revisions

The Federal Reserve has approved, on an interim basis, the following changes to the Annual Report of Bank Holding Companies (FR Y-6):

1. Modify Report Item 5, the list of shareholders, require the reporting of changes (both additions and deletions), during the fiscal year, in shareholders that own or control five percent or more of any class of voting securities in the bank holding company. Both the name and percent ownership would be reported.

2. Require each bank holding company to report as a supplement to its organizational chart a list of banks or bank holding companies in which it holds 25 percent or more of nonvoting equity shares and which would not otherwise be considered controlled subsidiaries.

The Federal Reserve has approved, on an interim basis, the following changes to the Annual Report of Selected Financial Data for Nonbank Subsidiaries (FR Y-11I):

1. The reporting instructions will be modified to clarify that inactive nonbank companies are only reportable if they have previously engaged in any business activity. Those companies that are part of the holding company organization but have not yet engaged in any business activity are not reportable.

2. The reporting instructions will be modified to indicate instances where more than one nonbanking subsidiary may be consolidated for reporting purposes. Mortgage banking and consumer finance subsidiaries may be consolidated on the FR Y-11I if they operate as the functional equivalent of branches of a mortgage banking or consumer finance operation. In certain instances, a bank holding company will establish separate corporations in various states in order to operate in those states. These separate corporations may be consolidated when reporting on the FR Y-11I.

3. Clarifications are being proposed to the FR Y-11I cover sheet and reporting form. It is also proposed that the supplemental cover page for use by tiered bank holding companies be eliminated.

Time Schedule for Information Collection and Publication

The FR Y-6 is collected annually as of the end of the bank holding company's fiscal year. This report must be submitted to the Federal Reserve within 3 months following the date of the report.

The FR Y-11I is reported annually as of the last calendar day of December. The FR Y-11I must be submitted to the appropriate Federal Reserve Bank within 60 days after the date of the report.

The data from these reports that are not given confidential treatment are available to the public. Data from these reports will generally not be published.

Legal Status and Confidentiality

The reports are required by law (12 U.S.C. 1844 (b) and (c) and 12 CFR 225.5(b) of Regulation Y).

The Federal Reserve has not considered the data in these reports to be confidential. However, a bank holding company may request confidential treatment pursuant to section (b)(4) and (b)(6) of the Freedom of Information of Act (5 U.S.C. 522(b)(4) and (b)(6)). Section (b)(4) provides exemption for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Section (b)(6) provides exemption for "personnel and medical files and similar files the disclosure or which would constitute a clearly unwarranted invasion of personal privacy."

Board of Governors of The Federal Reserve System, January 10, 1992.

Dated: January 10, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-1251 Filed 1-16-92; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. 7100-0124, (FR Y-6A)]

Bank Holding Company Reporting Requirements

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim approval of agency forms.

BACKGROUND: Notice is hereby given of approval, on an interim basis, by the Board of Governors of the Federal Reserve of changes to the bank holding company reporting requirements identified below, under delegated authority from the Office of Management and Budget (OMB), as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public.) The changes to the reporting requirements are to be effective for transactions occurring on or after January 1, 1992, for reports submitted according to a gradual phase-in period described below. The Board will consider all public comments and determine, on the basis of those comments, whether the changes approved on an interim basis should become final.

DATES: Comments must be submitted on or before February 18, 1992.

ADDRESSES: Comments, which should refer to the OMB Docket number, should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.8(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

SUMMARY: Under the Bank Holding Company Act of 1956, as amended, the Board of Governors of the Federal Reserve System is responsible for the supervision and regulation of all bank holding companies. The Board has given interim approval to the revisions of the Bank Holding Company Report of Changes in Investments and Activities (FR Y-6A; OMB No. 7100-0124). The Federal Reserve is proposing that the revisions to the FR Y-6A be implemented effective with transactions occurring on or after January 1, 1992.

The Bank Holding Company Report of Changes in Investments and Activities is an event-generated report filed by top-tier bank holding companies to report changes in regulated investments and activities made pursuant to the Bank Holding Company Act and Regulation Y. The report collects structure information on subsidiaries and regulated investments of bank holding companies engaged in both banking and nonbanking activities.

The proposed changes involve a modification to the reporting schedule from a quarterly basis to an event-driven basis in which reports must be submitted within 30 calendar days of the

occurrence of a reportable transaction. Additionally, the report form and instructions have been modified to improve clarity. Proposed changes to the content of the report include the elimination of legal address and activity rank information, and the inclusion of certain nonvoting equity investments and Small Business Investment Corporation (SBIC) investments.

To allow adequate time to adjust to the new reporting schedule and revised reporting form, the Federal Reserve requires all changes in investments or activities that occur during the first quarter of 1992 be filed within thirty days after the end of the quarter. The proposed 30-day flow reporting schedule would be fully implemented for transactions that occur on or after April 1, 1992. The interim approval is subject to any changes the Board may determine to make on the basis of public comments received.

Revisions Approved, on an Interim Basis, Under OMB Delegated Authority of the Following Report

1. *FR Y-6A* (OMB No. 7100-0124), Bank Holding Company Report of Changes in Investments and Activities;

This report is to be filed by all top-tier bank holding companies. The following bank holding companies are exempt from filing the FR Y-6A, unless the Board specifically requires an exempt company to file the report: bank holding companies that have been granted a hardship exemption by the Board under section 4(d) of the Bank Holding Company Act; and foreign banking organizations as defined by section 211.23(b) of Regulation K. The revised report is to be implemented on a flow basis as of January 1, 1992, with a submission date of 30 days after the occurrence of a reportable transaction. The implementation of the report is subject to a gradual phase in of the new requirement.

Report Title: Bank Holding Company Report of Investments and Activities
Agency Form Number: FR Y-6A
OMB Docket Number: 7100-0124
Frequency: Flow-basis
Reporters: Bank Holding Companies
Annual Reporting Hours: 2,000
Estimated Average Hours per Response: 1.0
Number of Respondents: 1,000
Small businesses are affected

The information collection is mandatory (12 U.S.C. 1844) and the information is not routinely given confidential treatment. However, confidential treatment for information, in whole or in part, can be requested in accordance with instructions to the form.

FOR FURTHER INFORMATION CONTACT: Stephen M. Lovette, Manager, Policy Implementation, Division of Banking Supervision and Regulation (202/452-3622) or Alison J. Waldron, Senior Financial Analyst, Division of Banking Supervision and Regulation (202/452-2538). The following individuals may be contacted with respect to issues related to the Paperwork Reduction Act of 1980: Stephen Siciliano, Special Assistant to the General Counsel for Administrative Law, Legal Division, (202/452-3920); Frederick J. Schroeder, Chief, Financial Reports, Division of Research and Statistics (202/452-3829); and Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: The Board of Governors of the Federal Reserve has granted approval, on an interim basis, under delegated authority from the Office of Management and Budget (OMB) to the revisions in the *FR Y-6A* (OMB No. 7100-0124), the Bank Holding Company Report of Changes In Investments and Activities.

The Bank Holding Company Report of Changes in Investments and Activities requests information from all top-tier bank holding companies on changes in investments and activities. This report is event-generated and is filed by bank holding companies only when they have changes in structure. The report collects information relating to acquisitions, divestitures, changes in relationships between a parent company and its subsidiaries, changes in activities, and legal authority. The response rate for the FR Y-6A varies depending on the reportable activity engaged in by each bank holding company.

In addition to a redesign of the reporting form and instructions, substantive changes to the FR Y-6A include a revision to the reporting cycle, the revision of existing reporting requirements to eliminate the collection of unnecessary information, and the addition of proposed information required by users of the report.

The Bank Holding Company Report of Changes in Investments and Activities (FR Y-6A) is collected by the Federal Reserve to monitor compliance by bank holding companies with the Bank Holding Company Act of 1956, as amended, and Regulation Y. Structure data are used to support the financial data collected by the Federal Reserve, and to support studies focusing on nonbanking trends of bank holding companies.

In addition to facilitating compliance monitoring by the staff of the Federal Reserve, the structure data are utilized to provide information on the investments and nonbanking activities of bank holding companies to the Federal Reserve.

Report Form Revisions

The Board has granted interim approval to the following changes to the Bank Holding Company Report of Changes in Investments and Activities (FR Y-6A):

1. *Revise the Reporting Cycle*—Change the current quarterly reporting requirement to a flow-basis requirement. Bank Holding Companies will have 30 calendar days following a reportable change in investments or activities to submit the FR Y-6A to the Federal Reserve.

2. *Cease Collection of Certain Information*
—Cease the collection of structure information on companies in the bank holding company organization that have not yet conducted any business activity.
—Cease collection of information on the number of offices operated by nonbanking subsidiaries.
—Cease collection of legal address information for bank holding companies.
—Change requirement for ranking all business activities by order of importance to a requirement that only the primary activity be indicated.

3. *Add Certain Reporting Requirements*
—Require that controlling ownership interests based on nonvoting equity be reported for subsidiaries that are not otherwise controlled.
—Require that investments made through Small Business Investment Corporations registered with the Small Business Administration be reported.

4. *Redesign the Reporting Form and Instructions*—Redesign the FR Y-6A reporting form and rewrite the instructions to correspond with the new form and to improve clarity.

Legal Status and Confidentiality

The reports are required by law (12 U.S.C. 1844 (b) and (c) and 12 CFR 225.5(b)).

The Federal Reserve has not considered the data in these reports to be confidential. However, a company may request confidential treatment pursuant to section (b)(4) and (b)(6) of the Freedom of Information Act (5 U.S.C. 552 (b)(4) and (b)(6)). Section (b)(4) provides exemption for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Section (b)(6) provides exemption for "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

Board of Governors of the Federal Reserve System, January 10, 1992.

Dated: January 10, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-1252 Filed 1-16-92; 8:45 am]

BILLING CODE 6210-01-M

The Long Term Credit Bank of Japan, Tokyo, Japan; Application to Engage in Providing Financial Advisory and Real-Estate Related Advisory Activities

The Long Term Credit Bank of Japan, Tokyo, Japan ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and section 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), to engage in providing financial advisory and real-estate related advisory activities through the acquisition of 95.5 percent of the outstanding voting shares of Peers Holdings, Inc., New York, New York ("Company"). Specifically, Applicant proposes to engage through Company in the following activities:

(1) Acting as financial adviser, either on a retainer or success fee basis, to provide corporate finance advisory services to institutional customers, including advice with respect to structuring, financing and negotiating domestic and international mergers, acquisitions, joint ventures, divestitures, leveraged buyouts, capital-raising vehicles, and other corporate transactions, and to provide ancillary services or functions incidental to the foregoing activities;

(2) Performing financial feasibility studies for institutional customers, principally in the context of determining the financial attractiveness and feasibility of particular corporate transactions and financing transactions;

(3) Providing valuation services in connection with the foregoing;

(4) Rendering fairness opinions in connection with corporate transactions;

(5) Providing investment research and advice, and promoting and assisting investors, with respect to real property investments; and

(6) Arranging commercial real estate equity financings.

Applicant proposes to conduct these activities indirectly on an international basis.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Applicant believes that these proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto."

The Board has previously determined that the financial advisory activities proposed by Applicant are closely related to banking and permissible for bank holding companies. *See, e.g., The Dai-Ichi Kangyo Bank, Limited*, 77 Federal Reserve Bulletin 184 (1991); *First Eastern Corporation*, 76 Federal Reserve Bulletin 764 (1990); *Banca Commerciale Italiana S.p.A.*, 76 Federal Reserve Bulletin 649 (1990); *The Fuji Bank, Limited*, 75 Federal Reserve Bulletin 577 (1989). The Board has also previously determined that providing investment research and advice, and promoting and assisting investors, with respect to real property investments are permissible activities for bank holding companies. *See, e.g., The Royal Bank of Scotland Group plc*, 76 Federal Reserve Bulletin 866 (1990). In addition, the Board has previously determined that bank holding companies may engage in arranging commercial real estate equity financings pursuant to § 225.25(b)(14) of the Board's Regulation Y (12 CFR 225.25(b)(14)). Applicant has made the commitments set forth in § 225.25(b)(14) of the Board's Regulation Y and considered by the Board in previous Orders.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC, 20551, not later than February 12, 1992. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how that party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, January 13, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-1254 Filed 1-16-92; 8:45 am]

BILLING CODE 6210-01-F

Saban, S.A., Panama City, Panama; Republic New York Corporation, New York, New York

Saban, S.A., Panama City, Panama, and its subsidiary, Republic New York Corporation, New York, New York (together, the "Applicant"), have applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8))("BHC Act") and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), for prior approval to engage *de novo* on a domestic and international basis through the Applicant's wholly-owned subsidiary, Republic New York Securities Corporation, New York, New York ("Company"), in the following activities:

(1) Providing to affiliates and to institutional and retail customers portfolio investment advice and research pursuant to § 225.25(b)(4) of Regulation Y, including furnishing general economic information and advice, general economic statistical forecasting services and industry studies; serving as the advisory company for a mortgage or a real estate investment trust; serving as an investment advisor as defined in Section 2(a)(20) of the Investment Company Act of 1940, as amended, to investment companies registered under that Act; and providing financial advice to state and local governments;

(2) Providing advice to institutional customers in connection with financial transactions, including advice regarding the structuring of and arranging for interest rate swaps and interest rate caps, the valuation of companies and blocks of stock, advice in connection with financing transactions and the rendering of fairness opinions in connection with such transactions and similar transactions ("financial advisory services");

(3) Purchasing and selling all types of securities on the order of institutional and retail customers as a "riskless principal;"

(4) Providing to affiliates and to institutional and retail customers investment advisory and securities brokerage services on a combined basis ("full-service brokerage"), including exercising limited investment discretion on behalf of institutional customers; and

(5) Providing to affiliates and to institutional and retail customers securities brokerage services and activities related or incidental thereto pursuant to § 225.25(b)(15) of Regulation Y, including related securities credit services pursuant to the Board's Regulation T and securities borrowing and lending.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1337 (D.C. Cir. 1975)("*National Courier*"). In addition, the Board may consider any other basis

that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

In determining whether an activity meets the second, or proper incident to banking, test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." 12 U.S.C. 1843(c)(8).

Applicant will conduct the proposed investment advisory activities subject to the conditions of § 225.25(b)(4) of the Board's Regulation Y (12 CFR 225.25(b)(4)). The Board has previously determined by order that the proposed financial advisory services are closely related to banking for purposes of section 4(c)(8) of the BHC Act, and the Applicant has committed to conduct these activities in accordance with the conditions set forth in these Orders. *See Suntrust Banks, Inc.*, 74 Federal Reserve Bulletin 256 (1988); *Signet Banking Corporation*, 73 Federal Reserve Bulletin 59 (1987). In addition, the Board has previously approved the proposed buying and selling of all types of securities on the order of investors as "riskless principal." *See, e.g., J.P. Morgan & Company Incorporated*, 76 Federal Reserve Bulletin 26 (1990); *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989). Applicant commits that Company will conduct this proposed activity subject to the same limitations and using the same methods and procedures established by the Board in these orders.

Applicant will conduct the proposed securities brokerage activities subject to the conditions of § 225.25(b)(15) of the Board's Regulation Y (12 CFR 225.25(b)(15)). Additionally, the Board has previously determined that, subject to certain conditions, full service brokerage activities are permissible nonbanking activities for bank holding companies and do not violate the Glass-Steagall Act. *See, e.g., PNC Financial Corporation*, 75 Federal Reserve Bulletin 396 (1989); *Bank of New England Corporation*, 74 Federal Reserve Bulletin 700 (1988); *Manufacturers Hanover Corporation*, 73 Federal Reserve Bulletin 930 (1987); *National Westminster Bank PLC*, 72 Federal Reserve Bulletin 584 (1986). The Board has also approved, subject to certain conditions, the provision of discretionary investment management services to institutional customers in connection with securities brokerage and investment advisory services. *J.P. Morgan & Company, Inc.*, 73 Federal Reserve Bulletin 810 (1987). Applicant proposes that Company conduct these activities in accordance with the prudential limitations relied upon by the Board in these orders.

As part of its securities brokerage activities, Company also proposes to engage in securities borrowing and lending activities. The Board has previously determined that securities borrowing and lending is permissible for bank holding companies pursuant to § 225.25(b)(15) of Regulation Y. *See, e.g., Canadian Imperial Bank of Commerce*, 74 Federal Reserve Bulletin 571 (1988); *The Chase Manhattan Corporation*, 69 Federal Reserve Bulletin 725 (1983). In addition, Company proposes to act as a "finder" or "conduit" in arranging securities loans to other broker-dealers either by lending securities held in a customer's margin account or by acting as an intermediary in arranging loans between broker-dealers. Applicant states that, in acting as a conduit, company will comply, as applicable, with the guidelines set forth in the Federal Financial Institutions Examination Council's Uniform Policy for Supervising Financial Institution Securities Lending Activities. Applicant contends that, in acting as a conduit in arranging securities loans, Company would assume a principal's risk no different than the risk assumed in acting as agent on behalf of a brokerage customer and that acting as a conduit in these transactions is a credit intermediation role typical of financial institutions. Thus, Applicant claims that acting as a conduit in securities borrowing and lending activities is closely related to banking for purposes of section 4 of the BHC Act under the standard established in *National Courier*.

Applicant states that the proposed activities will benefit the public. It believes that they will promote competition and provide gains in efficiency and added convenience to customers. Moreover, Applicant believes that the proposed activities will not result in any unsound banking practices. Accordingly, Applicant believes that public benefits of this proposal outweigh adverse effects and the activities are therefore a proper incident to banking for purposes of section 4 of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than February 16, 1992. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, January 13, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-1255 Filed 1-16-92; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 122391 AND 123191

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date Terminated
The Gates Corporation, Oryx Energy Company, Sun Operating Limited Partnership	92-0375	12/23/91
UAL Corporation, Pan Am Corporation, Pan American World Airways, Inc.	92-0385	12/23/91
R. E. Turner, Great American Communications Company, The Great American Entertainment Company, Inc.	92-0130	12/25/91
Pacific Telesis Group, Craig O. McCaw, Topeka Cellular Telephone Company, Inc.	92-0256	12/26/91
Applied Bioscience International Inc., Richard J. Hawkins and Nona F. Niland, husband and wife, Pharmaco Dynamics Research, Inc.	92-0322	12/26/91
Richard J. Hawkins and Nona F. Niland, Applied Bioscience International Inc., Applied Bioscience International, Inc.	92-0323	12/26/91
MidSouth Corporation, Tenneco Inc., The Corinth and Counce Railroad Company	92-0331	12/26/91
NISPCO Industries, Inc., Kokomo Gas and Fuel Company, Kokomo Gas and Fuel Company	92-0335	12/26/91
Occidental Petroleum Corporation, General Electric Corporation, General Electric Capital Corporation	92-0340	12/26/91
IES Industries Inc., Whiting Petroleum Corporation, Whiting Petroleum Corporation	92-0344	12/26/91
ALLTEL Corporation, Merrill Lynch Capital Appreciation Partnership V, L.P., CPI Acquisition, Inc.	92-0372	12/26/91
Bindley Western Industries, Inc., William G. Waldron, J.E. Goold & Co.	92-0373	12/26/91
David M. Hicks, ALLTEL Corporation, ALLTEL Corporation	92-0374	12/26/91
Charterhouse Equity Partners, L.P., John Labatt Limited, Everfresh, Inc.	92-0383	12/26/91
Daganeve Foundation, Adamra Foundation, Alfa-Laval U.S. Holding Inc.	92-0421	12/26/91
Abbott Laboratories, Unilever N.V., Sequoia Turner Corporation	92-0304	12/27/91
Charter Consolidated, P.L.C., PMC Holding Company, PMC Holding Company	92-0305	12/27/91
Merrill Lynch & Co., Inc., BBB Holdings Corp. (Joint Venture), BBB Holdings Corp. (Joint Venture)	92-0379	12/27/91
Merrill Lynch Capital Appreciation Company Limited II, BBB Holdings Corp. (Joint Venture), BBB Holdings Corp. (Joint Venture)	92-0380	12/27/91
Peder Kolind, Klaus J. Jacobs, Network Multi-Family Security Corporation	92-0411	12/27/91
Peder Kolind, Asko Deutsche Kauthaus Aktiengesellschaft, Network Multi-Family Security Corporation	92-0412	12/27/91
Lane Investment Limited Partnership, Great American Communications Company, Great American Television and Radio Company, Inc.	92-0352	12/30/91
Acadia Partners, L.P., Multi-Local Media Information Group, Inc., Multi-Local Media Information Group, Inc.	92-0365	12/30/91
Leucadia National Corporation, Transportation Capital Corporation, Transportation Capital Corporation	92-0386	12/30/91
Sumitomo Corporation, Harsco Corporation, Harsco Corporation	92-0426	12/30/91
Green Bay Packaging Inc., Tenneco Inc., Marinette, Tomahawk & Western Railroad	92-0455	12/30/91
Kirin Brewery Co., Ltd., Twyford International, Inc., Twyford International, Inc.	92-0361	12/31/91
Sisters of Charity of Montreal, St. Joseph's Province, Sisters of Charity of St. Hyacinthe, Quebec, Sisters of Charity Health Systems, Inc.	92-0415	12/31/91
CBI Industries, Inc., GEO International Corporation, MQS Inspection, Inc.	92-0420	12/31/91
Wingate Partners, L.P., Boise Cascade Corporation, Boise Cascade Office Productions Corporation	92-0431	12/31/91
Mitac International Corporation, Qume Corporation, Compac Microelectronics, Inc.	92-0435	12/31/91
USAir Group, Inc., Carl C. Icahn, Trans World Airlines, Inc.	92-0439	12/31/91
James W. Wilson, Jr., One Fifty Mall Associates, RGB Venture, a general partnership	92-0447	12/31/91
James W. Wilson, Jr., James W. Wilson, Jr., RGB Venture, a general partnership	92-0448	12/31/91
Metropolitan Life Insurance Company, James W. Wilson, Jr., Wiregrass Venture, Orange Venture, & HMS Venture	92-0449	12/31/91
James W. Wilson, Jr., Metropolitan Life Insurance Company, RGB Venture, a general partnership	92-0456	12/31/91

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 010192 AND 010392

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date Terminated
The Peninsular and Oriental Steam Navigation Company, Richard C. Halpern, Schal Associates, Inc.	92-0424	01/02/92
Tenneco Inc., LaPorte MTBE Limited Partnership, LaPorte MTBE Limited Partnership	92-0324	01/03/92
Unitil Corporation, Fitchburg Gas and Electric Light Company, Fitchburg Gas and Electric Light Company	92-0354	01/03/92
Dr. H.C. Paul Sacher, CompuChem Corporation, CompuChem Corporation	92-0368	01/03/92
American Stores Company, Melville Corporation, Mark Steven Service Merchandisers, Inc.	92-0423	01/03/92
Hellman & Friedman Capital Partners II, L.P., General Cellular Corporation, General Cellular Corporation	92-0444	01/03/92

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office; Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92-1287 Filed 1-16-92, 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3356]

Dive N' Surf, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the California-based company, d/b/a Body Glove International, to label or otherwise identify the constituent fiber content, percentages of fiber content, manufacturer's name, and country of origin for their textile fiber products, as required by the Textile Fiber Products Identification Act. In addition, the order requires the respondent to distribute a copy of the order to each of its operating divisions.

DATES: Complaint and Order issued December 23, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Sylvia Kundig, San Francisco Regional Office, Federal Trade Commission, 901 Market St., Suite 570, San Francisco, CA. 94103. (415) 744-7920.

SUPPLEMENTARY INFORMATION: On Wednesday, September 25, 1991, there was published in the **Federal Register**, 56 FR 48564, a proposed consent agreement with analysis In the Matter of Dive N' Surf, Inc., d/b/a Body Glove International, for the purpose of soliciting public comment. Interested

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 72 Stat. 1717; 15 U.S.C. 45, 70)

Donald S. Clark,

Secretary.

[FR Doc. 92-1285 Filed 1-16-92; 8:45 am]

BILLING CODE 6750-01-M

[Dkt C-3352]

O'Neill, Incorporated; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the California-based company, d/b/a Onax, Inc., to label or otherwise identify the constituent fiber content, percentages of fiber content, manufacturer's name, and country of origin for their textile fiber products, as required by the Textile Fiber Products Identification Act. In addition, the order requires the respondent to distribute a copy of the order to each of its operating divisions.

DATES: Complaint and Order issued December 9, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Sylvia Kundig, San Francisco Regional Office, Federal Trade Commission, 901 Market St., suite 570, San Francisco, CA 94103 (415) 744-7920.

SUPPLEMENTARY INFORMATION: On Wednesday, September 25, 1991, there was published in the **Federal Register** 56 FR 48564, a proposed consent agreement with analysis In the Matter of O'Neill, Incorporated, d/b/a Onax, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 72 Stat. 1717; 15 U.S.C. 45, 70)

Donald S. Clark,

Secretary.

[FR Doc. 92-1286 Filed 1-16-92; 8:45 am]

BILLING CODE 6750-01-M

[File No. 902 3309]

Tech Spray, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed 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 prohibit, among other things, a Texas corporation and its owner from making false and unsubstantiated environmental claims in the marketing of any product.

DATES: Comments must be received on or before March 17, 1992.

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: Michael Dershowitz, FTC/S-4002, Washington, DC 20580. (202) 326-3158.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 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 § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent to Cease and Desist

In the Matter of Tech Spray, Inc., a corporation, and Richard Russell, individually and as officer of said corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Tech Spray, Inc., a corporation, and Richard Russell, individually and as officer of said corporation ("proposed respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Tech Spray, Inc., by its duly authorized officer Richard Russell, individually and as officer of said corporation, and their attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Tech spray, Inc. ("Tech Spray") is a Texas corporation with its office and principal place of business at 88 North Hughes Street, Amarillo, Texas 79105.

Proposed respondent Richard Russell is an officer of Tech Spray. He formulates, directs, and controls the acts and practices of Tech Spray, and his business address is the same as that of Tech Spray.

2. Proposed respondents admit all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contained 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) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a 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 attached draft complaint, 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 respondents, 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 respondents

that the law has been violated as alleged in the attached draft complaint, or that the facts as alleged in the attached draft complaint, other than the 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 § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist 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 decision containing the agreed-to order to proposed respondents' addressed as stated in this agreement shall constitute service. Proposed respondents waive any right they might 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 in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of this Order, the following definitions shall apply:

"Class I ozone-depleting substance" means a substance that harms the environment by destroying ozone in the upper atmosphere and is listed as such in title 6 of the Clean Air Act Amendments of 1990, Public Law No. 101–549, and any other substance which may in the future be added to the list pursuant to title 6 of the Act. Class I substances currently include chlorofluorocarbons, halons, carbon tetrachloride, and 1,1,1-trichloroethane.

"Class II ozone-depleting substance" means a substance that harms the environment by destroying ozone in the upper atmosphere and is listed as such in title 6 of the Clean Air Act Amendments of 1990, Public Law No. 101–549, and any other substance which may in the future be added to the list pursuant to title 6 of the Act. Class II substances currently include hydrochlorofluorocarbons.

I.

It is ordered that respondents Tech Spray, Inc. ("Tech Spray"), a corporation, its successors and assigns, and its officers, and Richard Russell, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing that any such product containing any Class I or Class II ozone-depleting substance is "ozone friendly," "ozone safe," or, by words, depictions, or symbols representing directly or by implication that any such product will not deplete, destroy, or otherwise adversely affect ozone in the upper atmosphere.

II.

It is further ordered that respondents Tech Spray, a corporation, its successors and assigns, and its officers, and Richard Russell, individually and as an officer of said corporation, and respondents representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by words, depictions, or symbols, that any product offers any environmental benefit, unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates such representation. To the extent such evidence consists of scientific or professional tests, analyses, research, studies, or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession to yield accurate and reliable results.

III.

It is further ordered that for three years from the date that the representations to which they pertain are last disseminated, respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any representation covered by this Order; and

B. All tests, reports, studies, surveys, or other materials in respondents' possession or control that contradict, qualify, or call into question such representation or the basis upon which respondents relied for such representation.

IV.

It is further ordered that the corporate respondent shall distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation and placement of advertisements, promotional materials, product labels, or other such sales materials covered by this Order.

V.

It is further ordered that the corporate respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this Order.

VI.

It is further ordered that the individual respondent shall promptly notify the Commission in the event of the discontinuance of his present business or employment and of each affiliation with a new business or employment. In addition, for a period of five (5) years from the date of service of this Order, he shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the sale, distribution, and/or manufacturing of industrial cleaning or degreasing products or of his affiliation with a new business or employment in which his own duties

and responsibilities involve the sale, distribution, and/or manufacturing of industrial cleaning or degreasing products. Each such notice shall include the individual respondent's new business address and a statement of the nature of the business or employment in which such respondent is newly engaged, as well as a description of such respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this Order.

VII.

It is further ordered that respondents shall, within sixty (60) days after service of this Order upon them, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents Tech Spray, Inc., a Texas corporation, and Richard Russell, individually and as officer of the corporation.

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 and take other appropriate action, or make final the agreement's proposed order.

This matter concerns labeling and advertising of various Tech Spray electronic equipment products, including Blue Shower, Flux Stripper OF, Instant Chiller, Precision Duster, and Kleen-All. The Commission's complaint in this matter charges that the respondents' labeling and advertising contain false and misleading representations that these products are "ozone friendly." The complaint alleges that the respondents represented that there are no ingredients in their products that will deplete the ozone layer; that because one product contains no CFCs, it will not harm the earth's ozone layer; and that the respondents' products have lower ozone-depletion potential levels than the limits set by the Montreal Protocol and Environmental Protection Agency ("EPA") guidelines. In fact, the complaint alleges, these representations are false and misleading, because although the respondents' products contain lower ozone-depletion potentials than they did before they were reformulated, they still consist primarily of ozone-depleting chemicals; chlorofluorocarbons (CFCs), 1,1,1-trichloroethane, and/or hydrochlorofluorocarbons (HCFCs), and, furthermore, the Montreal Protocol and EPA guidelines do not provide ozone-depletion potential level limits that are applicable to individual products.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future.

The proposed order defines Class I and Class II ozone-depleting substances, incorporating the definitions established in the Clean Air Act Amendments of 1990. Class I substances currently listed under the Act are CFCs, halons, carbon tetrachloride, and 1,1,1-trichloroethane. Class II substances currently consist of HCFCs.

Part I of the proposed order requires the respondents, in connection with the advertising, sale, or distribution of any product, to cease representing that products containing any Class I or Class II ozone-depleting substance are "ozone friendly" or "ozone safe," or, through the use of similar terms or expression, that any such product will not deplete, destroy, or otherwise adversely affect ozone in the upper atmosphere.

Under the Clear Air Act Amendments, the EPA has authority to add new chemicals to the Class I and II lists. Thus, the order's definitions of Class I and Class II zone-depleting substances specifically include substances that may be added to the lists. If additional substances are added to the Class I or II lists, Part I of the order becomes applicable to claims made for products containing those substances after the substances are added to the lists.

Part II of the proposed order requires the respondents to cease representing that any of their products offer any environmental benefit, unless the respondents possess a reasonable basis for such representation.

Parts III, IV, V, VI, and VII of the order are standard order provisions requiring the respondents to distribute copies of the order to certain company officials and employees, to notify the Commission of any changes in corporate structure that might affect compliance with the order, to notify the Commission of any changes in the business or employment of the named individual respondent, and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 92-1288 Filed 1-16-92; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration; Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Health Care Financing Administration (HCFA), (49 FR 35247, dated September 6, 1984) is amended to include the Secretary's following delegations to the Administrator, HCFA, of the authority to conduct various Medicare/Medicaid studies, demonstrations and program initiatives under the Omnibus Budget Reconciliation Act of 1989 (OBRA 89) (as amended), Public Law 101-239, and the Omnibus Budget Reconciliation Act of 1990 (ORBA 90), Public Law 101-508. These delegations do not include the authority to make reports to Congress. The authority to make reports to Congress is reserved for the Secretary.

The specific amendments to Part F. are described below:

- Section F.30, Delegations of Authority, is amended to include the following delegations of authority under OBRA 89 and 90.

PP. The authorities under the Omnibus Budget Reconciliation Act of 1989 (OBRA 89) (as amended), Public Law 101-239.

1. The authority to conduct seven studies as mandated by sections 6016, 6102(d)(2), 6102(d)(3), 6102(d)(4), 6136, 6142, and 6408(a)(1) of OBRA 89 (as amended), and as may hereafter be amended.

2. The authority to conduct three demonstration projects as mandated by sections 6114(e), 6217 (as amended by section 4207(m)(5) of OBRA 90), and 6407(a) of OBRA 89 (as amended), and as may hereafter be amended.

3. The authority to conduct specific Medicare/Medicaid initiatives defined by sections 6109, 6213(e), 6407(e), 6901(d)(3)(A) and 6901(d)(3)(B) (as amended by section 4008(i)(2) of OBRA

90) of OBRA 89 (as amended), and as may hereafter be amended.

QQ. The authority under the Omnibus Budget Reconciliation Act of 1990 (ORBRA 90), Public Law 101-508.

1. The authority under section 4008(i)(1), and as may hereafter be amended, for waiver of such provisions of Title XVIII of the Social Security Act as are necessary to conduct any demonstration project for limited-service rural hospitals with respect to which HCFA has entered an agreement before the date of the enactment of OBRA 89.

Dated: December 21, 1991.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

[FR Doc. 92-1268 Filed 1-16-92; 8:45 am]

BILLING CODE 4120-03-M

Office of the Secretary

Assistant Secretary for Planning and Evaluation; Privacy Act of 1974; New System of Records

AGENCY: Department of Health and Human Services (DHHS), Office of the Assistant Secretary for Planning and Evaluation (ASPE).

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, ASPE is proposing to establish a new system of records 09-90-0083, "Jobs Opportunities and Basic Skills (JOBS) Evaluation Data System," DHHS/OS/ASPE. We have provided background information about the proposed system in the Supplementary Information section below.

DATES: ASPE invites interested parties to submit comments on the proposed routine uses on or before February 18, 1992. ASPE has sent a report of the new system to the Congress and to the Office of Management and Budget (OMB) on January 10, 1992. In addition, ASPE has requested a waiver for the 60-day clearance requirement. If granted, this system of records will be effective 30 days from the date submitted to OMB. The routine uses will take effect February 18, 1992, unless ASPE receives comments that result in a contrary determination.

ADDRESS: Comments should be addressed to the JOBS Evaluation Program Analyst in the Office of the Assistant Secretary for Planning and Evaluation (ASPE) at the address listed below. Comments received will be available for inspection from 9 a.m. to 3 p.m., Monday through Friday, in room 404E, Humphrey Building, at that address.

FOR FURTHER INFORMATION CONTACT: Canta Pian or Karen Armstrong, Hubert H. Humphrey Building, Room 404-E, 200 Independence Ave, SW., Washington, DC 20201, or call (202) 245-7148 (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: DHHS/ASPE proposes to establish a new system of records, called the JOBS Evaluation Data System. This system will be established and maintained by ASPE's contractor and its subcontractors to fulfill its contract to evaluate the JOBS programs.

The JOBS training program was mandated "to assure that needy families with children obtain the education, training, and employment that will help them avoid long-term welfare dependence" (Pub.L. 100-485, section 201 (a)). The Family Support Act, Pub.L. 100-485, section 203(c), calls for an evaluation of JOBS to determine the effectiveness of different approaches to assisting welfare applicants and recipients. The evaluation will contain three main study areas: An impact analysis, an implementation and process study, and a benefit-cost analysis. Other analyses, such as studies of performance standards, will also be conducted. Records will be collected for approximately 48,000 welfare applicants and recipients, although certain components of the data collection, such as educational testing and surveys, will be completed on smaller subsets of the sample.

Records in this system will be obtained through interviews with sample members, educational tests, case file reviews, and from participating sites' administrative files for AFDC benefits (including AFDC, Food Stamps, and Medicaid files). This information will be collected to inform the evaluation about sample members' JOBS program participation and wage and unemployment benefits receipt. Administrative records may be provided in computer readable formats such as magnetic tapes or disk. Social Security Numbers and/or case and recipient identifiers will be used to retrieve records.

Data in the system will be maintained in a secure manner. ASPE's contractor's project managers will control access to the data. All files will be kept in secure areas, using locked files, password controls and encryption routines. Compilations of individualized data will not be provided to agencies at the research sites.

The routine uses, compatible with the stated purposes of the system, are proposed as follows:

- Disclosure to the Department of Justice, courts or other tribunals in the event of litigation involving the Federal Government, the Department or employees of the Department.
- Disclosure to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.
- Disclosure to employees of the contactor who need the record in performing their duties related to the contract.
- Disclosure to subcontractors for the purpose of collating, analyzing, aggregating or otherwise refining records in the system.

Dated: January 10, 1992.

Martin H. Gerry,

Assistant Secretary for Planning and Evaluation.

09-90-0083

SYSTEM NAME:

JOBS Evaluation Data System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Manpower Demonstration Research Corporation (MDRC), 3 Park Avenue, New York, NY 10016
Deloitte and Touche, 2 Oliver Plaza, Pittsburgh, PA 15222
Response Analysis Corporation, 377 Wall Street, Princeton, NJ 08542-0158
Participating Sites (See list below)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system will include records on a sample of approximately 48,000 individuals in 7 to 9 sites who were AFDC recipients or applicants at the time of selection of the research sample and who were eligible to receive JOBS services. Certain categories of records will be collected for all sample members, while others will be collected only for subsamples in selected sites.

CATEGORIES OF RECORDS IN THE SYSTEM:

In each of the evaluation sites, clients will be randomly assigned to either treatment or control groups through a computerized assignment system by the contractor. Similar data will be collected for members of both treatment and control groups in the research sample. Categories of records collected from administrative records, surveys, and testing include client identifiers (including name, social security number,

etc.); demographic characteristics; family status; labor market status; educational status; public assistance status; program status; total income and poverty status; attitudes toward work, welfare, parenting, and jobs; motivational, self-descriptive, and work-related factors; program participation; educational and training utilization; school performance and developmental status of children; and factors related to child care use.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority is provided by the Family Support Act, Public Law 100-485, section 203(c), 42 U.S.C. 681 note, which calls for an evaluation to determine the effectiveness of different approaches to assisting welfare applicants and recipients.

PURPOSE OF THE SYSTEM:

The purpose of the JOBS Evaluation Data System is to build and expand on prior and in-progress research in order to determine which program approaches work best for different subgroups of welfare applicants and recipients. The evaluation will contain three main study areas: an impact analysis, an implementation and process study, and a benefit-cost analysis. Other analyses, such as studies of performance standards, will also be conducted. Numerous reports on the findings (in aggregate form only) will be issued over the course of the multi-year evaluation.

The impact study will examine the effects of various JOBS program approaches on individuals' employment status and earnings levels, receipt and amount of AFDC payments, income levels, and educational attainment, in up to ten sites (and on literacy, basic mathematics achievement, and the development of children in three of the ten sites). The research will provide important information to policy makers who need to decide which services to emphasize for which populations in JOBS in the future.

The implementation and process analysis—the second major evaluation study area—is intended to inform the impact analysis and assess the feasibility and replicability of different approaches. It will do this by examining how various JOBS approaches are implemented in each site, individuals' patterns of participation in JOBS and other services available in the community, the relationship between participation and individuals' baseline characteristics, and the site contexts.

The cost-effectiveness study—the third major study area—will estimate the total costs of the various JOBS approaches in each site as well as the costs of particular activities or components within each approach. These costs will then be compared to program benefits, as estimated through the impact study, to determine the relative cost-effectiveness of different JOBS approaches.

ROUTINE USES OR RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The following routine uses for the system are proposed:

1. Information may be disclosed to the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

• DHHS, or any component thereof; or

• Any DHHS employee in his or her official capacity; or

• Any DHHS employee in his or her individual capacity where the Department of Justice (or DHHS, where it is authorized to do so) has agreed to represent the employee; or

• The United States or any agency thereof where DHHS determines that the litigation is likely to affect DHHS or any of its components, is a party to litigation or has an interest in such litigation, and DHHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, DHHS determines that such disclosure is compatible with the purpose for which the records were collected.

2. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

3. The evaluation project is being performed under a contract. Records may be disclosed to employees of the contractor who need the record in performing their duties related to the contract. The contractor will be required to maintain Privacy Act safeguards with respect to such records.

4. Records may be disclosed to the contractor and its subcontractors for purposes of collecting, collating, analyzing, aggregating or otherwise refining records in this system. The contractor and its subcontractors shall be required to maintain Privacy Act safeguards with respect to such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape and disk, paper records.

RETRIEVABILITY:

The research sites will provide DHHS's contractor with identifying information on each sample member at the time of random assignment, which will be maintained in automated and paper files at the contractor's location. For all sample members, these identifiers will be used to access administrative records, as described above, and to add to files containing survey and test data.

The contractor will assign a sample identifier to each sample member and any personal identifiers will be encrypted on the research files. Thus, the identifiers will be used only for data collection and validation purposes. Once the files are created, the sample ID will be used for maintenance of the research files, with the identifiers encrypted. A master "decryption" routine will be maintained to link the files. Access to this file will be restricted to contractor staff who need to use this routine to validate data.

SAFEGUARDS:

The following safeguards are routinely employed by DHHS and the contractor to insure confidentiality:

• All contract staff sign an agreement to comply with the corporate policies on data security and confidentiality;

• All data, both paper files and computerized files, are kept in secure areas, with access limited on a need to know basis, using locked files, password controls and encryption routines;

• Merged data sources will have identifying information encoded to preclude overt identification of individuals;

• All reports, tables and printed materials will present only aggregate information;

• Compilations of individualized data will not be provided to agencies at the research sites; and

• Confidentiality agreements will be executed with any participating subcontractors and consultants who must obtain access to the detailed files.

Any users of the files in the future will be held to the same confidentiality and use restrictions outlined above.

RETENTION AND DISPOSAL:

Data will be maintained for at least seven years or as long as it serves

legitimate research purposes related to the evaluation.

Data disposal will consist of shredding all individual records (and certifying) and destroying computer files, other than the Public Use File, which will not contain identifiable individual data.

SYSTEM MANAGER AND ADDRESS:

Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW, Washington, DC 20201.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the system manager at the address indicated above. Provide notarized signature as proof of identity. The request should specify the name or identification number and the time period of association with the JOBS Evaluation.

RECORD ACCESS PROCEDURES:

Same as notification procedure. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Departmental Regulations (45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

Contact the System Manager named above, reasonably identify the record(s), and specify the information to be contested. State the reason for contesting it (e.g., why it is inaccurate, irrelevant, incomplete, or not current). (These procedures are in accordance with Departmental Regulations (45 CFR 5b.7)).

RECORD SOURCE CATEGORIES:

Information for individuals will be collected from local social services agency records, including benefit payment and claims files, from service providers and from interviews with sample members and their children.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

LIST OF PARTICIPATING SITES:

Michigan—Kent and Wayne Counties:

Director, Bureau of Employment Services, Michigan Department of Social Services, 235 South Grand Avenue, Lansing, MI 48909

Ohio—Franklin County:

Director, Ohio Department of Human Services, Office of Welfare Reform, 30 East Broad Street, 31st floor, Columbus, OH 43266

Georgia—Fulton County:

Director Division of Family and Children Services, Georgia Department of Human Resources, 878 Peachtree Street, NE., Atlanta, GA 30309

Oklahoma—Oklahoma City, Cleveland and Pottawatomie Counties:

Program Support Supervisor, Oklahoma Department of Human Services, Family Support Services Division, PO Box 25352, Oklahoma City, OK 73125

California—Riverside County:

Associate Program Analyst, GAIN and Employment Operations Bureau, California Department of Social Services, 744 P Street, MS-6136, Sacramento, CA 95814

Oregon—Washington and Multnomah Counties:

Program Analyst—JOBS unit, Adult and Family Services Division, Oregon Department of Human Resources, 415 Public Service Building, Salem, OR 97310

[FR Doc. 92-1269 Filed 1-16-92, 8:45 am]

BILLING CODE A150-04-M

Alcohol, Drug Abuse, and Mental Health Administration

Suspension Lifted; Laboratory Again Meets Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse, HHS.

ACTION: Notice

SUMMARY: The Department of Health and Human Services notifies Federal Agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11986) dated April 11, 1988. The following laboratory's certification to engage in urine drug testing for Federal Agencies was suspended on July 23, 1991 (56 FR 34205, July 26, 1991) and was reinstated effective January 14, 1992.

Harris Medical Laboratory, 7606 Pebble Drive, Fort Worth, TX 76118, 817-595-0294.

FOR FURTHER INFORMATION CONTACT: Mona W. Brown, Press Officer, National Institute on Drug Abuse, room 10-A-39, 5600 Fishers Lane, Rockville, Maryland 20857; Telephone (301)-443-6245.

Charles R. Schuster,

Director, National Institute on Drug Abuse.

[FR Doc. 92-1395 Filed 1-16-92; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 91F-0464]

Hoechst Celanese Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Hoechst Celanese Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2,2'-[1,2-ethanediylbis (oxy-2,1-phenyleneazo)] bis [N-(2,3-dihydro-2-oxo-1*H*-benzimidazol-5-yl)]-3-oxo-butanamide (C.I. Pigment Yellow 180) as a colorant in polymers that are intended to contact food.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9511.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 1B4289) has been filed by the Hoechst Celanese Corp., 500 Washington St., Coventry, RI 02816. The petition proposes to amend the food additive regulations in § 178.3297 *Colorants for polymers* (21 CFR 178.3297) to provide for the safe use of 2,2'-[1,2-ethanediylbis (oxy-2,1-phenyleneazo)]bis[N-(2,3-dihydro-2-oxo-1*H*-benzimidazol-5-yl)]-3-oxo-butanamide (C.I. Pigment Yellow 180) as a colorant in polymers that are intended to contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 9, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition

[FR Doc. 92-1262 Filed 1-16-92; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Center for Nursing Research; Notice of Meeting: National Advisory Council for Nursing Research and its Subcommittees

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the National Advisory Council for Nursing Research, National Center for Nursing Research; and its Subcommittees, February 3-5, 1992, Building 31C,

Conference Room 6, National Institutes of Health, Bethesda, Maryland 20892.

Meetings of the full Council and its Subcommittees will be held at times and places listed below. Attendance by the public will be limited to space available.

The full Council will meet in open session on February 4, from 9 a.m. to 4:30 p.m. and on February 5, from 11 a.m. to adjournment. Agenda items will include the NIH Strategic Plan, NCNR-Long Range Plan, Report on the Division of Intramural Programs, and the Report on the Division of Extramural Programs.

The Planning Subcommittee will meet in open session February 3, in Building 31C, Conference Room 7, from 8 a.m. to 10:30 a.m. to discuss long-term and strategic planning and policy issues.

The Communications Subcommittee will meet in open session February 3, in Building 31C, Conference Room 7, from 10:30 to 12 noon to discuss goals and strategies for enhancing communications with specific audiences.

The Intramural Program Subcommittee will meet in open session February 3, in Building 31C, Conference Room 6, from 12:30 p.m. to 2:30 p.m. to review, discuss and evaluate individual programs and projects conducted by the NCNR.

The National Nursing Research Agenda Subcommittee will meet in open session February 3, in Building 31C, Conference Room 7, from 2:30 p.m. to 5 p.m. to discuss the National Nursing Research Agenda in general and the Priority Expert Panels in particular.

The Nursing Resources and Health Policy Subcommittee will meet in open session February 4, in Building 31C, Conference Room 6, from 4:30 p.m. to 6 p.m. to discuss nursing resources and health policy as they relate to nursing science and the achievement of quality and effective outcomes in patient care.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S. Code and section 10(d) of Public Law 92–463, the Intramural Program Subcommittee meeting will be closed to the public on February 3, from 12 noon to 12:30 p.m. for the review, discussion and evaluation of individual intramural programs and projects conducted by the National Center for Nursing Research, including consideration of personal qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and Section 10(d) of Public Law 92–463, the meeting of the Research Subcommittee will be closed to the public on February 3, from 10 a.m. to 12 noon, and the meeting of the full Council on February 5, from 8:30 a.m. to 11 a.m. for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Vicki Thompson, Council Assistant, National Advisory Council for Nursing Research, National Institutes of Health, Building 31, room 5B23, Bethesda, Maryland 20892, (301) 496–0207, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health.)

Dated: January 10, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–1294 Filed 1–16–92; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on January 10, 1991.

(Call Reports Clearance Officer on (301) 965–4149 for copies of package)

1. Agency/Employer Questionnaire—0960–0470. The information collected on the form SSA–4163 is used to determine the need for and the amount of any offset of benefits for certain individuals receiving government pensions and also receiving or applying for Social Security benefits. The respondents are State governments or political subdivisions thereof.

Number of Respondents: 1,000.
Frequency of Response: 1.
Average Burden Per Response: 3 minutes.
Estimated Annual Burden. 50 hours.
OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: January 10, 1992.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 92–1165 Filed 1–16–92; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-1917; FR-2934-N-61]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in

National Coalition for the Homeless v. *Veterans Administration*, No. 88-2503-OG (D.D.C.),

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: Robert Conte, Dept. of Army, Military Facilities, DAEN-ZCI-P; Rm. 1E671, Pentagon, Washington, DC 20310-2600; (202) 693-4583; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW, room 10319, Washington, DC 20590; (202) 366-4246; Dept. of Interior; Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St. NW., Mailstop 5512-MIB, Washington, DC 20240; (202) 208-4080; (These are not toll-free numbers.)

Dated: January 10, 1992.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM, FEDERAL REGISTER REPORT FOR 01/17/92

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. TO3202, Fort Rucker
Cowboy & Crusader St.
Fort Rucker Co: Dale AL 36362-
Landholding Agency: Army
Property Number: 219210001
Status: Unutilized
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.

Bldg. TO3203, Fort Rucker
Cowboy & Crusader St.
Fort Rucker Co: Dale AL 36362-
Landholding Agency: Army
Property Number: 219210002
Status: Unutilized
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.

Bldg. TO3206, Fort Rucker
Cowboy & Crusader St.
Fort Rucker Co: Dale AL 36362-
Landholding Agency: Army
Property Number: 219210003
Status: Unutilized
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.

Bldg. TO3207, Fort Rucker
Cowboy & Crusader St.
Fort Rucker Co: Dale AL 36362-
Landholding Agency: Army
Property Number: 219210004
Status: Unutilized
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.

Bldg. TO3208, Fort Rucker
Cowboy & Crusader St.
Fort Rucker Co: Dale AL 36362-
Landholding Agency: Army
Property Number: 219210005
Status: Unutilized
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.

Bldg. TO3211, Fort Rucker
Cowboy & Crusader St.
Fort Rucker Co: Dale AL 36362-
Landholding Agency: Army
Property Number: 219210006
Status: Unutilized
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.

Bldg. TO3213, Fort Rucker
Cowboy & Crusader St.
Fort Rucker Co: Dale AL 36362-
Landholding Agency: Army
Property Number: 219210007
Status: Unutilized
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.

Bldg. TO3216, Fort Rucker
Cowboy & Crusader St.
Fort Rucker Co: Dale AL 36362-
Landholding Agency: Army
Property Number: 219210008
Status: Unutilized
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.

Bldg. TO3217, Fort Rucker
Cowboy & Crusader St.
Fort Rucker Co: Dale AL 36362-
Landholding Agency: Army
Property Number: 219210009
Status: Unutilized
Comment: 5310 sq. ft., two story wood structure, most recent use—barracks, presence of asbestos, off-site use only.

North Carolina

USCG Station Oak Island
300 A. Caswell Beach Road
Caswell Beach Co: Brunswick NC 28461-
Landholding Agency: DOT
Property Number: 879210001
Status: Excess
Comment: 1300 sq. ft., 3 story wood frame, needs rehab, presence of asbestos on pipes, secured area w/alternate access, off-site removal only.

Unsuitable Properties

Buildings (by State)

Oregon

Storage Building
USCG Marine Safety Office
6767 North Basin Avenue
Portland Co: Multnomah OR 97217-3992
Landholding Agency: DOT
Property Number: 879210002
Status: Excess
Reason: Other
Comment: Extensive deterioration.

Land (by State)

Puerto Rico

119.3 acres
Culebra Island PR 00775–
Landholding Agency: Interior
Property Number: 619210001
Status: Excess
Reason: Floodway

[FR Doc. 92–1111 Filed 1–16–92; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–02–4130–09]

Proposed Plan of Operation Amendment for Open Pit Mining, Baltic Mine

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement and to request comments on the scope of the environmental impact statement.

SUMMARY: Pursuant to section 102(2)c of the National Environmental Policy Act of 1969, as amended, the Bureau of Land Management intends to prepare an environmental impact statement for a portion of the California Desert Conservation Area, Kern County, California. The proposed action, the Baltic Project, is located in the Stringer Mining District, approximately 1 mile south of Randsburg, California. This document will be prepared as a joint Environmental Impact Statement/ Environmental Impact Report with Kern County, to meet the requirements of the National Environmental Policy Act and the California Environmental Quality Act.

Based on the analysis of an environmental assessment, the Bureau has made a finding of potential significant impact. At issue are the direct, indirect, and cumulative impacts to the human environment stemming from a plan amendment to conduct open pit mining and cyanide heap leach processing. The proposed action is surface mining and cyanide heap leach processing of up to 18 million tons of ore and waste on 200 acres of combined public and private land within a 532 acre project area. Possible alternatives include the processing of ore in a closed vat leach circuit, and no action.

ADDRESSES: To be considered in the scoping process, all written comments and suggestions must be received by Lee Delaney, Area Manager, Ridgecrest Resource Area, Bureau of Land Management, 300 South Richmond Road, Ridgecrest, California 93555, not later than February 18, 1992. Written comments made in response to the Kern County Notice of Preparation, need not be resubmitted.

FOR FURTHER INFORMATION CONTACT: Peter Milne, Project Manager, or Joe Liebhauser, Environmental Coordinator, Bureau of Land Management, Ridgecrest Resource Area, 300 South Richmond Road, Ridgecrest, California 93555, (619) 375–7125.

Steve Smith,

Acting Area Manager

[FR Doc. 92–1256 Filed 1–16–92; 8:45 am]

BILLING CODE 4310–40–M

[OR–130–02–4212–13: GPO–2–091]

Realty Action: Exchange of Public Lands in Ferry, Lincoln, Pend Oreille and Stevens Counties, WA

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under Sec. 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Willamette Meridian:

T. 36 N., R. 32 E., sec. 11, M.S. 503 and M.S. 575;
T. 40 N., R. 32 E., sec. 9, NW¼NE¼,
Sec. 14, NW¼NE¼, SE¼NE¼,
Sec. 19, SW¼SE¼,
Sec. 24, NE¼, E½, NW¼;
T. 40 N., R. 33 E., sec. 7, lots 1, 6, and 12,
T. 35 N., R. 34 E., sec. 18, NW¼NE¼,
Sec. 20, SW¼SW¼;
T. 35 N., R. 36 E., sec. 24, NW¼NE¼,
T. 35 N., R. 37 E., sec. 18, NW¼NE¼, SW¼NW¼,
Sec. 34, E½SW¼SE¼;
T. 37 N., R. 37 E., sec. 17, SW¼NW¼,
Sec. 32, Lot 1;
T. 38 N., R. 37 E., sec. 18, Lots 5 and 9, SW¼SE¼;
T. 34 N., R. 38 E., sec. 29, SE¼SE¼,
Sec. 30, Lot 3,
Sec. 33, NW¼NE¼, NE¼,NW¼, SE¼SE¼;
T. 36 N., R. 38 E., sec. 8, SW¼SW¼,
T. 36 N., R. 39 E., sec. 18, SW¼NE¼,
Sec. 19, E½SW¼;
T. 35 N., R. 40 E., sec. 4, SE¼NE¼
Sec. 9, Lots 3, 4, 8, & 9;
T. 38 N., R. 40 E., sec. 28, SW¼NW¼;
T. 32 N., R. 41 E., sec. 32, E½SW¼, SW¼,SW¼;
T. 38 N., R. 41 E., sec. 18, E½NE¼;
T. 39 N., R. 41 E., sec. 13, SE¼SE¼,
Sec. 35, NW¼NE¼;
T. 38 N., R. 42 E., sec. 1, Lot 5;
The area described aggregates 1,706 more or less acres in Ferry, Pend Oreille, and Stevens Counties, Washington.

In exchange for all part of these lands, the Federal Government will acquire all or part of the following described private lands from several landowners using Clearwater Investments, Inc., to facilitate the exchange:

Willamette Meridian:

T. 21 N., R. 32 E., sec. 1, Lots 1, 2, 3, & 4, S½N½, S½;
Sec. 3, These portions of the NE¼, SE¼,NW¼, and N½SW¼ lying south of the Great Northern Railroad Right-of-Way, SW¼,
T. 22 N., R. 32 E., sec. 14, All;
Sec. 15, portion of SW¼SE¼,
Sec. 22, E½;
Sec. 23, All;
T. 21 N., R. 33 E., sec. 6, Lots 3, 4, 5, 6, 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼,
Sec. 7, Those portions of Lot 1 and the NE¼NW¼ lying north of the Great Northern Railroad Right-of-Way;
T. 21 N., R. 35 E., sec. 23, E½, E½W½;
Sec. 24, S½N½, S½;
Sec. 25, N½N½NW¼, S½SNW¼, SW¼;
Sec. 26, N½, E½SE¼;
Sec. 35, N½;
The area described above aggregates 4,982 acres more of less in Lincoln County, Washington.

The Bureau of Land Management (BLM) and Clearwater Investments, Inc. have grouped the exchange of these public and private lands into priorities based on the opportunity to exchange individual properties and through land-use planning. Completion of the total exchange of these lands is expected to occur in several stages. The value of the lands to be exchanged in each stage will be approximately equal. The proponent may be required to make payments to equalize the values of the lands based upon the approved appraisal.

The purpose of the land exchange is to facilitate resource management opportunities in eastern Washington as identified in the Spokane District's Resource Management Plan. The exchange will reduce the number of widely scattered parcels of public land that are difficult and uneconomic to manage, and acquire private property in the Upper Grab Creek Management Area of Lincoln County. The private lands being offered have important values for recreation, fish and wildlife habitat, riparian and watershed management.

The exchange is subject to:

1. The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, act of August 30, 1890, (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

3. All other valid existing rights, including, but not limited to, any right-of-way, permit, or lease of record.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws.

Detailed information concerning the exchange, is available for review at the Spokane District Office, East 4217 Main Avenue, Spokane, Washington 99202.

For a period of 45 days, interested parties may submit comments to the Spokane District Manager at the above address. Any adverse comments will be reviewed by the State Director. In absence of any adverse comments, this realty action will become a final determination of the Department of the Interior.

Date of Issue: January 6, 1992.

Joseph K. Buesing,

District Manager.

[FR Doc. 1179 Filed 1-16-92; 8:45 am]

BILLING CODE 4310-33-M

[CA-060-4214-10; CACA 28950]

Proposed Withdrawal; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 1,262.45 acres of public land to protect the Santa Margarita Ecological Preserve. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Russell L. Kaldenberg, Area Manager, Palm Springs-South Coast Resource Area, 63-500 Garnet Avenue, P.O. Box 2000, North Palm Springs, California 92258.

SUPPLEMENTARY INFORMATION: On December 3, 1991, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

San Bernardino Meridian

T. 8 S., R. 3 W.,
Sec. 23, SE¼SE¼;
Sec. 24, Lots 1, 2, 3, S½SW¼;
Sec. 25, W½NE¼,W½,SE¼;
Sec. 26, E½NE¼,NE¼NW¼,NE¼SE¼;
Sec. 33, NW¼NE¼,S½NE¼,S½NW¼, N½SW¼,NE¼SE¼.
T. 9 S., R. 3 W.,
Sec. 3, Lot 4.

The areas described aggregate approximately 1,262.45 acres in Riverside and San Diego counties.

The purpose of the proposed withdrawal is to protect this unique area's sensitive resources and ensure its principle use as an outdoor classroom and field biology research site in accordance with a memorandum of understanding between San Diego State University, and the Bureau of Land Management. Until an application is filed, no further action will be taken on this proposal.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period may include short-term, low impact permits or licenses, provided such use is compatible with the sensitive resource values associated with the Santa Margarita Preserve.

Dated: January 9, 1992.

James L. Williams,

Acting, District Manager.

[FR Doc. 92-1261 Filed 1-16-92; 8:45 am]

BILLING CODE 4310-40-M

Fish and Wildlife Service

Availability of a Draft Habitat Conservation Plan and Environmental Assessment; Citation Builder's Ridge at Cresta Verde Development Project, Riverside Co., CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the draft Habitat Conservation Plan (HCP) and Environmental Assessment (EA) on the proposed issuance of a permit pursuant to section 10(a)(1)(B) to allow incidental take of the endangered Stephens' kangaroo rate (*Dipodomys stephensi*) on the Ridge at Cresta Verde Development Project in the City of Corona, in Riverside County, California, are available for public review. Comments and suggestions are requested. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments are requested 30 days after publication of this notice.

ADDRESSES: Persons wishing to review the draft HCP and EA may obtain a copy by writing the U.S. Fish and Wildlife Service, Laguna Niguel Field Office, Documents will be available for public inspection during normal business hours (8 a.m. to 5 p.m.) at the Laguna Niguel Field Office. Written data or comments concerning the proposed application and draft EA should be submitted to the U.S. Field and Wildlife Service, Laguna Niguel Field Office, 24000 Avila Road, room 3106, Laguna Niguel, California 92656.

FOR FURTHER INFORMATION CONTACT: Mr. Brooks Harper at the above Laguna Niguel Field Office.

SUPPLEMENTARY INFORMATION: Citation Builders, 17731 Irvine Boulevard, suite 201, Tustin, California 92680, has applied to the Fish and Wildlife Service (Service) for an incidental take permit that would authorize take of Stephens' kangaroo rates (SKR) on their proposed development site known as "The Ridge at Cresta Verde" within the City of Corona, Riverside County, California.

The proposed action is to authorize take of SKR on the proposed development site, which is outside of the area of take previously authorized under an interim incidental take permit (#739678) issued to Riverside County Habitat Conservation Agency (RCHCA).

This proposed action is detailed in section 1.3—Proposed Action. The proposed action authorizes take of 21.6 acres of SKR-occupied habitat. The applicant proposes to mitigate for the habitat loss by paying the sum of $42,220 to an entity designated by the Service for use in the SKR preservation program. This amount is equal to that which would be required if the project were within the RCHCA's permit boundary.

Dated: January 10, 1992.

Marvin L. Plenert,

Regional Director.

[FR Doc. 92-1257 Filed 1-16-92; 8:45 am]

BILLING CODE 4310-55-M

Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Contest

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Service announces the dates and locations of the 1992 Federal Duck Stamp Contest, and the public is invited to attend.

DATES: 1. This action is effective July 1, 1992, the beginning of the 1992-1993 contest.

2. The public may view the 1992 Federal Duck Stamp Contest entries on Sunday, November 8, 1992, in the Department of the Interior Auditorium.

3. This year's contest will be held on November 9 and 10, 1992, beginning at 10:30 a.m. on Monday and 9 a.m. on Tuesday.

4. Persons wishing to enter this year's contest may submit entries anytime after July 1, but all must be postmarked no later than midnight September 15.

ADDRESSES: Requests for complete copies of the regulations, reproduction rights and the display and participation agreements should be addressed to: Federal Duck Stamp Contest, U.S. Fish and Wildlife Service, Department of the Interior, 1849 C Street, NW., Suite 2058, Washington, DC 20240.

Location of contest: Department of the Interior Building Auditorium (C Street Entrance), 1849 C Street, NW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Ms. Norma Opgrand, Chief, Federal Duck Stamp Program, U.S. Fish and Wildlife Service, Washington, DC 20240, Telephone: (202) 208–4354 or (202) 208–5508.

SUPPLEMENTARY INFORMATION: The following five eligible species for the 1992–1993 duck stamp contest are listed below:.

(1) Canada Goose
(2) Mallard
(3) Canvasback
(4) Greater Scaup
(5) Northern Pintail

The primary author of this document is Norma Opgrand, U.S. Fish and Wildlife Service.

Dated: January 8, 1992.

Richard N. Smith,

Director

[FR Doc. 92–1267 Filed 1–16–92; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service Environmental Document Prepared for a Proposed 8⅝-Inch Texaco Inc.'s Right-of-Way Pipeline on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of an environmental document prepared for a proposed 8⅝-inch Texaco right-of-way pipeline from the Garden Banks, Block 189, to High Island Area, East Addition, South Extension, Block A–377, near the East Flower Garden Bank.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of a NEPA-related Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) prepared by the MMS for the following right-of-way pipeline activity proposed on the Gulf of Mexico OCS.

Activity/Operator	Location	Date
Texaco Pipeline Inc., Right-of-Way Pipeline Activity, SEA No. OCS–G 13219.	High Island Area, East Addition, South Extension, Blocks A–393, A–390, A–377, A–374, A–373, A–367, A–366, A–365, A–364; and Garden Banks, Blocks 189, 188, 187, 186, 142, 141, and 97; Pipeline Right-of-Way Grant, OCS–G 13219, approximately 130 miles southeast of the nearest coastline in Texas.	01/10/92

Persons interested in reviewing the environmental document for the proposal listed above or obtaining information about the EA and FONSI prepared for the activity on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone (504) 736–2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for certain proposals related to exploration for and the development/production of oil and gas resources, rights-of-way pipelines, structure removals, and other actions on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA. This notice constitutes the public notice of availability of an environmental document required under the NEPA Regulations.

Dated: January 10, 1992.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 92–1227 Filed 1–16–92; 8:45 am]

BILLING CODE 4310–MR–M

Minerals Management Service

National Outer Continental Shelf Advisory Board, Pacific Regional Technical Working Group Committee; Meeting

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of National Outer Continental Shelf Advisory Board, Pacific Regional Technical Working Group Committee.

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92–463.

The Pacific Regional Technical Working Group (RTWG) Committee of the National OCS Advisory Board is scheduled to meet February 13, 1992, from 8:30 a.m. to 5 p.m., at the Minerals Management Service Regional Office conference room at 770 Paseo Camarillo in Camarillo, California 93010. The tentative agenda for the meeting covers the following topics:

Opening Remarks
1993–1994 Regional Environmental Studies Plan
Committee Procedures
Local Government Issues
  Ventura County
  Santa Barbara County
  San Luis Obispo County
Postlease Issues
  Site Clearance
  Transportation
  Fisheries/Space-Use Conflicts
Members Reports
Public Comment Period

The Pacific RTWG is one of six such committees of the OCS Advisory Board. These committees provide the Director of the MMS with advice on technical matters of regional concern regarding prelease and postlease OCS activities.

The Pacific RTWG consists of seven private sector members and one representative from each of the following: California, Oregon, Washington, U.S. Fish and Wildlife, Environmental Protection Agency, U.S. Coast Guard, Department of the Navy, National Marine Fisheries Service, the National Park Service, and the Minerals Management Service.

The February 13 meeting is open to the public, and time has been set aside for public comment. This is primarily a technical meeting and does not address issues dealing with MMS policy. Interested persons may make oral or written presentations to the committee.

Requests to address the committee should be made by February 7, 1992, to:

Pacific OCS Region, Minerals Management Service, 770 Paseo Camarillo, Camarillo, California 93010.

Requests to make oral statements should be accompanied by a summary of the statement to be made.

Minutes of the meeting will be available for review and copying 20 days after the meeting at the MMS Library, 770 Paseo Camarillo, Camarillo, California 93010.

Dated: January 9, 1992.

J. Lisle Reed,

Regional Director, Pacific OCS Region.

[FR Doc. 92-1155 Filed 1-16-92; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development and Economic Cooperation; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the One Hundred and Ninth Meeting of the Board for International Food and Agricultural Development and Economic Cooperation (BIFADEC) on February 13, 1992, from 8:30 a.m. to 5 p.m.

The purposes of the meeting are: (1) To discuss the Administration's policies and programs for the Historically Black Colleges and Universities; (2) to consider A.I.D. deliberations about the future course of U.S. economic assistance; (3) to dialogue with A.I.D.'s task force on former USSR republics and the potential role of universities; and (4) to review current status of the CRSP program and take actions as appropriate.

This meeting will be held in Main State Department Building in room 1105. Any interested person may attend and may present oral statements in accordance with procedures established by the Board and to the extent time available for the meeting permits.

All persons, visitors and employees are required to wear proper identification at all times while in the Department of State building. Please let the BIFADEC Staff know (tel # (703) 816-0277) that you expect to attend the meeting and on which days. Provide your full name, name of employing company or organization, address and telephone number not later than February 6, 1992. A BIFADEC Staff Member will meet you at the Department of State Diplomatic Entrance at C and 22nd Streets with your Visitor's Pass.

C. Stuart Callison, Deputy Executive Director, Agency Center for University Cooperation in Development, Bureau for Research and Development, Agency for International Development will be the A.I.D. Advisory Committee Representative at this Meeting. Those desiring further information may write to Dr. Callison, in care of the Agency for International Development, room 900 SA-38, Washington, DC 20523-3801 or telephone him on (703) 816-0255.

Dated: January 13, 1992.

Ralph H. Smuckler,

Executive Director, Agency Center for University Cooperation in Development.

[FR Doc. 92-1264 Filed 1-16-92; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Notice to The Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

January 14, 1992.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Riceland Foods, Inc.

(2) 22nd & Park Avenue, Stuttgart, AR 72160.

(3) 22nd & Park Avenue, Stuttgart, AR 72160.

(4) Terry L. Richardson, P.O. Box 927, Stuttgart, AR 72160.

(1) Tennessee Farmers Cooperative.

(2) P.O. Box 3003, LaVergne, TN 37086-3003.

(3) P.O. Box 3003, LaVergne, TN 37086-3003.

(4) Joe L. Wright, P.O. Box 3003, LaVergne, TN 37086-3003.

Sidney L. Srickland, Jr.,

Secretary.

[FR Doc. 92-1271 Filed 1-16-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31998]

Peter M. Dearness and New England Southern Railroad Co., Inc.—Continuance in Control Exemption—Quincy Bay Terminal Co.; Notice of Exemption

Peter M. Dearness and New England Southern Railroad Co., (NES), jointly have filed a notice of exemption to continue to control Quincy Bay Terminal Co. (QBT) upon QBT's becoming a carrier. QBT concurrently filed, in Finance Docket No. 31997, Quincy Bay Terminal Co.—Operation Exemption—Fore River Railroad Corporation, a notice of exemption to operate a 3.76-mile rail line between Quincy, MA, and an interchange with Consolidated Rail Corporation at East Brainstree, MA, under a license and operating agreement with Fore River Railroad Corporation (Fore River). QBT proposed to commence operations on or after January 15, 1992. The notice is also related to Docket No. AB-359X, Fore River R. Corp.—Discont. of Service—Norfolk County, MA, where Massachusetts Water Resources Authority, Fore River's owner, filed a lease discontinuance exemption or an alternative adverse waiver petition to terminate the rail service of the line's current operator, Fore River Railway Company, Inc.

Peter M. Dearness owns 35 percent of QBT's stock, serves as its president and general manager, and is a 96-percent stock owner of NES, a class III rail carrier. NES owns 18 percent of QBT's stock. Mr. Dearness and NES assert that: (1) The properties they plan to operate and control do not connect with each other; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or

any other railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Any comments must be filed with the Commission and served on: Keith G. O'Brien, Rea, Cross & Auchincloss, suite 420, 1920 N Street, NW., Washington, DC 20036.

Decided: January 13, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-1272 Filed 1-16-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31985]

Peninsula Corridor Joint Powers Board—Trackage Rights Exemption—Southern Pacific Transportation Co.; Notice of Exemption

Southern Pacific Transportation Company (SP) has agreed to grant Peninsula Corridor Joint Powers Board (JPB): (i) Bridge trackage rights for commuter service over approximately 4.3 miles of SP line between milepost 47.1, at Cahill, CA, and milepost 51.4, at Lick CA; and (ii) trackage rights for extended commuter service over approximately 29.3 miles of line between milepost 51.4 and milepost 80.7, at Gilroy, CA. The trackage rights were to become effective on or after December 27, 1991.

This grant of trackage rights is one of a series of transactions that will allow JPB and San Mateo County Transit District (Samtrans) to conduct rail passenger commuter service on the San Francisco Peninsula without disrupting SP's freight and intercity passenger operations. Verified notices have been filed concurrently in Finance Docket No. 31980, Peninsula Corridor Joint Powers Board and San Mateo County Transit District—Acquisition Exemption—Southern Pacific Transportation Company, to exempt JPB's and Samtrans' acquisition of certain SP main lines, and in Finance Docket No. 31983, Southern Pacific Transportation Company—Trackage Rights Exemption—Peninsula Corridor Joint Powers Board and San Mateo County Transit District, to exempt JPB's and Samtrans' grant back to SP of trackage rights over certain main line that they are acquiring from SP. In addition, SP anticipates filing in Finance Docket No. 31984 a verified notice to exempt its grant of certain other trackage rights to JPB.

This notice is filed under 49 CFR 1180.2(d)(7). Petition to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Michael N. Conneran, Hanson, Bridgett, Marcus, Vlahos & Rudy, 333 Market Street, suite 2300, San Francisco, CA 94105.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: January 13, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-1273 Filed 1-6-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31980]

Peninsula Corridor Joint Powers Board and San Mateo County Transit District—Acquisition Exemption—Southern Pacific Transportation Co.; Notice of Exemption

The Peninsula Corridor Joint Powers Board (JPB) and the San Mateo County Transit District (Samtrans), both public agencies, have filed a notice of exemption to acquire segments of the main line track and all of the underlying right-of-way of Southern Pacific Transportation Company (SP) between milepost 0.147, at San Francisco, and milepost 51.40, at Lick, in San Francisco, San Mateo, and Santa Clara Counties, CA, a distance of approximately 51.3 miles. JPB and Samtrans will use the acquired properties to conduct passenger commuter rail service on the San Francisco Peninsula.[1] The transaction was to have been consummated on or after December 27, 1991.

JPB will own the acquired properties within San Francisco County (between mileposts 0.147 and 5.2) and Santa Clara County (between mileposts 29.7 and 51.4); JPB and Samtrans jointly will own the acquired properties within San Mateo County (between mileposts 5.2 and 29.7).

SP is selling all its main line track between milepost 0.147 and milepost 44.0, at Santa Clara Junction, CA, but in concurrently filed Finance Docket No. 31983, Southern Pacific Transportation Company—Trackage Rights Exempiton—Peninsula Corridor Joint Powers Board and San Mateo County Transit District, JPB and Samtrans are granting back trackage rights to SP for freight and intercity passenger operations between these points.

SP will retain ownership of the New Coast Main line between mileposts 44.0 and 51.4. SP is selling separate main line track to JPB between milepost 44.0 and milepost 46.9, at the Cahill Yard in San Jose. Multiple tracks are available in Cahill Yard between milepost 46.9 and milepost 47.4, at Auzerais Street, south of Cahill Yard. SP will retain ownership of the existing main line between mileposts 47.4, and 51.4. JPB will own a second main line now under construction between milepost 47.4 and milepost 48.8, near Alma Street. (JPB plans to extend that line to Lick.)

In concurrently filed Finance Docket No. 31985, Peninsula Corridor Joint Powers Board—Trackage Rights Exemption—Southern Pacific Transportation Company, SP is granting JPB overhead trackage rights between mileposts 46.9 and 51.4 (apparently pending completion of the referenced construction and extension of the JPB main line). Also in that proceeding, SP is granting JPB trackage rights between milepost 51.4 and milepost 80.7, at Gilroy. Finally, SP anticipates filing a verified notice for an exemption to grant JPB trackage rights over a 1-mile branch line at Lick (Finance Docket No. 31984 assertedly has been reserved for that transaction).

Any comments must be filed with the Commission and served on David J. Miller, Hanson, Bridgett, Marcus, Vlahos & Rudy, 333 Market Street, suite 2300, San Francisco, CA 94105.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a

[1] Samtrans will be the manager of the commuter service. Operations will be conducted either directly by Samtrans or by a contract operator to be selected. SP has agreed to serve as interim operator. This notice of exemption covers only the acquisition transaction and not any operation of the rail properties being acquired.

petition to revoke will not automatically stay the transaction.

Decided: January 13, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-1274 Filed 1-16-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31997]

Quincy Bay Terminal Co.—Operation Exemption—Fore River Railroad Corp.

Quincy Bay Terminal Co. (QBT), has filed a notice of exemption to operate a 3.76-mile rail line [1] between Quincy, MA, and an interchange with Consolidated Rail Corporation at East Braintree, MA, under a license and operating agreement with Fore River Railroad Corporation (Fore River). QBT proposes to commence operations on or after January 15, 1992.[2]

This transaction is related to a concurrently filed notice of exemption in Finance Docket No. 31998, Peter M. Dearness and New England Southern Railroad Co., Inc.—Continuance in Control Exemption—Quincy Bay Terminal Co.,[3] and a lease discontinuance in Docket No. AB-359X, Fore River R. Corp.—Discont. of Service—Norfolk County, MA.[4]

Any comments must be filed with the Commission and served on: Keith G. O'Brien, Rea, Cross & Auchincloss, suite 420, 1920 N Street, NW., Washington, DC 20036.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: January 13, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-1275 Filed 1-16-92; 8:45 am]

BILLING CODE 7035-01-M

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[1] QBT indicates that 1.93 miles of line are spur and side track. Under 49 U.S.C. 10907, the Commission lacks jurisdiction over the operation of spur, industrial, team, switching or side tracks that are located entirely in one State.

[2] The verified notice originally filed December 31, 1991, was amended by letter filed January 7, 1992. The exemption became effective on January 15, 1992.

[3] Becaue QBT will become a class III rail carrier upon consummation of this operation exemption, a notice of exemption for continuance of control has been filed under 49 CFR 1180.2(d)(2) in Finance Docket No. 31998. This is because Peter M. Dearness, president and general manager of QBT, owns 35 percent of its stock and 96 percent of the stock of New England Southern Railroad Co., Inc. (NES), a class III rail carrier. NES owns 18 percent of QBT's stock.

[4] A lease discontinuance exemption, and an alternative adverse waiver petition to terminate the rail service now being provided by the Fore River Railway Company, Inc., the line's current operator, was filed on December 31, 1991, by the Massachusetts Water Resources Authority, Fore River's owner.

[Finance Docket No. 31983]

Southern Pacific Transportation Co.—Trackage Rights Exemption—Peninsula Corridor Joint Powers Board and San Mateo County Transit District, Notice of Exemption

Peninsula Corridor Joint Powers Board (JPB) and San Mateo County Transit District (Samtrans) have agreed to grant trackage rights to Southern Pacific Transportation Company (SP) over approximately 43.8 miles of line between milepost 0.147, at San Francisco, and milepost 44.0, at Santa Clara Junction, CA. The trackage rights were to become effective on or after December 27, 1991.

This grant of trackage rights is one of a series of transactions that will allow JPB and Samtrans to conduct rail commuter passenger service on the San Francisco Peninsula without disrupting SP's freight and intercity passenger operations in the same corridor. Verified notices have been filed concurrently in Finance Docket No. 31980, Peninsula Corridor Joint Powers Board and San Mateo County Transit District—Acquisition Exemption—Southern Pacific Transportation Company, to exempt JPB's and Samtrans' acquisition of certain SP main lines (including the line over which trackage rights are being granted back to SP in this proceeding), and in Finance Docket No. 31985, Peninsula Corridor Joint Powers Board—Trackage Rights Exemption—Southern Pacific Transportation Company, to exempt SP's related grants of certain trackage rights to JPB. In addition, SP anticipates filing in Finance Docket No. 31984 a verified notice to exempt its grant of certain other trackage rights to JPB.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Gary Laakso, Southern Pacific Building, One Market Plaza, room 846, San Francisco, CA 94105.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: January 13, 1992.

By the Commisson, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-1276 Filed 1-16-92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 408X)]

CSX Transportation, Inc.—Abandonment Exemption—in Richmond, Va; Notice of Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon an approximately 0.51-mile line of railroad between milepost A.R.-1.92, near Maury Street, and milepost A.R.-2.43, at Hopkins Road, in the City of Richmond, VA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 16, 1992 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1]

[1] A stay will be routinely issued by the Commission in those proceedings where an

Continued

formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 27, 1992.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by February 6, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by January 22, 1992. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 13, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-1270 Filed 1-16-92; 8:45 am]

BILLING CODE 7035-01-M

informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987)

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Construction of a Federal Correctional Complex in Forrest City, AR

AGENCY: Federal Bureau of Prisons, Department of Justice

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

Proposed Action

The United States Department of Justice, Federal Bureau of Prisons has determined that a Federal Correctional Complex (FCC) is needed in its system. The Bureau of Prisons will evaluate two proposed sites located in Forrest City, Arkansas for construction of the FCC.

The proposed sites are:

A. A 943 acre site located south of the city in St. Francis County with the northern tip within the Forrest City limits. The property is bounded on the east by the Missouri Pacific Railroad, on the south by County Road No. 56, and on the west by Yacona Road. The northern boundary of the site is just south of Martin Luther King Boulevard.

B. A 526 acre site is located west of the city entirely within St. Francis County and bisected by County Road No. 8, Beck Spur Road. The site is adjacent to the Forrest City water utility sewage oxidation fields and is bounded on the south by the Chicago Rock Island and Pacific Railroad and County Road No. 72 and on the north by Interstate 40.

The Federal Bureau of Prisons proposes to construct a 2,750 bed Federal Correctional Complex, that will be completed in phases. The Bureau of Prisons has been studying a number of options and locations near Forrest City appear to merit further study.

It is anticipated that both of the proposed sites are of sufficient size to provide space for housing, programs, services and support areas as well as administration, staff training and parking.

The Process

In the process of evaluating the two sites, several aspects will receive detailed examination including: utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources and socio-economic impacts.

Alternatives

In developing the DEIS, the options of no action and alternative sites for the proposed facility will be fully and thoroughly examined.

Scoping Process

During the preparation of the DEIS, there will be numerous opportunities for public involvement in order to determine the issues to be examined. A scoping meeting will be held at 7:00 P.M. on January 30, 1992 at the Forrest City Civic Center. The meeting will be well publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, a number of public information meetings will be held by representatives of the Bureau of Prisons with interested citizens, officials and community leaders.

DEIS Preparation

Public notice will be given concerning the availability of the DEIS for public review and comment.

Address

Questions concerning the proposed action and the DEIS can be answered by: K. Bradley Wiggins, Site Selection and Environmental Review Specialist, Federal Bureau of Prisons, 320 First St. NW, Washington, DC 20534, (202) 514-8697.

Dated: January 9, 1992.

Patricia K. Sledge,

Chief, Site Selection and Environmental Review Branch.

[FR Doc. 92-997 Filed 1-16-92; 8:45 am]

BILLING CODE 4410-5-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II,

chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 27, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 27, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 6th day of January 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Atlas Wireline Services (Co)	Abilene, TX	01/06/92	12/13/91	26,713	Oilfield services.
C.A.D. Fashions, Inc. ILGWU	Newark, NJ	01/06/92	12/30/91	26,714	Sportswear
Gleason Corporation (Wkrs)	Rochester, NY	01/06/92	12/30/91	26,715	Cutting and grinding machines.
Northwest Alloys, Inc. (Co)	Addy, WA	01/06/92	12/18/91	26,716	Metal magnesium.
Pan American World Airways (Wkrs)	Jamaica, NY	01/06/92	12/27/91	26,717	Airlines.
Potomac Sportswear ILGWU	Martinsburg, WV	01/06/92	12/27/91	26,718	Children's garments.
Sage Drilling Co., Inc (Wkrs)	Wichita, KS	01/06/92	12/20/91	26,719	Oil, gas drilling.
Volvo GM Heavy Truck Corp (Wkrs)	Ogden, UT	01/06/92	12/29/91	26,720	Trucks.

[FR Doc. 92-1302 Filed 1-16-92; 8:45 am]

BILLING CODE 4510-30-M

Commission on Achieving Necessary Skills; Open Meeting

AGENCY: Employment and Training Administration, Labor.

SUMMARY: The Secretary's Commission on Achieving Necessary Skills (SCANS) was established in accordance with the Federal Advisory Committee Act (Public Law 92-463) on February 20, 1990. The SCANS is to advise the Secretary on national competency guidelines for the skills required of high school graduates for entry into employment. The Commission has the practical task of specifying and quantifying levels of skills' attainment to perform different types of jobs adequately.

TIME AND PLACE: The ninth meeting will be held on February 7, 1992 from 8:30 a.m. until 5 p.m. at the Capitol Hill Hyatt Regency Hotel, 400 New Jersey Avenue, NW., Washington, DC 20001.

AGENDA: Commissioners review draft final SCANS Report and formulate and approve final Commission recommendations.

PUBLIC PARTICIPATION: The meeting will be open to the public. Time will be set aside for public comments. Seating will be available for the public on a first-come, first-serve basis. Five seats will be reserved for the media. Handicapped individuals wishing to attend should contact the Commission to obtain appropriate accommodations.

Individuals or organizations wishing to submit written statements should send 10 copies to Dr. Arnold Packer, Executive Director, SCANS—room C-2318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Papers received on or before January 24, 1992 will be included in the record of the meeting.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Packer, Exec. Dir., SCANS—room C-2318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-4840.

Signed at Washington, DC this 10th day of January 1992.

Lynn Martin,

Secretary of Labor.

[FR Doc. 92-1303 Filed 1-16-92; 8:45 am]

BILLING CODE 4510-30-M

Office of Work-Based Learning; Federal Committee on Apprenticeship; Public Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-462; 5 U.S. App. 1) of October 6, 1972, notice is hereby given that the Federal Committee on Apprenticeship (FCA) will conduct an open meeting on January 28, 1992, from 10 a.m.-4:30 p.m. and January 29, from 8:30 a.m.-12 noon at the Quality Hotel Capitol Hill, 415 New Jersey Avenue, NW., Washington, DC 20001, Federal Ballroom South.

The agenda for the meeting will include:

Tuesday, January 28

10 a.m. Call meeting to order
- Introduction of Members and DOL Officials
- Committee Chair's Report and Plans for the meeting
- Approval of Minutes
- Report from Office of Work-Based Learning
- Report from Bureau of Apprenticeship and Training
- Presentation of Sub-Committee Reports
  - Traditional Apprenticeship Programs
  - Non-Traditional Apprenticeship Programs
  - Underrepresented Groups
  - Quality of Apprenticeship Programs
  - National Training System
  - Apprenticeship Operations
  - Legislation
  - Apprentice OSHA Safety Training
- Presentation by DOL Womens Bureau
- Discussion of Apprenticeship Concept Paper
- Developing National Training Standards for Vocational Education (Carl Perkins Act)

4 p.m. Public Comments

4:30 p.m. Recess to reconvene January 29, 1992, at 8:30 a.m.

Note: Lunch will be taken at 12 noon to 1 p.m.

Wednesday, January 29

8:30 a.m. Resume Presentation of Sub-Committee reports
- BAT Survey—Final Results and Next Steps
- FCA Members' Projects Relating to Apprenticeship
- Future FCA Actions and Considerations
- Other Business/Administrative Matters
- Plans for Next Meeting

12 Noon Adjourn

Note: The order of agenda items may be revised due to time constraints and availability of topic speakers.

Members of the public are invited to attend the proceedings. Any member of the public who wishes to file written data, views or arguments pertaining to the agenda may do so by furnishing a

copy to the Executive Director at any time. Papers received on or before January 24, 1992, will be included in the record of the meeting.

Any member of the public who wishes to speak at this meeting should so indicate the nature of intended presentation and the amount of time should be limited to no more than 5 minutes. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests. Communications to the Executive Director should be addressed as follows: Mr. Minor R. Miller, Office of Work-Based Learning, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-4649, Frances Perkins Building, Washington, DC 20210; telephone number (202) 535-0540.

Signed at Washington, DC this 9th day of January 1992.

Roberts T. Jones,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 92-1304 Filed 1-16-92; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page numbers.

Volume II

Ohio:
OH91-12 (Jan. 17, 1992) .... p. All.
OH91-14 (Jan. 17, 1992) .... p. All.

Volume III

South Dakota, SD91-5 (Jan. 17, 1992). p. All.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York, NY91-11 (Feb. 22, 1991). p. 885, p. 886.

Volume II

Iowa, IA91-14 (Feb. 22, 1991) p. All.
Indiana, IN91-3 (Feb. 22, 1991). p. 279, p. 280.
Michigan, MI91-7 (Feb. 22, 1991). p. 515, pp. 516-534b.
Nebraska, NE91-1 (Feb. 22, 1991). p. All.
Ohio, OH91-29 (Feb. 22, 1991). p. 903, pp. 905, 908, 911, pp. 913-915, 919-930, pp. 932-935.

Texas:
TX91-26 (Feb. 22, 1991)..... p. All
TX91-32 (Feb. 22, 1991)..... p. All.
TX91-48 (Feb. 22, 1991)..... p. All.

Volume III

South Dakota, SD91-3 (Feb. 22, 1991). p. All.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) documented entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing

Office, Washington, DC 20402 (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 10th day of January 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92-1089 Filed 1-16-92; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Establishment of Advisory Committee on Publications Subvention

This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) and advises of the establishment of the Advisory Committee on Publications Subvention for a two-year period. The Committee evaluates applications submitted to the National Historical Publications and Records Commission (NHPRC) by university presses for grant support to publish documentary editions under the NHPRC subvention program. The Committee advises the Commission on which proposals should be supported and makes recommendations on the mechanics and procedures for operation of the NHPRC subvention program.

The Archivist of the United States has determined that the establishment of this advisory committee is in the public interest.

Dated: January 13, 1992.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 92-1258 Filed 1-16-92; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL EDUCATION GOALS PANEL

Meeting

AGENCY: The National Education Goals Panel.

ACTION: Notice of meeting.

SUMMARY: The National Education Goals Panel was established by a Joint Statement between the President and the Nation's governors dated July 31, 1990. The panel will determine how to measure and monitor progress toward achieving the national education goals and report to the nation on the progress toward the goals.

TENTATIVE AGENDA ITEMS: The agenda for the meeting includes a report on the National Council on Education Standards and Testing and a discussion of feedback on the 1991 National Education Goals Report and the National Assessment of Educational Progress (NAEP).

DATES: The eleventh meeting is scheduled for Friday, January 24, 1992, 1:30-4:30 p.m.

ADDRESSES: The Holiday Inn, Capitol Hill, 550 C Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: The National Education Goals Panel office at (202) 632-0952. Please give your name to indicate attendance.

Dated: January 7, 1992.

Roger B. Porter,

Assistant to the President for Economic and Domestic Policy.

[FR Doc. 92-1225 Filed 1-16-92; 8:45 am]

BILLING CODE 3127-01-M

NATIONAL SCIENCE FOUNDATION

Directorate for Education and Human Resources; Human Resource Development for Minorities in Science and Engineering; Availability of Program Announcement

This is to announce the availability of the Program Announcement and Guidelines for Human Resource Development for Minorities in Science and Engineering (NSF 91-129).

You can obtain a copy of this document by sending an E-Mail request to STIS (NSF's Science and Technology Information System). Send your request to "stisserv@nsf.gov" (Internet) or "stisserv@NSF" (BITNET). The "Subject:" line will be ignored. Put the following commands in the text of the message:

Request: stis

Topic: NSF91129

Request: end

If you cannot send E-Mail to Internet or BITNET addresses, you may request a printed copy of the document by calling the Forms and Publications Unit, 202-357-7861 or writing: Forms and Publications Unit, room 232, National Science Foundation, Washington, DC 20550.

Dated: January 14, 1992.

M. Rebecca Winkler,

Management Analyst.

[FR Doc. 92-1265 Filed 1-16-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Chemistry; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Chemistry.

Date and Time: February 20-21, 1992; 9 a.m. to 5 p.m.

Place: Rooms 523, 536, 543, and 540-B, National Science Foundation 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Edwin H. Abbott, Program Officer, Division of Chemistry, Special Projects Office, National Science Foundation, room 340, Washington, DC 20550. Telephone: (202) 357-7503.

Purpose of Meeting: To provide advice and recommendations concerning applications submitted to NSF for financial support.

Agenda: Review and evaluate Postdoctoral Research Fellowships in Chemistry applications.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552 b. (c) (4) and (6) the Government in the Sunshine Act.

Dated: January 13, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-1223 Filed 1-16-92; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Engineering Centers Division; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate the project and provide advice and recommendations. Because the project being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meeting is closed to the public. These matters are within

exemptions (4) and (6) of 5 U.S.C. 552b(c), The Government in the Sunshine Act.

Name: Advisory Panel for Engineering Centers Division.
Date: February 11–13, 1992.
Time: 8:30 a.m. to 5 p.m.
Place: Carnegie Mellon University, Pittsburgh, Pennsylvania 15213.
Type of meeting: Closed.
Agenda: Site visit to review and evaluate the Engineering Research Center for Engineering Design.
Contact: Dr. Frederick Betz, Program Director, Engineering Centers Division, National Science Foundation, room 1121, Washington, DC 20550, Telephone: 202–357–9707.

Dated: January 13, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–1219 Filed 1–16–92; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Engineering Centers Division; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate the project and provide advice and recommendations. Because the project and provide advice and recommendations. Because the project being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meeting is closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), The Government in the Sunshine Act.

Name: Advisory Panel for Engineering Centers Division.
Date: February 18–19, 1992.
Time: 8:30 a.m. to 5 p.m.
Place: University of Maryland, College Park, Maryland 20742.
Type of Meeting: Closed.
Agenda: Site visit to review and evaluate the Engineering Research Center for Systems Research.
Contact: Dr. Frederick Betz, Program Director, Engineering Centers Division, National Science Foundation, room 1121, Washington, DC 20550, Telephone: 202–357–9707.

Dated: January 13, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–1220 Filed 1–16–92; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Engineering Centers Division; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate the project and provide advice and recommendations. Because the project being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meeting is closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), The Government in the Sunshine Act.

Name: Advisory Panel for Engineering Centers Division.
Date: February 19–21, 1992.
Time: 8:30 a.m. to 5 p.m.
Place: University of Illinois, Urbana, Ilinois 61801.
Type of Meeting: Closed.
Agenda: Site visit to review and evaluate the Engineering Research Center for Computational Field Simulation.
Contact: Dr. Christina Gabriel, Program Director, Engineering Centers Division, National Science Foundation, room 1121, Washington, DC 20550, Telephone: 202–357–9707.

Dated: January 13, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–1221 Filed 1–16–92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Mechanical and Structural Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Mechanical and Structural Systems.
Date and Time: February 19–20, 1992; 8:30 a.m. to 5 p.m.
Place: Room 1243, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.
Type of Meeting: Closed.
Contact Person: Dr. William W. Hakala, Acting Program Director, 1800 G Street, NW., room 1128, Washington, DC 20550 Telephone: (202) 357–7508.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: Review and evaluate Mechanical and Structural Systems unsolicited proposals.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical informatoin; financial data; such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b. (c)(4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–1222 Filed 1–16–92; 8:45 am]

BILLING CODE 7555-01-M

THE PRESIDENT'S EDUCATION POLICY ADVISORY COMMITTEE

Meeting

AGENCY: The President's Education Policy Advisory Committee.

ACTION: Notice of meeting.

SUMMARY: The President's Education Policy Advisory Committee was established under Executive Order 12687 and signed by the President of the United States on August 15, 1989.

Tentative Agenda

ITEMS: The tentative agenda for the meeting will include a discussion of suggestions for education-related activities for parental involvement in education and community outreach activities.

DATES: The tenth meeting is scheduled for Wednesday, January 22, 1992, from 2 to 4 p.m.

ADDRESSES: The meeting will be held at the Old Executive Office Building, room 180, Washington, DC.

ATTENDANCE: Please contact the White House Office of Policy Development to indicate attendance or for further information. The phone number is (202) 456–7777. For clearance purposes, please call no less than twenty-four hours in advance. Please provide over the phone, your social security number, date of birth, and name as read on your driver's license. When entering the building, you will be required to show picture identification.

Dated: January 7, 1992.

Roger B. Porter,

Assistant to the President for Economic and Domestic Policy.

[FR Doc. 92–1224 Filed 1–16–92; 8:45 am]

BILLING CODE 3127-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30178; File No. SR-CSE-91-5]

Self-Regulatory Organizations; the Cincinnati Stock Exchange; Order Granting Approval to Proposed Rule Change Relating to Administration of Requests for Extensions of Time Under Regulation T and Rule 15c3-3

January 13, 1992.

On October 19, 1991, the Cincinnati Stock Exchange ("CSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend Exchange Rule 6.1 to clarify the Exchange staff's authority to grant extensions of time on payment or delivery of securities pursuant to Federal Reserve Board ("FRB") Regulation T and Rule 15c3-3 under the Act ("SEC Rule 15c3-3").

The proposed rule change was published for comment in Securities Exchange Act Release No. 29903 (November 5, 1991), 56 FR 57540 (November 12, 1991). No comments were received regarding the proposed rule change.

Regulation T, issued by the Board of Governors of the Federal Reserve System pursuant to the Act, governs the extension of credit to customers by broker-dealers for purchasing securities.[3] SEC Rule 15c3-3 governs the extension of credit for selling securities.[4] Under Regulation T and Rule 15c3-3(n), a broker-dealer may request an extension of time for payment or delivery of securities from any registered national securities exchange or a registered national securities association.[5] Because it is a registered national securities exchange, the CSE is authorized to grant requests for extensions of time for payment or delivery of securities.

The CSE proposes to amend Exchange Rule 6.1,[6] in order to set forth more clearly the Exchange's existing authority to grant extensions of time for payment or delivery of securities pursuant to Regulation T and SEC Rule 15c3-3. Specifically, the CSE proposes to add to Rule 6.1(b) citations to §§ 220.8(d) and 220.4(c)(3)(ii) under regulation T, which provide that a broker-dealer may request an extension of time for payment or delivery of securities from any registered national securities exchange or a registered national securities association, and to SEC Rule 15c3-3, which governs the extension of credit for selling securities. The Exchange states that the proposed modifications to Rule 6.1 will ensure that the Rule addresses extensions of time for payment or delivery of securities comprehensively, accurately, and in accord with current law and practice.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 of the Act.[7] In particular, the Commission believes that the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Commission believes that the proposed amendment should further the objectives of section 6(b)(5) by clarifying the Exchange's authority to grant extensions of time for payment of delivery of securities pursuant to Regulation T and SEC Rule 15c-3-3. The proposal should result in clear and consistent guidelines for Exchange staff and provide notice to the public of the Exchange's authority to grant extensions of time.[8]

In addition, the Commission believes that the proposed rule change is consistent with section 7 of the Act in that it is designed to prevent the excessive use of credit for the purchase or carrying of securities.[9] The proposal further supports the purposes of Regulation T, which was issued by the FRB pursuant to section 7(a) of the Act, because it helps regulate the extension of credit by member organizations. Also, the proposal should better enable the Exchange to comply with the applicable provisions of the Act, as required by section 6(b)(1) of the Act, because it sets forth in clear and consistent terms the Exchange's authority to grant extensions of time for payment or delivery of securities.

Further, because the CSE is a registered national securities exchange that is authorized to grant requests for extensions of time for payment or delivery of securities, the Commission believes that it is essential for the CSE to have an effective Regulation T regulatory program in effect. To this end, the Commission believes that the CSE should develop a Regulation T regulatory program which includes, but is not limited to: Examination of extension request patterns by security and by registered representative; identification of increases in extension requests by firm, registered representative, and branch office; identification of the number of customers who have reached their extension limit, as well as the identity of customers who have filed extension requests with more than one firm; and sufficient staff so that this information can be analyzed, used, and shared with other self-regulatory organizations.

Finally, the commission notes that the proposed rule change merely codifies in rule form the CSE's existing authority to grant extensions of time for payment or delivery of securities. The Commission's approval of the proposal should not be construed as evaluating the CSE's performance to date in administering this program.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] That the proposed rule change is approved.

For the Commission, by the Division of Market Regulation. Pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-1277 Filed 1-16-92; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] 12 CFR part 220 (1991).

[4] 17 CFR 240.15c3-3 (1991).

[5] 12 CFR 220.8(d) and 220.4(c)(3)(ii) (1991); 17 CFR 240.15c3-3(n) (1991).

[6] Exchange Rule 6.1 is found in chapter VI of the CSE rules. The CSE proposes to change the title of this Chapter from Margin Accounts to Extensions of Credit, see *infra* note 8.

[7] 15 U.S.C. 78f (1988).

[8] The Commission further finds that the portion of the CSE proposal which deletes references to §§ 220.3(f) (exchange of securities) and 220.4(c)(6) (not an existing section) of Regulation T from Rule 6.1 and changes the title of chapter VI of the Exchange's Rules from Margin Accounts to Extensions of Credit is consistent with the Act. These changes delete superfluous citations and make the title of chapter VI more explicit and more consistent with the provisions of Regulation T.

[9] 15 U.S.C. 78g (1988).

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30-3(a)(12) and (15) (1991).

[Release No. 34-30176; File No. SR-NYSE-91-40]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Amendments to the Uniform Application for Securities Industry Registration or Transfer, Form U-4 and the Uniform Termination Notice for Securities Industry Registration, Form U-5

January 13, 1992.

On November 18, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend the Uniform Application for Securities Industry Registration or Transfer, Form U-4, and the Uniform Termination Notice for Securities Industry Registration, Form U-5.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 30018 (December 2, 1991), 56 FR 64283 (December 9, 1991). No comments were received on the proposal.

The Uniform Application for Securities Industry Registration or Transfer ("Form U-4") and the Uniform Termination Notice for Securities Industry Registration ("Form U-5"), which are employed in connection with the National Association of Securities Dealers, Inc. ("NASD") Central Registration Depository ("CRD") system,[4] are used by the various securities self-regulatory organizations ("SROs") as part of their registration and oversight of member organization personnel. Specifically, Form U-4 is the uniform form for licensing salespersons within the states and various SROs. An individual applies for registration for the first time by filing a Form U-4 with the CRD and, thereafter, the registered person is obligated to update this information as changes occur. Form U-5 contains information relating to the circumstances surrounding the termination of an applicant's prior employment.

The purpose of the proposed rule change is to revise Forms U-4 and U-5 to expand and clarify certain information required by these forms. First, the Exchange proposes a revision to Form U-4 identical to a revision previously submitted to the Commission by the NASD.[5] This revision allows a previously registered person to certify as to the completeness and accuracy of his or her disciplinary record in the NASD's CRD system and alleviates the need to resubmit full details of all reportable items upon transfer of registration to a new broker-dealer.[6] In this regard, the registered person would certify that, having reviewed a copy of the disclosure information taken from the CRD system, the disclosure information is correct, complete and in the proper Disclosure Reporting Page ("DRP") format.[7] An individual may further certify that (1) there is no new information to add to the disclosure file; (2) there is a new item to report, for which a DRP is provided; or (3) there is new information updating a previously reported occurrence, for which a DRP is attached.[8]

The Exchange is also proposing certain amendments to both Forms U-4 and U-5 as a result of the enactment of new legislation. Specifically, the changes are in response to the enactment of the Securities Acts Amendments of 1990 ("1990 Amendments") [9] and the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Remedies Act").[10] The Exchange believes that these new laws, which expand the definition of statutory disqualification in section 3(a)(39) of the Act [11] and expand the enforcement powers of the Commission, respectively, require that changes be made to Forms U-4 and U-5.[12] Certain minor changes to these forms were also requested by the Commodity Futures Trading Commission ("CFTC") and the National Futures Association ("NFA").

Accordingly, the Exchange proposes four amendments to Form U-4. First, on page one, the word "examination" is being added after "Series 3" and "Series 5" in item 11. The boxes for both the Series 3 and the Series 5 [13] represent requests to take an examination as opposed to a request to register as a certain type of registrant, such as a Registered Options Principal. This distinction is consistent with the title of item 11, "Type of Examination/ Registration Requested," as well as the boxes labelled S-63 and S-65, which reflect examination requests only.[14] This change was suggested by the NFA to eliminate confusion.

Second, the Exchange proposes several changes to the disciplinary questions on page three of Form U-4 as a result of the enactment of the 1990 Amendments, which became effective November 15, 1990. This law specifies that certain actions taken by foreign financial regulatory authorities will be considered statutory disqualifications under the Act. Pursuant to this legislative change, the definition of a foreign financial regulatory authority is being added to the form,[15] and language reflecting this change has been inserted in certain questions under item 22, where appropriate.[16] For example, in addition to disclosing domestic felony convictions and certain misdemeanor convictions involving fraud or investment related activities, item 22 A would require disclosure of foreign convictions of that nature as well.

Third, the Remedies Act, which became effective October 15, 1990, provides the Commission with additional enforcement remedies, which include cease and desist authority and the ability to impose a civil money penalty for certain securities violations. Accordingly, the Exchange proposes to add item 22 D(5) to Form U-4 to reflect these enforcement powers such that an applicant would be required to report civil monetary penalties as well as

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] The NYSE submitted the pages of Forms U-4 and U-5 that are proposed to be amended as Exhibits 2 and 3, respectively, of the rule filing. Copies are available at the Commission as well as at the NYSE.

[4] The CRD is a computer data base containing current registration information as well as the regulatory and enforcement actions taken against securities industry personnel for access by the Commission, state regulators and certain self-regulatory organizations. Specifically, the CRD contains each broker-dealer's Form BD, which is filed with the CRD to both register with the Commission and most state securities commissions, as well as to become a member of the NASD. Forms U-4 and U-5 are also filed with the CRD system.

[5] See Securities Exchange Act Release No. 28534 (October 12, 1990), 55 FR 42662 (approving File No. SR-NASD-90-45).

[6] See item 22 O, Disclosure Certification (Optional), on page 3 of Form U-4.

[7] The DRP is a page of Form U-4 used to report details of affirmative responses to the questions appearing in item 22 of Form U-4. This disciplinary information is then submitted directly into the CRD system.

[8] See questions 1-3 of item 22 O, on page 3 of Form U-4.

[9] Pub. L. No. 101-550, 104 Stat. 2713 (November 15, 1990).

[10] Pub. L. No. 101-429, 104 Stat. 931 (October 15, 1990).

[11] 15 U.S.C. 78c(a) (39) (1988).

[12] Recently, the Commission approved a proposal by the NASD containing similar changes to Forms U-4 and U-5. See Securities Exchange Act Release No. 29896 (November 4, 1991), 56 FR 57541 (approving File No. SR-NASD-91-33).

[13] These boxes are labelled S-3 and S-5, respectively.

[14] S-63 refers to the Series 63, or Uniform Securities Agent State Law Examination, and S-65 refers to the Series 65, or Uniform Investment Advisory Law Examination.

[15] See item 22, Definitions, on page 3 of Form U-4

[16] See item 22, questions A-C and E, on page 3 of Form U-4.

cease and desist orders entered by the SEC or CFTC.[17]

Fourth, the NYSE proposes a minor change to the firm certification section on the bottom of page four of Form U-4. The last sentence certifies that the firm has communicated with the employee's previous employers for the past three years. Previously, the CFTC required contact with former employers for the prior five years, which was noted in parenthesis following this sentence. Due to recent rule change,[18] the CFTC now requires employment verification for three years, so the clause relating to commodities has been deleted.[19]

In addition to the aforementioned amendments to Form U-4, the NYSE also proposes to amend Form U-5, modifying both the instructions and text of the form to include changes to the disciplinary questions consistent with Form U-4. Specifically, the NYSE proposes to add the definition of the term "foreign financial regulatory authority" to items 13 and 14 of Form U-5 as well as to Form U-5 Instructions, item 1, definition (C). Furthermore, an optional certification section has been added so that previously filed information will not have to be filed on subsequent forms.[20]

After careful consideration of the Exchange's proposed amendments to Forms U-4 and U-5, the Commission believes that the proposed rule change is consistent with the Act, as well as the 1990 Amendments and Remedies Act. Absent the amendments reflecting the Commission's additional enforcement powers, the Commission believes that the disclosure of information on Form U-4 would be incomplete because both cease and desist orders entered as well as monetary penalties assessed would go unreported. Furthermore, the Commission believes that the recognition of disciplinary actions taken by foreign financial regulatory authorities supports the international enforcement of securities laws, and, given the rapid internationalization of the securities markets, protects U.S. investors from foreign securities professionals who have engaged in misconduct abroad.

Moreover, the Commission notes that the supplementary material to NYSE Rule 345 both requires Exchange members and member organizations to thoroughly investigate the previous employment records of prospective employees as well as details various registration and recordkeeping requirements. Specifically, verification of the information contained in Form U-4 and review of Form U-5 are required.[21] The Commission believes that these amendments, clarifying and adding to Forms U-4 and U-5, should serve investors and the public interest by assuring that meaningful disclosure is relied upon by members selecting prospective employees as well as the Exchange in its oversight in this area.

Furthermore, the Commission understands that amending Form U-4 to allow for certification by a registered person, upon transfer to another broker-dealer, of previously disclosed disciplinary information in lieu of resubmission should simplify and accelerate the prospective registered person's application process as well as the member-employer's use of CRD information in seeking to make an informed hiring decision.

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b)(5) and 6(c)(3).[22] In particular, the Commssion believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public, in that the amendments eliminate repetitive information requirements, clarify certain language, and update various questions pursuant to legislative changes.

In addition, the Commission believes that the new information requirements of Forms U-4 and U-5 should assist the Exchange in its responsibility under Section 6(c) of the Act to deny membership to those subject to a statutory disqualification, who cannot meet such standards of training, experience, and competence as are prescribed by the rules of the exchange, or who have engaged in conduct inconsistent with just and equitable principles of trade.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[23] That the proposed rule change (SR-NYSE-91-40) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-1278 Filed 1-16-92; 8:45 am]

BILLING CODE 8010-01-M

[17] See item 22 D(5) on page 3 of Form U-4.

[18] See Commodities Exchange Act Rules 3.12(c)(1)(ii), 3.16(c)(1)(ii), 3.18(c)(1)(ii), and 3.44(a)(4)(i) (enacted March 8, 1988, 53 FR 8428 (March 15, 1988) and effective April 4, 1988)).

[19] See page 4 of Form U-4.

[20] See Form U-5 Instructions, item 6, and item 16 of Form U-5.

[21] See NYSE Rule 345.11, .12 and .17.

[22] 15 U.S.C. 78f(b)(5) and (c)(3) (1988).

[23] 15 U.S.C. 78s(b)(2) (1988).

[24] 17 CFR 200.30-3(a)(12) (1991).

[Release No. 34-30177; File No. SR-PSE-91-50]

Self Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Fees Respecting Applications for Membership

January 13, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 31, 1991, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE, pursuant to Rule 19b-4 of the Act, submits this rule filing to amend the following fees relating to applications for membership (italics denote proposed new language; brackets denote deleted language):

Investigation fee	$100
Fingerprinting fee	
In-House fee	$10
FBI processing fee	$30 [$25]
Study package/test fee (options)	$200
[$50 towards Initial Membership Fee]	
Equity examination fee	$50

Initial Membership Fee: 5% of average price of the last three membership sales with a minimum of *$1,000* [$350] and a maximum of *$4,000* [$3,500] (applicable to membership purchases and lease agreements)

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PSE is proposing to adopt and increase several fees associated with applying for membership at the Exchange.

Investigation Fees

Currently, no fee is charged for the investigation that the PSE conducts on the background of applicants.[1] The Exchange pays an outside investigating agency for conducting the investigation. The PSE proposes to pass through the investigating agency charge, together with an administrative processing fee, for a total of $100.[2]

Fingerprinting Fee

Applicants for membership are required to have their fingerprints taken and processed by the Federal Bureau of Investigation ("FBI").[3] Currently, there is no fee for taking fingerprints in-house. It is proposed to charge $10 as an in-house fingerprinting fee to offset costs.[4] The PSE pays the FBI for processing the fingerprints. The PSE proposes to increase the current charge of $25 for the FBI fee to $30, which includes a PSE administrative processing fee.

Study Package/Test Fee (Options)

All applicant market makers and floor brokers must take and pass the Options Examination.[5] Currently, the fee for the Options Study Package is $200, $50 of which is refundable if the applicant becomes a member. The proposed charge would eliminate the refund provision to help defray the administrative costs.

Equity Examination Fee

Currently, no fee is charged to specialists or floor brokers for taking the Equity Examination.[6] A non-refundable fee of $50 is proposed to help defray the administrative costs.

Initial Membership Fee

Currently, the Initial Membership Fee is 5% of the average price of the preceding three membership sales, subject to a minimum of $350 and a maximum of $3,500. This fee is applicable to membership purchase and lease agreements. The proposed charge would raise the minimum fee from $350 to $1,000 and the maximum from $3,500 to $4,000. The increased minimum will enable the PSE to establish a revenue base in this area to ensure its administrative expenses are covered.

The proposed rule filing is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among the Exchange's members and persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change imposes a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were not solicited nor received from members or others.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-91-50 and should be submitted by February 7, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-1279 Filed 1-16-92; 8:45 am]

BILLING CODE 8010-01-M

[1] See PSE Rule 1.4(d). Generally, the Exchange investigates the employment history, credit, residence and criminal background of applicants for membership.

[2] Currently, the investigation agency charges $77 per examination.

[3] 15 U.S.C. 78q(f)(2). Pursuant to a plan filed with the Commission under SEC Rule 17f-2(c), the Exchange acts as a processor of fingerprints for its members and others, channeling fingerprint cards and attendant payments to the FBI.

[4] This fee would only apply to the Los Angeles office of the PSE, as fingerprinting is not currently performed in-house at the Exchange's San Francisco office.

[5] See PSE Rules 1.16(c), 6.33 and 6.44.

[6] This examination is administered pursuant to PSE Rules 1.16(c) and 5.27(d)(ii).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Incorporated

January 13, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following security:

Oceaneering International, Inc.

Common Stock, $.01 Par Value (File No. 7-7775)

This security is listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 4, 1992, written data, views and arguments concerning the above-referenced

application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions or unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-1280 Filed 1-16-92; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-9990]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Coltec Holdings, Inc., 14¾% Senior Discount Debentures Due July 15, 2008)

January 13, 1992.

Coltec Holdings, Inc. ("Company") has filed an application with the Securities and Exchange Commission, pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

(1) The 14¾% Debentures were listed on the PSE in 1988 in order to facilitate compliance by the Company with certain state "blue sky" requirements in connection with their original issuance, and these objectives were met at the time of original issuance and are no longer relevant;

(2) since the original issuance of the 14¾% Debentures in July of 1988, trading volume has been and continues to be very low;

(3) since the original issuance, there have been, and continue to be, a limited number of registered holders of the 14¾% Debentures;

(4) the delisting of 14¾% Debentures would facilitate implementation of the proposed recapitalization ("Recapitalization") currently being pursued by the Company and Coltec Industries, Inc. in that the solicitation of consents from holders of the 14¾% Debentures contemplated by the Recapitalization would not then be subject to compliance with the proxy rules promulgated under the Act; and

(5) the Company seeks to avoid the expense and administrative burden associated with continued listing of the 14¾% Debentures on the PSE and continued registration of the 14¾% Debentures under the Act which would be necessary to permit such continued listing.

Any interested person may, on or before February 4, 1992 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-1281 Filed 1-16-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25452]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

January 10, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 3, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Express Company (31-864)

American Express Company ("American Express"), American Express Tower, World Financial Center, New York, New York 10285, has filed an application for an order declaring that it is not a "holding company" under section 2(a)(7) of the Act.

American Express, a New York corporation, is principally engaged, through subsidiaries, in providing travel-related, financial, international banking, information and investment services. Neither American Express nor any of its subsidiaries is presently a "public utility company" or a "holding company" under the Act.

American Express owns, through subsidiary companies, 186 shares (the "Shares") of auction perferred stock, no par value, of Tucson Electric Power Company ("Tucson Electric"), an electric-utility company. The Shares, which are generally nonvoting, have had voting rights since December 14, 1991 due to a default in dividend payment over a twelve-month period. American Express presently holds approximately 11% of the outstanding voting securities of Tucson Electric.

American Express states that it does not control or exercise such a "controlling influence" over the management or policies of Tucson Electric, as to make it necessary or appropriate in the public interest or the interest of investors or consumers that it be subject to the obligations, duties and liabilities imposed upon holding companies by the Act.

Indiana Michigan Power Company (70-5854)

Indiana Michigan Power Company ("Indiana Michigan"), formerly Indiana & Michigan Electric Company, One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801, an electric utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed a post-effective amendment under Sections 9(a) and 10 of the Act to its application-declaration.

By Commission order dated July 21, 1976 (HCAR No. 19620), Indiana Michigan was authorized to enter into

an agreement of sale ("Agreement") with the City of Lawrenceburg, Indiana ("City") concerning the financing of emission control facilities ("Facilities") at Indiana Michigan's Tanners Creek Generating Station. Under the Agreement the City is to issue and sell one or more series of its pollution control revenue bonds ("Revenue Bonds"). The proceeds from the sales are to be deposited by the City with the trustee ("Trustee") under the indenture ("Indenture") entered into between the City and the Trustee pursuant to which Indenture the Revenue Bonds are issued and secured. The proceeds will then be applied to the payment of the cost of construction of the Facilities, originally estimated at approximately $96,100,000, or, in the case of proceeds from the sale of refunding bonds, to the payment at par of the entire principal amount of the series of Revenue Bonds to be refunded. Indiana Michigan conveyed a portion of the Facilities to the City, which portion became a part of the Facilities which the City sold to Indiana Michigan under an installment sales arrangement requiring Indiana Michigan to pay as the purchase price semi-annual installments in such an amount (together with other monies held by the Trustee under the Indenture for that purpose) as to enable the City to pay, when due, the interest, principal and premium (if any) on the Revenue Bonds.

In the order of July 21, 1976, the City was authorized to issue Revenue Bonds in an initial principal amount of $25 million ("Series A Bonds") and jurisdiction was reserved with respect to the terms of the sale of the Facilities as those terms were affected by the issue and sale of additional Revenue Bonds under the Agreement.

By orders dated May 9, 1977 (HCAR No. 20021) and November 8, 1977 (HCAR No. 20249), jurisdiction was released concerning the sale of Revenue Bonds in the principal amounts of $40 million and $12 million, respectively, as such sales affected the terms of the sale of the Facilities.

It is stated that the City now proposes, through December 31, 1992, to issue and sell a series of refunding bonds ("Series D Bonds") in the aggregate principal amount of up to $25 million, the net proceeds of which will be used to provide for the principal payment required for the early redemption of the $25 million principal amount of Series A Bonds, bearing interest at 8½% and maturing on July 1, 2006. The Series D Bonds will be issued pursuant to the Indenture as supplemented by a third supplemental indenture, will bear interest semi-annually and will mature at a date or dates not more than 30 years from the date of their issuance. Indiana Michigan states that it will not agree to the issuance of any Series D Bond by the City if the rate of interest to be borne by any such Revenue Bonds shall exceed 8% per annum. The Series D Bonds will be subject to mandatory redemption under certain circumstances and, if it is deemed advisable, a sinking fund provision. In addition, the Series D Bonds may not be redeemable at the option of the City in whole or in part at any time for a period of up to ten years. The Series D Bonds may be provided some form of credit enhancement, such as a letter of credit, surety bond or bond insurance, and pay a fee in connection therewith. It is contemplated that the Series D Bonds will be sold by the City pursuant to arrangements with Goldman, Sachs & Co. as underwriter. Indiana Michigan requests authority to alter the terms of the purchase price of the Facilities as it is affected by the sale of the Series D Bonds.

New Orleans Public Service Inc. (70-7350)

New Orleans Public Service Inc. ("NOPSI"), 317 Baronne Street, New Orleans, Louisiana 70112, a subsidiary of Entergy Corporation, a registered holding company, has filed a post-effective amendment under Section 6(a)(2) of the Act to its application which was filed under sections 6(b) of the Act and Rule 50(a)(5) thereunder.

By order dated may 22, 1987 (HCAR. No. 24387), the Commission authorized NOPSI to establish a new Mortgage providing for the issuance of rate recovery general and refunding mortgage bonds and to issue and sell to institutional investors $75 million aggregate principal amount of an initial series of Bonds, 10.95% Series, due May 1, 1997 ("10.95% Bonds"). The 10.95% Bonds were issued under a First Supplemental Indenture ("Indenture") to the new Mortgage requiring NOPSI to initiate certain procedures which, under certain circumstances, would permit the holders of the 10.95% Bonds ("Holders") to tender such bonds to NOPSI for redemption, in the event of any modifications to a 1986 rate settlement agreement ("1986" Agreement") between NOPSI and its regulator the Council of the City of New Orleans ("Council"). Subsequently, on November 5, 1991, a new agreement was reached between NOPSI and Council ("1991 Agreement"), which modified and superceded the 1986 Agreement by resolving all pending rate matters and related litigation that had arisen during the interim. Because it modifies the 1986 Agreement, the 1991 Agreement triggers the Indenture's procedural requirements, which could permit the Holders to tender their bonds for redemption by NOPSI.

In light of the anticipated overall favorable impact of the 1991 Agreement of NOPSI's financial condition, and in order to avoid having to commerce the redemption procedures, NOPSI has requested the Holders to waive certain provisions of the Indenture insofar as they relate to such possible redemption. The Holders have unanimously agreed to such waiver. NOPSI requests authority to carry out the waiver set forth, above.

New Orleans Public Service Inc. (70-7448)

New Orleans Public Service Inc. ("NOPSI"), 317 Baronne Street, New Orleans Louisiana 70112, a subsidiary of Entergy Corporation, a registered holding company, has filed a post-effective amendment under section 6(a)(2) of the Act to its application which was filed under section 6(b) of the Act and Rule 50(a)(5) thereunder.

By order dated May 22, 1987 (HCAR. No. 24387), the Commission authorized NOPSI to establish a new Mortgage providing for the issuance of rate recovery general and refunding mortgage bonds ("Bonds") and to issue and sell to institutional investors $75 million aggregate principal amount of an initial series of Bonds, 10.95% Series, due May 1, 1997 ("10.95% Bonds") under a First Supplemental Indenture to the new Mortgage. By subsequent order herein dated January 13, 1988 (HCAR. No. 24559), the Commission authorized NOPSI to issue and sell up to $50 million aggregate principal amount of three additional series of Bonds under a Second Supplemental Indenture to the new Mortgage ("Indenture"). Pursuant to such authority, NOPSI issued and sold to institutional investors an aggregate principal amount of $40 million of Bonds in three series, a 13.20% Series, due February 1, 1991 ("13.20% Bonds"), a 13.60% Series, due February 1, 1993 ("13.20% Bonds"), and a 13.90% Series, due February 1, 1995 ("13.90% Bonds").

The 13.20% Bonds, 13.60% Bonds and 13.90% Bonds were issued under the Indenture requiring NOPSI to initiate certain procedures which, under certain circumstances, would permit the holders of the Bonds, including the holders of the 13.60% Bonds and the 13.90% Bonds ("Holders"), to tender such Bonds to NOPSI for redemption, in the event of any modifications to a 1986 rate settlement agreement ("1986" Agreement") between NOPSI and its

regulator the Council of the City of New Orleans ("Council"). Subsequently, on November 5, 1991, a new agreement was reached between NOPSI and Council ("1991 Agreement"), which modified and superceded the 1986 Agreement by resolving all pending rate matters and related litigation that had arisen during the interim. Because it modifies the 1986 Agreement, the 1991 Agreement triggers the Indenture's procedural requirements, which could permit the Holders to tender their Bonds for redemption by NOPSI.

In light of the anticipated overall favorable impact of the 1991 Agreement on NOPSI's financial condition, and in order to avoid having to commence the redemption procedures, NOPSI has requested the Holders to waive certain provisions of the Indenture insofar as they relate to such possible redemption. The Holders have unanimously agreed to such waiver. NOPSI requests authority to carry out the waiver set forth, above.

System Fuels, Inc., et al. (70-7668)

System Fuels, Inc. ("SFI"), 639 Loyola Avenue, New Orleans, Louisiana 70113, a fuel procurement subsidiary company, together with two of its parent companies, Louisiana Power & Light Company ("LP&L"), 142 Delaronde Street, New Orleans, Louisiana 70174 and Arkansas Power & Light Company ("AP&L"), 425 West Capitol, Floor 40, Little Rock, Arkansas 72201, each an electric public-utility subsidiary company of Entergy Corporation ("Entergy"), a registered holding company, and System Energy Resources, Inc. ("SERI"), Echelon One 1340 Echelon Parkway, Jackson, Mississippi 39213, also an electric public-utility subsidiary company of Entergy (LP&L, AP&L and SERI collectively referred to as the "Operating Companies"), have filed a post-effective amendment under sections 6(a), 7 and 12(b) of the Act and Rule 45 thereunder to their declaration.

By order dated September 27, 1989 (HCAR No. 24957), the Commission authorized SFI to enter into a credit agreement in order to borrow funds necessary to finance its nuclear materials and service inventory. In accordance with such order, SFI entered into a credit agreement, dated October 3, 1989 ("Credit Agreement"), with The Yasuda Trust and Banking Company, Ltd., New York Branch ("Yasuda"), as agent for the lenders named therein (collectively, "Banks"), including Yasuda, and the Banks, pursuant to which revolving credit loans ("Loans") are made to SFI in an aggregate principal amount of up to $45 million.

As security for the performance of its obligations under the Credit Agreement, SFI entered into a security agreement with Yasuda, dated October 3, 1989, as amended ("Security Agreement"), under which SFI granted Yasuda a security interest in certain nuclear materials, services inventory, accounts receivable and certain other incidental rights and instruments. The Operating Companies, SFI and Yasuda also entered into a consent and agreement, dated October 3, 1989, under which the Operating Companies acknowledged and consented to SFI's grant of a security interest to Yasuda in its accounts receivable arising from certain sales by SFI of nuclear materials and services to the Operating Companies and also entered into certain covenants.

The Credit Agreement will expire on September 30, 1993, unless SFI requests a one year extension. Therefore, SFI has requested that Yasuda extend the expiration date of the Credit Agreement an additional year until September 30, 1994. As a condition to such an extension, Yasuda has requested that SFI amend the Credit Agreement to provide for an increase in the quarterly commitment fee payable by SFI from 0.125% to 0.15% per year of the difference between: (i) The amount of the Banks' commitments to make Loans and (ii) the total principal amount of their outstanding Loans. In addition, SFI must pay Yasuda a closing fee of $3,000 at the closing of the proposed amendment to the Credit Agreement.

Northeast Utilities, et al. (70-7717)

Northeast Utilities ("Northeast"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, a registered holding company, and Western Massachusetts Electric Company ("WMECO") and The Quinnehtuk Company ("Quinnehtuk"), both of 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, and Northeast Utilities Service Company ("Service"), The Connecticut Light and Power Company ("CL&P"), Northeast Nuclear Energy Company ("Nuclear") and The Rocky River Realty Company ("Rocky River"), each of 107 Selden Street, Berlin, Connecticut 06037, and Holyoke Water Power Company ("Holyoke"), Canal Street, Holyoke, Massachusetts 01040, subsidiaries of Northeast ("Subsidiaries"), and Public Service Company of New Hampshire ("PSNH") and North Atlantic Energy Corporation ("North Atlantic"), both of 1000 Elm Street, Manchester, New Hampshire 03105 (all companies collectively, "Applicants"), have filed a post-effective amendment to Northeast's and its Subsidiaries' application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45 and 50(a)(5) thereunder.[1]

By order dated December 27, 1990 (HCAR No. 25234), the Commission authorized Northeast's and its Subsidiaries' proposal, through December 31, 1992, to issue short-term notes ("Bank Notes") pursuant to lines of credit, issue and sell commercial paper ("Commercial Paper"), make open account advances ("Advances") by Northeast to its subsidiary companies, and to continue the Northeast system money pool ("Money Pool") to be utilized by the Subsidiaries for operational, maintenance and construction expenses, and to meet certain cash needs. The aggregate amount of all short-term borrowings through December 31, 1992, whether through the issuance of Bank Notes, Commercial Paper, Advances, borrowings from the Money Pool, or through existing revolving credit agreements (HCAR No. 24943, August 18, 1989 and HCAR No. 24686, July 29, 1988) will not exceed the following maximum amounts: Northeast, $135 million; CL&P, $300 million; WMECO, $95 million; Holyoke, $2 million; Nuclear, $50 million; Rocky River, $55 million; Quinnehtuk, $5 million; and Service, $65 million.

The Applicants now propose to add PSNH and North Atlantic, through December 31, 1992, as participants in the Money Pool. PSNH's and North Atlantic's borrowings from the Money Pool will not exceed $125 million and $65 million, respectively. Additionally, Northeast also would be able to borrow funds for the purpose of lending those funds, through the Money Pool, to PSNH and North Atlantic.

Pennsylvania Electric Company (70-7924)

Pennsylvania Electric Company ("Pennelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, a public-utility subsidiary company of General Public Utilities Corporation, a registered holding company, has filed a declaration under section 12(d) of the Act and Rule 44 thereunder.

Pennelec proposes to sell to Pennsylvania State University ("Penn State") for $219,581 certain transformers, manholes and related equipment ("Utility Assets"). These Utility Assets

[1] Northeast was authorized, in relevant part, to acquire PSNH, a New Hampshire publicly owned electric utility, and to form North Atlantic as an electric utility subsidiary of Northeast that will own PSNH's interest in the Seabrook Nuclear Power Plant. HCAR Nos. 25221 and 25273 (Dec. 21, 1990 and Mar. 15, 1991, respectively).

are located on Penn State's property located in Harborcreek Township, Erie County, Pennsylvania. Pennelec arrived at the price through arms length negotiation and the proposed purchase price is in excess of the Utility Assets stated book value of $154,202.

National Fuel Gas Company, et al. (70-7927)

National Fuel Gas Company ("National"), 30 Rockefeller Plaza, New York, New York 10112, a registered holding company, and its wholly owned subsidiary company, National Fuel Gas Distribution Corporation ("Distribution"), 10 Lafayette Square, Buffalo, New York 14203, have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 45, 50 and 50 (a)(5) thereunder.

National proposes to issue and sell, through December 31, 1993, an aggregate principal amount up to $150 million of debt securities consisting of: (1) One or more series of its Debentures ("New Debentures") maturing from one to forty years, under the competitive bidding procedures of Rule 50 of the Act as modified by the Commission Statement of Policy dated September 2, 1982 (HCAR No. 22623); and/or (2) medium-term notes ("New MTNs") with maturities from nine months to forty years. National proposes to sell the New MTNs, under an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5). National has requested that it be authorized to begin negotiations with potential agents to place the MTNs. It may do so.

National proposes to lend the proceeds from the issuance of the New Debentures and/or New MTNs to Distribution in exchange for unsecured notes ("Notes"). Such Notes will bear interest payable semiannually and will mature serially on the date of maturity of the corresponding New Debentures and/or New MTNs; provided that National will have the option to require payment of such Notes at any time to the extent that the New Debentures and/or New MTNs mature are redeemed or otherwise reacquired by National. The Notes will bear interest at the effective interest cost of the principal amount of the New Debentures and/or New MTNs, in each case rounded to the next highest 1/100th of 1%.

Distribution will use the proceeds from the Notes: (1) To reduce their outstanding short-term borrowings under their lines of credit; (2) to repay notes held by National and issued in exchange for loans received by Distribution; (3) for its construction programs; or (4) for general corporate purposes.

Capital Holding Corp. (70-7953)

Capital Holding Corp. ("Capital Holding"), 680 Fourth Avenue, P.O. Box 32830, Louisville, Kentucky 40232, has filed an application for an order declaring that it is not a "holding company" under section 2(a)(7) of the Act.

Capital Holding, a Delaware corporation, is engaged, through subsidiaries, in providing diversified insurance and financial services. Capital Holding owns, through subsidiary companies, 100 shares (the "Shares") of auction preferred stock, no par value, of Tucson Electric Power Company ("Tucson Electric"), an electric-utility company. The Shares, which are generally nonvoting, have had voting rights since December 14, 1991 due to a default in dividend payment over a twelve-month period. Capital Holding presently holds more than 10% of the outstanding preferred stock of Tucson Electric, but less than 10% of all of the outstanding voting securities of Tucson Electric, including common stock.

Capital Holding states that it does not control or exercise such a "controlling influence" over the management or policies of Tucson Electric, as to make it necessary or appropriate in the public interest of investors or consumers that it be subject to the obligations, duties and liabilities imposed upon holding companies by the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-1282 Filed 1-16-92; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-9947]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; TRC Companies, Inc., Common Stock, $.10 Par Value

January 13, 1992.

TRC Companies, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

In addition to being listed on the Amex, the Company's Common Stock also currently is listed on the New York Stock Exchange ("NYSE"). Effective at the opening of business on December 16, 1991, the Company's Common Stock commenced trading on the NYSE, and concurrently therewith, such stock was suspended from trading on the Amex. Thus, in making the decision to withdraw its Common Stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the listing of the Common Stock on the NYSE and the Amex. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its Common Stock.

Any interested person may, on or before February 4, 1992, submit by letter to the Secretary of the Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-1283 Filed 1-16-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended January 10, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47940.

Date filed: January 8, 1992.

Parties: Members of the International Air Transport Association.

Subject: TC12 Reso/P 1278 dated November 22, 1991. North Atlantic-Israel Resos, R-1 To R-17 (intended effective date: January 31/February 1, 1992). TC12 Reso/P 1379 dated November 22, 1991, North Atlantic-

Israel Reso, (intended effective date: April 1, 1992).

Docket Number: 47941.

Date filed: January 8, 1992.

Parties: Members of the International Air Transport Association.

Subject: TC23 MV/P 0175 dated December 16, 1991. Mail Vote 527 (Mileages and Routes for Tariff Purposes).

Proposed Effective Date: April 1, 1992.

Docket Number: 47942.

Date filed: January 8, 1992.

Parties: Members of the International Air Transport Association.

Subject: TC12 Reso/P 1376 dated December 2, 1991, North Atlantic-Africa Resos, R-1 To R-20.

Proposed Effective Date: April 1, 1992.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-1318 Filed 1-16-92; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended January 10, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47943.

Date filed: January 9, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 6, 1992.

Description: Application of Air Micronesia, Inc., pursuant to section 401 of the act and subpart Q of the Regulations, applies for an amendment to its certificate of public convenience and necessity for route 170 so as to be authorized to engage in foreign air transportation of persons, property, and mail between the coterminal points Guam and Saipan, Northern Mariana Islands, on the one hand, and the coterminal points Brisbane and Sydney, Australia, on the other hand.

Docket Number: 43250.

Date filed: January 10, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 7, 1992.

Description: Application of Servicio Aereo De Honduras, S.A., pursuant to section 402 of the Act and subpart Q of the Regulations applies for amendment and renewal of the foreign air carrier permit which authorizes it to engage in scheduled foreign air transportation between points in Honduras and points in the United States.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-1319 Filed 1-16-92; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

Joint Application of Airline of the Americas, Inc. and Independent Air, Inc., for Transfer of Certificate Authority Under Section 401(h)

AGENCY: Department of Transportation.

ACTION: Notice of order of show cause, (Order 92-1-19) Docket 47653.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not (1) find Airline of the Americas, Inc., fit to engage in domestic and foreign charter and interstate and overseas scheduled air transportation of persons, property, and mail, and (2) transfer to it the section 401 certificates held by Independent Air, Inc.

DATES: Persons wishing to file objections should do so no later than January 23, 1992.

ADDRESSES: Objections and answers to objections should be filed in Docket 47653, addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (P-56. room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2337.

Dated: January 13, 1992.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 92-1317 Filed 1-16-92; 8:45 am]

BILLING CODE 4910-64-M

Federal Aviation Administration

San Diego International Airport-Lindbergh Field, San Diego, CA; Environmental Impact Statement

AGENCY: Federal Aviation Administration; DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared and considered for a proposal to incorporate an Immediate Action Program (IAP) consisting of the development of improved airport facilities at the San Diego International Airport-Lindberg Field. To ensure that all significant issues, related to the proposed action, are identified, a public scoping meeting will be held.

DATES: Comments must be received at the address below on or before Monday, February 24, 1992.

ADDRESSES: Comments may be mailed or delivered in duplicate to the FAA at the following address: Federal Aviation Administration, Western-Pacific Region, 15000 Aviation Boulevard, Hawthorne, California 90261. Mail Address: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007.

FOR FURTHER INFORMATION CONTACT: Mr. William T. Johnstone (AWP 611.3), Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007, (Telephone 310/297-1621).

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with the San Diego Unified Port District, will prepare an EIS based on an Environmental Assessment for the IAP. The following projects will be evaluated in the EIS:

—Passenger terminal expansion

—New aircraft gates

—Airport automobile parking and roadway improvements

—Aircraft fuel storage expansion

Comments and suggestions are invited from Federal, State and local agencies, and other interested parties to ensure that the full range of issues related to these proposed projects are addressed and all significant issues identified. Comments and suggestions may be mailed to the FAA informational contact listed above.

The objective of the project is the development of facilities consistent with project near term (5 year) growth of airport traffic.

Alternative

The existing configuration of the airport precludes reorientation of the

runways or relocation to different portions of the airport. Therefore, the alternative to the proposed projects is the "No Action" alternative.

Public Scoping Meeting

To effect scoping, the FAA hereby solicits comments for consideration and possible incorporation in the Draft EIS. To ensure that the full range of issues related to these proposed projects are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Interested parties are invited to attend a scoping meeting that will be held Thursday, February 13, 1992, at 2 p.m. in the San Diego Unified Port District Administration Building, 3165 Pacific Highway, San Diego, California.

Documents related to the proposed action that may be useful in defining issues and concerns may be reviewed at the following location: District Clerk's Office, San Diego Unified Port District, 3165 Pacific Highway, San Diego, California 92101.

Issued in Hawthorne, California on January 9, 1992.

Ellsworth Chan,

Acting Manager, Airports Division, AWP-600, Western-Pacific Region.

[FR Doc. 92-1231 Filed 1-16-92; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA) Special Committee 171, Airborne MLS Area Navigation Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the fourth meeting of Special Committee 171 to be held February 4-7, 1992, in the RTCA conference room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Approval of the third meeting's minutes, RTCA paper no. 626-91/SC171-40; (3) Technical presentations; (a) Curve Path Testing; (b) MLS RNAV Implementation Work; (c) Other; (4) AWOP activity report; (5) Working Group reports; (a) Operations Working Group (WG-1); (b) Technical Working Group (WG-2); (c) Architecture/Certification (WG-3); (6) Working group sessions; (7) In plenary; (a) Working Group progress; (b) Task assignment; (8) Other business; (9) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 8, 1992.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92-1232 Filed 1-16-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Aviation Administration

Air Carrier/General Aviation Maintenance Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemakng Advisory Committee Air Carrier/General Aviation Maintenance Subcommittee.

DATES: The meeting will be held on February 5, 1992, at 9 a.m. Arrange for oral presentations by January 28, 1992.

ADDRESSES: The meeting will be held at Aerospace Industries Associaton of America, suite 1100, 1250 Eye Street, NW., Washington, DC, at 9 a.m.

FOR FURTHER INFORMATION CONTACT: Ms. Jacqueline Renaud, Meeting Coordinator, Aircraft Maintenance Division, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-7461.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Air Carrier/General Aviation Maintenance Subcommittee to be held on February 5, 1992. The agenda for the meeting will include reports from the working groups dealing with establishment of current standard weights for passengers and baggage, development of a notice of proposed rulemaking (NPRM) for part 65 of the Federal Aviation Regulations (FAR), development of an NPRM for reporting requirements of §§ 121.703 and 121.705 of the FAR, development of an advisory circular for Special Federal Aviation Regulation (SFAR) 36, and development of an NPRM and advisory circular for maintenance recordkeeping and retention of records. The agenda will also include discussion of a new Structural Maintenance Program Guide document that was developed by an industry Airworthiness Assurance Working Group. This document was originally presented to the Transport Airplane and Engine Subcommittee by the industry group. Since it is a maintenance document, it has been transferred to the General Aviation Maintenance Subcommittee for discussion.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements on or before January 28, 1992, to present oral statements at the meeting. Written statements (75 copies) may be presented to the committee at any time through the meeting corrdinator. Arrangements may be made by contacting the meeting coordinator listed under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Washington, DC, on January 14, 1992.

William J. White,

Executive Director, Air Carrier/General Aviation Maintenance Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-1296 Filed 1-16-92; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

This notice sets forth the reasons for the denial of a petition submitted to NHTSA under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

In September 1991, the Center for Auto Safety (CFAS) petitioned NHTSA requesting a defect investigation to determine whether 1991 Chevrolet Camaro and Pontiac Firebird passenger cars contain two different safety-related defects. One alleged defect involves failure of the lug studs, five of which attach each of the front and rear wheels to the vehicle. If three or more lug studs supporting a wheel fracture, the wheel will probably detach from the vehicle. The other alleged defect involves rear axle shaft failures. If either of the two rear axle shafts fail, then a rear wheel and the brake for that wheel will detach from the vehicle, but the front brakes will remain functional. Detachment of any of the four wheels adversely affects vehicle stability and at best forces the vehicle to slide to a stop. A detached wheel can also collide with another

vehicle or a pedestrian. A total of 140,804 subject 1991 Chevrolet Camaro and Pontiac Firebird vehicles, which have identical lug studs and axle shafts, were sold in the United States.

CFAS submitted three reports: two reports of alleged rear axle shaft failures with wheel separation, and one report of alleged broken lug studs.

A search of the agency's consumer complaint file produced no other relevant complaints pertaining to lug stud failures on the subject vehicles. General Motors Corporation (GM) indicated that they have received one other report of lug stud failures, and one other report of front wheel separation, possibly due to lug stud failure.

The two, possibly three, reports of lug stud failures do not appear to be indicative of a problem because a small number of similar reports are routinely received by the agency involving most large groups of automobiles. Lug studs can fracture if they have been tightened excessively or insufficiently, and this can occur when tires are changed or rotated after the vehicle has left the factory. The warranty rate of 0.002 percent for lug studs, and 0.034 percent for vehicles (each vehicle has 20 lug studs) also is not indicative of a problem.

CFAS submitted two reports that purported to relate to rear axle shaft failures on the subject vehicles. A search of the agency's consumer complaint file produced no other relevant complaints pertaining to this problem. One of the two reports submitted by the petitioner was not considered relevant because the father of the deceased driver stated that he had hired an independent expert who advised him that the accident caused the axle fracture, and that no relevant vehicle defects were found. The driver apparently lost control on a curve on a wet, oily road, and was struck by an oncoming truck. There is no reason to believe that an axle shaft failed on that vehicle.

GM indicated that they had received 14 additional reports of rear axle shaft failures. This brings the total count of alleged failures to 15 reports, involving 15 accident, 4 injuries, and 2 fatalities. The two fatalities occurred in an accident in which the driver was convicted of vehicular homicide, in spite of his allegations of a vehicle defect. A civil court also accepted GM's position that the accident caused the failure, not vice versa. A total of eight axle shafts were replaced on seven vehicles under warranty, resulting in a relatively low axle shaft warranty replacement rate of 0.003 percent, and a vehicle warranty rate of 0.005 percent.

A review of all of the relevant information indicates that all, or almost all, of the reported axle shaft failures resulted from crashes or impacts with curbs or similar immovable barriers. This conclusion is based on several factors.

1. A similar conclusion was reached during two previous investigations of a similar alleged problem in older model years of the same Camaro and Firebird vehicles. The 1982 models were the subject of a preliminary investigation, IR84–065, and the 1984 through 1988 models were the subject of an Engineering Analysis, EA90–012.

2. Testing submitted by GM in connection with the IR84–065 investigation demonstrated that the axle shaft will fracture before the wheel is damaged if a severe load is applied to the side of the wheel, as would occur if the vehicle is run into a curb or similar barrier while still attached to the vehicle.

3. The fact that 100 percent of the reports involve accidents suggests that accidents were a causative factor. In a different investigation involving wheel detachments (C87–001), only 34 percent (77 out of 228) wheel detachments resulted in accidents. The two wheel detachments that apparently resulted from lug stud fractures in the subject vehicles did not result in accidents.

4. If a rear wheel detaches, the corresponding corner of the vehicle drops to the ground, and the sliding vehicle leaves scrapes and gouges on the road surface leading to the point where the vehicle stops moving. However, none of the failure reports indicate that such evidence was found.

5. It was noted that 85 percent (11 out of 13) of the accidents occurred either on wet roads or between midnight and 3 a.m. If the axles were defective, there is no reason why a majority would fail on wet roads, when reduced tire traction limits axle stress, or at a time when most vehicles are not being driven. However, loss of control due to slippery roads or inappropriate driver behavior is more likely to occur under those conditions and times.

6. It was noted that nine of the reports state that the vehicle "spun out" prior to the crash. This is not consistent with rear wheel detachment, because the rear of the vehicle drags on the road and cannot normally pass the front of the vehicle, as occurs when a vehicle "spins."

In consideration of the available information, it was concluded that there was not a reasonable possibility that an order concerning the notification and remedy of a safety-related defect in relation to any of the petitioner's allegations would be issued at the conclusion of an investigation. Since no evidence of a safety-related defect trend was discovered, further commitment of resources to determine whether such a trend may exist does not appear to be warranted. Therefore, the petition is denied.

Authority: Sec. 124, Pub. L. 93–492; 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 13, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92–1241 Filed 1–16–92; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 92–01–No. 1]

Philatron International; Receipt of Petition for Determination of Inconsequential Noncompliance

Philatron International (Philatron) of Santa Fe Springs, California has determined that some of its trucks and trailers fail to comply with 49 CFR 571.106, "Brake Hoses," and has filed an appropriate report pursuant to 49 CFR part 573. Philatron has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Philatron determined that certain air brake hoses installed in 45,411 trucks and trailers manufactured from January 1991 through September 30, 1991, do not comply with the oil resistance requirements of S7.3.4 of Federal Motor Vehicle Safety Standard No. 106, "Brake Hoses." Section S7.3.4 requires that after immersion in ASTM No. 3 oil for 70 hours at 212 degrees fahrenheit, the volume of a specimen prepared from the inner tube and cover of an air brake hose shall not increase more than 100 percent. Philatron supports its petition with the following: There is no possibility for the interiors of the coiled tubing to become saturated with oil at any temperature; and specifically, there is no possibility under any condition for the items to be saturated with oil for 70 hours at a temperature of 212 [degrees fahrenheit].

The compressors of all trucks are designed to pass compressed air, and

not oil, through the coiled tubing. Any small quantities of oil which might travel with the compressed air are reduced in at least two (2) reservoirs (commonly referred to as the wet truck and the service tank) which are included in all trucks, and in which any moisture and any minute quantities of oil are removed from the compressed air passed through the tubing to the towed vehicles.

Moreover, virtually every truck today is also equipped with an air dryer which dries and purifies the compressed air before it enters the reservoirs. This dryer has a 99.9% oil removal efficiency.

There is also no possibility for the temperature of the compressed air passed through the tubing ever to be above ambient temperature at the inner area if the tubing. The compressed air is rapidly cooled as it travels from the compressor, and when it enters the air reservoirs it is cooled to ambient temperatures well before it reaches the tubing located further down the line.

Most if not all trucks today are equipped with an air dryer which is positioned between the compressor and the air reservoirs, normally 6 to 15 feet from the compressor. Virtually all trucks which are equipped with air dryers are also equipped with pre-cooling coils which pre-cool the air before it enters the air dryers. The dryers themselves cool the air. Again, it [sic] is no possibility that compressed air could exceed ambient temperature within the tubing.

There is also no possibility that the outer surface of the items when in use would ever come in contact with or be immersed in hot oil. This is because the items are located between the rear of the towing vehicle and the front of the towed vehicle at a significant distance from any sources of hot oil. Additionally, there is no conceivable possibility of any quantity of hot oil to be spilled on the items while the vehicles are at rest, and any small quantity of oil which might contact the items when the vehicles are in motion are cooled by the wind chill factor of the traveling vehicles to below ambient temperatures.

In addition to the above arguments, Philatron conducted the following tests to demonstrate what it feels to be a considerable margin of safety associated with the hoses in question with respect to oil resistance.

The first test consisted of air brake tubing with couplings plugged at the end and immersed in ASTM No. 3 oil. Ambient temperatures ranged from 33 degrees fahrenheit to 91 degrees fahrenheit. After 3,310 hours, 138 days, the assembly was removed from the oil and subject to a burst test. The tubing burst at 1,200 psi—well above the FMVSS Standard No. 106's requirement for burst strength of 800 psi.

The second test consisted of air brake tubing without the couplings. The tubing was not plugged as to allow the oil to reach the inner and outer surface of the tubing and then immersed in ASTM No. 3 oil for 70 hours at 134 degrees fahrenheit. After 70 hours the assembly was removed from the oven and allowed to cool at ambient temperature for 50 minutes. It was then subjected to a burst strength test. The tubing burst at 1050 psi which is above the requirement.

Interested persons are invited to submit written data, views and arguments on the petition of Philatron, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicating below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: February 18, 1992.

(15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8).

Issued on January 13, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-1242 Filed 1-16-92; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

Office of Hazardous Materials Safety; Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications for Modification of Exemptions or Applications to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **FEDERAL REGISTER** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before February 3, 1992.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

Application No.	Applicant	Renewal of exemption
6614-X	Hasa, Inc., Saugus, CA (See Footnote 1).	6614
8125-X	Arbel-Fauvet-Rail, Paris, France (See Footnote 2).	8125
9519-X	Transchem I, Inc., Kearny, NJ (See Footnote 3).	9519
10460-X	W. H. Stewart Company, Oklahoma City, OK (See Footnote 4).	10460
10541-X	Aerojet Propulsion Division, Sacramento, CA (See Footnote 5).	10541

[1] To authorize shipment of Hydrochloric acid or Hypochlorite solutions, classed as a corrosive material, contained in one gallon polyethylene bottles overpacked in a polyethylene box to be shipped as a corrosive waste when partially emptied and returned for disposal and refill.

[2] To revew and modify the exemption by replacing the external excess flow valve with an internal valve on non-DOT specification IMO type 5 portable tanks.

[3] To modify the exemption to provide for an additional tank configuration of two (2) 110 gallon bottles mounted in a metal support structure (cage) for shipment of certain corrosive and flammable liquids and an oxidizer.

[4] To authorize those UF-6 cylinders which satisfy the prescribed inspection and test requirements to be stamped and recertified for filling and transport without an exemption.

[5] To authorize use of different rubber inhibitors as filler in the void between the propellant and dome assembly of a rocket motor configuration.

Application No.	Applicant	Parties to exemption
5923-P	Akron Welding and Spring Co., d.b.a. Parry Corp., North Royalton, OH.	5923
6309-P	BASF Corporation, Parsippany, NJ.	6309
6530-P	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	6530
6626-P	Midwest Airgas, Inc., Fairfield, IA.	6626
6691-P	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	6691
6691-P	General Welding Products, Inc., Louisville, KY.	6691
6691-P	Valley Welding Supply Company, Wheeling, WV.	6691
7052-P	Catalyst Research, Owings Mills, MD.	7052
7268-P	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	7268
7835-P	The Jimmie Jones Company, Tulsa, OK.	7835
7969-P	Burlington Environmental, Portland, OR.	7969
8063-P	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	8063
8156-P	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	8156
8236-P	Ford Motor Company, Dearborn, MI.	8236
8236-P	Ford Motor Company, Dearborn, MI.	8236
8426-P	Burlington Environmental, Portland, OR.	8426
8451-P	Econex, Inc., Pittsfield, IL.	8451
8723-P	OEI, Inc., Whitesburg, GA.	8723
8862-P	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	8862
8944-P	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	8944
8990-P	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	8990
8995-P	BASF Corporation, Parsippany, NJ.	8995
9047-P	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	9047
9419-P	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	9419
9525-P	Air Products and Chemicals, Inc., Allentown, PA.	9525
9610-P	GenCorp—Aerojet Ordnance, Chino Hills, CA.	9610
9758-P	Insulation Material Corporation of America, Haltom City, TX (See Footnote 1).	9758
9847-P	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	9847
9851-P	Trans States Airlines, St. Louis, MO.	9851
10001-P	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	10001
10101-P	Airco, The BOC Group, Inc., Murray Hill, NJ.	10101
10184-P	Akron Welding and Spring Co., d/b/a Parry Corp., North Royalton, OH.	10184
10457-P	PPG Industries, Inc., New Martinsville, WV.	10457

[1] Request party status and to modify the exemption to include cargo aircraft as an additional mode of transportation.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on January 10, 1992.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 92-1320 Filed 1-16-92; 8:45 am]

BILLING CODE 4910-60-M

Research and Special Programs Administration; Office of Hazardous Materials Safety

Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Mateials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before February 18, 1992.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, room 8426, Nassif Building, 400 7th Street, SW. Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10724-N	Buffalo Sewer Authority Wastewater Treatment Plant, Buffalo, NY.	49 CFR 174.67(i), (j)	To authorize chlorine filled tank cars to stand with unloading connections attached during unloading without the physical presence of an unloader. (mode 2).
10725-N	Coresa S.A., Santiago, Chile	49 CFR 172.331, 173.154, 173.164, 173.178, 173.182, 173.204, 173.217, 173.234, 173.245(b), 173.366.	To authorize the shipment of certain hazardous materials in polyethylene-lined polypropylene flexible intermediate nonreusable bulk bags. (modes 1, 2, 3).

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10726-N	Metropolitan Water District of Southern California, Los Angeles, CA.	.49 CFR 173.315(a), note 8,	To authorize chlorine filled cargo tank vehicles contents to be unloaded at numerous unloading points. (mode 1).
10727-N	United States Environmental Protection Agency, Denver, CO.	.49 CFR 173.403	To authorize the bulk shipment of soils and debris contaminated with a radioactive material (Radium) from Superfund cleanup site to a disposal facility. (mode 2).

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on January 10, 1992.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 92-1316 Filed 1-16-92; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF TREASURY

Internal Revenue Service

Establishment of a Form Design Group

OFFICE: Returns Processing, Forms Standardization Project Office.

ACTION: Announcement.

SUMMARY: The Internal Revenue Service has established a Forms Standardization Project Office. The objective of the Forms Standardization Project is to standardize and simplify the tax forms information and documents IRS issues and receives from taxpayers to efficiently process needed information through emerging Tax Systems Modernization (TSM) initiatives. The Forms Standardization Project Office is establishing a multifunctional forms work group. The purpose of this work group is to standardize the location of common data elements (e.g., Form Number, tax Year, etc.) to decease taxpayer confusion and enhance the imaging and data capture of automated systems processing.

SUPPLEMENTARY INFORMATION: The Form Design Group will report to the Forms Standardization Project Manager, who is responsible for information reporting and is charged with the planning and control of all aspects of the project. Increasing public participation in the form design will help to achieve the goal of acceptance of standardized returns.

The Form Standardization Project Office is interested in representation from different areas of the taxpayer community (e.g., forms developers, practitioners, tax software developers, etc.). Anyone wishing to be considered for participation in the Form Design Group should so advise the Internal Revenue Service. Please complete the following questionnaire and forward to Don Tucker, Project Manager, at the address below.

ADDRESSES: Internal Revenue Service, 1111 Constitution Avenue, NW, R:R, room 7046, Washington, DC 20224. If you wish to Fax the questionnaire, the number is (202) 566-4964.

DATES: Completed questionnaires should be received by February 24, 1992. An acknowledgement letter will be sent upon receipt of your application.

FOR FURTHER INFORMATION CONTACT: Larry Dambrose at (202) 786-8495 (not a toll-free number).

Dated: January 10, 1992.

Don Tucker,

Project Manager.

Interest Questionnaire

Form Standardization Project Office—Forms Work Group

This questionnaire must be completed by anyone interested in becoming a member of the Forms Work Group. The form should be returned to Mr. Don Tucker, Project Manager, Form Standardization Project Office, Internal Revenue Service, 1111 Constitution Avenue, NW., R:R room 7046, Washington, DC 20224, and Must be received in that office by February 24, 1992. Applications received after this date will not be considered. All applications received will be acknowledged. Questions should be direct to Larry Dambrose at (202) 786-8495.

1. Name:
2. Title:
3. Company or Organization Name:
4. Business Address:
5. Home Address:
6. Business Phone:
7. Home Phone:
8. Social Security Number (THIS IS REQUIRED FOR A TAX CHECK):
9. Prior IRS employment (if applicable, please state position/s and title/s):
10. Professional credentials (e.g., Ph.D., CPA, Enrolled Agent, Attorney, Accountant, Tax Practitioner, Professor, etc.)
11. Which one professional credential most accurately describes your current professional activity?
12. How many years of tax related experience do you have?
13. What most closely describes your primary area(s) of tax administration expertise? (select no more than three.)

____Individual taxpayers
____Corporate taxpayer
____Small business taxpayers
____Minority taxpayers
____Employee plans
____General tax practice
____Information systems
____Software developer
____Rulings & Regulations
____International taxpayers
____Taxpayer service/assist
____Compliance activities
____Exempt organizations
____Quality management
____Form Designer
____Other (please describe)

14. Summarize your background and identify organizations to which you belong and any leadership positions you have held. Please limit job and organization entries to five each (total of 10).

[FR Doc. 92-1229 Filed 1-16-92; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 12
Friday, January 17, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:02 a.m. on Tuesday, January 14, 1992, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to: (1) The probable failure of certain insured banks; (2) the Corporation's corporate activities; and (3) a certain financial institution.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Mr. Stephen R. Steinbrink, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and Chairman William Taylor, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Dated: January 14, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–1345 Filed 1–14–92; 4:38 pm]

BILLING CODE 6714-0-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, January 22, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a perviously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 15, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–1348 Filed 1–15–92; 9:46 am]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 57, No. 12
Friday, January 17, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4019-5]

Clean Air Act Advisory Committee of Open Meeting

Correction

In notice document 91-24324 beginning on page 50902 in the issue of Wednesday, October 9, 1991, make the following correction:

On page 50903, in the first column, in the file line at the end of the document, "FR Doc. 91-24324" should read "FR Doc. 91-23424".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement No. 202]

Cooperative Agreements for Minority and Other Community-Based Human Immunodeficiency Virus (HIV) Prevention Projects Program Announcement and Availability of Funds for Fiscal Year 1992

Correction

In notice document 91-29904, beginning on page 65164, in the issue of Friday, December 13, 1991, make the following correction:

On page 65168, in the second column, under **Confidentiality**, in the eighth line, "or" should read "of" the first time it appears in that line.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement No. 201]

Public Health Conference Support Cooperative Agreement Program for Human Immunodeficiency Virus (HIV) Prevention

Correction

In notice document 91-29903, beginning on page 65162, in the issue of Friday, December 13, 1991, make the following correction:

On page 65162, in the third column, under **Program Requirements**, in the second paragraph, in the second line, "preparation" should read "prevention".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Notice of Meetings

Correction

In notice document 91-30490, beginning on page 66038, in the issue of Friday, December 20, 1991, make the following corrections:

1. On page 66038, in the third column, under **MEETINGS:**, in the first line, "advisory" should preceed "meetings".

2. On page 66039, in the second column, in the heading **Ophthalmic Devices Panel of the Medical Devices Advisory Committee**, "ophthalmic" was misspelled.

3. On the same page, in the third column, in the third line, "20856," should read "20857,".

4. On the same page, in the same column, under **Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee**, in the fourth paragraph, in the fifth line, "a" should preceed "formal".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 620

[Docket No. 91N-0366]

Amendment of Additional Standards for Bacterial Products; Pertussis Vaccine

Correction

In rule document 91-29036 beginning on page 63409 in the issue of Wednesday, December 4, 1991, make the following correction:

1. On page 63409, in the 1st column, in the **SUMMARY**, in the 12th line, "1 CFR" should read "21 CFR".

2. On the same page, in the second column, under **I. Current Regulation**, in the seventh line,"§ § 620." should read "§ § 620.2".

3. On the same page, in the third column, in the first full paragraph, in the eighth line, "§ § 620.3" should read "§ § 620.2".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0382]

Community Blood Bank of Southern New Jersey, Inc.; Revocation of U.S. License No. 440

Correction

In notice document 91-29450 appearing on page 64523 in the issue of Tuesday, December 10, 1991, make the following correction:

In the first column, in the last paragraph, in the 11th and 12th lines, "immunodeficiency" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310 and 358

[Docket No. 82N-0214]

RIN 0905-AA06

Dandruff, Seborrheic Dermatitis, and Psoriasis Drug Products for Over-the Counter Human Use; Final Monograph

Correction

In rule document 91-28893 beginning on page 63554 in the issue of Wednesday, December 4, 1991, make the following correction:

On page 63563, in the second column, in the diagram under paragraph (a), "Doesn't itch" should be connected by a line with "Itches a lot" all on one line. Also, in the diagram under paragraph (b), "Not at all" should be connected by a line with "Very Much" all on one line.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 211, 314, and 514

[Docket No. 91N-0074]

RIN 0905 AD45

Use of Aseptic Processing and Terminal Sterilization in the Preparation of Sterile Pharmaceuticals for Human and Veterinary Use; Extension of Comment Period

Correction

In proposed rule document 91-29334, appearing on page 64216, in the issue of Monday, December 9, 1991, make the following correction:

On page 64216, in the second column, in the eighth line, "date" should read "data".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[AA-610-00-4111-02; Circular No. 2630]

RIN 1004-AA67

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 6, Hydrogen Sulfide Operations

Correction

In rule document 90-27426 beginning on page 48958, in the issue of Friday, November 23, 1990, make the following corrections:

1. On page 48968, in the first column, in the first line of the last paragraph, "established" was misspelled.

2. On page 48969, in the second column, in the second line, the first "to" should read "be".

3. On page 48972, in the second column, in paragragh b., in the third line "respirator" should read "respiratory".

4. On page 48975, in the first column, in paragraph f., in the last line "he" should read "be".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 90-51]

Alan H. Olefsky, M.D., Revocation of Registration

Correction

In notice document 92-463 beginning on page 928 in the issue of Thursday, January 9, 1992, make the following correction:

On page 929, in the third column, in the last paragraph, in the last line, "1991" should read "1992".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Correction

In notice document 91-24532 beginning on page 51442 in the issue of Friday, October 11, 1991, make the following correction:

On page 51443, in the third column, in the file line at the end of the document, "FR Doc. 91-25532" should read "FR Doc. 91-24532".

BILLING CODE 1505-01-D

federal register

Friday
January 17, 1992

Part II

Environmental Protection Agency

40 CFR Parts 704 and 799

Aryl Phosphate Base Stocks; Proposed Test Rule and Reporting Requirements

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 704 and 799

[OPPTS-42038A; FRL 3883-4]

RIN: 2070-Ab07

Aryl Phosphate Base Stocks; Proposed Test Rule Including Reporting and Recordkeeping Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes that manufacturers, importers and processors of chemical substances in the category of aryl phosphate base stocks be required, under section 4 of the Toxic Substances Control Act (TSCA), to conduct testing. For this Proposed Rule, aryl phosphate base stocks are phosphate esters or combination of esters resulting from the reaction of a phenol, mixtures of phenols, or a combination of alkyl-substituted phenols or, in some cases, phenols plus an alcohol, with phosphorus oxychloride ($POCl_3$) or other phosphoric acid derivatives. This definition includes triaryl and mixed aryl/alkyl esters (where one or two of the three ester groups are alkyl). Base stocks are initially manufactured aryl phosphates from which other aryl phosphate products are produced, and are often commercially available. The proposed testing includes chemical analysis and, at certain production volumes, chemical fate and health and environmental effects. This is a category rule to which every substance fitting the above definition would be subject. EPA is also proposing, under TSCA section 8(a), that manufacturers and importers of aryl phosphate base stocks be required to report to EPA the volume of substances manufactured and imported, in accordance with 40 CFR part 704, to allow EPA to determine when certain tests are to be performed. This rule is being proposed under the authority of TSCA sections 4(a)(1)(A) and (B), 8(a), and 26(c)(2). This rule requires that testing be conducted to develop data with respect to health and environmental effects for which there is an insufficiency of data and experience and which are relevant to a determination that the manufacture, distribution in commerce, processing, use, or disposal of such substances or mixture, or that any combination of such activities, does or does not present an unreasonable risk of injury to health or the environment.

DATES: Submit written comments on or before April 16, 1992. If persons request an opportunity to submit oral comments by April 1, 1992, EPA will hold a public meeting on this proposed rule in Washington, DC. For information on arranging to speak at the meeting, see Unit VII of this preamble.

ADDRESSES: Submit written comments, identified by the document control number OPPTS-42038A, in triplicate, to: TSCA Public Docket Office (TS-793), rm. NE-G004, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. A public version of the administrative record supporting this action (with confidential business information deleted) is available for inspection at the above address from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under section 4(a) of TSCA, EPA shall, by rule, require testing of a chemical substance or mixture (substance) to develop health or environmental data if the Administrator makes certain findings described in TSCA under section 4(a)(1)(A) or (B). Detailed discussion of the TSCA section 4 findings are provided in EPA's first and second proposed test rules, which were published in the **Federal Registers** of July 18, 1980 (45 FR 48524) and June 5, 1981 (46 FR 30300). The aryl phosphate category proposed for chemical analysis, chemical fate, environmental effects and health effects testing includes any chemical fitting the category definition in this proposal that is listed now or in the future in public or confidential portions of the TSCA section 8(b) Inventory of Chemical Substances.

EPA is also proposing, under TSCA section 8(a), that manufacturers and importers of these substances report annual production and/or importation volumes. This information will be used by EPA to trigger testing at levels predetermined by EPA.

The aryl phosphates are a complicated category of chemicals that present unique factors to consider in developing an appropriate test rule. EPA expects to seriously weigh all alternative approaches and may promulgate a test rule that is substantially different from today's proposal.

I. Introduction

This rule requires manufacturers of aryl phosphate base stocks to analyze them chemically and test them for chemical fate, environmental and health effects. The testing requirements are divided into two stages. Stage one is to determine the chemical identity of the base stocks being produced during the period this rule is in effect. Stage one testing requires chemical analysis of base stocks by gas chromatography/mass spectrometry (GC/MS). All manufacturers of aryl phosphate base stocks must perform stage one testing on each base stock they manufacture and report the results to EPA. Since these analytical data may be unique to each manufacturer's product they can not be jointly developed. EPA will use these data to determine equivalency of test substances for stage two testing. Manufacturers of base stocks EPA judges to be equivalent may jointly sponsor stage two testing.

Stage two testing is to determine the chemical fate, environmental effects and health effects of aryl phosphates. To minimize the economic impact of the rule, stage two testing is divided into three levels based upon the annual production volume of the base stock. Aryl phosphate base stocks produced at or above 1 million pounds per year are subject to level one testing requirements. Level one consists of 120-day post-hatch rainbow trout early life stage testing (ELS), three hen

neurotoxicity assays, and a two-generation reproductive effects study. Level two testing is triggered by a production volume of 5 million pounds or higher. It includes anaerobic biodegradation, chronic Daphnia, and subchronic toxicity testing. Aryl phosphate base stocks produced at or above 10 million pounds would be subject to level three testing. Level three includes aerobic biodegradation, microcosm effects, developmental toxicity, and the subchronic rat neurotoxicity battery.

To determine if base stocks have met the trigger levels, EPA is proposing a section 8(a) reporting requirement. EPA would notify manufacturers when the production triggers were met.

A. Definitions

"aryl phosphate" for this proposed rule is a phosphate triester of phenol or of an alkyl-substituted phenol. This definition includes triaryl and mixed aryl alkyl esters (where one or two of the three ester groups are alkyl), and can denote structurally unique substances, base stocks, or downstream products.

"Aryl phosphate base stock" means the phosphate ester or combination of esters resulting from the reaction of a phenol, mixtures of phenols, or, in some cases, phenols plus an alcohol, with phosphorus oxychloride ($POCl_3$) or other phosphoric acid derivatives (see Unit I.C.1 of this preamble for a fuller discussion). This definition includes triaryl and mixed aryl/alkyl esters (where one or two of the three ester groups are alkyl). This reaction can produce a near-pure triaryl phosphate such as triphenyl phosphate (when phenol is used), a mix of aryl phosphates (as when a mix of an alkylphenol and phenol is used) or a mix of isomeric esters such as ortho-, meta- and paracresyl phosphates. Mono and dicresyl esters would also be possible reaction products in the latter example. Base stocks are initially manufactured aryl phosphates from which other aryl phosphate products are produced and are often commercially available. The base stock components remain unreacted in these aryl phosphate products. Thus, when an aryl phosphate product is released into the environment, the base stock components in the product are released into the environment. Likewise, when humans are exposed to aryl phosphate products, they are exposed to the base stock components that are in the products.

"Chemical" means any organic or inorganic substance of a particular molecular identity.

"Complex substance" means a "chemical substance" as defined under section 3 of TSCA that is composed of related chemicals produced as "*** a result of a chemical reaction." Most aryl phosphate base stocks, as defined in this proposal, are complex substances. The names of these substances generally refer to the major component.

"Component" and "constituent" are used interchangeably, and mean one of the individually identified chemicals that, together with other components, comprise a complex substance.

"Feedstocks" are alcohols or phenols used in the manufacture of aryl phosphate base stocks. They may be single or mixed alcohols.

"Isomer" means one of two or more chemical compounds containing the same numbers of atoms of the same elements, but differing in structural arrangement. For example, tri-orthocresyl phosphate (TOCP), with its methyl substituent at the ortho position of the phenyl group, is one of three pure tricresyl phosphate isomers (the others being the tri-meta and tri-para isomers).

"Mixture" is defined in TSCA section 3(8). In the case of aryl phosphate products, a mixture includes combinations of two or more aryl phosphate base stocks, or of an aryl phosphate base stock and other chemicals, but does not include those defined in this proposed rule as "complex substances".

"Product" means the final commercially manufactured substance. It may be a single base stock, a mixture of different base stocks or a mixture of a base stock with an unrelated substance. The product Phosflex 370, for example, is a mixture of the base stocks isodecyl diphenyl phosphate and *tert*-butylphenyl diphenyl phosphate.

"Substituent" means an atom or group that replaces another atom or group in a molecule. In xylol (dimethylphenol), two hydrogens of the phenyl moiety are replaced by two methyl substituents.

B. Background

1. *ITC designation.* The Interagency Testing Committee (ITC) designated the aryl phosphate category for priority testing consideration in its second report. The reasons for this designation are discussed in the **Federal Register** of April 19, 1978 (43 FR 16684).

The ITC defined the category as "***phosphate esters of phenol or of alkyl-substituted phenols. Tri-aryl and mixed alkyl and aryl esters are included, but tri-alkyl esters are excluded." The ITC recommended testing for "carcinogenicity, mutagenicity, teratogenicity, other chronic effects, environmental effects and epidemiology."

2. *Advance Notice of Proposed Rulemaking (ANPR)*—a. *Summary.* The Agency published an ANPR on aryl phosphates on December 29, 1983 (48 FR 57452), following discussions with the Industry Ad Hoc Aryl Phosphate Ester Committee (IAPEC). The ANPR proposed testing nine aryl phosphate complex substances because they had been "identified by industry as being constituents of commercial products currently in production."

The nine substances proposed for testing in the ANPR were: (1) Tricresyl phosphate (TCP), mixed isomers (tritolyl phosphate, CAS Nos. 1330-78-5 and 68952-35-2); (2) Trixylenyl phosphate (TXP), mixed isomers (trixylyl phosphate, CAS Nos. 25155-23-1 and 68952-33-0); (3) Triphenyl phosphate (TPP) (CAS No. 115-86-6); (4) Nonylphenyl diphenyl phosphate (NDP), mixed isomers (CAS No. 38638-05-0); (5) Dimethylbenzylphenyl diphenyl phosphate, mixed isomers (CAS No. 34364-42-6); (6) Isopropylphenyl diphenyl phosphate (IPP), mixed isomers (CAS No. 28108-99-8); (7) *tert*-Butylphenyl diphenyl phosphate (BDP), mixed isomers (CAS No. 56803-37-3); (8) Isodecyl diphenyl phosphate (IDP) (CAS No. 59800-46-3); (9) 2-Ethylhexyl diphenyl phosphate (EDP) (CAS No. 1241-94-7). All were base stocks as defined in this proposed rule.

The ITC designated these chemicals because they were "*** produced in [aggregate] quantities exceeding 65 million pounds/year," NIOSH had estimated exposure of over 2 million workers, and certain members of this chemical class had known toxicities.

Testing proposed for aryl phosphates in the ANPR included: chronic effects - 90-day subchronics; mutagenicity--all substances for some aspect of mutagenicity; oncogenicity (triggered by mutagenicity or data from the 90-day subchronics); teratogenicity for TCP, and for TXP, IPP, BDP, IDP, and EDP if triggered by TCP; reproductive effects for TCP and others if triggered by TCP results; 90-day subchronic neurotoxicity for TCP and TXP; environmental effects — field monitoring studies, tissue residue analyses of biota exposed to water and sediment collected from sites known to contain aryl phosphates at measurable levels and testing on terrestrial organisms. Epidemiology studies were not considered for proposal in the ANPR.

b. *Comments.* EPA requested comments on eight issues in the ANPR, and received comments from eight sources: IAPEC, five corporations (Ciba-

Geigy, Eastman Kodak, FMC, Monsanto, Stauffer), the Environmental Defense Fund (EDF), and D. Muir of the Canadian Fisheries and Wildlife Service. Summaries of the issues and comments submitted and the Agency's response to each appear below.

1. *Issue*. EPA requested information on persons exposed to aryl phosphates from synthetic feedstocks, the type of exposure, notable changes in production of individual substances over the last 5 years, new applications planned for any of these substances and projected growth rate over the next 5 years.

Comments. The IAPEC commented that aryl phosphate production reflects a "mature product category and market growth rate is projected below GNP levels." It stated that production declined between 1979 and 1982, and that EPA should use this production decline when predicting the future trend. IAPEC estimated that fewer than 200 workers are involved in production. It was also exploring a "user survey to address possible concerns" (the Agency has not received any such survey to date). Eastman Kodak Company and FMC also commented about the reduced production. Kodak commented on the lack of justification for a 4(a)(1)(B) finding. Stauffer Chemical Company commented that fewer than 90 of its employees are exposed to aryl phosphates and that downstream worker exposure is insignificant. Stauffer also estimated exposure levels of less than 1.0 part per billion (ppb) to air-borne aryl phosphates during each working day. Stauffer estimated that dermal exposure occurs during less than 20 percent of the day, and that this is minimized by protective clothing worn by its employees. Stauffer also commented that low vapor pressure (typically <0.1 mm Hg at 100 °F) of listed aryl phosphates reduces the potential for inhalation exposure to an insignificant level under typical operating conditions.

EPA Response. The ANPR gave levels of projected production in 1980 as 100 to 140 million pounds. Manufacturers subsequently submitted production levels of individual substances to EPA as confidential business information (CBI). However, EPA's current estimate of aggregate category production, 72.1 million pounds, is available (Ref. 6).

A 1986 EPA report provided information indicating that, although the production levels of individual aryl phosphates dipped to an all-time low in 1982, they subsequently grew 10 percent or more by 1984 (Ref. 38). Information in the Partial Inventory Update Rule (Chemical Update System, CUS) (Ref. 69) shows that, in 1986, levels were down from the highs mentioned in the ITC report, but not to the extent that manufacturers were predicting. According to EPA's assessment, production of this category remains substantial. There has, however, been a reduction in production of some individual base stocks listed in this proposed rule.

IAPEC commented that only about 200 workers are exposed. However, this reference was to manufacturing workers only. Many more workers are exposed while using the end product(s). The 1980 National Occupational Hazard Survey (NOHS) update shows more than 2 million workers may be exposed to aryl phosphates (Ref. 51). It is difficult to evaluate exposure numbers in subsequent data, e.g., the National Occupational Exposure Survey (NOES) (Ref. 52), because of inconsistent reporting terminology.

For purposes of reporting to the TSCA section 8(b) Chemical Inventory, EPA allows manufacturers of a complex substance to report it as such or as its individual components. This makes it difficult to ensure acquisition of all the information relating to the complex substance. For example, NOES (Ref. 52) shows 69 workers exposed to IPP (CAS No. 28108-99-8), one of the substances listed in the ANPR. However, NOES also shows 46,946 workers exposed to "isopropylated phenol, phosphate (3:1)" (Cas No. 68937-41-7), a complex substance that may contain varying amounts of isopropylphenyl diphenyl phosphate (IPP), bis(isopropylphenyl) phenyl phosphate, and/or tris(isopropylphenyl) phosphate, depending upon the degree of propylation required for the desired end properties.

Exposure in the workplace occurs via dermal contact and inhalation. EPA estimates inhalation exposure of TPP may be as high as 150 mg/day (Ref. 35). The 1986-1987 issue of the American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values reference book (Ref. 3) listed two aryl phosphates, TPP and TOCP. ACGIH recommends a time-weighted average (TWA) threshold limit value (TLV) of 3 mg/m^3 (cubic meters) for TPP in air, and a TWA TLV of 0.1 mg/m^3 for skin contact with TOCP. Most aryl phosphate base stocks are liquids with high boiling points, but they may be volatile or form an aerosol in certain applications. For example, a NIOSH walkthrough of a General Motors Die Cast Department in Rochester, NY, in which aryl phosphate-containing hydraulic fluids were used at 100 °F, found TPP and IPP in the air at 0.57 and 0.013 milligram (mg)/cubic meter (m^3), respectively (Ref. 75).

Aircraft maintenance workers may have frequent dermal contact with hydraulic fluids containing aryl phosphate base stocks. EPA estimates such exposure to be in the 1300 to 3900 mg/day range if no protective clothing is worn (Ref. 35). EPA described this exposure pattern in its proposed test rule for tributyl phosphate (TBP) (Ref. 71). EPA believes exposure level estimates for users of aircraft hydraulic fluids containing TBP are applicable to users of those containing aryl phosphate base stocks.

2. *Issue*. Would analytical data from the manufacturers of commercial TCP showing the TOCP level of their commercial product, when combined with the results of EPA's proposed 90-day subchronic neurotoxicity study using three dose levels of TOCP, enable the Agency to reasonably determine or predict the neurotoxicity of a TCP commercial product?

Comments. EDF recommended subchronic testing of TOCP and the TCP mixture, while IAPEC and Stauffer mentioned the difficulty and expense of testing pure isomers and suggested testing products instead. Stauffer discussed the use of acute toxicity and percent ortho-cresol as an acceptable neurotoxicity approximation rather than the subchronic test. Stauffer also mentioned a 7-dose-level TOCP toxicity study published in conjunction with the Delayed Neurotoxicity Workshop it recently co-sponsored.

EPA Response. EPA is not proposing toxicity testing of pure TOCP at this time, but is proposing the produced base stock which may or may not include TOCP. EPA did consider the multi-dose study of TOCP (Ref. 56 and 57); however, published data on the test substance and methodology do not give enough information for EPA assessment.

The ANPR also stated that a 90-day subchronic test of TOCP, then under way as a positive control to FMC's 90-day study of IPP, was not an appropriate neurotoxicity test for TCP because it was only a single-dose study. The testing scheme discussed in the ANPR would have required a full 3-dose study of TOCP. The FMC TOCP study received in 1986, although a 2-dose study, was therefore still unacceptable (Ref. 24).

Studies performed on individual tricresyl phosphate isomers indicated the major neurotoxicant was TOCP (Ref. 63). Manufacturers, therefore, endeavored to reduce the TOCP content of their products. However, a recent TSCA section 8(e) submission (Ref. 40) indicates TOCP-reduced (less than 0.1 percent) products have neurotoxic

effects on the hen similar to those arising from exposure to pure TOCP.

EPA believes aryl phosphate testing should focus, at this time, on the complex substances to which people may be exposed. This proposed rule would require testing of base stocks, but not individual chemical constituents or product mixtures (see Unit I.C.3 of this preamble for fuller discussion of test substances). Thus, for isopropylated phenyl phosphates, three base stocks are proposed for testing: isopropylphenyl diphenyl-, bis(isopropylphenyl) phenyl-, and tris(isopropylphenyl) phosphate. Each of these base stocks contains smaller but significant amounts of one or both of the other isopropylated phenyl phosphates. EPA would use test data obtained on base stocks to help determine whether or not testing individual constituents would be necessary.

3. *Issue.* Does the potential for human exposure to certain consumer products containing acutely neurotoxic TXP components warrant subchronic neurotoxicity testing?

Comments. EDF commented that all organophosphates should be tested for subchronic neurotoxicity, not just those selected on the basis of acute data. It specifically suggested testing of IPP and TXP. IAPEC stated that "the neurotoxicity of TXP has been determined," and that "*** human exposure is insignificant. As commercial production continues to decline, no further testing is warranted." Stauffer commented that subchronic testing would be appropriate if exposure were significant, but in any case, an acute test should be performed to determine if subchronic testing is necessary.

EPA Response. EPA believes that acute organophosphorus induced delayed neuropathy (OPIDN) testing combined with acute neurotoxic esterase testing is a valid predictor for the OPIDN syndrome. The subchronic testing is primarily for risk assessment purposes.

EPA does not believe the neurotoxicity of TXP has been adequately determined, and is proposing testing of this complex substance in this test rule. In the case of IPP, the ANPR did not discuss possible subchronic neurotoxicity testing because, at the time, FMC was planning a 90-day subchronic assay of IPP in the hen that was expected to reasonably predict or determine IPP neurotoxicity. However, the data FMC submitted to EPA characterizing the composition of the test material was insufficient for evaluation of the study (see Unit II.C.2 of this preamble).

4. *Issue.* Is TOCP the only agent responsible for the suggested reproductive and teratogenic effects of TCP? Should it be tested separately? Do the existing data for TOCP provide sufficient evidence to implicate other aryl phosphates?

Comments. EDF said all aryl phosphates should be tested. The IAPEC took the position that because no scientific data indicate TOCP or tricresyl phosphates have reproductive or developmental effects, there is no justification for further testing. It stated that because five important commercial aryl phosphates were negative in teratogenicity studies, there was no need for further testing. Stauffer stated that the information on TOCP did not justify any type of reproductive or developmental toxicity testing. The company asserted that validity of seminiferous tubule degeneration observed in a study of male rabbits and dogs with TCP (Ref. 14) must be questioned. Without knowing what was tested, it is difficult to draw any meaningful conclusions. Finally, Stauffer stated testing TOCP had no relevance to predicting the effect of exposure to compounds in commercial production.

EPA Response. EPA is not proposing testing of any component, including TOCP, of any of the complex substances in this test rule. EPA agrees with Stauffer that testing single components of an aryl phosphate is not appropriate at this time, and instead proposes testing of actual manufactured aryl phosphate base stocks (see Unit I.C.3 of this preamble).

The data IAPEC referred to included minimal chemical analysis on the products tested and is of limited use for assessment of hazard potential.

Three recent studies have demonstrated the reproductive toxicity of TCP in several species and strains of laboratory animals (Refs. 12, 13, and 15). The National Toxicology Program (NTP) and National Institute of Environmental Health Sciences (NIEHS) studies both used TCP with less than 0.1 percent TOCP, while the TCP in the EPA study contained less than 9 percent TOCP. All three studies showed effects on male reproductive parameters, and histopathologic effects were seen in the ovaries in the EPA-sponsored study. Both the EPA-sponsored and NIEHS-sponsored studies demonstrated developmental toxicity, while the NIEHS study also showed effects in the F_1 generation at the lowest dose. A confidential TSCA section 8(e) study was submitted to EPA in 1990 demonstrating similar reproductive effects with an additional aryl phosphate.

5. *Issue.* Is it possible to reduce the testing burden by forming subcategories of similar aryl phosphates or by testing a subset that spans the structural spectrum of the aryl phosphates category?

Comments. EDF stated that information about possible toxicity of these compounds was insufficient to justify such approaches. Kodak suggested a decision to choose subcategories should be based on quantities being manufactured and potential exposure, and it would be inappropriate for EPA to decide this matter until these data were available. IAPEC stated that structural subsets could be developed if a need for further testing was demonstrated, and added there was no need to conduct separate tests for each chemical.

EPA Response. EPA has decided not to pursue these possibilities for aryl phosphates at this time. The use of subcategories or subsets for testing implies that the results of such surrogate testing would be valid for all the chemicals not tested. EPA is not convinced there is a sufficient understanding at this time of the relationship of structure and observed toxicity to subcategorize aryl phosphate base stocks for testing.

6. *Issue.* EPA sought comments on criteria used to evaluate the industry-sponsored monitoring study. These included: (i) Detection limit sensitivity; (ii) quality assurance evaluation; (iii) location and selection of sampling sites; (iv) statistical treatment of data obtained; (v) analytical method; and (vi) interpretation of results.

Comments. IAPEC commented on the six criteria as follows:

a. *Detection limit sensitivity.* IAPEC contends the monitoring study they submitted demonstrates adequate margins of safety, and while recoveries were variable for experimental field spikes, standard laboratory spiking and storage showed good recoveries.

b. *Quality assurance evaluation.* Their quality assurance (QA) effort, which involved spiking samples from all aquatic strata tested, was sound and provided valid QA for the environmental monitoring program. IAPEC contends that EPA's concern as to the insufficiency of a 29 percent recovery for "the phosphate esters spiked or sediment samples carried to the field and spiked in the field" is inappropriate. This description referred to early testing involving only six samples, whereas the overall experimental recovery rate was 70 percent.

c. *Location and selection of sampling sites.* Sample site selection was agreed upon by industry and EPA, the collections were conducted exactly as agreed upon, and calculated safety factors for each site (based on rainbow trout MATC) ranged from 2 to 10.

d. *Statistical treatment of data obtained.* Q-test was used to identify extraneous or outlying values in the water data set. All of the monitoring data were given to the Agency, including the raw data from the appendices of the monitoring report. Thus the Agency can apply whatever statistical treatment it considers appropriate.

e. *Analytical method.* All methods were validated according to state-of-the-art validation procedures. Information on methods, detection limits and quality assurance was provided to the Agency before the program began. IAPEC received no comments, questions or suggestions for changes.

f. *Interpretation of results.* This study provides evidence for no concern for exposure through the water column. IAPEC believes that aryl phosphates would be adsorbed to sediment and desorb very slowly, meaning that any potential environmental problems would be to sediment-dwelling organisms.

EPA Response. EPA is not proposing monitoring in this test rule.

Following the ANPR, EPA conducted a Good Laboratory Practices (GLP) Inspection/Study Audit Report on the aryl phosphate monitoring study (Ref. 68), which reported numerous GLP compliance deviations and reporting inconsistencies. In addition, while overall experimental recovery rate was 70 percent, the recovery for the field-spiked sediments was only 29 percent. The minimum recovery specified by the ACS guidelines for reliability (Ref. 2a) is 60 percent. A lower recovery could result in a large occurrence of false negative results. These shortcomings caused EPA to dismiss the monitoring report.

7. *Issue.* How useful is a site-specific aquatic ecotoxicity test procedure compared to standard laboratory ecological tests? Is there a need for terrestrial testing in addition to aquatic testing for a site-specific effect?

Comments. IAPEC commented that a site-specific test was not feasible, because in their monitoring study, five of the esters proposed for testing were not found in water, four were not found in sediment and three were not present in sediment or water. In addition, where aryl phosphates were found, the presence of other organic contaminants would dominate any effects of aryl phosphates. IAPEC held that conventional risk assessment using standardized protocols was preferable. It also contended terrestrial organism testing was not needed, as there was no significant exposure.

EPA Response. EPA is not proposing site-specific aquatic ecotoxicity testing in this test rule. EPA agrees with the comment on testing procedures. This proposed test rule includes standards for environmental testing and chemical fate studies. There has been some evidence of terrestrial exposure, particularly in the vicinity of aryl phosphate manufacturing plants (Ref. 18), but EPA is not proposing terrestrial testing at this time.

8. *Issue.* Should an oncogenicity testing requirement be based on results of selected mutagenicity tests or rather on a section 4(a)(1)(B) finding?

Comments. EDF concluded the use of mutagenicity data as the sole basis for choosing chemicals for oncogenicity testing was inappropriate, and stated that any chemical with substantial human exposure should be tested for oncogenicity and *in vitro* and *in vivo* mutagenicity. IAPEC and Stauffer doubted aryl phosphate exposure would support a section 4(a)(1)(B) finding, and IAPEC suggested that, because all mutagenicity information was negative, oncogenicity testing should not be considered.

EPA Response. NTP is performing a 2-year bioassay on TCP, and EPA will examine the results before deciding whether further oncogenicity testing on any other aryl phosphate is needed.

C. Substances to Which the Rule Applies

1. *Chemistry of aryl phosphates.* Aryl phosphate base stocks, as defined in Unit I.A of this preamble, are phosphate esters of phenol or of alkyl-substituted phenols. They are produced by reaction of a phenol, alkylated phenol, and/or an aliphatic alcohol with phosphorus oxychloride ($POCl_3$) at elevated temperatures in the presence of a catalyst. Mixed aryl phosphate esters are produced by reacting $POCl_3$ with controlled quantities of appropriate phenols. Variations in feedstock, starting proportions or reaction conditions will result in batch-to-batch differences that could account for disparities in the physical properties of these mixed esters (Refs. 42 and 50).

A second alkyl substituent in the starting phenol greatly increases the number of possible components in the final product; there are more than 50 for trixylyl (tris-dimethylphenyl) phosphate, for example. When the feedstock is a mixture of non-isomeric phenols, the possibilities may multiply even further.

The names applied to aryl phosphate base stocks can be confusing. For example, as described in Unit I.A of this preamble, a phenyl group can be alkylated in the ortho, meta, or para position, so that "tricresyl phosphate" [tritolyl phosphate, tri(methylphenyl) phosphate] could be either tri-meta-cresyl phosphate (TMCP) (one of the isomers), the corresponding triortho- (TOCP) or tri-para- (TPCP) ester, or a mixed ester where two or three of the cresyl isomers are present in the same molecule. In practice, because commercial TCP may be manufactured from a blend of ortho, meta, and para-cresol, it may contain up to 10 possible tricresyl phosphates, in proportions that depend not only on the proportions of starting cresol isomers, but also on their relative reactivity under the manufacturing conditions employed. So-called "tricresyl phosphate" is a complex substance containing TOCP, TMCP, and TPCP (though certain commercial mixtures may be primarily the para isomer with 1 percent or less of the ortho isomer), plus some dicresyl phenyl phosphate, cresyl diphenyl phosphate, and triphenylphosphate that reflect the presence of some unsubstituted phenol in the feedstock. If the complex substance is primarily TOCP, but contains some TMCP and TPCP, it is generally called TOCP.

2. *Category.* Under TSCA section 26, EPA has authority to take any action authorized or required to be taken with respect to a chemical substance or mixture with respect to a category of substances or mixtures. TSCA section 26(c)(2) defines "category of chemical substances" to mean

> a group of chemical substances the members of which are similar in molecular structure, in physical, chemical, or biological properties, in use, or in mode of entrance into the human body or into the environment, or the members of which are in some other way suitable for classification as such for purposes of this Act, except that such term does not mean a group of chemical substances which are grouped together solely on the basis of their being new chemical substances. Thus, the term "category of chemical substances" is quite broad.

This proposed rule would require testing of the aryl phosphate base stock category under sections 4(a)(1)(A) and (B) of TSCA for both existing members of the category and future entries to it. The category is based on chemical structure. EPA believes that the phosphotriester function common to all aryl phosphates justifies using toxicity data identifying a hazard for one aryl phosphate substance to suggest a hazard potential for other aryl phosphate

category members. In evaluating the testing needs for the aryl phosphate base stock category, EPA considered all available data, including: production volume; use; release; exposure; test data; information included in the ITC's report; TSCA section 8(a), (d) and (e) data; comments received following the publication of the ANPR; recent publications in the literature; any EPA-generated monitoring; and additional information.

EPA, by taking the category approach, will assure that any newly-manufactured aryl phosphate base stock meeting the category definition, such as chemicals on the TSCA Inventory but not being produced, or any aryl phosphate base stocks that are "new chemical substances" under TSCA section 5, would also be subject to the rule. This approach should preclude the necessity of a new test rule if changes in production processes yield differences in aryl phosphate components.

For instance, in a 1984 report by Muir (Ref. 50), cresyl diphenyl phosphate (CAS No. 26444-49-5) was given as the major component in two commercial phosphate esters, and the 1980-81 NOES (Ref. 52) reported 13,370 employees exposed to this substance. However, although this substance is on the TSCA Inventory, no production was reported in the 1986 Chemical Update System (CUS). Without the category finding, cresyl diphenyl phosphate production could easily be resumed without the substance being subject to testing.

3. *Test substances.* Promulgating a test rule for aryl phosphates raises several important policy issues. One of the most difficult is the question of what to test. Data may be difficult or impossible to evaluate if the test substances are not appropriately chosen and their composition not adequately specified.

EPA considered several different test substance options: individual isomers, aryl phosphate components of base stocks listed on the inventory, aryl phosphate base stocks, and commercial products.

a. *Individual isomers.* Because most aryl phosphate base stocks marketed are complex substances whose components may have varying toxicities, EPA considered requiring testing of each isomeric component. The Agency abandoned this approach because of the diversity of some complex substances such as trixylenyl phosphate, which may have 50 or more isomers. The cost and complexity of testing hundreds of isomers would be prohibitive, and the time required for such testing would significantly delay EPA's evaluation of the data.

b. *Base stock components.* The 1977 TSCA Non-Confidential Inventory includes 58 individual base stock components meeting the chemical definition (Ref. 55). Several of the 58 aryl phosphates on the Inventory are components of the base stocks listed in this proposed test rule but are not reported in production. Although the number of inventory components is substantially less than the number of possible isomers, the same objections (high cost and testing program delays) apply. In addition, the benefits of such testing may be even fewer than for testing of individual isomers if the toxicity of aryl phosphates is an isomer-specific phenomenon.

c. *Commercial products.* EPA also rejected testing of commercial aryl phosphate products. These may be aryl phosphate base stocks or mixtures of aryl phosphate base stocks and other substances. Since EPA is interested in aryl phosphate toxicity it does not seem wise to test substances that may contain non-aryl phosphate components or that are mixtures of base stocks. In addition, the number, and often the complexity, of commercial products exceeds that of base stocks, making this a more expensive option.

d. *Base stocks.* EPA is proposing aryl phosphate base stocks as the test substances. EPA believes that this approach strikes a balance between the need to characterize aryl phosphate toxicity, the unacceptably high cost of the other options considered, and the potential difficulties of any case-by-case test substance selection process. Base stocks, as defined in this proposed rule, include all the individual aryl phosphates to which people or the environment may be exposed as a result of activities involving aryl phosphate base stocks or downstream aryl phosphate-containing consumer or industrial products. Finally, if test results on a base stock suggest a need for more detailed characterization, EPA can require by separate rulemaking testing of individual or combined aryl phosphates, guided by the analytical data and other results on all the base stocks initially tested. Thus, this proposed rule can be considered a type of screening rule.

The aryl phosphate base stocks now in production include seven of the nine aryl phosphates listed in the ANPR (see Unit I.B.2.a of this preamble). The other two, NDP and DBDP, are not being produced (Ref. 55) and thus would not be subject to the testing requirements unless production resumed. The more recent additions to the list of in-production category members are di(n-butyl) phenyl phosphate (DBP), and four aryl phosphate base stocks closely related to IDP and BDP.

Thus, the Agency has identified 12 members of the aryl phosphate base stock category that it believes to be in production (Ref. 55) for which it is proposing testing at this time. They are as follows (see Unit III.B of this preamble for more information):

i. *tert*-Butylphenyl diphenyl phosphate.
ii. bis-(*tert*-Butylphenyl) phenyl phosphate.
iii. tris-(*tert*-Butylphenyl) phosphate.
iv. Di-*n*-butyl phenyl phosphate.
v. 2-Ethylhexyl diphenyl phosphate.
vi. Isodecyl diphenyl phosphate.
vii. Isopropylphenyl diphenyl phosphate.
viii. bis-(Isopropylphenyl) phenyl phosphate.
ix. tris-(Isopropylphenyl) phosphate.
x. Tricresyl phosphate.
xi. Triphenyl phosphate.
xii. Trixylyl phosphate.

4. *TSCA section 8(a) reporting and triggering of testing.* EPA recognizes costs of the complete testing for some category members may be burdensome (see Unit V of this preamble) and has prioritized the proposed test requirements (see Unit III of this preamble). EPA believes most or all current manufacturers of base stocks can afford the tests in Level 1, some can support the additional tests in Level 2, and a few can afford Level 3 testing. For this reason, EPA proposes a trigger mechanism that ties testing requirements to specified production levels.

To facilitate this approach, EPA is proposing, under section 8(a) of TSCA, a Preliminary Assessment Information Rule (PAIR) to require annual reporting by manufacturers and importers of production and importation volumes for all substances meeting the definition of this chemical category which are now, or become, listed on the public or confidential portion of the TSCA Chemical Substances Inventory.

5. *Synergism and antagonism.* Synergism and antagonism among components may also affect the toxicity of the final product. To some extent this will be reflected in the testing of base stocks; however, testing expressly for these phenomena would require tests of individual components and combinations of components at different levels. The prohibitive cost of testing components individually (Unit I.C.3.a of this preamble) would also apply to any study of synergism and antagonism.

II. Findings

EPA is basing its proposed testing for members of the aryl phosphate category on the authority of sections 4(a)(1)(A)

and 4(a)(1)(B) of TSCA through the use of TSCA section 26(c).

A. Findings Under TSCA Section 4(a)(1)(B)(i)

Pursuant to section 4(a)(1)(B) of TSCA, EPA finds that aryl phosphate base stocks are produced in substantial quantities and that the use of aryl phosphate base stocks may result in substantial human exposure and/or substantial release to the environment.

Under TSCA section 26(c), EPA proposes to make a section 4(a)(1)(B) finding for the entire aryl phosphate base stock category, including (1) all such substances on the TSCA Inventory, both public and confidential, and (2) any substance not yet produced that would fit the definition of aryl phosphate base stocks (see Unit I.C.2 of this preamble).

EPA believes that this is an appropriate category of substances under section 26(c) because they are similar in molecular structure and in use and because their common phosphate triester functionality confers the potential for similar biological activity. This category is also "suitable for classification" because the ITC designated aryl phosphates as a category for priority consideration for testing.

EPA is developing a general policy under TSCA section 4(a)(1)(B) (the "B" policy) in which it will articulate its criteria for making findings under this provision. The "B" policy is being developed in response to the April 12, 1990, decision in *CMA v. EPA*, 899 F.2d 344 (5th Cir. 1990), in which the Court remanded the TSCA section 4 rule for cumene to EPA to "articulate the standards or criteria on the basis of which it found the quantities of cumene entering the environment from the facilities in question to be 'substantial' and human exposure potentially resulting to be 'substantial.'" Although not required to do so by the cumene decision, EPA also will be articulating the criteria for 'substantial production' and 'significant human exposure.' EPA has recently published the criteria for public comment (56 FR 32294).

EPA has decided to move forward in proposing this aryl phosphate test rule under both TSCA sections 4(a)(1)(B) and (A), without waiting for notice and comment on the generic "B" policy. The Court in CMA made it clear that EPA need not adopt a definition applicable to all cases, but may choose to proceed on a case-by-case basis, if it rationally explains its exercise of discretion. Thus, because this proposal articulates the criteria used in making findings under TSCA section 4(a)(1)(B) for aryl phosphate base stocks, it is not necessary to wait for publication of a generic policy before proposing this test rule.

TSCA does not provide EPA with much guidance on what criteria and standards to use in making "B" findings. The statute does not define the terms "significant" or "substantial." The policy section of TSCA, however, makes it clear that Congress considered testing of chemical substances to be an important aspect of the Act. This section provides:

> [that] adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture and those who process such chemical substances and mixtures.

The legislative history of TSCA also provides some guidance on what criteria are to be used in making "B" findings. The legislative history states that "[t]he conditions specified in TSCA section 4(a)(1)(B) reflect the Committee's recognition that there are certain situations in which testing is desirable even though there is an absence of information indicating that the substance or mixture may be harmful." H.R. Rept. No. 1341, 94th Cong. 2d Sess. (1976), at 18 reprinted in, A Legislative History of the Toxic Substances Control Act (Comm. Print 1976) ("Leg. Hist.") at 425, and "there are certain situations in which testing should be conducted even though there is an absence of information indicating that the substance or mixture per se may be hazardous." H.R. Conf. Rept. No. 1679, 94th Cong. 2d Sess. (1976), reprinted in, Leg. Hist. at 674. The legislative history also provides that EPA "is not limited to consideration of sheer volume of production or exposure at a specific point in time. The duration of exposure, the level of intensity of exposure at various periods of time, the number of people exposed, or the extent of environmental exposure are among the considerations which may be relevant in particular circumstances." [Leg. Hist. at 425.] EPA believes that it is reasonable to interpret the duration of exposure and level of intensity of exposure as relating to "significant" human exposure, the number of people exposed as relating to "substantial" human exposure, and the extent of environmental exposure as relating to "substantial" environmental release.

EPA recognizes that it must not define "significant" and "substantial" in ways that would require the Administrator to make findings for every substance in commerce, or the statute would have simply required testing for all substances. Nevertheless, TSCA section 4(a)(1)(B) is designed to support risk management activities under the other provisions of TSCA. Thus, it is reasonable to interpret TSCA section 4(a)(1)(B) as authorizing EPA to require testing for every substance whose environmental or human exposure is of such magnitude or type that it may need to be regulated if test data reveal adverse effects.

EPA believes that, for this category of chemical substances in which certain members are structurally similar, may be used interchangeably, and in which some individual members of the category are produced in substantial quantities, it may be reasonable to require testing of a category of substances that collectively is or will be produced in substantial quantities, greater than 1 million pounds per year, and that either collectively may be released to the environment in substantial quantities, greater than 1 million pounds per year, or to which collectively there may be significant or substantial human exposure, over 1,000 workers, 10,000 consumers or 100,000 people. Furthermore, if EPA made findings only on individual substances that met the thresholds for substantial production, substantial release, and significant or substantial human exposure, persons subject to the rule could avoid providing the required data by switching to substances not in current production. Thus, EPA would have to propose another test rule every time a manufacturer switched to an aryl phosphate base stock not otherwise in production. Theoretically, the persons subject to the rule could continue switching the substances they make and process, and EPA would never catch up. To prevent this, EPA believes it is appropriate, in this special case, to make the findings for the category as a whole, using the same criteria for making such findings that would be used for individual chemical substances and mixtures. However, for other chemical categories EPA may decide not to make the substantial exposure or quantities finding for the category as a whole, instead considering exposure on a subcategory or individual chemical basis.

EPA specifically solicits comment on whether EPA should use the same section 4(a)(1)(B) finding numerical thresholds for a category of chemicals as are used for individual chemicals, or instead require higher thresholds. When this rule is promulgated, EPA will address all comments on the proposed criteria that are relevant to this rule as well as comments on this proposed rule.

1. EPA finds that the category of aryl phosphate base stocks is produced in substantial quantities. Manufacturers recently submitted production levels of individual category members to EPA as confidential business information. However, a nonconfidential EPA-estimated aggregate category production total of 72.1 million pounds is available (Ref. 6).

EPA is reserving discussion on what it considers to be the minimum production volume that can be considered "substantial" until it promulgates its "B" policy. Nevertheless, EPA finds that 72.1 million pounds per year clearly is above the minimum level that can be considered "substantial." EPA believes it is reasonable to interpret substantial production to mean large production, and that 72.1 million pounds is a large amount of production. Although EPA does not know the exact percentage of chemical substances in commerce with production volumes above 72.1 million pounds per year, the TSCA section 8(b) inventory of the substances in commerce shows that only 4.5 percent of the listed substances have production volumes over 10 million pounds, together accounting for over 95 percent of the total production of all substances produced in the United States (see 56 FR 32294, 15 July 1991). Moreover, the inventory shows that only about 1.5 percent of the listed chemical substances in commerce have production volumes over 100 million pounds per year. Thus, EPA believes that substances with production volumes of at least 72.1 million pounds per year comprise somewhere between 1.5 percent and 4.5 percent of the substances in commerce, and together account for over 95 percent of the total production of all substances produced in the United States. EPA believes that it is reasonable to conclude that this small group of substances (i.e., the top 1.5 to 4.5 percent according to production volume), which account for the vast majority of all production, clearly are substances with substantial production.

2. EPA finds that the use of aryl phosphate base stocks in various products results in substantial human exposure to these base stocks. Aryl phosphate base stock components generally comprise 0.5 to 20 parts per hundred parts of resin, or up to 45 percent by weight of plastic formulations (Ref. 73), and 0.5 to 100 percent of functional fluids (Ref. 35) (0.5 to 4 percent as antiwear additives and 100 percent as hydraulic fluids).

Exposure potential in the workplace is substantial. The 1980 National Occupational Hazard Survey (NOHS) update indicates more than 2 million workers are exposed to aryl phosphate base stock components (Ref. 51). Although it is difficult to evaluate exposure numbers in subsequent data, e.g., NOES (Ref. 52), because of inconsistent reporting terminology (see Unit I.D.2 of this preamble), EPA does not know of any reason why the number of workers would have changed significantly between 1980 and 1991.

Exposure in the workplace occurs via inhalation and dermal contact. While most of the aryl phosphate base stocks are high boiling-point liquids, they may be volatile or form aerosols in certain applications. For example, a NIOSH walk-through of a General Motors Die Cast Department in Rochester, NY, in which aryl phosphate-containing hydraulic fluids were used at 100 °F, found TPP and IPP at concentrations of 0.57 and 0.013 mg/m^3, respectively (Ref. 75).

EPA estimates workers having dermal exposure to aryl phosphate base stocks may have 1300 to 3900 mg/day exposure if no protective clothing is worn (Ref. 35). Aircraft maintenance workers frequently work with hydraulic fluids and may be at particular risk. EPA described this exposure pattern in its proposed test rule for TBP (Ref. 71). The Tributyl Phosphate Task Force, an industry group, sponsored a survey of aircraft worker exposure to tributyl phosphate, and provided estimates that 2,200 employees in this industry are routinely exposed to aircraft hydraulic fluid and 43,000 mechanics may, at various times, be exposed (Ref. 34). EPA believes exposure estimates provided for users of aircraft hydraulic fluids containing TBP are applicable to users of those containing aryl phosphate base stocks, as the applications of some of the aryl phosphate base stocks are similar.

Some of these functional fluids are manufactured to meet military specifications. Responding to a recent query by EPA, the U.S. Army responded that there was potential TOCP exposure at 19 bases involving 196 military and 146 civilian workers (Ref. 74).

In addition to worker exposure, the general population uses plastic in many forms and is potentially exposed to aryl phosphates from base stocks used as plasticizers. The heat in a closed automobile can volatilize plasticizers used in upholstery or other plastic components, and has been shown to produce a visible film of TCP on the inside of automobile windshields (Ref. 17). This means millions of Americans may be inhaling TCP in automobiles on a regular basis, particularly on hot days. Room temperature water can leach plasticizers out of plastics (Refs. 2 and 7). Thus, people who drink out of plastic glasses, wash plastic items or handle any such plastic items containing aryl phosphate plasticizers, may be exposed to aryl phosphates through that water.

Disposal of plastics generates additional general population exposure potential, as aryl phosphates may leach out of plastics in landfills and enter groundwater (Ref. 7). Thus, human populations near landfills may be exposed to aryl phosphates in their drinking water. Incineration may cause aryl phosphates to volatilize (Ref. 7), potentially causing populations of people living near incinerators to be exposed to aryl phosphates in the air. One EPA report has postulated that as much as 80 percent of plasticizers may volatilize or leach out (Ref. 73). General population exposure is further confirmed by the detection of aryl phosphates in human adipose tissue (Ref. 64).

EPA believes that it is reasonable to interpret the term "substantial human exposure" to mean widespread human exposure, or in other words, exposure of a large number of people. EPA believes that exposure of 2 million workers is substantial exposure because, where millions of workers are exposed to a chemical substance, it is reasonable that EPA should have data on the potential hazards associated with the substance so that EPA can implement appropriate risk management efforts where necessary to protect workers against unreasonable risk. As a general matter, EPA has found that workers tend to be subject to routine or episodic exposure over a long period of time. The Court in CMA recognized that there could be some overlap between substantial and significant human exposure: "it is not necessarily clear that 'significant' and 'substantial' as used in clause (II) must be understood in a way that prevents their respective meanings or requires that any factor relevant to one may be necessarily irrelevant to the other." CMA at 356, note 17. Thus, exposure, to be considered substantial, does not have to be as widespread for workers as for consumers or the general population. EPA believes that exposure of 2 million workers is widespread enough to necessitate testing for the potential hazards of the substances to evaluate whether worker protection efforts are necessary.

Moreover, EPA believes that millions of consumers may be exposed to aryl phosphate base stocks due to their presence in plastics and that millions of members of the general population may be exposed to aryl phosphate base

stocks that leach out of plastics in landfills and are released into the air during incineration of plastics. EPA believes that potential exposure of millions of consumers and members of the general public to aryl phosphates is substantial exposure because where millions of people are exposed to chemical substances, it is reasonable that EPA should have data on the potential hazards associated with the substance so that EPA can implement appropriate risk management efforts where necessary to protect consumers and members of the general public against unreasonable risk.

3. EPA finds that aryl phosphate base stocks used in various products are released to the environment in substantial quantities. An EPA report estimated that 1 to 3 million pounds of aryl phosphate base stocks may enter the environment annually (Ref. 42).

TPP has been detected in surface waters from the San Francisco Bay (Ref. 39) to the Delaware River (Ref. 60). Los Angeles rainwater was found to contain TPP (Ref. 33). A 1986 survey found TPP in at least three major waterways, in both sediment and fish (Ref. 72). Substantial release is indicated by the presence of aryl phosphates (TPP, IPP, TXP, TCP) in water (Refs. 31, 39, 41, and 60), sediment (Refs. 39, 18, 31, 41, and 72) and fish (Refs. 37, 39, and 72).

IPP was detected in soil and vegetation samples near production sites (Ref. 18).

The presence of TPP and EDP in foodstuffs (Refs. 19, 26, 27, 28, and 29) and of TPP in human adipose tissue (Ref. 64) suggests the possibility of ingestion of these chemicals.

TPP has been found in the water-extractable fraction from items such as plastic car upholstery (Ref. 2). Disposal of such plastics through landfills or incineration adds to environmental exposure, as leaching of plasticizers or volatilization may occur (see Unit II.A.2 of this preamble).

4. Evidence for substantial production, substantial human exposure and substantial environmental release. EPA believes that the phrase "released into the environment in substantial amounts" is intended to capture substances with extensive release to the environment, which in itself would be sufficient reason to require testing in the absence of any information that the substance may be hazardous to human health or the environment. In other words, as with substantial production, release of substantial quantities means large release. Aryl phosphate base stocks are released into the environment in quantities of 1 million to 3 million pounds per year. EPA finds that 1 million to 3 million pounds of release to the environment is a sufficiently large release that EPA should require testing to determine whether measures should be taken to reduce risk to the environment. Moreover, the Toxics Release Inventory (TRI), under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. section 11023, shows that 37 percent of the listed substances have releases over 1 million pounds, accounting for over 99 percent of the total reported releases on the TRI by volume released. Because the TRI does not include all substances, less than 37 percent of all substances would have releases above 1 million pounds. EPA believes that it is reasonable to conclude that this small group of substances (i.e., less than 37 percent), which accounts for over 99 percent of all releases, clearly are substances with substantial releases.

B. Findings Under TSCA Section 4(a)(1)(A)(i)

Pursuant to section 4(a)(1)(A)(i) of TSCA, EPA finds that the manufacturing, processing, use, distribution in commerce, and disposal of aryl phosphate base stocks used in various products may present an unreasonable risk of injury to human health and the environment.

1. *Evidence of potential for adverse human health effects.* Subchronic toxicity testing of TPP, the most acutely toxic aryl phosphate, demonstrates effects in liver, kidney and adrenals (Ref. 30). TCP demonstrates the same toxicities as TPP (liver, Refs. 30 and 54; kidney and adrenals, Refs. 54 and 59), and also affects the immune system (Ref. 10). Long-term treatment with DBP damages liver, kidneys and blood (Refs. 46 and 49). Santicizer 148 (a mixture of 87 to 91 percent isodecyl diphenyl phosphate, 5 to 7 percent di(isodecyl) phenyl phosphate and 4 to 6 percent TPP) affects both the liver and the hematologic system (Ref. 48).

Since the 1930s, various individual and combined aryl phosphates have demonstrated neurotoxicity, including phenol-type syndrome (muscular tremors, hyperexcitability, spastic rigidity, muscular weakness and generalized flaccid paralysis, perhaps due to degradation to the phenol or cresol) (Refs. 62), as well as OPIDN, the well-known human syndrome caused by certain individual aryl phosphates (see Ref. 32). Several cases in humans, primarily due to the tricresyl phosphates, have been reported (see Ref. 1). Studies performed on individual tricresyl phosphate isomers indicated the major neurotoxicant was TOCP (Refs. 61 and 63). Manufacturers, therefore, reduced the TOCP content of their products. However, a recently submitted TSCA section 8(e) hen study (Ref. 40) indicates that complex TCP-containing aryl phosphates containing less than 0.1 percent TOCP have neurotoxic effects similar to those arising from exposure to pure TOCP.

Three recent studies have demonstrated the reproductive toxicity of TCP in several species and strains of laboratory animals (Refs. 12, 13 and 15). The NTP and NIEHS studies both used TCP with less than 0.1 percent TOCP, while EPA's study used TCP with less than 9 percent TOCP. All three studies showed effects on male reproductive parameters, and histopathologic effects were seen in the ovaries in the EPA-sponsored study. Both the EPA-sponsored and NIEHS-sponsored studies demonstrated developmental toxicity, while the NIEHS study also showed reproductive effects in the F_1 generation at the lowest dose.

A two-generation reproductive and fertility study has also been performed on dibutyl phenyl phosphate (Ref. 29a). In the F_0 generation survivability of pups was decreased in both the mid-level and high dose, while in the F_1 generation, only the high dose was so affected.

A confidential TSCA section 8(e) study was submitted to EPA in 1990 demonstrating similar reproductive effects with an additional aryl phosphate.

TOCP has been tested in a standard rat developmental toxicity study (Ref. 67), with significant increases in mean pup body weight at doses as low as 87.5 mg/kg. Further, the two-generation reproductive study on TCP in mice showed significant developmental effects in the pups, with decreases in litter size and live-born pups as well as decreased body weight (Ref. 15). A one-generation study in Long-Evans rats with TCP (Ref. 12) also indicated developmental toxicity effects: decreases in percent of mothers delivering live-born young, and decreases in litter size and pup viability.

2. *Evidence of potential for environmental toxicity.* Mayer et al. (1981) reported rainbow trout exposed to Pydraul 50E (aryl phosphate-containing hydraulic fluid), Pydraul 115E (aryl phosphate-containing hydraulic fluid), or either of their major aryl phosphate components, NDP and cumylphenyl diphenyl phosphate (CDP), developed cataracts after 90 days' exposure. These complex substances also affected bone development and bone collagen content. Reduced growth and survival rates were seen with the two mixtures and also with CDP. With Pydraul 115E, exposure

to 16 μg/L (microgram/liter) and above also caused impaired swimming and feeding activities. This study also examined lake trout fed Pydraul 50E for 120 days and observed cataract effects and growth reduction at 5 μg/L, and effects on vertebral collagen at 2.6 μg/L. Growth and survival were affected in fathead minnows exposed to Pydraul 50E for 30 days at 752 μg/L. Precursors to eye cataracts were seen histologically at 317 μg/L. The most sensitive endpoint in this series of tests was the reduced vertebral collagen in rainbow trout following 90 days of exposure to CDP at 0.22 μg/L (Ref. 39).

A 4-month feeding study on Pliabrac 521, an aryl phosphate containing TPP, TCP, TXP and cresyl diphenyl phosphate, indicated reproductive toxicity in the minnow (Phoxinus phoxinus) (Ref. 5).

A 4-month exposure to IMOL S-140 (composed of TCP, TXP, and assorted other phosphates) in rainbow trout resulted in chronic toxicity, indicated by altered feeding behavior, increased serum enzyme levels of serum glutamic transaminase and lactic dehydrogenase (LDH), presence of muscle LDH in serum and discoloration of internal fatty tissue (Ref. 36).

Ninety-day studies in the fathead minnow for several aryl phosphate base stocks showed differing responses (Ref. 16). The authors indicated that for Santicizer 148 (IDP, TPP), the most sensitive endpoint was growth, while for Fyrquel GT (BDP, TPP), Phosflex 31P (TPP, IPP), and Pydraul 50E (NDP, CDP), the most sensitive endpoint was survival. Gross observation of the minnows did not demonstrate the cataract problems reported in 1981 by Mayer et al. (Ref. 39).

3. *Evidence of potential for unreasonable risk.* In determining that a substance may present an unreasonable risk, EPA must consider both the potential hazard of the substance and the potential for human and environmental exposure to the substance. EPA estimates that 2 million workers and additional millions of consumers and members of the general population may be exposed to aryl phosphate base stocks. In fact, EPA finds that the amount of human exposure to aryl phosphate base stocks is substantial. It is not necessary for human exposure to be "substantial" to support a finding of potential unreasonable risk. Nevertheless, where human substantial exposure does exist, that exposure necessarily is widespread enough to support the exposure component of a potential risk finding. As discussed above, aryl phosphates have been shown to cause human neurotoxicity, and the potential for others such as liver, kidney, adrenal and blood effects, reproductive toxicity and developmental toxicity. The widespread human exposure coupled with the potential human hazards associated with aryl phosphates indicates that aryl phosphate base stocks may present a risk to human health.

EPA estimates aryl phosphate base stocks are released into the environment in quantities of 1 million to 3 million pounds per year. In fact, EPA finds that 1 million to 3 million pounds of aryl phosphate base stocks released into the environment per year constitutes substantial release into the environment. It is not necessary for release into the environment to be "substantial" release to support a finding of potential unreasonable risk to the environment. Nevertheless, where substantial release into the environment exists, that release necessarily is large enough to support the exposure component of the potential risk finding. As discussed above, aryl phosphate base stocks have been shown to cause cataracts, reduced growth and survival rates, impaired swimming and feeding activity, reproductive toxicity, chronic toxicity, and reduced vertebral collagen in fish. The large release into the environment coupled with the potential environmental hazards associated with aryl phosphate base stocks indicates that aryl phosphate base stocks may present a risk to the environment.

From the information presented above on the hazard potential of aryl phosphate base stocks and the amount of potential human and environmental exposure to aryl phosphate base stocks that are used in various products, EPA finds that the manufacturing, processing, use, distribution in commerce, and disposal of aryl phosphate base stocks may present an unreasonable risk of injury to human health and the environment.

C. Findings Under TSCA Section 4(a)(1)(A)(ii) and (B)(ii)

Pursuant to section 4(a)(1)(A)(ii) and (B)(ii) of TSCA, EPA finds that, for all substances comprising the aryl phosphate base stock category, data are insufficient to determine or predict the effects of manufacturing, processing, distribution in commerce, or use of these substances on health and on the environment.

In evaluating the testing needs for the aryl phosphate base stock category, EPA considered all available data including information in the ITC's report, TSCA section 8(d) and 8(e) data, comments received following the publication of the ANPR, and recent scientific publications. An EPA review (Ref. 66) of information available through early 1987 is available. Later sources are included in the docket for this rulemaking.

Without more complete information regarding what was actually tested, and in some cases, how the studies were performed, none of the studies discussed in Unit II.B of this preamble are acceptable to EPA for the purpose of risk assessment.

1. *Subchronic effects.* Monsanto submitted a 3-month feeding study on DBP with Sprague-Dawley rats in March 1987 (Ref. 49). The study was not conducted according to EPA guidelines, as EPA's GLPs require a detailed analysis of all components in the tested compound. However, the report only identified the components (DBP, butyl diphenyl phosphate and TBP) and gave no percentage composition. Analyses of test material in food reported only the levels of DBP.

Similarly, two other subchronic studies, one on TCP (Ref. 59) and the other on Santicizer 148 (Ref. 48), appear to meet the Agency's guidelines (or their equivalent), but inadequate test substance identification.

A subchronic study on *tert*-butylphenyl diphenyl phosphate (Ref. 43) may have an appropriate test protocol, but the high dose (1000 ppm in the diet) induced no treatment-related effects. EPA guidelines require that the high dose for a subchronic study induce some significant toxicity. In lieu of this EPA needs evidence that an appropriate high dose level was selected. In some cases EPA has accepted studies that use a level that exceeds potential human exposure by at least a factor of a hundred. These conditions have not been met for this study.

2. *Neurotoxicity.* Standard acute hen studies demonstrated OPIDN for TCP, TXP and IPP. Subsequently, FMC conducted a 90-day subchronic assay in the hen with Kronitex 50 (IPP) that may have been sufficient to reasonably predict or determine IPP neurotoxicity, but information on the material tested was insufficient for EPA to evaluate the study. The study in question describes the material tested simply as C8096-126-1 Phosphate Ester from FMC. However, FMC's cover letter stated this was Kronitex 50 (Ref. 24). The Material Safety Data Sheet (MSDS) (Ref. 25) gives the composition of Kronitex 50 as phenol, isopropylated, phosphate (3-1) (Cas No. 68937-41-7). EPA has three technical listings of the chemical analysis of Kronitex 50 (none associated with this study): two from the manufacturer (Refs. 20 and 21) and one from the published literature (Ref. 53).

The three listings are significantly different. For instance, the level of triphenyl phosphate in the three papers ranges from 24.9 to 33 percent. This difference may not affect the final toxicity result, but EPA is requesting comment on this issue (Unit IV.A.1 of this preamble).

A multi-dose study of TOCP has been performed in England, but published data on the methodology do not give enough information for EPA's needs (Refs. 56 and 57).

Acute neurotoxicity results on the *tert*-butylphenyl phosphates are mixed. Of the 12 studies on various forms of *tert*-butylphenyl phosphate, 7 are negative but 5 show diverse levels of OPIDN (Refs. 22, 23, 44, and 65 [two reported in Ref. 22]).

EPA does not propose repeating acute hen neurotoxicity studies for those aryl phosphate base stocks for which acceptable studies have already been completed and reviewed for the ANPR. However, DBP, one of the chemicals subject to this proposed rule, was acutely tested by Industrial Bio-Test. Tests carried out by the latter laboratory are questionable, but if the results were independently and appropriately audited, and the test substance adequately defined, EPA will decide if it is acceptable or whether further testing is required.

3. *Reproductive effects.* A two-generation reproductive study on TCP has been performed by NIEHS (Ref. 15). This was a continuous breeding study in mice using TCP with less than 0.1 percent TOCP. Reproductive effects were seen in both sexes, with sperm motility decreases seen in the F_1 generation at the lowest dose tested. A recent section 8(e) study (claimed as CBI) on another aryl phosphate base stock showed similar effects.

A two-generation reproductive and fertility study has also been performed on dibutyl phenyl phosphate (Ref. 29a). This study also was done using EPA guidelines, except for lack of information on the test substance. In the F_0 generation survivability of pups was decreased in both the mid-level dose and the high dose, while in the F_1 generation, only the high dose was so affected.

These studies may be acceptable to EPA for risk assessment if submitters can demonstrate that the test substances used were equivalent to what is now manufactured.

The studies on developmental toxicity submitted to EPA also lack adequate identification of test substance. Monsanto reported on studies for two plasticizers, Santicizer 141 and Santicizer 148 (Ref. 58). The study protocols are adequate, but the 3000 mg/kg/day high dose for the Santicizer 148 did not cause significant maternal toxicity. EPA guidelines require that significant maternal toxicity be elicited at the highest dose, to determine whether developmental toxicity will occur at levels below those that are toxic to the mother. That is, if no developmental effects are seen, then regulating the dose affecting the mother will protect the child. As with the subchronic toxicity guidelines, if the dose is high enough to guarantee a hundred-fold level above potential human exposure, then EPA may consider the study adequate.

Monsanto performed two additional developmental toxicity studies, on Santicizer 154 (Ref. 47) and BDP (Ref. 45), but neither produced maternal toxicity.

4. *Environmental effects.* EPA believes acute fish toxicity information is adequate for the substances tested. Because information from the ELS testing will include acute range-finding data, EPA is not proposing acute toxicity testing for untested aryl phosphate base stocks. However, data on long-term effects are deficient, and more information is needed for risk assessment. Fish toxicity data discussed in Unit II.B of this preamble are primarily from European studies on marketed products; the test substances for which analytical information was provided did not appear to include any aryl phosphate base stocks presently marketed in the United States.

D. Findings Unders TSCA Sections 4(a)(1)(A)(iii) and (B)(iii)

Pursuant to section 4(a)(1)(A)(iii) and (B)(iii) of TSCA, EPA finds that testing of these substances is necessary to determine or predict the effects of manufacturing, processing, use, distribution in commerce and disposal of all substances in the aryl phosphate base stocks category.

Under section 4(a)(1)(A)(iii) and (B)(iii), EPA finds that testing aryl phosphate base stocks is necessary to develop data for chemical analysis, organophosphorus-induced delayed neuropathy, two-generation reproductive and fertility effects, 120-day post-hatch rainbow trout ELS effects, anaerobic biodegradation, chronic Daphnia toxicity, subchronic toxicity, aerobic biodegradation, microcosm effects, subchronic neurotoxicity and developmental toxicity. EPA believes that data resulting from this testing will be relevant to a determination as to whether manufacturing, processing, distribution in commerce, use and disposal of aryl phosphate base stocks does or does not present an unreasonable risk of injury to health or the environment.

III. Proposed Rule

A. Proposed Testing and Test Standards

On the basis of the findings in Unit II of this preamble, EPA is proposing a test rule for aryl phosphate base stocks that meet the category definition specified in Unit I.A of this preamble.

This would be a two-stage test rule. First, the rule would require submission of chemical analysis data obtained by GC/MS. EPA would require for first-stage information any individual aryl phosphate positional isomer, except TOCP, or any other substance present in a base stock, to be identified and quantitated if present at a concentration of 1 percent or greater; quantitation for TOCP would be required to ±0.5 percent. TOCP would have to be quantitated, to ±0.05 percent, unless present at less than 0.10 percent. The Agency would notify manufacturers by certified mail if: (1) A particular chemical to be tested demonstrates equivalence to another manufacturer's product and testing costs may be shared; or, (2) the chemical in question does not demonstrate equivalence to another aryl phosphate base stock and testing costs may not be shared.

EPA would evaluate the analytical chemistry data and determine whether any base stock is equivalent to another. EPA proposes as equivalence criteria that any two base stock substances be considered equivalent if all the individual aryl phosphate components of the two substances are within 2 percent of each other, unless, for a situation involving three or more base stocks, this results in a range greater than 4 percent for any component. In such a case, EPA would apply its best scientific judgement.

Because of the economic impact of certain of these tests on some category members, EPA has prioritized the second-stage tests, providing three levels of testing. Level 1 is the base set of required testing for aryl phosphate base stocks having aggregate annual production volumes of at least 1 but less than 5 million pounds: 120-day post-hatch rainbow trout ELS test; three hen neurotoxicity tests — acute neurotoxic esterase (NTE), acute organophosphate delayed neuropathy, and subchronic organophosphate delayed neuropathy (triggered by a positive NTE or positive acute OPIDN study); and a two-generation reproductive test. Level 2 includes additional tests required for

aryl phosphate base stocks having aggregate annual production volumes of at least 5 but less than 10 million pounds: anaerobic biodegradation; chronic Daphnia; and subchronic toxicity. Level 3 includes additional testing for aryl phosphate base stocks having aggregate annual production volumes of at least 10 million pounds: aerobic biodegradation; microcosm; developmental toxicity; subchronic rat neurotoxicity - functional observation battery (FOB), motor activity (MA) and neuropathology (NP). EPA would notify manufacturers when they meet trigger levels, as determined from the proposed section 8(a) production reporting. Present and future aryl phosphate base stock manufacturers would be subject to testing requirements.

Proposed Test Standards	CFR citations
Level 1	
120-Day post-hatch trout ELS.	40 CFR 797.1600
Neurotoxicity in the hen	
Acute NTE	40 CFR 798.6450
Acute OPIDN	40 CFR 798.6540
Subchronic OPIDN, if triggered.	40 CFR 798.6560
Two-generation reproduction and fertility effects.	40 CFR 798.4700
Level 2	
Anaerobic biodegradation	40 CFR 796.3140
Chronic Daphnia	40 CFR 797.1350
Subchronic toxicity	40 CFR 798.2650
Level 3	
Aerobic biodegradation	40 CFR 799.700 (Bourquin paper (Ref. 9) incorporated by reference)
Microcosm ecosystem	§ 797.3050 (proposed)
Neurotoxicity in the rat: (may be combined with subchronic per specific guideline instruction; FOB and MA acute testing required).	
FOB	40 CFR 798.6050
MA	40 CFR 798.6200
NP	40 CFR 798.6400
Developmental toxicity	40 CFR 798.4900

The original ITC designation also recommended EPA investigate mutagenicity and oncogenicity and conduct epidemiology studies. However, considerable mutagenicity testing on aryl phosphates before and after the ANPR has been predominately negative, and EPA is not proposing such testing at this time. NTP is testing TCP for oncogenicity, and EPA has decided to await the outcome of this study before deciding if oncogenicity testing on other aryl phosphate base stocks is necessary. Any subsequent oncogenicity requirement would be the subject of a separate rulemaking. Epidemiology is discussed in Unit IV.5 of this preamble.

New aryl phosphate base stocks subject to TSCA section 5 would also be subject to this rule. Section 5(b) of TSCA requires that if a person submits a notice to EPA under section 5(a)(1) before the manufacture or processing of a chemical substance, and the substance is subject to a section 4 test rule promulgated before the submission of such notice, the data required by the section 4 test rule shall be submitted at the same time notice is submitted in accordance with section 5(a)(1). In other words, anyone making a "new" aryl phosphate base stock must first do the chemical analysis under § 799.700(e) and submit that analysis with the premanufacture notification to comply with § 799.700(c)(2). New chemical manufacturers will not be required to do tiered testing, however, until EPA has evaluated the chemical analysis data and determined if that aryl phosphate base stock is equivalent to any other substance, and if an aggregate production volume triggering stage 2 testing for that group of equivalent substances has been met. If, at the time a final test rule is promulgated, a substance has already been submitted to EPA and is being reviewed pursuant to section 5(a), EPA requires that the submitter provide the data required by this test rule. Category members subject to a section 5(e) order (i.e., already reviewed by EPA and being regulated) will be re-reviewed by EPA to determine if data required by the test rule are necessary.

B. Test Substances

All aryl phosphate base stocks, as defined by this rule, would be subject to this test rule. EPA has identified 12 aryl phosphate base stocks that are in production at this time (Ref. 55). Base stocks differing from one another by more than 2 percent in a single component (0.1 percent for TOCP) would be considered different base stocks for purposes of this rule. Any other base stock meeting the definition of aryl phosphate base stocks that EPA is not aware of or that comes into production in the future would also be subject to this test rule. See Unit I.C.3.d of this preamble for a more complete discussion of the background and decisions for the following substance listings.

The 12 aryl phosphate base stocks EPA believes are in production are as follows:

1. *tert*-Butylphenyl diphenyl phosphate (CAS No. 56803-37-3) or isobutylenated phenol, phosphate (3:1) (CAS No. 68937-40-6) (based on a 1:3 mol ratio isobutylene to phenol).

2. bis-(*tert*-Butylphenyl) phenyl phosphate (CAS No. 65652-41-7)or isobutylenated phenol, phosphate (3:1) (CAS No. 68937-40-6) (based on a 2:3 mol ratio isobutylene to phenol).

3. tris-(*tert*-Butylphenyl) phosphate (CAS No. 78-33-1) or isobutylenated phenol, phosphate (CAS No. 68937-40-6) (based on a 1:1 mol ratio isobutylene to phenol).

4. Di(*n*-butyl) phenyl phosphate (CAS No. 2528-36-1).

5. 2-Ethylhexyl diphenyl phosphate (CAS No. 1241-94-7).

6. Isodecyl diphenyl phosphate (CAS No. 29761-21-5).

7. Isopropylphenyl diphenyl phosphate (CAS No. 28108-99-8) or phenol, isopropylated, phosphate (3:1) (CAS No. 68937-41-7) (based on a 1:3 mol ratio propylene to phenol).

8. bis-(Isopropylphenyl) phenyl phosphate (CAS No. 28109-00-4) or phenol, isopropylated, phosphate (3:1) (CAS No. 68937-41-7) (based on a 2:3 mol ratio propylene to phenol).

9. tris-(Isopropylphenyl) phosphate or phenol, isopropylated, phosphate (3:1) (CAS No. 68937-41-7) (based on a 1:1 mol ratio propylene to phenol).

10. Tricresyl phosphate (CAS No. 1330-78-5), or tar acids, cresylic, phenyl phosphate (CAS No. 68952-35-2).

11. Triphenyl phosphate (CAS No. 115-86-6).

12. Trixylyl phosphate (CAS No. 25155-23-1) or tar acids, cresylic, C-8 rich, phenyl phosphate (CAS No. 68952-33-6).

For this proposed rule, EPA would not require testing of pure chemicals, but rather the base stocks to which persons (manufacturing workers, users, consumers, general populace, etc.), or the environment are actually exposed. EPA would require chemical analysis as the first stage of testing to help define equivalence for category members.

Any substance meeting the aryl phosphate base stock category definition, even if not named in the final rule, would be considered a member of this category and subject to this test rule.

C. Persons Required to Test

Because of the findings in Unit II of this preamble, EPA is proposing that persons who manufacture (including persons who import) or process or intend to manufacture and/or process an aryl phosphate base stock as defined by this rule, at any time from the effective date of the final test rule to the end of the reimbursement period, be subject to the testing requirements

contained in this proposed rule. This period is defined in 40 CFR 791.3(h).

Each manufacturer of a specific aryl phosphate base stock would pay a pro rata share of the aggregate cost of testing that specific test substance in proportion to its market share. Manufacturers (including importers) potentially subject to this rule should consult the procedures in 40 CFR part 790. As explained in 40 CFR part 790, initially manufacturers, but not processors, of one or more of these substances would be required to submit letters of intent or exemption applications. Pursuant to a recent amendment to part 790, small quantity research and development manufacturers are not required to submit letters of intent or exemption applications. Such manufacturers should consult the **Federal Register** at 55 FR 18881, May 7, 1990, for further details.

Product compositions may change because of feedstock or processing changes, and the toxicity of individual aryl phosphate components can vary widely. For this reason, chemical analysis data are needed to define the test substance and to prove equivalence of products if there are two or more manufacturers. As new manufacturers move into the market, they would also have to demonstrate equivalence, or conduct testing. The Stage 1 chemical analysis would be required for each in-production aryl phosphate base stock in this category.

D. Reporting Requirements

As required under 40 CFR 799.10, EPA is proposing that all data developed under this rule must be reported in accordance with its GLP standards which appear in 40 CFR part 792.

As required by TSCA section 4(b)(1)(c), EPA is proposing specific reporting requirements for each of the proposed test standards as follows: Final reports for the first stage of this test rule, the chemical analysis data, would be due no later than 6 months after the date of publication of the final rule.

Final reports for second stage studies would be due at intervals specified below following the notification of manufacturers by EPA by certified mail that the second stage of testing should begin on their substance or that production volume had triggered another level of testing.

Proposed Test Standards	Reporting Requirements
Level 1	
120-Day post-hatch trout ELS	18 months
Neurotoxicity in the hen	
Acute NTE	6 months
Acute OPIDN	6 months
Subchronic OPIDN	18 months
Two-generation reproduction and fertility effects	24 months
Level 2	
Anaerobic biodegradation	12 months
Chronic Daphnia	12 months
Subchronic toxicity	18 months
Level 3	
Aerobic biodegradation	12 months
Microcosm ecosystem	24 months
Neurotoxicity in the rat: (may be combined with subchronic per specificguideline instruction; FOB and MA acute testing required).	
FOB	18 months
MA	18 months
NP	18 months
Developmental toxicity	12 months

Progress reports on these tests would have to be submitted to EPA every 6 months, beginning 6 months after EPA notifies the manufacturers testing must proceed, until the final report is submitted.

TSCA section 14(b) governs EPA's disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, EPA will publish a notice of receipt in the **Federal Register** as required by section 4(d) of TSCA.

IV. Issues for Comment

A. Issues Relating to Choice of Test Substances

1. EPA requests comments on EPA's approach to choosing test substances.

Most aryl phosphate toxicity testing has been performed on multicomponent technical grade substances. EPA considered requiring testing of individual components because the literature has documented differences in toxicity between components and between individual isomers, but rejected this approach as impractical and too expensive. Instead EPA is proposing to require testing of aryl phosphate base stocks. These may vary significantly from manufacturer to manufacturer and perhaps between batches. EPA is proposing that base stocks differing from one another by more than 2 percent in a single component (0.1 percent for TOCP) be considered different base stocks for purposes of this rule. Would this result in an unnecessary or burdensome amount of base stock testing? Are there better ways or more appropriate criteria to define and differentiate base stocks?

2. How should the specific test substances be chosen?

EPA is proposing the first stage of this two-stage rule to enable the Agency to assess the identity and proportions of constituents of individually manufactured aryl phosphate base stocks. EPA is addressing this issue up front rather than through the exemption application process. To assure equitable sharing of second-stage testing responsibilities and costs among manufacturers in cases where multiple manufacturers produce aryl phosphate base stocks judged by EPA to be equivalent, the Agency would have three alternative courses of action, as follows:

• To have EPA or the manufacturers choose one of equivalent substances for testing.

• To require testing of a composite mixture of equivalent aryl phosphate base stocks.

• To define a "standard" test substance for each group of equivalent substances.

EPA is proposing in this Notice that EPA will choose one of the equivalent substances for testing, but desires comment on this.

3. What level of quantitation should EPA require in the chemical analysis? Should there be a requirement to quantitate any chemical component other than TOCP of an aryl phosphate base stock more precisely than ±2.0 percent?

Except for TOCP, the rule would require chemical analysis with identification of all components of the manufacturers' products present at a level of 1.0 percent or greater. However, data reported in Ref. 40 suggest that observed neurotoxicity from TCP may be due to TOCP present at less than 0.1 percent. Thus, the Agency is proposing to require quantification for TOCP if its concentration is 0.10 percent or greater. For comparison, the Office of Pesticide Programs (OPP) requires identification of all chemicals present in the test material at or above 1.0 percent concentration.

4. How detailed should EPA make the chemical analysis requirement, and what are the most useful techniques? Should EPA allow each submitter to supply justification for the methods he chooses, or require a specific method?

EPA is proposing to require for the chemical analysis GC/MS, which may be the best method for conducting chemical analyses for these compounds, as all these aryl phosphate base stock components are sufficiently volatile. However, isomers in products such as TCP and TXP are difficult to separate even on capillary columns. Determination of specific components such as TOCP, and analysis of phenolic moieties by gas-liquid chromatography following alkaline hydrolysis of the phosphate esters has been proposed (Ref. 50). Alternatives to GC include:

• Gel permeation chromatography.

• High performance liquid chromatography.

• Supercritical fluid chromatography.

Alternatives to MS (which may be too destructive of the separated particles for good analysis) include:

• Nuclear magnetic resonance.

• Infrared radiation.

• Ion track detector.

Should any of these methods be considered as alternatives, particularly if the proposed method may cause destruction of the sample?

5. Does the exposure information on aryl phosphates support testing for all identified base stocks? Could results of more limited testing be used as a screen to develop whether or not it is necessary to test additional base stocks?

B. Issues Related to Required Testing

1. Should EPA propose another level that would have no production trigger and would include only the hen subchronic neurotoxicity and a one-generation reproductive toxicity test for those chemicals where economic impact is severe?

According to information received by EPA, some of the aryl phosphate base stocks do not have an aggregate production level that EPA has determined will adequately support the required Level 1 testing costs. The tests proposed in Level 1 are based on known toxicity for the category, and, in some instances, on toxicity of certain components of the base stocks.

2. Should EPA require developmental neurotoxicity testing of aryl phosphate base stocks?

EPA is requiring both hen (acute delayed neurotoxicity and NTE, and subchronic delayed neurotoxicity, if triggered) and rat (FOB, MA, NP) neurotoxicity studies, but is not proposing to require developmental neurotoxicity testing at this time. EPA's Science Advisory Panel recommended that one criterion for requiring the developmental neurotoxicity screen be "*** test substances that produce neuropathology in developing or adult animals," and another criterion be "*** strong structure-activity relationships with known neurotoxicants" (Ref. 70). Should EPA propose a developmental neurotoxicity test requirement in a subsequent rulemaking if neurotoxicity test results in the rat are positive?

3. Should EPA again consider investigating whether some form of epidemiological study is indicated?

EPA did not suggest epidemiological neurotoxicity studies in the ANPR because available information suggested that a valid cohort was too difficult to identify. However, the Agency is interested in determining if a valid cohort may now be identified. Epidemiological studies of neurotoxic and/or reproductive effects may be warranted because of the suggestive new toxicity data in these areas.

4. Should EPA require that the rainbow trout ELS test be expanded to include histopathological examination specifically for cataracts, bone development and bone collagen deficits as seen in Ref. 39, or carried for a longer post-hatch period, e.g., 6 months, to better ensure that any such effects will be observed?

EPA is proposing to extend the usual 90 day post-hatch duration of the ELS test in the trout to 120 days post-hatch as a surrogate for a chronic fish test, for which EPA has no guideline. Cataracts and reduced vertebral collagen were seen in long-term studies of at least 3 to 4 months in trout, but not detected in a 30-day study in minnows, although histological precursors were detected (Ref. 39).

5. Should EPA require additional testing for the aryl phosphate base stocks to address memory and other neurobehavioral deficits if brain and blood acetylcholinesterase inhibition is significant?

The proposed subchronic toxicity test would include tests for blood and brain acetylcholinesterase (AChE) inhibition. References cited in the 1971 ACGIH Documentation of the Threshold Limit Values reported significant decreases in plasma cholinesterase in workers exposed to TOCP and of red blood cell cholinesterase in workers exposed to TPP, even though the authors found no other effects (Ref. 4). Of more concern, a recent study on an organophosphate pesticide, diisopropylfluorophosphate, showed significant effects on short- and long-term memory, impaired matching accuracy and lengthened response times at levels at which the only other effect observed was depressed brain AChE (Ref. 11), and only after extended treatment with the chemical.

6. Is there a CBI problem if EPA informs all manufacturers of a given base stock substance that there are other manufacturers of the same substance and who those manufacturers are, and that an aggregate production volume trigger was met for that substance?

7. EPA is aware of the interchangeability of some aryl phosphates for the same end use. To gain a greater understanding of this factor which plays a role in the evaluations of the economic impact of this proposed rule, EPA is requesting the submission of additional data relating to interchangeability.

C. Other Issues

1. Should EPA require reporting of exposure and release information beyond that proposed in the test rule?

EPA is proposing TSCA section 8(a) PAIR reporting for manufacturers of the aryl phosphate base stocks to enable EPA to make better decisions on which base stocks can support the testing. Preliminary information indicates that a great deal of human exposure and

environmental release results from processing and use of products containing aryl phosphate base stocks, suggesting that EPA may miss important information by not requiring processors to report.

2. EPA has defined three production-level triggers, one at 1 million pounds for potential unreasonable risk findings, one at 5 million pounds and one at 10 million pounds for additional testing. EPA solicits comment on whether these triggers comport with manufacturers' ability to pay for the level of testing. Is it appropriate to use these triggers based on a high production/high exposure concern? If an exposure value should be included, what should it be and how could EPA apply it as a triggering mechanism?

V. Economic Analysis of Proposed Rule

EPA has prepared an economic analysis of this proposed rule (Ref. 6). The analysis estimates the costs of conducting the proposed testing for each of the chemicals, including both laboratory and administrative costs, and evaluates the potential for economic impacts as a result of these test costs, using a comparison between a chemical's annualized test costs and its annual revenues.

The estimated total cost of the maximum possible testing for each chemical is $1,076,988 to $1,656,638.

In order to evaluate the potential economic impacts of the proposed testing, test costs are annualized and compared with annual revenues from the chemicals. The annualized test costs, using a 7 percent cost of capital over a period of 15 years are $53,974 to $81,167 for Level 1; for Levels 1 and 2, the costs are $66,681 to $99,516; for all 3 Levels, the costs are $118,247 to $181,890. The costs of chemical analysis were not estimated because no protocols were identified for this test. Therefore these costs may be underestimated.

The comparison between annual costs and revenues suggests that for four chemicals, the maximum test cost may have no significant adverse economic impacts. For the remaining chemicals, the test costs do appear to pose some potential for adverse economic impacts. Please refer to the economic analysis contained in the public record for this rulemaking for more details on test cost estimations and the evaluation of economic impacts. EPA's proposed testing and standards devised to reduce the impact of testing costs is described in Unit III.A of this preamble of this notice.

VI. Availability of Test Facilities and Personnel

EPA has determined that test facilities and personnel are available to perform the testing specified in this proposed rule. (Ref. 8).

VII. Public Meeting

If requests for oral comments are submitted, as indicated in the dates section, EPA will hold a public meeting after the close of the public comment period in Washington, DC. Persons wishing to present comments or attend the meeting should call Mary Louise Hewlett, (202) 260–8162. The meetings are open to the public, but active participation will be limited to those who requested to comment and EPA representatives. Participants are requested to submit copies of their statements by the meeting date. These statements and a transcript of the meeting will become part of EPA's record for rulemaking.

VIII. Comments Containing Confidential Business Information

All comments will be placed in the public file unless they are clearly labeled as Confidential Business Information (CBI) when the comments are submitted.

While a part of the record, CBI comments will be treated in accordance with 40 CFR part 2. A sanitized version of all CBI comments should be submitted to EPA for the public file.

It is the responsibility of the commenter to comply with 40 CFR part 2 in order that all materials claimed as confidential may be properly protected. This includes, but is not limited to, clearly indicating on the face of the comment (as well as on any associated correspondence) that CBI is included, and marking "CONFIDENTIAL", "TSCA CBI" or similar designation on the face of each document or attachment in the comment that contains CBI. Should information be put into the public file because of failure to clearly designate its confidential status on the face of the comment, EPA will presume any such information that has been in the public file for more than 30 days to be in the public domain.

IX. Rulemaking Record

EPA has established a record for this rulemaking, (docket number OPPTS–42038A). This record contains the basic information considered by the Agency in developing this proposal and appropriate **Federal Register** notices.

This record includes the following information:

A. Supporting documentation

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice containing the ITC designation of the chemical category of aryl phosphates to the Priority List (43 FR 16684, April 19, 1978).

(b) Rule requiring TSCA section 8(a) reporting on the chemical category of aryl phosphates (47 FR 26992, June 22, 1982).

(c) Rule requiring TSCA section 8(d) reporting on the chemical category of aryl phosphates (47 FR 38780, September 2, 1982).

(d) TSCA test guidelines cited as proposed test standards for this rule, 40 CFR parts 796, 797, and 798.

(e) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (54 FR 34034, August 17, 1989).

(f) Notice of interim final rule on single-phase test rule development and exemption procedures (50 FR 20652, May 17, 1985).

(g) Notice of final rule on data reimbursement policy and procedures (48 FR 31786, July 11, 1983).

(h) Advance notice of proposed rulemaking for aryl phosphates (48 FR 57452, December 29, 1983).

(i) Notice of Inventory Update Rule (51 FR 21447, June 12, 1986).

(j) Notice of Agency's first and second proposed test rules (45 FR 48510, July 18, 1980 and 46 FR 30300, June 5, 1981).

(2) Communications before proposal consisting of:

(a) Written public comments and letters.

(b) Contact reports of telephone conversations.

B. References

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X. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this test rule would not be major because it does not meet any of the criteria set forth in section 1(b) of the Order, i.e., it would not have an annual effect on the economy of at least $100 million, would not cause a major increase in prices, and would not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in this record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 et seq., Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule, if promulgated, would not have a significant impact on a substantial number of small businesses because: (1) There are only a small number of known small manufacturers, (2) any small processors are not expected to perform testing themselves or to participate in the organization of the testing effort, (3) they will experience only very minor cost in securing exemption from testing requirements, and (4) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and has assigned OMB control number 2070–0033.

Public reporting burden for this collection of information is estimated to average 14,174 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total public reporting burden is estimated to be 170,088 hours for all.

Send comments regarding the burden estimates for any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington DC 20460; and to the Office of Management and Budget, Paperwork Reduction Project (2070–0033), Washington, DC 20503. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Parts 704 and 799

Chemicals, Chemical fate, Chemical export, Environmental effects, Environmental protection, Hazardous substances, Health, Laboratories, Recordkeeping and reporting requirements, Testing, Incorporation by Reference

Dated: December 26, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Chapter I be amended as follows:

1. In part 704:

PART 704—[AMENDED]

a. The authority citation for Part 704 would continue to read as follows:

Authority: 15 U.S.C. 2607

b. By adding § 704.32 to read as follows:

§ 704.32 Aryl Phosphate Base Stocks.

(a) *Substances for which reporting is required.* The chemical substances for which reporting is required under this rule consist of the category of aryl phosphate base stocks, as defined in § 799.700 of this chapter, that are now listed on, or in the future are added to, the public or confidential portions of the TSCA Inventory of Chemical Substances maintained by EPA under TSCA section 8(b) at any time after the effective date of the final rule. New chemical substances meeting this definition shall also be subject to this section once entered into the TSCA Inventory of Chemical Substances.

(b) *Persons who must report.* The following persons, unless exempt as provided in § 704.5, are subject to the reporting requirements of this rule; a person may be required to report more than once under this section. Those persons who are small manufacturers as defined in § 704.3 are also required to report.

(1) *Initial reporting.* Persons who manufacture or import any substance identified in paragraph (a) of this section for commercial purposes during the person's latest complete corporate fiscal year prior to (the effective date of the final rule) are required to report.

(2) *Subsequent reporting.* Persons who manufacture or import any substance identified in paragraph (a) of this section for commercial purposes after (the effective date of the final rule) are required to report. The persons described in this paragraph (b)(2) include persons who report initially in response to paragraph (b)(1) of this section and persons who commence the manufacture or importation of any substance identified in paragraph (a) of this section after (the effective date of the final rule).

(c) *When to report*—(1) *Initial reporting.* Persons described in paragraph (b)(1) of this section must submit an initial report within 60 days of (the effective date of the final rule).

(2) *Subsequent reporting.* Persons described in paragraph (b)(2) of this section must submit a report within 60 days of the completion of each corporate fiscal year during which they manufacture or import any substance identified in paragraph (a) of this section. Persons shall submit a separate report for each corporate fiscal year in which they are subject to this section.

(3) *Duplicative reporting.* Persons reporting under this section are exempt, pursuant to § 710.35 of this chapter, from duplicative reporting for the Inventory Update Rule.

(d) *What information to report.* All persons subject to this section shall report the following information to EPA:

(1) Company name and headquarters address.

(2) Name, address, and telephone number (including area code) of the company's principal technical contact.

(3) The chemical name and Chemical Abstracts Service Registry Number (CAS number) of each chemical substance identified in paragraph (a) of this section manufactured or imported during the latest complete corporate fiscal year.

(4) The quantity (in pounds) of each such substance manufactured or imported during the latest complete corporate fiscal year.

(5) A cross reference to any letter of intent to test that has been submitted for that substance under 40 CFR 799.700(d).

(e) *Where to send reports.* Reports must be submitted to the U.S. Environmental Protection Agency, TSCA Document Processing Center (TS-790), Rm. L-100, Office of Pollution Prevention and Toxics, 401 M St., SW., Washington, DC 20460, Attn: TSCA section 4, Aryl phosphates.

2. In Part 799:

PART 799—[AMENDED]

a. The authority citation for part 799 would continue to read as follows:

AUTHORITY: 15 U.S.C. 2603, 2611, 2625.

2. By adding § 799.700 to read as follows:

§ 799.700 Aryl phosphate base stocks.

(a) *Scope and purpose.* This section requires persons who manufacture, import, or process a chemical substance in the "aryl phosphate base stocks" chemical category to conduct chemical analysis and testing for health effects, environmental effects, and chemical fate of the substance. The extent of testing for an individual aryl phosphate base stock depends upon its aggregate annual production volume. The testing requirements are divided into two stages. Stage one, which is required of all manufacturers, importers, and processors, involves chemical analysis that will determine the chemical identity of the base stocks produced during the period this rule is in effect. Stage two, which is subdivided into three levels triggered by production volume, involves testing for health and environmental effects, and chemical fate.

(1) *Stage one.* (i) All persons who manufacture, import, or process, or intend to manufacture, import, or process a particular aryl phosphate base stock will be responsible for conducting chemical analysis of that substance pursuant to paragraph (e) of this section.

(ii) From the results of these analyses, EPA will determine whether two or more chemicals are equivalent and whether further tests can be jointly sponsored. For purposes of this section, base stocks with greater than 2 percent variation in a single component (0.1 percent for TOCP) will be considered different base stocks. As provided in paragraph (d)(3) of this section affected persons will be notified of such decisions by certified mail.

(2) *Stage two*—(i) *Level 1.* When the aggregate annual production volume for all manufactures and importers of a particular aryl phosphate base stock is, or reaches, 1 million pounds, all persons who manufacture, import, or process that substance will be responsible for conducting the following testing of the substance pursuant to paragraphs (g)(1)(ii), (h)(2)(i)(B) and (h)(3)(i) of this section: a 120-day post-hatch rainbow trout early life stage (ELS) test, three hen neurotoxicity assays, and a two-generation reproductive effects study.

(ii) *Level 2.* When the aggregate annual production volume for all manufacturers and importers of an aryl phosphate base stock substance is, or reaches, 5 million pounds, all persons who manufacture, import, or process that substance will be responsible for conducting the following testing of the substance pursuant to paragraphs (f)(1), (g)(1)(i) (g)(1)(ii), (h)(1), (h)(2)(i)(B), and (h)(3)(i) of this section: all Level 1 testing plus anaerobic biodegradation, chronic Daphnia, and subchronic toxicity studies.

(iii) *Level 3.* When the aggregate annual production volume for all manufacturers and importers of an aryl phosphate base stock substance is, or reaches, 10 million pounds, all persons who manufacture, import, or process that substance will be responsible for conducting the following testing of the substance pursuant to paragraphs (f), (g), and (h) of this section: all Level 1 and Level 2 testing plus aerobic biodegradation, a microcosm ecosystem test, and developmental toxicity studies, and the subchronic rat neurotoxicity battery.

(b) *Definitions.* In addition to the definitions in section 3 of TSCA and the definitions of § 790.3 of this chapter, the

following definition also applies to this section.

(1) "Aryl phosphate base stocks" are phosphate esters or combination of esters resulting from the reaction of a phenol, mixtures of phenols, or a combination of alkyl-substituted phenols or, in some cases, phenols plus an alcohol, with phosphorus oxychloride ($POCl_3$) or other phosphoric acid derivatives. This definition includes triaryl and mixed aryl/alkyl esters (where one or two of the three ester groups are alkyl).

(2) [Reserved]

(c) *Identification of test substance.* (1) This section applies to any chemical substance within the aryl phosphate base stock category. The chemical substances in this category listed on the TSCA section 8(b) public inventory are identified in this paragraph. Any aryl phosphate base stock substance that meets the category definition in paragraph (b)(1) of this section shall be tested in accordance with this section. Base stocks differing from one another by more than 2 percent in a single component (0.1 percent for TOCP) shall be considered different base stocks for purposes of this rule.

(2) This section also applies to any new chemical substance within the aryl phosphate base stock substance category. Persons subject to this section by virtue of their intention to manufacture or import a new chemical substance in the category of aryl phosphate base stock substances must comply with this section before submitting a premanufacture notification (PMN) under TSCA section 5(a) for such substance.

(3) The following currently manufactured base stock substances meet the category definition and shall be tested:

(i) *tert*-butylphenyl diphenyl phosphate (CAS No. 56803-37-3), or isobutylenated phenol, phosphate (3:1) (CAS No. 68937-40-6) (based on a 1:3 mol ratio isobutylene to phenol).

(ii) bis-(*tert*-butylphenyl) phenyl phosphate (CAS No. 65652-41-7), or isobutylenated phenol, phosphate (3:1) (CAS No. 68937-40-6) (based on a 2:3 mol ratio isobutylene to phenol).

(iii) tris-(*tert*-Butylphenyl) phosphate (CAS No. 78-33-1), or isobutylenated phenol, phosphate (CAS No. 68937-40-6) (based on a 1:1 mol ratio isobutylene to phenol).

(iv) Di-*n*-butyl phenyl phosphate (CAS No. 2528-36-1).

(v) 2-ethylhexyl diphenyl phosphate (CAS No. 1241-94-7).

(vi) Isodecyl diphenyl phosphate (CAS No. 29761-21-5).

(vii) Isopropylphenyl diphenyl phosphate (CAS No. 28108-99-8), or phenol, isopropylated, phosphate (3:1) (CAS No. 68937-41-7) (based on a 1:3 mol ratio propylene to phenol).

(viii) bis-(Isopropylphenyl) phenyl phosphate (CAS No. 28109-00-4), or phenol, isopropylated, phosphate (3:1) (CAS No. 68937-41-7) (based on a 2:3 mol ratio propylene to phenol).

(ix) tris-(Isopropylphenyl) phosphate or phenol, isopropylated, phosphate (3:1) (CAS No. 68937-41-7) (based on a 1:1 mol ratio propylene to phenol).

(x) Tricresyl phosphate (CAS No. 1330-78-5), or tar acids, cresylic, phenyl phosphate (CAS No. 68952-35-2)

(xi) Triphenyl phosphate (CAS No. 115-86-6).

(xii) Trixylyl phosphate (CAS No. 25155-23-1), or tar acids, cresylic, C-8 rich, phenyl phosphate (CAS No. 68952-33-6).

(d) *Persons required to submit study plans, conduct tests, submit data, and the EPA notification plan*—(1) *Chemical analysis.* All persons who manufacture (including persons who import) or process or intend to manufacture or process any aryl phosphate base stock substance that meets the definition in paragraph (b)(1) of this section including, but not limited to, those listed in paragraph (c)(3) of this section, from the effective date of this section to the end of the reimbursement period, are subject to chemical analysis testing and shall submit letters of intent to test, submit study plans, conduct tests and submit data as described in this section, subpart A of this part, and parts 790 and 792 of this chapter for single-phase rulemaking.

(2) *Chemical fate, environmental effects and health effects tests.* All persons who manufacture, import or process, or intend to manufacture, import or process any aryl phosphate base stock substance that meets the definition in paragraph (b) of this section, from the effective date of this section to the end of the reimbursement period, shall submit letters of intent to test, submit study plans, conduct tests and submit data as described in this section, subpart A of this part, and parts 790 and 792 of this chapter for single-phase rule-making.

(e) *Chemical analysis*—(1) *Required testing.* GC/MS analysis shall be performed on every aryl phosphate base stock substance. The provisions of § 792.105(a) of this chapter require that for each study done under Good Laboratory Practice Standards, the identity, strength, purity and composition stability shall be determined for each batch and shall be documented before the initiation of the study. Any individual aryl phosphate positional isomer, except tri-ortho-cresyl phosphate (TOCP), or any other substance present in a base stock, must be identified and quantitated if present at a concentration of 1 percent or greater; quantitation is required to ±0.5 percent. TOCP shall be quantitated, at ±0.05 percent, unless present at less than 0.10 percent.

(2) *Reporting requirements.* Chemical analysis shall be completed and the final report submitted to EPA no later than 6 months after the effective date of this test rule or, for new chemicals, with the Premanufacture Notification under TSCA section 5(a).

(3) *EPA notification of manufacturers.* The Agency will notify manufacturers by certified mail if their chemical is equivalent to another manufacturer's and costs may be shared, or if they are required to begin additional testing under this test rule without co-sponsors. The notification will also include for each manufacturer the level of testing that should begin for the specific aryl phosphate base stock substance and will specify which of any equivalent substances must be tested.

(f) *Chemical fate*—(1) *Required testing*—(i) Anaerobic biodegradation testing shall be performed in accordance with § 796.3140 of this chapter upon receipt of EPA's written notification to manufacturers, pursuant to paragraph (e)(3) of this section, of a particular aryl phosphate base stock substance that EPA has determined that the aggregate annual production volume of that substance equals or exceeds 5 million pounds.

(ii) Aerobic biodegradation testing shall be conducted using clean freshwater sediments in accordance with the method described in an article by Bourquin (1977) entitled "An Artificial Microbial Ecosystem for Determining Effects and Fate of Toxicants in a Salt-Marsh Environment", published in *Developments in Industrial Microbiology*, vol. 18, Chapter 11, 1977, which is incorporated by reference. A copy of this material incorporated by reference is available in the TSCA Public Reading Room, Rm. NE-G004, 401 M St., SW., Washington, DC 20460. This material is also available for inspection at the Office of the Federal Register, Rm. 8401, 1100 L St., NW., Washington, DC 20408. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This method is incorporated as it exists on the effective date of this section and notice of any change to the method will

be published in the **Federal Register**. The aerobic biodegradation test is required upon receipt of EPA's written notification to manufacturers, pursuant to paragraph (e)(3) of this section, of a particular aryl phosphate base stock substance that EPA has determined that the aggregate annual production volume of that substance equals or exceeds 10 million pounds.

(2) *Reporting requirements.* (i) Each chemical fate test shall be completed and the final report submitted to EPA within 12 months after receipt of EPA's written notification that the anaerobic biodegradation or the aerobic biodegradation testing must be initiated.

(ii) Progress reports shall be submitted to EPA at 6-month intervals, beginning 6 months after receipt of EPA's written notification that testing must be initiated until submission of the final report.

(g) *Environmental effects*—(1) *Required testing*—(i) *Daphnid chronic toxicity test.* The chronic test for Daphnia shall be performed according to § 797.1350 of this chapter upon receipt of EPA's written notification to manufacturers, pursuant to paragraph (e)(3) of this section,of a particular aryl phosphate base stock substance that EPA has determined that the aggregate annual production volume of that substance equals or exceeds 5 million pounds.

(ii) *Fish ELS toxicity test.* (A) The ELS test for aquatic toxicity in the rainbow trout shall be performed according to § 797.1600 of this chapter, except the provisions of paragraph of § 797.1600(c)(1)(i), upon receipt of EPA's written notification to manufacturers, pursuant to paragraph (e)(3) of this section, of a particular aryl phosphate base stock substance that EPA has determined that the aggregate annual production volume of that substance equals or exceeds 1 million pounds.

(B) For the purpose of this section, the following provisions also apply:

(*1*) The test terminates following 120 days of post-hatch exposure (for an approximate total exposure period of 150 days).

(*2*) [Reserved]

(iii) *Generic freshwater microcosm test.* The generic freshwater microcosm test shall be performed according to proposed § 797.3050 (52 FR 36344, September 28, 1987) upon receipt of EPA's written notification to manufacturers, pursuant to paragraph (e)(3) of this section, of a particular aryl phosphate base stock substance that EPA has determined that the aggregate annual production volume of that substance equals or exceeds 10 million pounds.

(2) *Reporting requirements.* (i) The Daphnid chronic toxicity test shall be completed and the final report submitted to EPA within 12 months after receipt of EPA's written notification that testing must be initiated.

(ii) The fish ELS test in the rainbow trout shall be completed and the final report submitted to EPA 18 months after receipt of EPA's written notification that testing must be initiated.

(iii) The generic freshwater microcosm test shall be completed and the final report submitted to EPA 24 months after receipt of EPA's written notification that testing must be initiated.

(iv) Progress reports shall be submitted to EPA at 6-month intervals, beginning 6 months after receipt of EPA's written notification that testing must be initiated until submission of the final report

(h) *Health effects*—(1) *Subchronic toxicity*—(i) *Required testing.* (A) Oral toxicity testing in the Sprague-Dawley rat shall be performed by gavage in accordance with § 798.2650 of this chapter, except the provisions of § 798.2650(e)(9)(i)(B), upon receipt of EPA's written notification to manufacturers, pursuant to paragraph (e)(3) of this section, of a particular aryl phosphate base stock substance that EPA has determined that the aggregate annual production volume of that substance equals or exceeds 5 million pounds.

(B) For the purpose of this section, the following provisions also apply:

(*1*) Blood acetylcholinesterase activity shall be determined pre-dosing, and blood and brain acetylcholinesterase activity at termination.

(*2*) [Reserved]

(ii) *Reporting requirements*—(A) Subchronic toxicity testing shall be completed and a final report submitted to EPA within 18 months after receipt of EPA's written notification that testing must be initiated.

(B) Progress reports shall be submitted to EPA at 6-month intervals, beginning 6 months after receipt of EPA's written notification that testing must be initiated until submission of the final report.

(2) *Neurotoxicity*—(i) *Required testing.* (A) Gavage neurotoxicity testing in the Sprague-Dawley rat shall be performed according to § § 798.6050, 798.6200 and 798.6400 of this chapter upon receipt of EPA's written notification to manufacturers of a particular aryl phosphate base stock substance that EPA has determined that the aggregate annual production volume of that substance equals or exceeds 10 million pounds (see paragraph (e)(3) of this section). Tests conducted according to § 798.6050 and § 798.6200 of this chapter shall be both acute and subchronic. The test conducted according to § 798.6400 of this chapter shall be subchronic. The acute studies according to § 798.6050 and § 798.6200 of this chapter may be incorporated into the subchronic neurotoxicity tests. The subchronic neurotoxicity tests may be combined with the testing required by paragraph (h)(1)(i) of this section if the test protocol allows. The cited guidelines provide standard information for these procedures.

(B) Gavage neurotoxicity testing in the hen shall be performed according to § § 798.6450, 798.6540, and 798.6560 of this chapter upon receipt of EPA's written notification to manufacturers of a particular aryl phosphate base stock substance that EPA has determined that the aggregate annual production volume of that substance equals or exceeds 1 million pounds (see paragraph (e)(3) of this section). Testing according to § 798.6450 of this chapter shall be performed in conjunction with § 798.6540 of this chapter. However, if results for a substance tested according to § 798.6540 and § 798.6450 of this chapter are negative, then testing according to § 798.6560 of this chapter need not be conducted on that substance.

(ii) *Reporting requirements*—(A) Rat neurotoxicity studies shall be completed and the final reports submitted to EPA within 18 months after receipt of EPA's written notification that testing must be initiated until submission of the final report.

(B) The hen neurotoxicity studies pursuant to § 798.6450 and § 798.6540 of this chapter shall be completed and final reports submitted to EPA within 6 months after receipt of EPA's written notification that testing must be initiated. If the subchronic study, § 798.6560 of this chapter as specified in paragraph (g)(2)(i)(B) of this section, is necessary, the final reporting date will be 18 months after receipt of EPA's written notification that testing must be initiated.

(iii) Progress reports shall be submitted to EPA at 6-month intervals, beginning 6 months after receipt of EPA's written notification that testing must be initiated until submission of the final report.

(3) *Reproduction and fertility*—(i) *Required testing.* (A) Reproduction and fertility testing shall be performed by gavage in the Sprague-Dawley rat according to § 798.4700 of this chapter, except the provisions of paragraphs (c)(7)(i), (c)(8)(ii), (c)(9)(i) and (c)(9)(iii) of § 798.4700, upon receipt of EPA's written notification to manufacturers,

pursuant to paragraph (e)(3) of this section, of a particular aryl phosphate base stock substance that EPA has determined that the aggregate annual production volume of that substance equals or exceeds 1 million pounds.

(B) For the purposes of this rule, the following provisions apply:

(*1*) Data on female cyclicity in P and F_1 females over the last 3 weeks prior to mating shall be described. The method of Sadleir (1979), found under paragraph (i)(6) of this section, or an equivalent method may be used. Data shall be provided on whether the animal is cycling and the cycle length. P and F_1 females shall continue to be exposed to the test substance through the 3 weeks prior to mating. The ovary shall be serially sectioned with a sufficient number of sections examined to adequately detail oocyte and follicular morphology. The methods of Mattison and Thorgierson (1979) found under paragraph (i)(3) of this section and Pederson and Peters (1988) found under paragraph (i)(4) of this section or their equivalent provide guidance. The strategy for sectioning and evaluation is left to the discretion of the investigator, but shall be described in detail in the test protocol and final report.

(*2*) Measurements of homogenization-resistant spermatid count, caudal epididymal sperm density and motility will be provided. Assessments of motility include quantification of progressively motile and immotile sperm, and techniques that utilize video recording of the samples, as well as objective measurement of the motility parameters. Guidance for assessing motility is provided by Linder et al. (1986) found under paragraph (i)(2) of this section, and Klinefelter et al. (1991) found under paragraph (i)(1) of this section, or their equivalent.

(*3*) Weights of the testes, epididymes (total and cauda), pituitary, seminal vesicles (with coagulating glands), prostate, ovary and uterus shall be recorded at the time of sacrifice of the P and F_1 animals. Histopathology of the testes shall be conducted on the P and F_1 males at the time of sacrifice. Particular attention shall be directed toward achieving satisfactory quality from fixation and embedding, and preparations shall follow the recommendations of Russell et al. (1990) found under paragraph (i)(5) of this section, or an equivalent. Histologic analyses shall include evaluations of the spermatogenic cycle, i.e., the presence and integrity of the 14 cell stages. These evaluations follow the guidance provided by Russell et al. (1990) found under paragraph (i)(5) of this section, or an equivalent.

(ii) *Reporting requirements*—(A) The reproductive and fertility studies shall be completed and final reports received by the EPA 24 months after receipt of EPA's written notification that testing must be initiated.

(B) Progress reports shall be submitted to EPA at 6-month intervals, beginning 6 months after receipt of EPA's written notification that testing must be initiated until submission of the final report.

(4) *Developmental toxicity*—(i) *Required testing*. Developmental toxicity studies shall be performed by gavage in the rat and rabbit according to § 798.4900 of this chapter upon receipt of EPA's written notification to manufacturers, pursuant to paragraph (e)(3) of this section, of a particular aryl phosphate base stock substance that EPA has determined that the aggregate annual production volume of that substance equals or exceeds 10 million pounds.

(ii) *Reporting requirements*—(A) The developmental toxicity studies shall be completed and final reports submitted to EPA within 12 months after receipt of EPA's written notification that testing must be initiated.

(B) Progress reports shall be submitted to EPA at 6-month intervals, beginning 6 months after receipt of EPA's written notification that testing must be initiated until submission of the final report.

(i) *References*. For additional background information, the following references should be consulted.

(1) Klinefelter, G.R., Gray, L.E., Jr. and J.D. Suarez. "The method of sperm collection significantly influences sperm motion parameters following ethane dimethanesulfonate administration in the rat." *Reproductive Toxicology*. 5:39–45 (1991).

(2) Linder, R.E., Strader, L.F. and W.K. McElroy. "Measurement of epididymes sperm motility as a test variable in the rat." *Bulletin of Environmental Contaminant Toxicology*. 36:317–324 (1986).

(3) Mattison, D.R. and Thorgeirsson, S.S. "Ovarian aryl hydrocarbon hydroxylase activity and primordial oocyte toxicity of polycyclic aromatic hydrocarbons in mice." *Cancer Research*. 39:3471–3475 (1979).

(4) Pederson, T. and Peters, H. "Proposal for classification of oocytes and follicles in the mouse ovary." *Journal of Reproduction and Fertility*. 17:555–557 (1968).

(5) Russell, L.D., R.A. Ettlin, Sinha Hikim, A.P. and E.D. Clegg. "Histological and histopathologic evaluation of the testis." Cache River Press: Clearwater, FL (1990).

(6) Sadleir, R.M.F.S. "Cycles and seasons." In: *Reproduction in Mammals: I. Germ Cells and Fertilization*, Austin, C.R. and R.V. Short, eds. Cambridge Press: New York, NY (1979).

(j) *Effective date*. (1) The effective date of the final rule will be (insert date 44 days after date of publication of final rule in the **Federal Register**).

(2) The guidelines cited in this section are referenced here as they exist on (insert effective date of the final rule).

(Information collection requirements have been approved by the Office of Management and Budget under control number 2070–0033.)

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Friday
January 17, 1992

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing; Office of Administration

24 CFR Part 901

Public Housing Management Assessment Program; Interim Rule and Notice of Submission of Proposed Information Collection to OMB

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 901

[Docket No. R-92-1520; FR-2897-I-02]

RIN 2577-AA89

Public Housing Management Assessment Program

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

ACTION: Interim rule.

SUMMARY: This rule establishes the Public Housing Management Assessment Program (PHMAP) in accordance with section 502 of the National Affordable Housing Act (approved November 28, 1990, Public Law 101-625, hereinafter, NAHA) as amended by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (approved October 28, 1991, Public Law 102-139, hereinafter, 92 App. Act). PHMAP does not apply to Indian Housing Authorities, nor to the Family Self Sufficiency Program authorized under section 23. PHMAP provides policies and procedures for the Department's use in identifying public housing agency (PHA) management capabilities and deficiencies, and allows HUD Field Offices to practice accountability monitoring and risk management. PHMAP also establishes procedures for memoranda of agreement between HUD and troubled agencies and agencies troubled with respect to the program under section 14 that set forth targets, strategies, incentives and sanctions for improving performance. Procedures to follow with respect to housing administered by PHAs that substantially default on their management responsibilities are included in PHMAP.

DATES: Effective date: February 18, 1992. Comment due date: May 18, 1992.

FOR FURTHER INFORMATION CONTACT: Casimir R. Bonkowski, Director, Office of Management and Policy, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-0440. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708-0850. (These are not toll-free telephone numbers.)

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Expedited review has been requested with a seven day public comment period, so that the application process described in this notice may be carried out after approval of the described collections of information. A separate notice of Submission of Proposed Information Collection to OMB inviting comments on the information collection requirements of this rule is published elsewhere in this issue of the **Federal Register.**

Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.**

The public reporting burden for this collection of information is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the documents making up the collection of information. Information on the estimated public reporting burden is provided below:

Reference	Number of respondents	Freq. of response	Est. avg. response time (hours)	Est. annual burden (hrs.)
1-99 Unit PHAs	1,608	1	1.9	3,055.2
100-499 Unit PHAs	1,274	1	2.1	2,675.4
500-1,249 Unit PHAs	244	1	3.1	756.4
1,250-3,999 Unit PHAs	102	1	3.7	377.4
4,000+ Unit PHAs	40	1	4.5	180.0
Total reporting burden				7,044.4

Background

This rule has developed out of the need to ensure that public housing functions as a well-managed enterprise on a uniform, nationwide basis to the benefit of its residents and the public that supports it. This is not the first attempt to accomplish this goal, but it is the most comprehensive, having grown out of the experience of the Department and the public housing community with previous efforts, and having been given new impetus and authority by the mandate of section 502 of NAHA.

The rule first sets out to describe public housing management comprehensively. The Department seeks to accomplish this with a minimum of burden on PHAs by taking data from reports already being submitted and by relying on certifications for 6 out of the 12 indicators, rather than on additional reports.

Once the necessary management information is compiled, it will be evaluated. This will be done by grading or scoring the management performance of each PHA in accordance with uniform and objective criteria.

Finally, when the management performance of a PHA has been accurately described and fairly evaluated, the rule prescribes what action will follow. High-performing PHAs will be rewarded for their excellence. In this way, all PHAs will be encouraged to achieve this status. Troubled PHAs and PHAs troubled with respect to the program under section 14 (mod-troubled PHAs) will be assisted in improving their management performance by focusing resources on the deficiencies identified by the management assessment. Under appropriate conditions, the rule would

permit HUD to make other arrangements in the best interests of residents for managing all or part of a poorly managed PHA's housing.

Congress recognized the need to identify and assist troubled and mod-troubled PHAs and to provide for the consistent good management of PHAs in section 502 of NAHA. Section 502 requires the Department to develop indicators to assess the management performance of PHAs. Seven indicators that must be used for assessment purposes are listed in the statute, and the Department is authorized by the 92 App. Act amendments to develop five additional indicators as it deems appropriate. A PHA assessed as troubled or mod-troubled must enter into a memorandum of agreement (MOA) with HUD that sets forth targets, strategies, incentives and sanctions for improving its management performance. Section 502 also provides that if a PHA substantially defaults upon its agreement or with respect to other covenants or conditions to which it is subject, the Department is permitted to solicit proposals from other public housing agencies and private housing management agents for the management of the housing administered by the defaulted PHA. Alternatively, following a default, the Department may petition the appropriate State or Federal court to appoint a receiver to manage the defaulted PHA. The Department may also require a defaulting PHA to make other acceptable arrangements for managing all or part of the housing in the best interests of the residents.

A proposed rule was published in the **Federal Register** on April 17, 1991, with a 60 day comment period. The Department received 114 comments on the PHMAP proposed rule.

The 92 App. Act, passed after the publication of the proposed rule, amends NAHA Section 502 in four ways: the number of factors that may be used to assess the management performance of PHAs is limited; the evaluation of PHAs must be administered flexibly to ensure that they are not penalized for circumstances beyond their control; the weights assigned to indicators must reflect the differences in management difficulty that results from physical condition and neighborhood environment; and the determination of a PHA's status as "troubled with respect to the program under section 14" is to be based upon factors solely related to its ability to carry out that program. In a related 92 App. Act amendment to section 14 of the U.S. Housing Act of 1937, the determination of whether a PHA is "troubled with respect to the modernization program" (the equivalent of "troubled with respect to the program under section 14") is to consider only the PHA's ability to carry out the modernization program effectively based upon the PHA's capacity to accomplish the physical work: with decent quality; in a timely manner; under competent contract administration; and with adequate budget controls. Among the changes in this interim rule from the proposed rule is the implementation of these 92 App. Act amendments.

The Department is proceeding to implement section 502 of NAHA, as amended by the 92 App. Act, through this interim rule. This approach is taken in order for the Department and PHAs to gain some experience in the actual execution of the program and to permit additional comments to be received and considered by the Department. A final rule will be issued only after the Department has had the opportunity to review comments submitted on this interim rule and to assess its experience in implementing the PHMAP program under this interim rule.

Public Comments

The Department received 114 comments on the PHMAP proposed rule. The great majority of these were received from PHAs, but comment from industry organizations, resident organizations, cities, towns, individuals, and a congressional subcommittee were also received.

The following is a discussion of PHMAP comments and the Department's responses to them. This discussion is organized according to, first, general comments that resulted in changes to the overall organization of the rule; second, comments that addressed specific sections in the proposed rule; third, "other" comments; and finally, comments on specific PHMAP indicators.

General Comments. The management assessment of a PHA under the proposed rule was based upon the PHA's grade or score on management indicators and standards of performance within those indicators. While this basic approach was generally accepted by those submitting comments, specific aspects of it were called into question. A number of the comments stated that PHMAP had too many indicators/standards; that some of the indicators/standards were duplicative and should be consolidated; and that the indicators/standards that seemed more concerned with measuring compliance with HUD requirements than with measuring management performance should be eliminated from PHMAP.

The Department agrees with these comments, and the number of indicators and standards has been reduced from 39 to 12 indicators. This change also corresponds to one of the requirements of the 92 App. Act amendments. The indicators in the interim rule are: (1) Vacancies; (2) modernization; (3) rents uncollected; (4) energy consumption; (5) unit turnaround; (6) outstanding work orders; (7) annual inspection and condition of units and systems; (8) tenants accounts receivable; (9) operating reserves; (10) routine operating expenses; (11) resident initiatives; and (12) development.

The rest of the compliance-based indicators/standards that were included in the proposed rule have been removed from this interim rule. These were as follows: indicator (8)(a)–(e), general management; indicator (10)(a)–(b), procurement; indicator (11), utilities; indicator (12)(b), Comprehensive Occupancy Plan, and the reporting requirements in indicators (12)(a), occupancy; (13)(e), financial management; (15)(e), modernization; and (16)(d), development.

Two performance standards have been removed as a result of comments received: standard (9)(b), work order response time; and standard (15)(e), timeliness of management improvements. The comments indicated that the concept of work order response time was already addressed in indicator (6), outstanding work orders. The standard for management improvements was eliminated because the major aspects of management improvement are adequately documented elsewhere in the modernization program.

At the urging of comments submitted by members of Congress, industry organizations (National Association of Housing and Redevelopment Officials [NAHRO], Council of Large Public Housing Authorities [CLPHA], and Public Housing Authorities Directors Association [PHADA]), and others, the Department has also consolidated the following indicators/standards from the proposed rule: indicator (2), unexpended modernization funds, has been consolidated with standards (a)–(d) within indicator (15), modernization; indicator (7), annual inspection and condition of units, has been consolidated with standard (9)(a), annual inspection of systems; the four standards within indicator (14), residents' quality of life, have been consolidated into one indicator; and the three remaining standards within indicator (16), development, have been consolidated into one indicator.

Three of these four consolidated indicators have been divided into components to focus on particular aspects of management assessment; Indicator (2), modernization; indicator (7), annual inspection and condition of units and systems; and indicator (12), development. The application of components will be discussed later in this preamble in connection with the subject of computing the assessment score.

A number of the comments suggested additional indicators should be included in PHMAP, as follows: (1) Lease enforcement; (2) support by local government (per cooperation agreement or financial committment); (3) housing type and age of units; (4) classifying the type of neighborhood the housing is located in; (5) PHA involvement in the community; (6) affirmative action/minority business compliance; (7) Resident Management Corporation performance; and, (8) an indicator to measure a PHA's creativity, flexibility, and initiative. The Department has considered these suggestions but has determined, in accordance with the majority of comments received and the 92 App. Act amendments to section 502 that place a limit on the number of indicators that can be used, to reduce the number of indicators rather than to include additional indicators at this time. However, the areas listed in items (3) and (4) of this paragraph will be given active consideration in the interim rule because of the 92 App. Act requirement that the differences in management difficulty that result from physical condition and neighborhood environment be reflected in the management assessment process.

Several comments stated that the method of adding, amending or removing indicators by publishing a notice of the change in the **Federal Register**, as planned in the proposed rule, would violate the Administrative Procedures Act. Because of these concerns, the Department has decided to include the indicators in full in the interim rule. Any amendments to the indicators will follow after an opportunity for notice and comment, using the same procedure as any other change to the rule would follow.

The proposed rule provided a scoring adjustment for indicators according to PHA size, with large PHAs (those having more than 1250 units) being required to meet less stringent standards than small PHAs. While a number of comments approved of this approach, a greater number argued that the size-based adjustment in the proposed rule was not sufficient to account for performance differences in PHAs, or that other adjustments, for example, ones based on the type of population served or the nature of the surrounding community, were more appropriate. The size-based adjustment is eliminated in the interim rule and the standards that applied to smaller PHAs are used in those indicators that remain from the proposed rule. Rather than using scoring adjustments, the interim rule provides for the adjustment of a PHA's designation from troubled to standard status or from standard to high performer status based upon the emphasis to be given to physical condition and neighborhood environment, as required by the 92 App. Act. The approach of not providing any specific scoring or status adjustments other than those required by law is being taken to permit the Department to acquire experience with the program and make more valid determinations on what additional adjustments, if any, would be appropriate. Comments are specifically invited on what scoring or status adjustments would be appropriate in the final rule.

Comments are also invited on the 92 App. Act requirement to give weight to the differences in the difficulty of managing developments that result from their physical condition and neighborhood environment. To put this requirement into effect in the initial year of PHMAP implementation, the Regional Administrator shall consider whether or not to designate a PHA as troubled or mod-troubled or as a high performer in accordance with § 901.125. If a PHA's score falls within ten points below the point value established for troubled, mod-troubled or high performer designation, the Regional Administrator shall take into consideration the extent to which a PHA's performance difficulties are attributable to the physical condition of its development(s) and/or the nature of neighborhood environment. If the Regional Administrator determines that a PHA's performance difficulties are attributable to physical condition and/or neighborhood environment rather than to poor management practices, the Regional Administrator may withhold troubled or mod-troubled designation or award high performer designation. The Department, in the interim rule, has chosen this method to implement the clear, statutory intent to include considerations of physical condition and neighborhood environment in the management assessment process. However, the Department will seek to develop a more exact method of integrating these two factors into the assessment process, and will rely on comments it will receive and its experience in administering the program under the interim rule in doing so.

Two comments stated that no consideration was given to factors beyond a PHA's control, e.g., land availability or lawsuits. The 92 App. Act amendments also require that PHAs not be penalized because of factors beyond their control. The proposed rule provided for modification and exclusion requests that PHA could use to demonstrate the existence of factors beyond its control to avoid penalization. The interim rule continues to provide this option. In addition, several of the indicators now have exemptions based on factors beyond a PHA's control. The score for an indicator to which an exemption applies is not included in the calculation of the overall PHMAP score, and a PHA is thereby not penalized for those particular factors beyond its control.

One comment stated that the current system of checks and balances to oversee PHA management is adequate and PHMAP is not necessary. This comment overlooks the fact that there is a statutory mandate to establish a management assessment program for PHAs using, at least, the seven indicators listed in section 502 of NAHA and up to five others deemed necessary by the Department. In addition, the Department believes that PHMAP enhances the current system of checks and balances, by providing a means of assessing all PHAs with uniform criteria.

Section 901.05 Definitions

One comment stated that the rule should include a definition of "deficiency". The Department agrees and will include a definition in this rule.

Section 901.100 Data Collection

The certification requirement attracted a number of comments. Fifteen comments objected to the requirement for the PHA attorney to attest to a PHA's certification, often citing the sufficient assurances provided by the other required signatories and the additional expense of an attorney review that is especially significant to smaller PHAs. The Department agrees with these observations and has dropped this requirement.

Three comments stated that HUD has no authority to suspend or debar signatories of the certifications. It may be that what suspension or debarment actions are available to the Department were misunderstood in these comments. The Department has authority to

suspend or debar signatories in accordance with 24 CFR part 24. A person debarred or suspended in this way is excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities.

One comment requested the Department to specify the sanctions for intentional false certification, and asks how HUD will determine intentional false certification. The proposed rule lists a range of sanctions that may be used, as would be deemed appropriate under the circumstances. The Department will make a determination of intentional false certification on the basis of any adequate evidence, that is, information sufficient to support the reasonable belief that an intentional false certification has occurred. This information may be obtained from a thorough review, investigation, audit, or any other source that produces adequate evidence of intentional false certification. The interim rule makes clear that the determination of intentional false certification and the sanction imposed may be appealed.

Three comments stated that 45 days after the publication of the rule is not sufficient time for certification to be provided. The Department stated in the proposed rule that only in the first year of PHMAP implementation, for the purposes of the Comprehensive Grant Program, would PHAs with 500 or more public housing units under their management be required to submit certification within 45 calendar days after the publication of the rule. This interim rule also requires an accelerated schedule for submission of certifications in the initial year of PHMAP implementation, as described fully in the discussion and charts below. These time limits are necessary for the timely implementation of the Comprehensive Grant Program.

Three comments stated that HUD lacks the resources to check certifications. The Department will attempt to maximize the effectiveness of the resources available to it and perform confirmatory reviews of PHAs on a risk management basis. The procedure that will be followed is described more fully below, in the preamble discussion of Field Office functions. The Department is considering other methods to verify certifications.

One comment stated that the wording of the certification is too broad and PHA board members should be permitted to rely on the representations made to them by the Executive Director. The Department understands that board members are more generally concerned with policy issues and often rely on their staff to provide them with information on day to day details. Where their reliance is reasonable under the circumstances of the particular case, board members are not penalized. However, the matters to be certified under PHMAP are of a more general nature and reflect management trends rather than day to day details. Because of this, and since the Board of Commissioners is the governing body of, sets policy for, and officially acts on behalf of, the PHA, the Department has determined that the Board chairperson should be required to sign the certification.

One comment stated that the certification is too costly because much of the information sought is not currently tracked by PHAs. Specifically cited were certifications related to work orders, maintenance and inspections. The Department has determined that these certifications are necessary to implement the statutory indicators that require the assessment of PHA performance with regard to work orders, maintenance and inspections. The Department considers certification to be the least burdensome method of gathering the information for these required assessments. The Department is aware that those PHAs that currently have no system for tracking this information will expend more effort in preparing certifications the first year of PHMAP, but certification will be substantially less burdensome in all subsequent years once a PHA implements a tracking system. To further facilitate ease of reporting, items that are currently being certified to will be incorporated into existing HUD forms, where possible. The Department believes that a well-managed PHA should normally be tabulating and submitting the information required on the certification form on a regular basis to its Board of Commissioners.

One comment suggested that certification and HUD review should not take place during the budget review; they should take place on the semi-annual report date. The Department agrees that the certification should not take place during the budget review process, and the interim rule requires PHAs to submit certification 90 calendar days after the beginning of their fiscal year, except for the first year of PHMAP implementation, in which an accelerated schedule will be followed as described fully in the discussion and charts below. The purpose for using the beginning of a PHA's fiscal year is to enable the Field Offices to distribute the workload for 3,135 PHAs across the Federal Fiscal Year.

The interim rule also states that if a PHA does not submit its certification, or submits its certification late, this may be cause for the PHA to receive a presumptive rating of failure in all of the PHMAP indicators, which may result in troubled or mod-troubled designations.

Six comments stated that the time table for data collection is too short. The Department agrees to change the time line for the submission of data to allow a PHA additional time to tabulate year end data and submit its certification to the Field Office. This interim rule establishes the general rule for submitting data that requires a PHA to submit its certification 90 calendar days after the beginning of its fiscal year. However, because of the needs of the Comprehensive Grant Program (CGP) to identify mod-troubled PHAs for Federal Fiscal Year (FFY) 1993 and to develop a management needs assessment component, the submission and assessment of PHMAP data in the initial year of implementation under this rule will take place in three phases.

The following charts show the certification submission schedules and Field Office assessment schedules for the three phases of PHMAP in the initial year of its implementation:

First Phase Submission

500+ unit PHAs shall submit PHMAP certification based upon their 1991 fiscal year by March 2, 1992, which is 45 calendar days after the publication of the PHMAP interim rule in the **Federal Register.** These data submissions will be used for the management needs assessment for FFY 1992 CGP for all 500+ unit PHAs. In addition, these data submissions will be used for those 500+ unit PHAs with their fiscal year beginning (FYB) 01-01-92 for the management needs assessment and mod-troubled determination for FFY 1993 CGP. Field Offices will complete this first phase assessment within 90 calendar days after the publication of the interim rule in the **Federal Register.** The following chart presents the first phase submission schedule:

PHA FYB	Submission	Data source	FO assessment
01-01-92	45 calendar days after FR	12-31-91	90 calendar days after FR.
04-01-92	45 calendar days after FR	03-31-91	90 calendar days after FR
07-01-92	45 calendar days after FR	06-30-91	90 calendar days after FR.
10-01-92	45 calendar days after FR	09-30-91	90 calendar days after FR.

Second Phase Submission

1–499 unit PHAs with FYB 01–01–92 shall submit certifications for the immediate past fiscal year 90 calendar days after the beginning of their fiscal year. For the 250–499 unit PHAs, these submissions will be used for the management needs assessment for FFY 1993 CGP, including the mod-troubled determination; 1–249 and 500+ unit PHAs with FYB 04–01–92, 07–01–92 and 10–01–92, and 250–499 unit PHAs with FYB 07–01–92 and 10–10–92, shall submit certifications for the immediate past fiscal year 90 calendar days after the beginning of their fiscal year. For the 500+ unit PHAs, these submissions will be used for the management needs assessment for FFY 1993 CGP, including the mod-troubled determination. For the 250–499 unit PHAs, these submissions will be used for the management needs assessment and the mod-troubled determination for FFY 1994 CGP. Field Offices will complete the second phase assessments 90 calendar days after PHAs submit certification. The following chart presents the second phase submission schedule:

PHA size	PHA FYB	Submission	Data source	FO assessment
1-499 units	01-01-92	04-01-92	12-31-91	07-01-92
1-249 units, and 500+ units	04-01-92	07-01-92	03-31-92	10-01-92
1-249 units, 250-499 units, and 500+ units	07-01-92	10-01-92	06-30-92	01-01-93
1-249 units, 250-499 units, and 500+ units	10-01-92	12-31-92	09-30-92	04-01-93

Third Phase Submission

250–499 unit PHAs with FYB 04–01–92 shall submit certifications based upon their 1992 fiscal year, and 250–499 PHAs with FYB 07–01–92 and 10–01–92 shall submit certifications based upon their 1991 fiscal year, by June 1, 1992. These submissions will be used for the management needs assessment for FFY 1993 CGP, including mod-troubled determination. Field Offices will complete the third phase assessments 45 calendar days after PHAs submit their certifications. The following chart presents the third phase submission schedule:

PHA size	PHA FYB	Submission	Data source	FO assessment
250-499 units	04-01-92	06-01-92	03-31-92	07-15-92
250-499 units	07-01-92	06-01-92	06-30-91	07-15-92
250-499 units	10-01-92	06-01-92	09-30-92	07-15-93

Two comments inquired as to what period will be covered in the initial assessment. The Department will assess a PHA on its immediate past fiscal year for the initial year and all subsequent years.

Among the comments were suggestions that PHMAP not rely on the fiscal year as an event marker, or not use annual due dates, or measure certain indicators as of the same day for all PHAs. The Department disagrees with these comments and will use the end of a PHA's fiscal year as the time to perform the PHA's annual performance assessment, since PHAs compile and submit other annual reports at this time.

One comment suggested the use of annual averages, not status as of a certain date, in measuring performance. The Department agrees that PHAs should be given the option of using averages over a period of time. The interim rule has revised the indicators to permit PHAs to use status as of certain date or averages over a period of time, where appropriate. The indicators in which PHAs may elect to be scored on data as of a certain date or an average over a period of time are vacancy number and percentage, and TARs.

Eight comments suggested variations of a phase-in or delay of PHMAP implementation for periods ranging over six months, one year, or two years, or running PHMAP as a trial or advisory program. The Department disagrees because this program and its basic parameters are required by statute. The Department will, however, first implement the program through this interim rule rather than a final rule. In this way, additional comments may be submitted on changes from the proposed rule, and the initial years of PHMAP will be used to gain experience that will enable the Department to assess and refine the program in a final rule. The Department is particularly interested in receiving comments from PHAs, residents, industry and resident groups, and other interested parties, on the most appropriate way, if any, to attain equitable comparisons among PHAs through the use of scoring adjustments, as discussed more fully below.

Section 901.105 Computing Assessment Score

Thirty-nine comments addressed the issue of appropriate scoring adjustments, with many disagreeing with the use of a large/small PHA designation as in the proposed rule, or suggesting other or additional adjustments to be used. Suggestions were received to make scoring adjustments on the basis of: (1) Age of stock; (2) demographics; (3) more leeway for small PHAs; (4) more leeway for large PHAs; (5) more strict standards for large PHAs; (6) State and local laws and local conditions; (7) the number of elderly units vs. the number of family units; (8) a two tiered system with strict standards for newer or modernized developments in good condition; (9) urban vs. rural environments; (10)

densely populated developments vs. scattered site housing; and (11) thriving communities vs. depressed communities.

The Department acknowledges the differences that exist among PHAs and believes that some uniform adjustments on the basis of significant differences for management assessment may be appropriate. However, the comments received indicate the lack of consensus and difficulty in proceeding on this issue. The Department does not, therefore, include any scoring adjustments in this interim rule, although it will, in accordance with the 92 App. Act requirement, either withhold troubled or mod-troubled designation or proceed with high performer designation based upon consideration of the differences in the difficulty of managing developments that result from their physical condition and/or the nature of their neighborhood environment. During the initial implementation period of PHMAP under the interim rule, the Department will consider any additional comments submitted on this issue, analyze the operation of the program with particular interest in the types of exclusion and modification requests received, and consult with PHAs, residents and industry groups to develop the most appropriate way to attain equitable comparisons and scoring adjustments among PHAs.

Four comments addressed the process of computing the PHMAP score, stating that the calculation of total points is unclear; that there is no discussion provided of how the weighting system is derived; and that there is no discussion of the statistical bases of standards and grades. The Department did discuss these topics at some length in the preamble of the proposed rule, and will not repeat that discussion here. The Department does believe that in order for PHMAP to be a useful tool for PHAs to perform their own assessments, the program should be as uncomplicated as possible. One area in which the Department is simplifying the process is in the weighting or multiplication of the points scored in an indicator to reflect its importance or significance in relation to other indicators. The proposed rule used weighting factors that ranged from one to five. In the interim rule, the range of weighting factors is more limited and the points scored in an indicator will be weighted or multiplied, if at all, by two or three only.

The Department has determined, based on its experience with PHAs, that indicators receive a higher weight primarily if they reflect a management aspect closely related to the key areas of the condition of PHA stock and delivery of services to PHA residents. On this basis, four indicators are given a high weight of three: vacancies; rents uncollected; annual inspection and condition of units and systems; and resident initiatives. Two indicators are given a medium weight of two: modernization; and unit turnaround. Six indicators are not weighted: energy consumption; outstanding work orders; tenants accounts receivable; operating reserve; routine operating expenses; and development.

Because each indicator is graded from zero to ten points, indicators with a weight of three have a weighted value of zero to 30 points and indicators with a weight of two have a weighted value of zero to 20 points. A PHA being scored for all 12 indicators could receive a maximum total of 220 points. PHAs with indicators not examined because of exclusion requests would have a smaller maximum total of points. The percentage score of a PHA is the result of dividing its actual number of points by its potential maximum (for the indicators that are examined) and multiplying by 100. For example, if a PHA were graded on all 12 indicators and received 176 points, its percentage score would be 80 (176 divided by 220, with the ratio multiplied by 100). On the other hand, if the PHA scored 176 points out of a potential maximum total of 200 points, its percentage score would be 88 (176 divided by 200, with the ratio multiplied by 100).

The 12 indicators in this interim rule provide the basis for overall scoring and assessment. Three of the indicators are divided into subparts or components, to provide a fairer and more accurate measure of different aspects of PHA performance on those indicators. The indicators with components are modernization; annual inspection and condition of units and systems; and development.

The modernization indicator consists of five components, each initially graded from zero to ten points and then weighted as follows: unexpended funds over three years old, x2; timeliness of fund obligation, x1; contract administration, x1; quality of physical work, x3; and budget controls, x1. These factors correspond to a requirement of the 92 App. Act that, in determining whether a PHA is troubled with respect to the modernization program, the Department consider only the PHA's ability to carry out the modernization program effectively based upon the PHA's capacity to accomplish the physical work: (a) With decent quality; (b) within a timely manner; (c) under competent contract administration; and (d) with adequate budget controls. The unexpended funds and timeliness of fund obligation components reflect the timeliness standard of the 92 App. Act, and the other components of this indicator match up one-for-one with the remaining statutory standards.

The five components, after being weighted, have a potential maximum of 80 points. In order to calibrate the overall modernization indicator to the zero to ten point scale used for every other indicator before weighting, the total component score of the modernization indicator is divided by eight, and the result is rounded to one decimal place. For example, if a PHA scored 60 points as the weighted sum of its components on modernization, then its PHMAP indicator score for modernization would be 7.5 (the result of dividing 60 by eight and rounding to one decimal place). In computing the overall PHMAP score, the modernization indicator score of 7.5 in this example would be multiplied by the overall modernization indicator weight of two.

For determinations of mod-troubled status for the purposes of the Comprehensive Grant Program, any score on the PHMAP modernization indicator of less than 6.0 (or fewer than 48 points on the component-weighted preliminary score) will designate a PHA as mod-troubled. During the initial year of PHMAP implementation, the Department will give Field Offices sufficient time to assess PHA modernization performance and compile accurate data so that designations of mod-troubled can be made for the second year of Comprehensive Grant Program funding. The Department will not reduce any PHA's Comprehensive Grant Program FFY 1992 formula allocation due to a mod-troubled designation.

The PHMAP grade for the indicator of development is computed by grading its four components from zero to ten points, then weighting these four component scores as follows: quality of contract administration, x1; timeliness of development, x2; quality of physical work, x3; and budget controls, x1. The weighted component score is divided by seven, with the result rounded to one decimal place.

The PHMAP grade for the indicator of annual inspection and condition of units and systems is computed by grading its four components from zero to ten points, and weighting these four components as follows: systems to track inspection/repair of units, x1; annual inspection of units, x1; correction of unit deficiencies,

x3; inspection and repair of systems, x3. The weighted component score is divided by eight, with the result rounded to one decimal place.

Several comments suggested the restructuring of grades "A"–"F" for more flexibility. The Department has revised the grading of the indicators remaining in the interim rule to reflect the comments received and to provide more flexibility. The grades now reflect a range of zero to ten points, rather than zero to five points as in the proposed rule. The rule will include the following chart that assigns the points attributed to each grade:

Grade and Points

A 10.0
B 8.5
C 7.0
D 5.0
E 3.0
F 0.0

The point values of each grade were revised to reflect a true percentage value for grade "C". In the proposed rule, grade "C" equalled a point value of 3.0, or 60%. In the revised grade points, grade "C" equals a point value of 7.0, or 70%, which is a true percentage for grade "C".

One comment suggested that scores should be computed on a project, not PHA, basis. The Department disagrees since the purpose of PHMAP is to assess the overall management performance of PHAs, not PHA management of individual projects.

Comments were received that suggested additional categories for designating the status of PHAs. The Department has determined not to use any designations in the first year of PHMAP implementation other than high performer, standard and troubled. The Department will use the first year of PHMAP to continue to assess the instrument and determine the most appropriate ways to designate PHAs.

Section 901.110 PHA Request for Exclusion or Modification

A number of comments stated that the most common or expected exclusions should be listed in the rule or handbook. The Department will issue handbook guidance that will include examples of the most common or expected exclusion and modification requests. Handbook guidance will stress that extenuating circumstances should be addressed at the time of PHA certification when a PHA submits its requests for modifications and exclusions. Handbook guidance will also stress that a PHA should submit requests for modifications and exclusions at the time it submits its certification rather than during the appeals process, unless highly unusual circumstances are discovered after a PHA submits its certification request. Modification and exclusion requests submitted during the appeals process that do not reflect highly unusual circumstances discovered after a PHA submitted its certification will not be considered.

Another comment asked what standard HUD will use to evaluate these requests. The Department requires a PHA to submit supporting documentation to justify its request for an exclusion or modification. This documentation should provide a PHA's reasons and the supporting data for requesting the exclusion or modification. HUD will then make its determination using the standard of whether the exclusion or modification request is reasonable under all of the circumstances considered.

One comment stated that the rule should provide examples of required supporting documentation. The Department will issue handbook guidance that will include examples of required supporting documentation.

One comment stated that modification requests should be open for public inspection. The Department agrees. A PHA that has an exclusion or modification request granted is on a different footing from other PHAs with respect to the area covered by the request. The decision to grant a request and the basis on which it was made should, therefore, be an open record that gives the public confidence in the integrity of the process. Similarly, an open record of requests that are denied can dispel any suggestion of favoritism, provide guidance for future actions, and insure consistency in the program. For these reasons, the records of exclusion and modification requests will be open for public inspection.

The Department has further determined that a policy of openness in all areas of PHMAP is in the public interest, for the reasons discussed immediately above, and particularly because what is being assessed is the management of public housing. The interim rule provides in a new § 901.155 for the Field Office to maintain PHMAP files, including certifications, the records of exclusion and modification requests, appeals, and designations of status based on physical condition and neighborhood environment, as open records, available for public inspection in accordance with any procedures established by the Field Office to minimize disruption of normal office operations.

Section 901.115 PHA Scores and Status

The Department received comments that suggested the elimination of high performer status and the use of a simple pass/fail system; or the use of a pass/fail system with a continuum of levels within fail or troubled. The Department disagrees with these suggestions and has determined that the present, three-tiered system of high performer, standard, and troubled (including mod-troubled) will be used in the interim rule. Absent any experience indicating the contrary, this system seems the most appropriate way of implementing the authorizing statute, section 502 of NAHA, which requires the designations of troubled and mod-troubled, and specifically permits the designation of high performer. The Department will identify and commend PHAs that meet the performance indicators established under PHMAP in an exemplary manner, in accordance with section 502 of NAHA.

Two comments stated that the Department has too much discretion in assigning status. The proposed rule provides that HUD "may" designate a PHA as a high-performer, standard or troubled. The Department disagrees with these statements, and believes the Regional Administrator should have the discretion to deny, for example, a PHA high performer status for substantial noncompliance by a PHA in one or more areas. This subject will be discussed further, later in this preamble under "Regional Administrator functions."

A comment stated that PHMAP scores should be open to public inspection. The Department agrees. The local community, residents, local and State officials, and the public should know whether or not a PHA is performing in a capacity to preserve and protect its public housing developments and is operating them in accordance with Federal law and regulations. To ensure that those elected to represent the public are informed of the performance of the PHAs within their purview, the Department will notify local and State officials of a PHA's score once it has been finally determined.

This interim rule states that a PHA that achieves a total weighted score of 90% or above on all of the indicators may be designated as a high performer. A PHA that achieves a total weighted score of less than 60% on all of the indicators may be designated as troubled. A PHA that achieves a total weighted score of less than 60% on the modernization indicator may be designated as mod-troubled.

Section 901.120 Field Office Functions

Several comments stated that the proposed rule places too much of a burden on the Field Office. The comments characterized the Field Offices as competent and hardworking, but too overburdened, understaffed, and poorly trained to implement the program. Concerns were expressed that no time would be left for the Field Offices to provide technical assistance because of other duties imposed upon them by the rule. The Department considers the Field Offices capable of carrying out their duties under the rule. Field Offices have been assessing PHA performance on an annual basis (annual performance review) for the past several years, and the Department believes that a change in the assessment criteria will not overburden Field Office personnel. Field personnel will be trained in the new PHMAP program. The provision of technical assistance to PHAs under Memoranda of Agreement will be ensured under PHMAP.

Two comments stated that Field Offices lack adequate travel funds for on-site reviews. The Department agrees that adequate travel funds are not available to review each PHA in every program area once a year. However, Field Offices will continue to practice accountability monitoring, and review of PHAs, including confirmatory reviews, will be conducted on a risk management basis.

One comment stated that there is too much variation in Field Offices for objective field judgments to be made under the program. The Department agrees that it is impossible to take all subjectivity out of this rule, but the subjective element is a given in any judgmental process. The intent of PHMAP is to be as objective as possible. Indicators are based on numerical data whenever appropriate. The Department also recognizes that a cold, hard, objectivity based entirely on numerical data may not always be appropriate. For this reason, the Regional Administrator has the discretion to review and verify a PHA's score prior to the transmission of the score to the PHA. To avoid the abuse, or even the appearance of abuse, of this discretion, the PHMAP process is an open record.

The Department will issue handbook guidance that will require the Field Office to perform the PHMAP assessment within 180 calendar days after the beginning of a PHA fiscal year (or within 90 calendar days after a PHA submits its certification, which is 90 calendar days after the beginning of a PHA fiscal year). Confirmatory reviews will be conducted on a risk management basis in the following order: (1) Size; (2) borderline mod-troubled designation (5% below and above the percentage for mod-troubled designation); (3) borderline troubled designation (5% below and above the percentage for troubled designation); (4) those PHAs whose PHMAP scores or individual indicator scores indicate a negative trend over a period of three to five years; and (5) high performer designation.

The Field Office will transmit a letter informing a PHA of its PHMAP score and status (notification letter) within 180 calendar days after the beginning of the PHA's fiscal year. If a PHA appeals, a second notification letter will be sent to the appointing official(s), and to the PHA after the appeals process has been concluded. If a PHA does not appeal, a notification letter will be sent to the appointing official(s) 195 calendar days after the beginning of the PHA's fiscal year when the 15 day period for the PHA to appeal has expired. (The appeals process, as revised for this interim rule, is fully described later in this preamble). Each Field Office will transmit notification letters pertaining to all PHAs in its jurisdiction, to the Governor and members of Congress, once a year, at the beginning of the Federal Fiscal Year.

One comment stated that CIAP incentives should not be automatically tied to CIAP performance, but should be within the discretion of the Field Office. The Department disagrees and places discretion with the Regional Administrator.

Section 901.125 Regional Administrator Functions

There were no comments received on Regional Administrator functions, but changes due to comments in other areas have necessitated changes in Regional Administrator functions. The interim rule states that the Regional Administrator may review a PHA's score prior to the transmission of the notification letter to the PHA, within 180 calendar days after the beginning of the PHA's fiscal year. The Regional Administrator will have discretion to determine the method for this review. In the initial year of PHMAP implementation and for the purpose of the public housing Comprehensive Grant Program under section 14, the review will be made in accordance with the schedule set out in the discussion of § 901.100 (data collection), above.

The Regional Administrator has the discretion to deny or rescind a PHA's status as a high performer so that it will not be entitled to any relief or incentives, based on substantial noncompliance with legal or contractual requirements by the PHA. Areas of substantial noncompliance include, but are not limited to, noncompliance with statutes (for example, Fair Housing and Equal Opportunity statutes); regulations (for example, 24 CFR part 85); or the Annual Contributions Contract (ACC) (for example, part II, section 307, Personnel). Substantial noncompliance with the legal and contractual requirements to which it is subject casts doubt on the PHA's capacity to preserve and protect its public housing developments and operate them in accordance with Federal law and regulations. Under these circumstances, a high performer designation would not be appropriate.

If high performer designation is rescinded, the Regional Administrator will send written notification to the PHA, within 15 days of the decision, with an explanation of the reasons. An information copy will be forwarded to the Assistant Secretary for Public and Indian Housing.

In the initial year of PHMAP implementation, the Regional Administrator shall consider whether or not to designate a PHA as troubled or as a high performer in accordance with § 901.125. This section implements the 92 App. Act requirements that weight be given to the differences in the management difficulty that result from physical condition and neighborhood environment, and that the evaluation system be administered flexibly to ensure that PHAs are not penalized for circumstances beyond their control. If a PHA's score falls within ten points below the point value established for troubled, mod-troubled or high performer designation, the Regional Administrator shall take into consideration the differences in the difficulty of managing developments that result from their physical condition and/or the nature of neighborhood environment. If the Regional Administrator determines that a PHA's performance difficulties are attributable to physical condition and/or neighborhood environment rather than to poor management practices, the Regional Administrator may withhold troubled or mod-troubled designation or award high performer designation.

The Regional Administrator, in accordance with handbook guidance, may take into consideration as appropriate, but not be limited to, the below listed guidelines in determining whether to refrain from designating a PHA as troubled or mod-troubled or to designate a PHA as high performer.

Management difficulties attributable to the physical condition for one or more of a PHA's developments may include:

1. Age of the development(s);
2. Size of the development(s); and
3. Modernization needs, i.e., the development has not undergone comprehensive modernization within the past 20 years; or the development has undergone comprehensive modernization within the past 20 years, but neighborhood environment has contributed to additional modernization needs.

Management difficulties attributable to neighborhood environment for one or more of a PHA's developments may include:

1. Crime;
2. Drug activity;
3. Lack of commercial, employment and social services;
4. Age and/or poor condition of the infrastructure;
5. Amount and type of financial resources and services provided by the locality;
6. Population density; and
7. Demographics.

The Department believes that a 10 point range, equal to ten percent of the total PHMAP score, in which the Regional Administrator may act to withhold troubled or mod-troubled status or award high performer status, appropriately reflects the weight to be given to the impact of physical condition and neighborhood environment on management capability. A broader range of correction, equal to fifteen, twenty, or more percent of the total PHMAP score, would unfairly skew the comparability of assessment scores and management performance. However, to avoid any unjust result from not giving sufficient consideration where merited in individual cases, appeals of PHMAP designations of status are specifically permitted in the interim rule on the basis of the Regional Administrator's failure to consider physical condition and neighborhood environment, in cases where a PHA's score falls more than ten points below the point value established for troubled, mod-troubled or high performer designation.

Section 901.130 Right to Appeal

Twelve comments stated that notification of a PHA's status after an appeal should only be provided to a PHA's Executive Director, with no notification provided to Senators, or Governors, because the notification to elected officials would only politicize the issue of a PHA's status. The Department disagrees with these comments and believes that the local community, residents, and local and State officials should know whether or not a PHA is performing in a capacity to preserve and protect its public housing developments and operate them in accordance with Federal law and regulations. Elected officials in particular, as representatives of the public, should be aware of the status of PHAs within their jurisdictions. However, notification to these parties will not occur until after any appeals have been heard. As with all other aspects of PHMAP, the appeal shall be an open record to provide future guidance and avoid any hint of impropriety or favoritism.

Eight comments stated that the appeals process is too complex, too burdensome, and too long. The Department agrees and the interim rule has simplified the appeals process. The interim rule, and handbook guidance, will detail the appeals procedure and provide time frames for processing appeals and HUD responses.

A PHA may appeal its score on the basis of data errors (incorrect data or incorrect calculations), or highly unusual circumstances that were discovered after a PHA submitted its certification and request for modifications and exclusions, or on the basis of the Regional Administrator's failure to consider physical condition and neighborhood environment in the designation of the PHA's status. In addition, a PHA has the statutory right to appeal its designation as a troubled and/or mod-troubled PHA, to petition for removal of either of these designations after it has acted to improve sufficiently its management performance, and to appeal any refusal of a petition to remove these designations.

The deadline date by which the Field Office must receive a PHA's appeal will be specified in the Field Office notification letter. The appeal deadline date will be the 15th calendar day after the Field Office mails the notification letter, not counting the day the notification letter is mailed. If the 15th day falls on a weekend or holiday, the deadline date is the next day that is not on a weekend or a holiday. Any appeal not received by the Field Office by the deadline date will not be considered.

After the Field Office receives an appeal, it will review the issues presented and forward its recommendation for their resolution to the Regional Administrator. The Regional Administrator will review the Field Office recommendation, which will include a copy of the appeal, and will render a decision on the appeal. The Field Office's recommendation and the Regional Aministrator's decision will be made within 30 calendar days of receipt of the appeal. The Field Office's recommendation and the Regional Administrator's decision are a part of the record of the appeal.

A PHA must demonstrate that a successful appeal will have a significant impact on its score (e.g., at least 5 percentage points increase) or its performance standing (e.g., it will remove a PHA from troubled designation, or move a PHA into high performer status). If a PHA appeals on the basis of incorrect data, the PHA must document the corrections, demonstrate the impact of these corrections on its score and supply reasons for the error. If a PHA appeals on the basis of incorrect calculations, the PHA must clearly document the calculation errors, demonstrate the impact of these corrections on its score, and provide corrected calculations. If a PHA appeals on the basis of highly unusual circumstances that were discovered after a PHA submitted its certification and request for modifications and exclusions, the PHA must demonstrate the impact of these unusual circumstances on its score, and submit a request for modifications or exclusions, with supporting justifying documentation. An appeal on the basis of the Regional Administrator's failure to consider physical condition and neighborhood environment must demonstrate the presence of these factors and their direct and substantial impact on the management of the affected PHA.

A PHA may also appeal the rescission of high performer designation. If a PHA appeals the rescission of high performer designation, the PHA must clearly demonstrate that the Regional Administrator's decision to rescind high performer designation was not supported by the evidence.

In cases where an appeal is denied by the Regional Office, the PHA may appeal to the Assistant Secretary for Public and Indian Housing. The deadline date by which the Assistant Secretary must receive a PHA's appeal will be specified in the denial of appeal letter. The appeal deadline date will be the 15th calendar day after the Regional Administrator mails the denial of appeal letter, not counting the day the denial of appeal letter is mailed. If the 15th day falls on a weekend or holiday, the deadline date is the next day that is not on a weekend or a holiday. Any appeal not received by the Assistant Secretary by the deadline date will not be considered. A PHA may appeal for only the reasons discussed above, and only if the PHA can produce new

documentation not previously submitted to the Field Office. The Assistant Secretary will have 30 calendar days from the receipt of the PHA appeal to respond to the PHA.

Handbook guidance will include the following chart which outlines the time lines for the PHA appeal process:

Activity	Completion date
PHA submits Appeal to Field Office.	15 calendar days after notification letter is mailed (date is specified in letter).
Field Office recommendation and Regional Office decision.	30 calendar days after receipt of PHA Appeal.
Regional Administrator responds to PHA Appeal with notification letter.	30 calendar days after receipt of PHA Appeal.
PHA Submits Appeal of Regional Office decision to Assistant Secretary.	15 calendar days after Regional Administrator mails denial of appeal (date is specified in denial letter).
Assistant Secretary responds to PHA Appeal.	30 calendar days after receipt of PHA Appeal.

Three comments suggested that PHAs should be given 30 days to appeal; one comment suggested that the Regional Administrator should have 60 days to review appeals; and one comment suggested the inclusion of an arbitration panel process in the rule. The Department disagrees with these suggestions because the majority of comments on this subject reflect concerns that the appeals process is too long, and these suggestions would add additional time to the appeals process.

Section 901.135 Incentives

Fourteen comments suggested that high performers should be given extra consideration in HUD funding (for example, a higher percentage of funding when the Performance Funding System is under-funded; competitive NOFAs; Section 8 certificate and voucher rankings). The Department agrees, in part, with these comments, and will include the PHMAP assessment as the management capabilities component in conventional public housing competitive grant programs. Other suggested areas of extra consideration will be examined by the Department.

A number of comments stated that the rule provides no specific or substantial incentives; that the only incentive in the rule is not to become troubled. The Department agrees that the proposed rule did not provide specific incentives. This is because the proposed rule specifically requested comments on incentives.

Four comments suggested that the Department re-establish the decontrol program incentives. The Department agrees that many of the incentives under the decontrol program were beneficial to PHAs. A PHA which is designated to be a high performer will be relieved of specific HUD requirements identified in the interim rule, effective upon notification of high performer designation and until the next assessment is completed. All incentives will be awarded to PHAs on this basis. These areas of relief supersede incentives presently prescribed by various other HUD handbooks, to the extent of any inconsistency.

Four comments suggested that high performers be permitted to make line item (not bottom line) changes in the budget. The Department agrees and high performers will be allowed to make specific line item changes to routine expenditures as long as the total level of routine expense is not changed.

Three comments suggested reducing/waiving the number of HUD approvals needed before the PHA can take action in a number of areas. The Department agrees and in the interim rule has included as incentives not requiring prior HUD approval for occupancy of dwelling units by PHA employees, provided the PHA charges market rents for these units; not requiring prior HUD approval under the Development Handbook for contracts for professional and technical services; and other reductions of otherwise necessary HUD approvals for high performing PHAs.

Three comments suggested awards/certificates of recognition for high performers at the formal Performance Awards ceremony. The Department agrees that public recognition for high performers is warranted but is not certain of the exact vehicle that will be used to convey this recognition.

Two comments stated that specific incentives should be in place after notice and comment before the evaluation and sanctions aspect of the rule go into effect. The Department agrees, and incentives for PHMAP will be published in the interim rule.

Two comments suggested that the Department provide incentives or recognition for "substantially improved" PHAs. The Department agrees and will work on implementing this suggestion in the final regulation once experience with the interim rule shows how PHA improvement can best be ascertained.

Two comments suggested that high performers be permitted to retain savings/earnings resulting from management efforts. The Department does not believe this is a new incentive as it basically reflects what is already contained in the Performance Funding System in two areas: (1) Income—increases in rental income generated in a PHA's fiscal year are retained and are not reflected in the subsidy calculation until the following year; and (2) Allowable Expense Level (AEL)—operating savings generated through improved procedures or cost saving measures do not result in a reduction in the AEL. Therefore, this incentive is already available under current regulations.

One comment suggested that high performance in individual indicators should be recognized, not just overall high performance. The Department disagrees due to the oppressive administrative burden this would impose on both PHAs and the Department. However, the Department will identify and commend PHAs that meet the performance indicators established under PHMAP in an exemplary manner, in accordance with section 502 of NAHA.

One comment suggested monetary incentives for PHA employees responsible for "A" ratings. The Department is bound by the comparability provisions of the Annual Contributions Contract. However, the Department is reviewing this issue.

One comment suggested that the Department waive or relax salary comparability requirements for employees of high-performing PHAs. The Department disagrees. Although salaries must be kept at reasonable levels, under existing regulations, bonuses can be paid to PHA employees, as long as the bonuses are comparable to those paid to other comparable local agencies.

One comment suggested that high performers be permitted to receive their entire annual subsidy at once and keep the interest. The Department disagrees with this proposal because it violates United States Treasury regulations, as well as the rule at 24 CFR Part 85. All interest on Federal funds is returned to the government to reduce grant payments. Public housing management enjoys a specific exemption from the provision that that all interest is retained, but is incorporated into the calculation of subsidy eligibility under the Performance Funding System.

One comment suggested that high performers that have exceeded maximum reserves be permitted to establish replacement reserves without meeting all replacement reserve criteria. The Department disagrees because a PHA cannot be permitted to establish a replacement reserve when some or all of

its projects have either bonded debt or notes that were sold to the Federal Financing Bank. Such PHAs are not subject to the Debt Forgiveness provisions of section 3004 of the Housing and Community Development Reconciliation Amendments Act of 1985, Public Law 99–272, which amends section 4 of the U.S. Housing Act of 1937.

One comment suggested that modernization funding be reprogrammed to troubled PHAs that demonstrate local government support. The Department disagrees because one of the technical review factors for the Comprehensive Improvement Assistance Program is local government and resident support for proposed modernization. Once the Annual Contributions Contract amendments have been executed, the Department cannot reprogram modernization funding from one PHA to another; recaptured modernization funding cannot be reprogrammed or reused, but must be returned to the United States Treasury.

One comment suggested that high performers be permitted to budget for vacancies at 4% instead of 3%, even though the actual rate is lower. The Department disagrees with the proposal, which is merely a means of providing an additional increment of subsidy eligibility not currently permitted or budgeted for under the Performance Funding System.

One comment suggested that high performers be permitted to receive Major Reconstruction of Obsolete Projects (MROP) funding if physical conditions warrant without regard to vacancies. The Department disagrees with this suggestion. However, a PHA's ability to compete for competitive grants, including MROP, will be enhanced because high performers will receive the highest management capability rating.

One comment suggested that high performers receive speedier processing of RHPS requests. The Department disagrees because it is currently considering alternative requisition systems that would reduce the paper work requirements and expedite payment for all PHAs.

One comment suggested that high performers receive a limited budget review. The Department already performs limited budget reviews and only performs detailed budget reviews on an exceptional basis.

One comment suggested that the Department limit financial reporting requirements to once per year for high performers. The Department agrees and has included this as an incentive.

One comment suggested that high performers not be designated as mod-troubled. The Department disagrees because section 502 of NAHA mandates the designation of mod-troubled PHAs as a separate determination from the designation of troubled. The Department also expects it to be very rare that any PHA would be both a high performer and mod-troubled.

Section 901.140 Memorandum of Agreement (MOA)

One comment suggested that the Department assess PHAs operating with MOAs under MOA standards, not the PHMAP standards. The Department disagrees with the suggestion to assess PHAs operating with MOAs under the MOA performance goals only. Section 502 requires that all PHAs be assessed under the PHMAP indicators, with no exception for troubled or mod-troubled PHAs. The purpose of the MOA, in part, is to move the PHA to acceptable performance levels, and not just the MOA yearly performance target.

One comment suggested that Comprehensive Grant Program money be allowed in increments if a PHA meets the MOA requirements. The Department disagrees because the Comprehensive Grant Program is based on formula allocations with specific provisions on treating mod-troubled agencies and on the circumstances under which the Department may withhold or reallocate funds.

One comment stated that it was unclear what grade represents a deficiency that must be corrected with an MOA. The Department has determined that the chief purpose of the MOA is to serve as the plan to remove the PHA from troubled or mod-troubled status as quickly as possible. The emphasis in a MOA is not on taking actions to bring a PHA's management performance in each indicator, considered individually, to at least a grade of "C", as is the case with Improvement Plans; rather, the MOA's emphasis is on identifying what combination of actions across what combination of indicators will result in an overall PHA management capability that is no longer considered troubled or mod-troubled. As both the proposed rule and the interim rule state: "the scope of the MOA may vary depending upon the extent of the problems present in the PHA." There are, thus, no set grade levels that must be addressed in a MOA. For example, the goal of removing a PHA from troubled or mod-troubled status may, in a particular instance, be more readily accomplished by raising the grade levels of a number of indicators from "D" to "B", than from raising the grade levels of other indicators from "F" to "D". The "F" grade indicators would still have to be addressed in an Improvement Plan, and these corrections for particular indicators may require extended timeliness, but the remedying of troubled or mod-troubled status should not be contingent upon correcting the most intransigent deficiency. The areas of improvement on which the MOA focuses, the targeted levels of improvement to be achieved, and the strategy for attaining those levels are arrived at through a process of negotiation between the troubled or mod-troubled PHA and the Department.

One comment stated that the statute does not require a MOA for mod-troubled PHAs. The Department interprets the statute to include the requirement of an MOA for mod-troubled PHAs. Although the statute does not specifically state that an MOA is required for mod-troubled PHAs, it does infer this. The determination of a PHA as mod-troubled under section 502 of NAHA is tied into the modernization allocation formula of section 509 of NAHA. Under the formula, a mod-troubled PHA may be allocated less funding than is allowed a PHA that is not troubled. Section 509 provides that a mod-troubled PHA's funding allocation may be restored if its designation as mod-troubled is removed. The obvious mechanism for removing the designation of a PHA as mod-troubled, since no other process is even mentioned in the statute, is the memorandum of agreement (MOA) under section 502, which is the same section under which mod-troubled status is estimated.

One comment suggested that high performers should also be required to enter into MOAs. The Department disagrees because one of the incentives for high-performing PHAs is less paper work requirements, rather than more.

One comment stated that is was not clear what technical aid/assistance will be given to troubled PHAs. The Department will require Field Offices either to provide technical assistance, or direct a PHA to another provider, for all of the deficient areas (below a grade "C") of a PHA's operations. The specific types of technical assistance will be dependent upon the needs of individual PHAs. Examples include, but are not limited to, assistance in developing financial controls; orientation of new board members; procurement training; and assistance in developing required policies.

Section 901.145 Improvement Plan

The Department did not receive specific comments on the improvement plan, but there were two comments asking for clarification of what constitutes a "deficiency". The Department defines deficiency as any grade in any indicator below a grade "C". The Department has made two changes in the improvement plan in order to relieve PHAs of paperwork burden. The first change allows a PHA 90 calendar days after the receipt of its notification letter or a final resolution of an appeal to correct a deficiency, rather than 60 calendar days as stated in the proposed rule. A PHA should be able to correct most deficiencies within this time frame. A PHA will be aware of most deficiencies at the time it performs its own assessment and submits its certification which is due within 90 calendar days after its fiscal year begins. Correction of deficiencies should begin immediately after discovery and continue through the Field Office assessment process and appeals process, if any. At a minimum, a PHA has 270 calendar days after its fiscal year begins to correct a deficiency before an improvement plan may be requested.

The second change involves the submission of an improvement plan. The Field Office will require a PHA to submit an improvement plan for each indicator in which a PHA scored a grade "F". The Field Office may require, on a risk management basis, a PHA to submit an improvement plan for each indicator in which a PHA scored a grade "D" or "E".

Section 901.150 PHAs Troubled With Respect to the Program Under Section 14 (Mod-Troubled)

Eight comments stated that many of the indicator items are not related to mod-troubled or are too broad (such as funds owed to HUD, development funds, excess HUD advances, sustained audit disallowances, annual audit, etc.), and recommended that the entire section be re-analyzed. The Department agrees with this comment and, accordingly, has limited the indicators used to determine mod-troubled PHAs to only one indicator, the modernization indicator, which is composed of only items directly related to modernization performance.

One comment stated this section is so confusing it might better be written as a separate proposed rule. The Department disagrees. In addition to limiting the indicators used to determine mod-troubled to a single indicator directly relating to modernization, the section of the PHMAP rule on mod-troubled PHAs has been rewritten for clarity.

One comment stated that even though this provision may not violate the statute, it breaches its spirit by not providing for a credit system for PHAs that become mod-troubled in subsequent years. This issue will be addressed more appropriately in the Comprehensive Grant Program rule.

One comment stated that the mod-troubled designation should be limited to past performance on modernization using four of the PHMAP modernization standards: quality of physical work, timeliness of physical work, contract administration, and budget controls. The Department agrees, and has incorporated the appropriate standards within the modernization indicator along with the statutory indicator of unexpended modernization funds.

One comment suggested that the process for designating mod-troubled PHAs should be the subject of a separate rulemaking. The Department disagrees. The procedure for designating mod-troubled PHAs is going forward because the modernization program is such an important part of the overall operation of a PHA. An opportunity to comment on this important aspect of PHMAP was provided in the proposed rule. This interim rule provides additional opportunity for public comment on this issue.

Section 901.200 Substantial Default by a PHA

The proposed rule addressed the substantial default provision of section 502 by restating the statutory language, with no amplification, and inviting public comment on the issue. Recognizing that the statutory language may not be adequate for regulatory purposes, the Department developed additional implementing language for inclusion in this interim rule.

The Department's purpose in developing the new subpart C, Substantial Default, is to define clearly the terms and conditions under which the Department can and will intervene in the management of a public housing agency to assure the continued availability of decent, safe, and sanitary housing for PHA residents, and to protect the Department's and the public's financial interest in the preservation of PHAs' real property assets.

Several comments stated that this section needs more adequate definition, or that a description of triggering events for a substantial default should be given in the rule. The Department agrees and has provided both in § 901.205 of the rule. Two comments stated that substantial default should be defined only as an intentional act or an act done with criminal intent. The Department disagrees because events or conditions that constitute a substantial default are not always intentional or done with criminal intent. The significant aspect of a substantial default is an inability to perform as required under contracts or covenants. Whether the harm that results from the inability to perform, or that is avoided by prompt remedial action, is a consequence of an intentionally wrongful act or mere negligence or incompetence, should not, and will not, be the determining factor in defining a substantial default.

One comment suggested that an appeals process to challenge a finding of substantial default should be included. The Department disagrees and has determined that since the finding could only be made by the Assistant Secretary after full Departmental review, court action would be the appropriate avenue for a PHA to challenge the finding.

Other Comments

Three comments stated that PHAs need more money to perform their functions. The Department believes that PHMAP attempts to be flexible in its performance assessment by providing for special circumstances through modification and exclusion requests. Every PHA is given the opportunity to present for consideration its arguments and supporting data that it is unable to perform to a satisfactory level in any indicator because of financial factors beyond its control.

One comment stated that charts and graphs would be helpful for understanding the rule. The Department agrees and has provided charts in this interim rule whenever possible. Handbook guidance that will be issued for this interim rule will include charts and graphs whenever possible.

One comment suggested that PHMAP could have a significant impact on small entities under the Regulatory Flexibility Act. The Department believes it is significant that in this comment the total number of paperwork burden hours was mistaken for the paperwork burden per respondent. The Department considers and is sensitive to size-based impacts and distinctions in this rule. The analysis of the paperwork burden in the proposed rule was broken down by PHA size, and the proposed rule incorporated a scoring adjustment based on PHA size. The Department invites additional comment in this interim rule on what, if any, size-based adjustments would be appropriate for this program, and will be reviewing the operation of the program

under the interim rule with this consideration in mind.

One comment suggested that PHMAP should be suspended anytime the Performance Funding System is funded at less than 100%. The Department disagrees with this suggestion because PHAs do not stop providing housing and basic services if the Performance Funding System is funded at less than 100%. While underfunding of the Performance Funding System creates a challenge, it does not suspend responsibility.

One comment suggested that HUD officials should be graded by PHAs. The Department disagrees that this program is an appropriate vehicle for this activity. The Annual Contributions Contract places monitoring responsibility for PHA compliance on the Department. Section 502 of NAHA, which establishes PHMAP, requires the Department to assess the management performance of PHAs. The Department performs an annual performance evaluation of Regional Offices, and Regional Offices perform annual performance evaluations of Field Office to ensure accountability. PHAs should inform Regional Offices of Field Office nonperformance for review and action, and inform Headquarters of Regional Office nonperformance for review and action.

The Department is particularly interested in receiving suggestions from PHAs, residents, representatives of resident and industry groups, and other interested parties, regarding indicators to assess the management performance of PHAs under the section 8 program, as well as incentives for section 8.

Indicator Comments

Since many indicators/standards have been eliminated or consolidated, the Department will only address those comments that relate to the remaining indicators. The remaining indicators have been renumbered to reflect their order of appearance in this interim rule; the order of numbering that was used in the proposed rule will be included in the following discussion for ease of reference to the proposed rule. The grade "C" in all the indicators reflects acceptable performance, with grades "B" and "A" reflecting higher than acceptable performance, and grades "D", "E" and "F" reflecting lower than acceptable performance.

Vacancy Number and Percentage (Indicator (1) in the Proposed Rule)

Fifty-eight comments stated that vacancies need to be defined and suggested the following categories not be included in the vacancy rate: (1) Vacant units is on-schedule modernization programs; (2) vacant units not available for occupancy that are in developments identified in an approved Comprehensive Plan for modernization but that have not as yet been funded; (3) vacant units that have been determined to contain lead based paint or other hazardous materials; (4) vacant units in an approved demolition or disposition program or in a site for which the PHA has submitted an application for demolition or disposition; (5) vacant units in States whose law requires the PHA to hold abandoned resident possessions in a unit for a stated period of time should not be counted until the PHA is permitted to enter the unit and begin readying it for re-occupancy; (6) vacant units that are vacant because of casualty damage during the period when the claim is being adjusted; (7) vacant units in locations where the units are vacant because of marketability and have been excluded by a modification waiver from HUD; (8) vacancy problems caused by over-building of competing subsidized units, which often have numerous amenities that are not available in public housing; (9) vacant units due to rigorous and necessary eviction practices; (10) units that have been deprogrammed; (11) units that are vacant due to local market conditions; (12) units that are vacant due to resident-caused damages; (13) units that are vacant due to natural disaster; (14) units that are vacant due to drug elimination efforts; (15) a reasonable time to re-rent vacant units after they have been turned back from modernization in large blocks; (16) temporary fluctuations in the vacancy rate due to the addition of new development units; and (17) vacant units due to lack of modernization funds.

The Department agrees that vacant units should not be included in the vacancy rate under the following circumstances: (1) Units in an approved demolition or disposition program; (2) units in which resident property has been abandoned, but only if State law requires the property to be left in the unit for some period of time, and only for the period stated in law; (3) units that have sustained casualty damage and are being held off the market to allow adjustment of the insurance claim; and (4) units that are occupied by employees of the PHA and units that are used for resident services.

Vacant units in a funded on-schedule modernization program have been consolidated into this indicator for grade"C" and below. In the private housing sector, most rehabilitation is performed with residents in place. Given the need for public housing, in most circumstances, a PHA should be able to modernize units with residents in place. Under the Comprehensive Grant Program (CGP), the cases where units are rehabilitated with residents in place should increase.

The Department disagrees with the other exemptions suggested by the comments. The other suggestions enumerated above are for unusual or special circumstances that clearly are under the control of PHAs to mitigate, or that existing handbook procedures accommodate. However, in the event a truly unusual or special circumstance exists, the issue should be raised with the Field Office through an exclusion or modification request, as discussed earlier in this preamble.

Twenty-six comments stated that the vacancy percentages are too rigid and the vacancy percentage should be 3% for grade A. The Department disagrees with these comments. Acceptable performance for vacancies in accordance with the Performance Funding System is 3% vacancies.

Twenty-two comments stated that vacancies should be an annual average rather than a snapshot picture because vacancy rates are often seasonal, and it would be unfair to base the vacancy rate determination on one month. The Department agrees that the requirement to use only the snapshot method could result in an unrepresentative vacancy rate. Therefore, the vacancy indicator has been revised specifically to allow for the average vacancy rate for the reporting month, or a snapshot picture at the end of the reporting month. This procedure for calculating vacancy rates is the same as that specified in 24 CFR 990.117.

Nine comments asked how the term "vacant" is defined. The Department defines a vacant unit as a unit that is not under lease to a family that was a low-income family at the time of admission and has not been approved for temporary or long-term nondwelling use in the normal course of project operation. The Department will issue handbook guidance that will include a sample work sheet for calculating the average percentage of vacancy days. The formula used to compute the vacancy rate is vacancy days (less stated exemptions) divided by the unit availability days (less stated exemptions). In the revised indicator (1), vacancies, actual vacancies means: (1) The percent or number of vacancies after deducting vacant units included in an approved demolition or disposition program; (2) vacant units in which resident property has been abandoned,

but only if State law requires the property to be left in the unit for some period of time, and only for the period stated in the law; (3) vacant units that have sustained casualty damage and are being held off the market to allow adjustment of the insurance claim; and (4) units that are occupied by employees of the PHA and units that are used for resident services. Adjusted vacancies means the percent or number of vacancies after deducting units included in a funded on-schedule modernization program.

Two comments inquired as to what period of time is being assessed. The Department will assess PHAs under PHMAP for the period of the PHA's immediate past fiscal year, unless stated otherwise for assessing modernization.

One comment stated that the industry norm of 5% vacancies should be applied to all PHAs. The Department disagrees with this comment due to the unique nature of public housing. Private industry housing does not have a guarantee of operating subsidy nor does it have the stipulation that a resident shall pay no more than 30% of income towards total housing cost. Since public housing has greater opportunities to rent units, grade "C" of this indicator is the acceptable performance of 3% vacancies.

One comment suggested that specific ranges be used for the vacancy indicator. The Department agrees, and the vacancy indicator has been revised to reflect more specific language.

One comment noted that the number of vacant units does not appear in the grading of the indicator. The Department included the number of vacant units for grade "C" and below in the proposed rule and has included the number of vacant units for grade "B" and below in the vacancy indicator for this interim rule. In addition, a PHA will now be required to certify to the average number and percent of vacancy days.

One comment stated that if a PHA has more than 5% of its units vacant for more than one year, the PHA should fail this indicator. The Department has determined that 8% is the failing percentage.

One comment stated that the vacancy rate is not necessarily a factor of management performance; in an area where vacancies run 15%, a 10% vacancy rate may show exceptional management. The Department disagrees with the statement that the vacancy rate is not necessarily a factor of management performance. The Department considers vacancies one of four major areas of management performance, and has weighted this indicator to reflect its importance in management performance. A private industry housing vacancy rate of 15% does not necessarily mean that a PHA should have a comparable vacancy rate, since the two may not be addressing the same segment of the housing market. Private industry housing does not have a guarantee of operating subsidy nor does it have the stipulation that a resident shall pay no more than 30% of income towards total housing cost. The norms for public housing should, therefore, be more rigid than for the private sector.

A PHA shall certify to this vacancy indicator within 90 calendar days after the beginning of its fiscal year, as of the end of its immediate past fiscal year. Documentation verifying this indicator shall be maintained by the PHA for HUD post-review. This indicator has a scoring weight of three.

Modernization (indicators #2 and 15(a)–(f) in the proposed rule)

In response to public comments, the Department has decided to combine indicators #2 and #15 into one indicator with five components for modernization and to eliminate the items related to program management (#15(e) in the proposed rule) and to timeliness of management improvements (#15(f) in the proposed rule). In addition, the Department has revised indicator #2 in the proposed rule, which is now component #1, Unexpended Funds, of the modernization indicator (#2 in the interim rule) to be a more effective measure of performance. Based on the language in the proposed rule, this indicator allowed for a certain percentage of unexpended funds after 3 years without consideration of whether a revision to the original Project Implementation Schedule had been approved by HUD. The Department did additional field testing of this component and found that it did not accurately reflect the Departmental policy of granting time extensions that resulted in revised Schedules. The results of the field test support the Department's decision to revise this component to a pass/fail component that is consistent with the Department's policy of adherence to the latest HUD-approved Project Implementation Schedule. This approach is consistent with longstanding Departmental policy on issuing time extensions based on valid delays and the effect of these HUD-approved time extensions on the expenditure of funds.

In response to the public comments, the Department has made other significant revisions to the items comprising the modernization indicator. However, in revising the modernization indicator, the Department has concluded that it may be necessary to conduct on-site assessments of the indicator before applying it for the purpose of affecting the formula allocation of modernization funds under the Comprehensive Grant Program (CGP), due to the following reasons:

First, the Department is concerned that, in some cases, Regional and Field Offices may have granted time extensions for fund obligation (also affecting fund expenditure) for reasons within the PHA's control in order to avoid the recapture of funds. Recaptured funds are currently not available to the Department for reuse. Reasons within the PHA's control do not constitute valid reasons for delay, as set forth in the Comprehensive Improvement Assistance Program (CIAP) Handbook 7485.1, as revised. The issuance of time extensions in cases of poor performance solely to avoid fund recapture affects the accuracy of the scoring for the revised components #1 and #2 of the modernization indicator.

Second, some Field Offices may not have adequate documentation of PHA performance in the areas of contract administration and quality of physical work. This lack of adequate documentation affects the accuracy of the scoring for the revised components #3 and #4 of the modernization indicator.

Accordingly, the inadequate or inaccurate data in the Field Offices may result in artificially high scores for certain PHAs on the modernization indicator; and a lack of uniform application of the time extension policy and the monitoring requirements by Field Offices may result in artificially high or low scores for other PHAs. Therefore, the Department has concluded that it is in the best interest of the Public Housing Program to score and rate PHAs on the modernization indicator only after conducting any necessary on-site assessments. This means that in the first year of the CGP, which is FFY 1992, no PHA participating in the CGP will be initially designated as mod-troubled for FFY 1992 and have its formula funding limited.

However, the Department puts the public on notice that it may condition a PHA's annual formula grant in the first year of the CGP, based on substantial evidence of a lack of performance in carrying out its modernization program under the CIAP. Under conditioning, the PHA would receive the full amount of its annual formula grant, subject to carrying out certain activities, such as hiring a construction management firm, or subject to receiving prior HUD approval of certain activities, such as award of

architect/engineer contracts, bid advertisement, issuance of contract modifications, etc.

As previously stated, the Department intends to use the first year of the PHMAP (FFY 1992) to conduct any necessary on-site assessments of PHAs participating in the CGP in FFY 1992. This will enable the Department to have accurate and sufficient information regarding the PHA's contract administration and quality of work under the CIAP. In addition, the Department intends to work closely with Field and Regional Offices on appropriate application of the time extension policy, as set forth in the CIAP Handbook. Mod-troubled designation will not affect a PHA's formula funding amount until FFY 1993.

One comment questioned how a PHA which has applied for CIAP funding over many years for a specific project, but has not been funded, can be penalized. The comment stated that projects with problems must be excluded when determining performance because the need for CIAP money is a valid reason for the very problems being monitored. The Department does not understand this comment since the indicator relates to PHA performance using modernization funds, not to the condition of units as the comment implies.

One comment stated this indicator should measure the product, not the process. The Department believes that overall, the modernization indicator as revised does measure the product, not the process, in that each of the components has an impact on the quality of the modernization. In addition, the criteria or standards to be used within this indicator have been set by the 92 App. Act.

Comments regarding indicator #2, unexpended section 14 (modernization) funds in the proposed rule (now designated component #1 of the modernization indicator) which is mandated by the statute, are as follows: Two comments stated that a clarification is needed as to whether unexpended means unspent or unobligated. The Department defines unexpended to mean unspent, regardless of obligation status.

Two comments stated that measuring obligated modernization funds is a more appropriate measure from an administrative and construction perspective. The comments also noted that the overlay of the CGP adds another layer of complexity when measuring "expended funds." The comments recommended that HUD should either interpret the starting point for the expenditure of funds to be the time of the contract execution or seek a technical correction to the statute to provide for review based upon the obligation of funds. The Department believes that fund expenditure is an important measure of PHA performance under modernization since expended funds reflect completion of planned work. Completion of planned work is the ultimate objective of modernization in order to improve living conditions for the residents. Therefore, the Department has no plans to seek a technical correction to the statute.

Two comments stated that following a strict time period for funds expended is arduous in that disputes with contractors require time to resolve, architectural and engineering studies and plans/specifications require time to develop, and unanticipated hazard abatement among other things may delay the completion of the modernization work. The Department agrees and has written into this component an exemption for valid delays outside of the PHA's control. Again, PHAs should be aware that the purpose of modernization is to not only obligate funds, but obtain decent living conditions for residents as quickly and responsibly as possible. Furthermore, a PHA should exert maximum effort to resolve contract disputes which can result in delays in expending funds, without compromising its contractual rights.

Two comments stated that this statutory indicator has the unintended and undesirable effect of encouraging PHAs to front-load modernization contracts to ensure that funds are expended more quickly. The Department disagrees in that because of the approved project implementation schedule and time extension exclusions, it would not be to any PHA's advantage to "front-load modernization contracts". It would be far more effective for the PHA to submit an original project implementation schedule which is realistic or request a time extension, where necessary and justified. Where the PHA has unexpended funds over three years old, but has not reached the fund expenditure deadline in the latest HUD-approved schedule, the PHA is not penalized for having such funds unexpended.

One comment stated that this factor needs to be made more stringent, recognizing that HUD can approve longer implementation schedules for those unusual projects which might actually require an extended period of time for fund expenditure. The Department agrees and has reworded this component, making it pass/fail except where the PHA can demonstrate that the approved original or revised schedules gave the PHA longer than 3 years.

One comment stated that in light of the fact that PHAs have traditionally been measured primarily on the percentage of obligated funds, perhaps this standard should initially provide for a lower percentage of expended funds, and raise it each fiscal year, providing a smoother transition to the new measurement than the percentages contained in the proposed rule. The Department disagrees and feels that this statutory component will effectively measure performance under a pass/fail approach with the incorporated valid delay exemption.

One comment stated that PHAs with unexpended funds approved prior to fiscal 1984 should not automatically fail this indicator. For example, litigation might be the cause of the unexpended funds. More generally, there is a danger that the "unexpended after three years" rule will be applied too mechanically, even though HUD can approve longer time frames in the project implementation schedules. The Department agrees and has incorporated the valid delay exemption.

One comment stated that it is not always possible to have funds expended after three years due to the size and complexity of some modernization projects and suggested that current procedures remain in place. The Department agrees that current procedures should remain in place and has written into the component exclusions which cover longer time frames in the approved schedule, as well as exemptions for valid delays outside of the PHA's control.

One comment stated that this indicator would lead to waste of Federal funds. It is reasonable to expect a PHA to plan, design, commit and implement work items within a three-year time period, but it is not reasonable to have necessarily spent all the related funding within three years. The comment also stated that the current handbook requirement requiring obligation of all funding within three years is reasonable and is working well; and that if HUD changes the standard to expended rather than obligated, the effect will be to encourage PHAs to throw money at problems rather than to plan and spend wisely. The Department disagrees and feels that the built-in exemptions and exclusions/modifications provided for this component will allow PHAs to plan to spend the funds appropriately without waste or fear of receiving a low score if all funds are not expended within three years due to a longer time frame

approved by HUD in the original or revised project implementation schedule. If these funds are planned for expenditure past the three years, they would be excluded from the scoring. The Department would like to note that the national norm for expenditure of all funds for single stage comprehensive modernization, as set forth in the CIAP Handbook, is two and one-half years. Furthermore, the Department strongly believes that the objective is to finish the job in a timely manner, not just to obligate the funds.

One comment stated grade "A" should be raised to 10% rather than 20%, and grade "C" should cover a range of 10 to 20%. The entire indicator should have a higher scoring weight. HUD is entirely too lenient on modernization non-performance and it can be reasonably expected that the problem will grow larger when the CGP is in place and large PHAs are no longer competing with one another. The Department agrees that the component was too lenient and has changed it to pass/fail.

One comment stated that there appears to be a major conflict between the PHMAP system and many HUD Handbook requirements and gave as an example indicator #2, unexpended section 14 (modernization) funds, which requires a PHA to expend more than 70% of non-emergency modernization funds a full year ahead of CIAP Handbook requirements to keep from getting an "F" grade. The comment questions whether HUD plans to revise all relevant HUD Handbooks to reflect the new PHMAP requirements and if so, recommends that these Handbooks be rewritten/revised prior to the PHMAP or any other assessment system becoming effective. The Department disagrees that the revised component conflicts with HUD Handbooks since it relies on the expenditure deadline date identified by the PHA in its project implementation schedule. This is consistent with the handbook requirement for submission of schedules.

Comments regarding indicator #15(b), timeliness of physical work (this indicator has been retitled as timeliness of fund obligation and redesignated as component #2) are as follows: Three comments stated that a passing grade should be given to PHAs that obligate 100% of their modernization funds in accordance with their implementation schedule within three years. Those that do not meet this standard should fail. The Department agrees with the pass/fail approach to this indicator and has rewritten the component to so reflect.

Two comments stated that this timeliness is generally not a problem; however, based on past experience, delays encountered in meeting implementation schedules as adopted rest with HUD and the prolonged process of obtaining approvals on such things as change orders and even time extensions themselves may take as long as six months. The Department recognizes that HUD delay is a valid reason for a time extension. However, it is the responsibility of the PHA, when it determines that it will not be able to meet the fund obligation deadline date in the original project implementation schedule, to request a time extension, where there are valid reasons outside of the PHA's control.

Two comments indicated that as long as project completion meets the required date, failing to meet interim dates should not result in a failing grade. The Department has the responsibility to monitor all the key steps leading to the completion of the modernization and must be aware of interim progress in order to anticipate possible delays in completion. However, the Department agrees that failure to meet the first two dates in the project implementation schedule is less important than failing to meet the fund obligation deadline.

Two comments stated that there is no distinct difference between grade "A" and grade "C". If the issue is simply determined by the designated project implementation schedule, it would be more realistic to have this category rated on a simple pass/fail basis. Otherwise, some delineation between grade "A" and grade "C" is necessary. The Department agrees with this comment and has redefined this component on a pass/fail basis.

One comment stated that HUD's own involvement (control) over the "mod" program could easily result in poor PHA performance. The Department recognizes that HUD delay is a valid reason for a time extension. However, it is the responsibility of the PHA, when it determines that it will not be able to meet the fund obligation deadline date in the original project implementation schedule, to request a time extension where there are valid reasons outside of the PHA's control.

One comment stated that this indicator assumes that unobligated funds is linked to poor PHA management when these funds could represent savings from bringing contracts in at cost less than originally budgeted. The Department agrees that unobligated funds due to completing a contract below the budgeted amount is a valid reason for a time extension. Accordingly, the Department has included this exemption in the component.

One comment indicated that it seems excessive to fail a PHA for missing a single implementation date. (A PHA could fail this item merely because a Field Office had not processed a request by the time that it scored this factor.) The Department agrees and has modified this factor to only address the fund obligation deadline date.

One comment stated this indicator fails to consider lawsuits. The Department recognizes lawsuits as a valid delay and time extensions for obligation of funds should be approved on that basis. It is absolutely not the Department's intention to discourage PHAs from pursuing legitimate claims to the maximum degree. This indicator has been modified to exclude funds where programs have been given time extensions.

One comment stated although the project implementation schedule has been a guide in the past (not a law), a PHA should not be penalized for past problems in the event that it was unaware of its importance. While the Department agrees that the requirement for the project implementation schedule is not required by statute, it has been a requirement since 1985 and the Department has continued to emphasize its importance as a monitoring tool for both HUD and the PHA.

One comment stated that HUD should be more responsive to modernization-related activities, particularly when Departmental approval of change orders is necessary. Any delays caused by HUD inaction or indecision should be deducted from the three-year time clock. The Department agrees and has included HUD delay as a valid reason for delay.

One comment stated that grades for this item are subject to change only "when HUD approved a longer time frame in the Project Implementation Schedule." The comment stated that this item should state "excluding HUD delays." The comment further suggested that a provision be added that the entire indicator is based on CIAP requirements. The Department agrees that, at this time, the entire modernization indicator evaluates regulatory CIAP issues as they relate to performance. However, after the implementation of the Comprehensive Grant Program, an indicator will be developed to assess a PHA's performance in that area. Exemptions for good cause including HUD delays have been incorporated into this component.

One comment wanted to know how valid HUD extensions are factored in. The Department will factor in such

funds as follows: all funds which are covered by the extension would be removed from the calculation for determining unobligated funds and therefore would not adversely impact on the PHA's overall unobligated percentage.

Contract Administration (Indicator #15(c) in the Proposed Rule, Redesignated as Modernization Component #3)

One comment indicated a grade "C" designation for a PHA who has identified contract administration problems, and is in the process of resolving those problems, implies a punitive approach. Initiating the same approach used in the quality of physical work designation and not discrediting a PHA for correcting problems identified by the PHA, would be a better approach. The Department has reworked this component to provide gradations and point values for varying levels of performance based on the results of previous Field Office monitoring. Furthermore, a grade "C" is not punitive; it is an acceptable level of performance.

One comment stated this factor is based on a past review and does not allow for any correction to a finding. A more appropriate factor would be that the PHA has addressed any findings raised during the preceding 12 months based on on-site inspections. The Department agrees and, accordingly, has incorporated language into this component to include any correction to a finding.

One comment stated the words "significant monitoring findings" are much too broad and should be more clearly defined. The Department agrees and, accordingly, has defined "significant monitoring findings" to mean certain items within the Monitoring Checklist, Sections II–IV (Appendix 18 of the CIAP Handbook), or where an equivalent review was conducted.

Quality of Physical Work (Indicator #15(a) in the Proposed Rule, Redesignated as Modernization Component #4)

Three comments stated that the standard related to the quality of physical work relies on subjective judgements by different Field Office staff which will seriously undermine the validity of the PHMAP program. (Depends on 8 items on a monitoring checklist which is replete with the terms "adequate", "reasonably inferable", "reasonable promptness", "endeavoring to guard against", etc., these are clearly not objective standards.) The Department maintains that the Monitoring Checklist (Appendix 18) is a valid instrument for determining monitoring findings and considers Section I of the Monitoring Checklist or another equivalent review as appropriate in evaluating the quality of physical work.

One comment suggested that this indicator require HUD to conduct field inspections. The Department disagrees that field inspections are necessary in all cases. Where necessary, and on a priority, risk management basis as explained further in the discussion of Field Office functions, below, HUD will conduct at least one monitoring visit to the PHA in order to evaluate PHA performance in this area.

Budget Controls (Indicator #15(d) in the Proposed Rule, Redesignated as Modernization Component #5)

Two comments stated that this factor ought to measure the successful resolution of any matter raised, not some fixed-in-concrete standard applied retroactively. The Department has revised this component to incorporate budget revisions or where the PHA has obtained prior HUD approval.

One comment indicated that zero-tolerance wording is too rigid (i.e., "In all cases the PHA expends modernization funds only for approved items.") Some tolerance for minor slippage should be provided for an "A" grade, a "C" grade should be defined for more frequent lapses, and "F" should be reserved for those PHAs which demonstrate a pattern of spending outside of the approved budget. The Department disagrees that some slippage should be tolerated within this component and, accordingly, has retained the pass/fail approach. If the PHA wishes to expend funds outside of the latest HUD-approved budget or over the HUD-established threshold for budget revision, the PHA should obtain prior HUD approval.

One comment noted that some Field Offices approve expenditures verbally or by letter in anticipation of a formal budget announcement; such expenditures should not be treated as if they are outside of the HUD-approved budget. The Department agrees since this situation constitutes an informal budget revisions and would be excluded from the scoring.

One comment stated that this category delineates no difference between grade "A" and grade "C". Some benchmarks should be developed as a means of justifying a grade "A" classification over a grade "C" classification. The Department has reworked this indicator as a pass/fail component.

One comment stated that the concept of measuring "Budget Controls" cost allocation systems on "actual time distribution records" is questionable. The comment suggested a better measurement would be "in accordance with budget". The Department agrees and has eliminated it from the component.

This indicator has a scoring weight of two.

Rents Uncollected (Indicator #3 in the Proposed Rule)

Thirty comments stated that a more precise definition of this indicator is required, and raised several specific questions. The Department defines "rents uncollected" as unpaid dwelling rent for residents in possession. Rents that were previously reported uncollected and subsequently received through collection procedures are included in the calculation of this indicator.

Handbook guidance will be issued that will include a sample work sheet for calculating the average percentage of rents uncollected. The indicator compares the rents uncollected at the end of the reporting period to the sum of the current dwelling rent charged for the reporting period plus the total amount of rents uncollected as of the end of the prior reporting period. The term, "current dwelling rent charged" refers to the resident dwelling rent charges reflected in the monthly rent roll(s), and excludes retroactive rent charges (including those identified through the Tenant Integrity Program), maintenance charges, excess utility charges, late charges, and any other charges not specifically identified as dwelling rent.

The formula for the calculation of average percentage of rents uncollected is as follows:

(1) Balance of rents uncollected at the end of the prior fiscal year; plus

(2) Current dwelling rents charged to residents in the current fiscal year; equals

(3) Total dwelling rent to be collected; minus

(4) Collections received for dwelling rent reported in (3); minus

(5) Dwelling rent charges reported in (3) written off as collection losses during the current fiscal year; equals

(6) Rents uncollected for the current fiscal year; divided by total dwelling rent charges to be collected in the current fiscal year as reported in (3); equals

(7) The percentage of rents uncollected.

An example showing the calculation of annual average percentage of rents uncollected is as follows:

(1) Balance of rents uncollected at the end of FY 90	$2,000
(2) Current dwelling rents charged for FY 91	+100,000
(3) Total dwelling rent to be collected in FY 91	102,000
(4) Collections received for dwelling rent reported in line (3)	99,000
(5) Dwelling rent charges reported in line (3) written off as collection losses during FY 91	+1,600
(6) Line (4) plus line (5)	100,600
(7) Rents uncollected for FY 91 (line (3) minus line (6)) divided by total dwelling rent charges to be collected in FY 91 (line (7)) as reported in (3) ($1,400 divided by $102,000) equals	$1,400
(8) The percentage of rents uncollected	1%

Three comments stated that a snapshot picture of rents uncollected could lead to the reporting of what may be distorted information. The Department disagrees, because this indicator does not measure a snapshot picture. This indicator has been revised to specify balance of rents uncollected as a percentage of total rents to be collected.

Three comments stated that this indicator is too stringent and does not sufficiently distinguish between grades, and one comment suggested using the percentages as stated in the proposed rule for PHAs with 1,249 units or less. The Department disagrees that this indicator is too stringent since rent collected is a major portion of PHA income. The Department disagrees that the indicator does not sufficiently distinguish between grades and has determined to average the percentages as stated in the proposed rule for PHAs with greater than 1,250 units and PHAs with 1,249 units or less and has determined to use the same standard of PHAs of all sizes.

Two comments pointed out a typographical error in grade "F". That error has been corrected.

Two comments stated that this indicator should be given less weight and one comment agreed with the weight for this indicator. The Department disagrees with the statement that this indicator should be given less weight. The Department considers rents uncollected as one of four major areas of management performance, and has weighted this indicator x3 to reflect its importance in management performance.

One comment stated that this indicator did not take into account resident fraud which oftentimes results in residents vacating the property as soon as a court awarded judgement or settlement is reached, or legal fees related to the eviction process assessed. The Department considers that those types of situations would be included in tenants accounts receivable for tenants not in possession, and not rents uncollected.

One comment stated that small PHAs are badly penalized using percentages because one resident with a large balance tied up in court or bankruptcy proceedings could skew the percentage, and changes in local economic conditions could change rent collection patterns. The Department agrees with these statements. If a PHA has unusual or special circumstances, the issue should be raised with the Field Office, as stated earlier in this preamble.

One comment stated that this indicator should not be included in the PHMAP assessment when an application has been submitted to HUD for demolition or homeownership. The Department disagrees because applications may be returned for additional information or documentation, and circumstances beyond a PHA's control, such as litigation, may delay the approval process, or the application may not be approved.

A PHA shall certify to this indicator within 90 calendar days after the beginning of its fiscal year, as of the end of its immediate past fiscal year. Documentation verifying this indicator shall be maintained by the PHA for HUD post-review. This indicator has a scoring weight of three.

Energy Consumption (Indicator #4 in the Proposed Rule)

The heating degree days (HDD) variance includes appropriate adjustments to reflect different Regions but does not reflect different unit sizes. One comment stated that it would be helpful if the regulations could contain an adjustment for the different unit sizes. To an extent, this indicator already reflects a PHA's unit size and Region because it is not an absolute standard, but relative to a PHA's past performance. However, the Department is still determining how best to include adjustments to reflect different unit sizes.

Fourteen comments raised issues which address unusual or special circumstances, as follows: (1) The installation of equipment, such as a computer, which may increase annual utility consumption by more than 5%; (2) negotiated or court ordered increases in utility allowances because of threatened or pending litigation; (3) units added to a PHA's inventory; (4) the installation of exterior lighting; (5) the initiation of new programs that use a community building that was not previously used; (6) increases in social services to residents; (7) substantial increases or reductions in overall energy usage; and (8) a change in the type of utilities provided. The Department agrees that there may be unusual circumstances that would increase a PHA's utility consumption more than 5%. A PHA may raise such issues with the Field Office, as stated earlier in this preamble.

Ten comments recommended that there be some increase allowed in energy consumption while still obtaining a grade "A", or suggested other percentages for grade "A". The Department disagrees because the acceptable performance for energy consumption utilized in the Field Office Monitoring of Public Housing Agencies (PHAs) Handbook 7460.7, as revised, is a maximum of 5% increase in utility consumption. Therefore, grade "C" for this indicator will be a maximum increase of 5%.

Nine comments stated that this indicator should include adjustments for cooling degree days (CDD) and energy costs incurred for the use of air conditioners. The Department agrees, and an adjustment for CDD will be included in this indicator once the CDD is included in the Performance Funding System regulations in accordance with section 508 of NAHA.

Eight comments questioned what this indicator measures and how this indicator handles the addition of office space, maintenance buildings, etc. The Department's Performance Funding System (PFS) forms are based on utility consumption which includes office space, maintenance buildings, etc., and not only the buildings occupied by residents. The Department believes that a PHA should be able to establish controls to conserve energy over space under its control, such as office space or maintenance buildings. The only consumption for developments with resident-supplied utilities to be added by the PHA will be for vacant units.

Four comments suggested that this indicator be revised to recognize energy consumption measures that a PHA has taken; the three year average ending with the most recently completed fiscal year could be compared to the average of the three years prior to that. The

Department believes that the three-year rolling base consumption average provides an incentive for new energy conservation and does not penalize previous efforts.

Three comments pointed out typographical errors involving grades "C" and "F". Those errors have been corrected.

Two comments suggested that the utility allowance portion of indicator #11, utilities, be consolidated into this indicator. The Department has determined that the review and revision of utility allowances and surcharges for excess consumption are compliance issues as required in 24 CFR Parts 965.473 and 965.477, and therefore, should not be included in a performance assessment.

Two comments suggested that the Department may wish to reserve this indicator until a means can be developed to compare consumption between different PHAs rather than between a single PHA's operating years, and consideration for the types of units under management should be given. The Department disagrees because the statute specifically calls for appropriate adjustments to reflect different Regions and unit sizes. However, all of the indicators will continue to be refined and revised as circumstances warrant.

Two comments suggested that this indicator be given more weight. The Department believes that this indicator may be weighted higher once a means has been developed to reflect different unit sizes. Until such a means has been developed, this indicator will have a scoring weight of one.

One comment stated that this indicator as worded in the proposed rule stated, "Annual utility consumption". This wording would include all utilities, rather than energy consumption, which is the wording in the statute. The Department has revised this indicator to include the statutory language.

One comment stated that this indicator should include a way to deduct the amount charged to residents for excess utilities. The Department believes the likelihood that charges for excess utilities would be sufficient to alter a PHA's score is remote. In the event of such an occurrence, the Department will give due consideration.

One comment stated that under this indicator, some PHAs will benefit if they have not conserved energy in the past, but a PHA that has historically reduced energy cost will suffer. The Department believes that a PHA which has implemented energy improvements in the past will be able to control increases and achieve an "A" rating. Such PHAs are not penalized by their past positive initiative.

One comment stated that it does not seem proper to judge the PHA with all resident-furnished utilities with the PHA with project-furnished utilities. The Department believes the control of utility consumption, whether resident-furnished or project-furnished, is a management function. There is no inequity between the two classes in that they are both being measured around their own performance.

One comment stated that the HDD adjustment in the Performance Funding System is badly flawed in that it is applied only to the one fuel source that provides the majority of the space heating and there is inadequate information provided on the Performance Funding System forms to make an informed analysis of "reasonable" utility consumption. The Department views the application of the HDD factor to meters with combined uses as a reasonable trade-off between administrative complexity and a reasonable approximation.

One comment stated that there doesn't seem to be any incentive for a PHA to reduce energy consumption when a grade of "A" can be had for maintaining the status quo. The Department disagrees. While the Department wants to encourage reductions in energy consumption, it does not believe this is always possible. On the other hand, no increase is possible even for those PHAs which have already engaged in significant conservation efforts. PHAs with inefficient and wasteful energy practices are seldom able to maintain the status quo.

This indicator has a scoring weight of one.

Unit Turnaround (Indicator #5 in the Proposed Rule)

Fourteen comments felt that certain types of units should be exempted from the calculation of vacancy rate and turnaround time: (1) All units vacant and awaiting modernization; (2) units in an approved demolition/disposition program; (3) those that are ready but unmarketable; (4) units held vacant because they contain abandoned property, and (5) units damaged by fires, floods, extensively vandalized units, etc. The Department agrees that certain types of units should be exempted from the calculation of this indicator, as follows: (1) units in on-schedule CIAP (only) programs; (2) units in an approved demolition or disposition program; (3) units in which resident property has been abandoned, but only if State law requires the property to be left in the unit for some period of time, and only for the period stated in the law; and (4) units that have sustained casualty damage, but only to the extent required to permit adjustment of the insurance claim.

Nine comments felt HUD should take into consideration several factors impacting turnaround: (1) Problems with elderly waiting lists and resident screening committees, both of which constitute additional and sometimes lengthy steps; (2) units that need comprehensive modernization or major reconstruction as documented in the Comprehensive Plan for Modernization which require a longer routine unit turnover time; (3) the extent to which modernization funding has been requested and approved or denied; (4) soft housing markets; (5) numbers on waiting lists and numbers of bedrooms required; (6) older units needing replacement parts which are harder to get; (7) units that will need to be tested for lead-based paint and subsequently abated; and (8) PHAs which experience delays in leasing units for the elderly due to the construction of FmHA projects or section 202 projects by HUD and non-profit sponsors. The Department has agreed to exempt the units in turnaround time that are listed as exempt in the preceding paragraph. The Department is coordinating with FmHA to attempt to limit competition among Federal housing programs. In the event a truly unusual or special circumstance exists, the issue should be raised with the Field Office, as discussed earlier in this preamble.

Eight comments questioned the grade "A" classification: Three comments indicated that 20 working days would be more logical to use than 20 calendar days for the grade "A" classification; three comments felt that an authority that can turnaround a unit in 30 calendar days should be graded "A" (using 30 calendar days to offset the non-working days for maintenance and management, holidays and weekends, and taking into consideration the fact that often applicants must give their landlords a 30-day notice before they can move into a unit); one comment felt grade "A" should be changed to state "is less than or equal to 30 calendar days," for a smaller housing agency, and "is less than or equal to 35 calendar days," for the large housing agency; and one comment felt the standards for vacant unit turnaround time are unrealistic—the standard needs to be less stringent to recognize these factors. The intent of each indicator is to assure this regardless of a low vacancy rate. The Department views grade "A" as an

exceptional rating. A PHA may still achieve a satisfactory rate with the 30 calendar day turnaround suggested by the comment. A grade "A" rating reflects a PHA that plans move-ins in advance and notifies the potential residents.

Four comments commented on the weight and importance of this indicator. Three comments felt this indicator should be given less weight and questioned its importance to justify a separate category. If an authority had a vacancy rate of 2%, why should it be penalized if it has a high turnaround time. One comment recommends this indicator be weighted no more than three; if a PHA is meeting the PHMAP vacancy rate targets, turnaround time is not particularly relevant. The comment feels the indicator is useful, however, if a PHA fails the vacancy rate indicator. The Department views this indicator as important since a PHA can maintain a low vacancy rate by turning vacant units around in a timely manner; therefore, this indicator will have a scoring weight of two.

Three comments felt the definition which states "average number of calendar days for the PHA maintenance staff to turnaround vacant units and for a new lease to be executed * * *" should be replaced with "average number of calendar days for the vacant unit to be prepared for re-rental and for a new lease to be executed * * *." The Department agrees with this comment and has revised the indicator to reflect such language.

Two comments requested that the following language be added to this indicator: "If the lease is executed before the unit is prepared for re-rental, then the turnaround time ends when the tenant is issued the keys and can take occupancy of the unit." The Department does not agree with this concept. The turnaround cycle should end on the effective date of the lease, not the date of execution, and the unit turnaround indicator in the interim rule reflects this determination. Leases are often executed long before a unit is ready for occupancy, but the tenant doesn't take possession of the unit or begin paying rent on it until the effective date.

Two comments thought this factor could be contradictory as related to indicator #1 concerning vacancy rates. The Department has determined that all of the exclusions for this indicator are also allowable exclusions for the vacancy indicator, with CIAP being incorporated into the actual vacancy indicator itself.

One comment thought the indicator needed to be clarified as to the period of time over which performance is to be measured—asking if this is a snapshot reflecting turnaround time for units occupied in the month prior to the certification or if it is an annual average for unit turnaround. Another comment thought one or two units could skew this average significantly and felt the median would be a better indicator of performance and would ignore extremes. The Department will allow for performance to be measured on the basis of the average during a PHA's immediate past fiscal year and has revised this indicator accordingly. Information from a PHA's immediate past fiscal year will be assessed. This average compensates for the extremes identified by the comment and is more commonly used as a statistic.

One comment wanted to know how "vacant unit" is defined? The Department defines a vacant unit as a unit that is not under lease to a family that was a low-income family at the time of admission and has not been approved for temporary or long-term nondwelling use.

One comment wanted to know how "difficult to rent units" (i.e., handicapped accessible units) are to be treated. The answer is, no differently than any other unit. The Department allows a PHA to rent handicapped accessible units to non-handicapped applicants if there are no handicapped applicants on the waiting list.

One comment wanted to know how those situations in which there is a definite lack of demand for public housing (due to oversupply) are to be addressed. The Department believes that unilateral exceptions for "difficult to rent units" and dwelling units where there is no demand would provide no incentive for PHAs to ensure that the units remain occupied. In the event a truly unusual or special circumstance exists, the issue should be raised with the Field Office, as discussed earlier in this preamble.

One comment felt this indicator should be modified to reflect higher average turnaround times in scattered site dispersed units. Turnaround times are higher in those units due to travel time to and from the units and the time associated with ordering replacement parts which are typically not inventoried. PHAs must plan for vacant unit turnaround. While the Department agrees that some additional time is sometimes required in these areas, the standards for 20 calendar days for grade "A" and 30 calendar days for grade "C" should still provide sufficient time for PHAs to accomplish the necessary work in a reasonable period. A PHA with a large amount of scattered site units should be able to plan for the additional travel time required to turnaround those units.

One comment indicated that the proposed termination of the Consolidated Supply Program (CSP) will have a negative effect on PHAs as they attempt to meet the proposed turnaround time indicator. The Department disagrees, and should the CSP be terminated, a PHA may have to adjust its procurement practices to assure that it maintains an adequate inventory to accomplish the unit turnaround in a timely fashion.

One comment felt an arbitrary number of days should not be the rule for measuring turnaround of vacant units. There are many occasions when units with major resident damage ($1,500 or more) are beyond the capabilities and scope of the maintenance rehabilitation crews, and in these cases it is more practical to utilize the small contract concept which takes more time. The Department disagrees. PHAs should be conducting annual inspections and doing routine maintenance so that such circumstances are the exception rather than the rule. Since this indicator uses an annual average, exceptions should not distort a PHA's performance. In addition, the small purchase procedures is a viable option for PHAs to accomplish repairs costing less than $25,000 (or a lesser amount as specified by State law). Under this method, PHAs solicit quotes from an adequate number (no less than three) of sources and can award the contract to the offeror with the lowest quote. This method is significantly less time consuming than the normal sealed bid procedure where formal advertising is involved. Also, it is noted that contractors can be procured for utilization on an as-needed basis, allowing them to begin work immediately.

One comment wanted to know how HUD considers the material differences between housing authorities as to the number of family and elderly units. The Department is not considering material differences between PHAs as to the number of family and elderly units in the initial year of PHMAP implementation, as discussed earlier in this preamble. PHAs should operate maintenance management systems that facilitate timely unit turnaround irrespective of household type.

One comment suggested that rather than one measurement for unit turnaround, there should be a dual tracking system—those units that require minor repairs to ready them for re-occupancy should be measured and graded by the proposed method; units that require substantial repairs or

modernization should be separated out and tracked in tandem by a second system designed to more accurately reflect the longer amount of time necessary to turnaround these units. The Department is not considering a dual tracking system in the initial year of PHMAP implementation. However, in the initial year of PHMAP implementation, the Regional Administrator shall consider whether or not to designate a PHA as troubled or mod-troubled or as a high performer in accordance with § 901.125. If a PHA's score falls within ten points *below* the point value established for troubled, mod-troubled or high performer designation, the Regional Administrator shall take into consideration the extent to which a PHA's performance difficulties are attributable to the physical condition of its development(s) and/or the nature of neighborhood environment. If the Regional Administrator has sufficient reason to determine that a PHA's performance difficulties are attributable to physical condition and/or neighborhood environment rather than to poor management practices, the Regional Administrator may withhold troubled or mod-troubled designation or award high performer designation.

One comment stated that vacancies are important, but overall percentages should be given a higher weight than unit turnaround time. At the very least, there should be some allowance for rental offers made after maintenance has completed the unit and it is ready to rent. There should also be an allowance for lease up time for new developments and large blocks of post-modernization units. The Department agrees that the vacancies should be given a higher weight than unit turnaround; the weight for indicator #1, vacancies, is three, and the weight for this indicator, unit turnaround, is two. With regard to the allowances, the Department disagrees and discussed such allowances under indicator #1, vacancies. A PHA should have management systems in place to facilitate time for unit turnaround and rent up. Consequently, there should not be a need for extra allowances for new developments and large blocks of post-modernization units.

A PHA shall certify to this indicator within 90 calendar days after the beginning of its fiscal year, as of the end of its immediate past fiscal year. Documentation verifying this indicator shall be maintained by the PHA for HUD post-review. This indicator has a scoring weight of two.

Outstanding Work Orders (Indicator #6 in the Proposed Rule)

Nine comments questioned the significance of counting work orders only at the end of the fiscal year; the evaluation should be made on a yearly average basis as opposed to only a year-end basis. The Department believes that outstanding work orders are most appropriately measured on a year-end basis, but as a percent of the total year's work orders.

Five comments stated that demand work orders should not be given preference over those generated as a result of a PHA's annual inspection or a deficiency noted by a PHA employee, and resident initiated work orders should not be the sole measurement. The Department agrees and has revised this indicator to omit the reference to demand (resident initiated) work orders. Instead, all work orders are treated alike.

Four comments stated that it is imperative that the provision for "cyclical work orders" remain in this indicator The Department agrees and does not intend to penalize PHAs for an ongoing preventive maintenance program. In fact, it is the Department's intention to reward PHAs with effective preventive maintenance programs. The term "cyclical work orders" refers to work orders which are performed on a seasonal basis, or in accordance with warranty requirements, or as part of a preventive maintenance program. For example, furnaces may be checked, cleaned and repaired during the late summer in preparation for winter usage, or vehicles may be serviced on a predetermined basis to keep warranties in effect.

Three comments stated the importance of ensuring that the information required to report on this indicator be available for all PHAs. The Department agrees, and will include a sample work sheet as handbook guidance.

Three comments questioned whether there is an adjustment planned for work orders of low priority or for work orders waiting on parts. The Department has not planned for an adjustment for work orders of low priority because of lack of consensus and difficulty in determining "low priority." Special consideration is not given for work orders waiting on parts because this is not a normally recurring or usual occurrence that would have a substantial impact on the score of this indicator. This indicator only excludes cyclical work orders from consideration in calculating outstanding work orders. A PHA should have most replacement parts in its inventory, and since this indicator is assessing the annual average number of non-emergency work orders outstanding during a PHA's immediate past fiscal year, a wait for parts should not materially impact on this indicator.

Two comments stated that there must be a clear line on what is classified as an emergency. The Department defines emergency as physical work items that pose an immediate threat to the life, health and safety of residents or that are related to fire safety.

Two comments stated that the qualification for receiving a grade "A" are unclear, as well as the phrase, "beyond 10 calendar days". The Department has revised this indicator to reflect clearer language; the phrase, "beyond 10 calendar days" has been omitted.

Two comments stated that PHAs should not be penalized for incomplete work orders in situations where the delay is due to circumstances beyond the control of the PHA. The Department agrees and has revised this indicator to reflect the annual average number of non-emergency work orders outstanding during a PHA's immediate past fiscal year.

One comment stated that HUD should consider the effect of the type of units managed by the PHA on work orders. The Department believes that since this indicator is assessing the annual average number of non-emergency work orders outstanding at the end of the PHA's fiscal year, the type of unit should not be taken into consideration during the first year of program implementation.

One comment stated that if an emergency cannot be corrected within 24 hours, then the residents should be relocated from the unit in order to remove them from exposure. The Department agrees that in some cases, the relocation of residents may be appropriate. In such a circumstance, the relocation of residents could constitute the abatement of the emergency.

One comment stated that small PHAs with small staffs and scattered sites may not be able to meet the same standard as single location PHAs. As the Department stated earlier in this preamble, all indicators will apply equally to all PHAs. Income and expenses are directly proportional to the size of the agency, and adequate funding is available to meet this indicator.

One comment stated that the need for CIAP funds increases the likelihood of outstanding work orders. As the Department stated earlier in this preamble, in the initial year of PHMAP implementation, the Regional

Administrator shall consider whether or not to designate a PHA as troubled or mod-troubled or as a high performer in accordance with § 901.125. If a PHA's score falls within ten points *below* the point value established for troubled, mod-troubled or high performance designation, the Regional Administrator shall take into consideration the extent to which a PHA's performance difficulties are attributable to the physical condition of its development(s) and/or the nature of neighborhood environment. If the Regional Administrator has sufficient reason to determine that a PHA's performance difficulties are attributable to physical condition and/or neighborhood environment rather than to poor management practices, the Regional Administrator may withhold troubled or mod-troubled designation or award high performer designation.

One comment stated that consideration should be given where PHAs rank work orders by the degree of urgency. While the Department agrees with setting priorities and recognizes the importance of taking care of emergency situations first, it will not look at that detailed a level of management. Instead, the Department is looking at overall performance.

One comment stated that the weighting of this indicator should be higher since it directly reflects the maintenance of the property and responsiveness of maintenance operations systems. The Department agrees with the importance of this indicator, but feels that a scoring weight of one is appropriate at this time due to the fact that many PHAs do not have systems in place to track adequately outstanding work orders. The weight of this indicator may be increased in the future as appropriate revisions are made to PHMAP.

The term "demonstrates progress" used in the indicator means that the time required to complete work orders has been reduced during the most recent three year period.

A PHA shall certify to this indicator within 90 calendar days after the beginning of its fiscal year, as of the end of its immediate past fiscal year. Documentation verifying this indicator shall be maintained by the PHA for HUD post-review. This indicator has a scoring weight of one.

Annual Inspection and Condition of Units and Systems (Indicators #7 (Units) and #9a (Systems) in the Proposed Rule)

Comments regarding the inspection and condition of *units* are as follows: Three comments suggested that this standard needs two tiers of grading to take into account the difference in conditions at developments that are relatively new or have been comprehensively modernized versus developments that are identified as needing comprehensive modernization or major reconstruction in the Comprehensive Plan for Modernization. This comment also proposed that this indicator be expanded to include the inspection and correction of deficiencies in both units and structures and systems (standard 9(a)). The comment further suggested that the list of systems items identified in the proposed rule for inspection and correction be more specific. The comment recommended that at a minimum this standard should be examining the condition of the structure, including foundations, walls, floors and roof, plus the plumbing, heating, mechanical, electrical, ventilation, utility distribution and security and life safety systems, as well as any elevators; in addition, all non-dwelling spaces should be inspected (this would include maintenance shops and warehouses, community facilities, offices, etc.). While the interim rule does not adopt this specific approach, the requirement of the 92 App. Act, implemented in the interim rule, to reflect the results of physical condition or management difficulty addresses some of the concerns expressed in this comment. As the Department stated earlier in this preamble, in the initial year of PHMAP implementation, the Regional Administrator shall consider whether or not to designate a PHA as troubled or mod-troubled or as a high performer in accordance with § 901.125. If a PHA's score falls within ten points *below* the point value established for troubled, mod-troubled or high performer designation, the Regional Administrator shall take into consideration the differences in the difficulty of managing developments that result from their physical condition and/or the nature of neighborhood environment. If the Regional Administrator determines that a PHA's performance difficulties are attributable to physical condition and/or neighborhood environment rather than to poor management practices, the Regional Administrator may withhold troubled or mod-troubled designation or award high performer designation. Handbook guidance for this interim rule will address specific systems that a PHA should be examining on an annual basis.

Three comments had concerns regarding the use of Housing Quality Standards (HQS) for public housing. One comment felt that the standard that PHAs should use for inspection and habitability should be the local housing and sanitation codes. The comment states that PHAs are already inspecting and maintaining their units according to these codes, and, unless HUD makes HQS a requirement for public housing, this is the actual minimum legal standard for habitability. One comment feels it is unfair for HUD suddenly to impose compliance with a non-required code as a performance standard. One comment suggests that either HUD change this requirement or delay the implementation of this standard for at least a year to allow PHAs to use the HQS inspection form. The Department disagrees. The Department requires PHAs to comply with local codes. The HQS permits variances due to local code requirements. The Department does not believe that the HQS imposes an unreasonable or unduly difficult standard to meet. Consequently, a delay in implementation should not be required. Additionally, the indicator refers to "HQS or its equivalent." Handbook guidance will be issued for this interim rule that will address this issue.

Two comments questioned why HQS has become an operative standard for public housing. (Public housing units do not receive the same level of subsidy being provided to the Section 8 private owners.) The Department believes that all public housing units should be maintained as decent, safe and sanitary. The use of HQS, which is an occupancy code, is a proxy for determining units that are providing acceptable living environments for their residents. In the absence of such standards, the Department has chosen to use the HQS national standard established for a similar Federal housing program, i.e., the Section 8 Program. The Department believes that these are reasonable requirements to assure decent, safe and sanitary housing required under the United States Housing Act of 1937.

One comment stated that while conformity with HQS standards is a reasonable measurement, no reference should be made to utilizing the HQS inspection form if the HQS standard is utilized. The design and use of a form is best determined locally and does not lend itself to the force fitting of the HQS form to this effort. The Department disagrees and the use of HQS review form will be a Handbook requirement for a PHA if the agency uses HQS for the inspection of its public housing units. However, local variations are acceptable as long as the minimum standard is met.

One comment stated that work orders generated as a result of HQS inspections should exclude work orders for painting because of the lead based paint (LBP) abatement requirements. The Department disagrees. There is no reason to delay required painting in units with defective paint surfaces. Instead, the lead based paint should be abated. In addition, the Department is developing interim LBP containment measures which can be used until abatement is completed.

One comment stated that the more detailed a PHA is in conducting its inspections, the more difficult it will be for that PHA is complete the resulting work items and to be less than thorough in its inspections, which may not be in the best interest of improving housing quality. The better the PHA does its inspections, the worse its chances of meeting the PHMAP standards. The Department appreciates this concern. However, the Department expects all PHAs to do proper and thorough inspections.

One comment stated that this indicator, coupled with Outstanding Work Orders, Annual Inspection Systems, and Work Order Response Time will have the effect of stifling or eliminating a PHA's ability to manage its maintenance workload by having it respond to arbitrary time frames instead of following the customary maintenance priorities that relate time frames to the actual urgency of the work needed. The Department has revised the language of this indicator to provide a specific standard or deferring to a PHA's maintenance plan for specific items.

On comment suggested that 30 days be defined as 30 calendar days after the issuance of the work order. The Department disagrees; the calculation begins on the day after the inspection is performed.

One comment stated this standard needs to be modified to take into account the difference in conditions at developments. Units that are relatively new or have comprehensively modernized should be viewed differently than developments that are identified as needing comprehensive modernization or major reconstruction in the Comprehensive Plan for Modernization. As the Department stated earlier in this preamble, in the initial year of PHMAP implementation, the Regional Administrator shall consider whether or not to designate a PHA as troubled or as a high performer in accordance with § 901.125. If a PHA's score fails within ten points below the point value established for troubled or high performer designation, the Regional Administrator shall take into consideration the differences in the difficulty of managing developments that result from their physical condition and/or the nature of neighborhood environment. If the Regional Administrator determines that a PHA's performance difficulties are attributable to physical condition and/or neighborhood environment rather than to poor management practices, the Regional Administrator may withhold troubled or mod-troubled designation or award high performer designation.

One comment indicated a truer measure of a PHA's performance would include actions to correct those units not meeting HQS rather than the length of time to correct. The Department recognizes this concern and has included language in this indicator to provide for scoring either according to a specific time frame or according to a PHA's maintenance plan for specific items.

One comment stated the proposed standard is heavily "loaded" with a reasonable standard for grade "A" but with a relatively minor drop in grade. A grade "D" PHA that is actually inspecting all of its units and correcting all deficiencies within 60 calendar days may be doing a fair job, but receives little better score than the grade "F" PHA which has allowed its units to go "straight to blazes". HUD should also consider that a PHA with an approved modernization program be allowed to forego non-emergency work in units that are going to receive major rehabilitation. The Department appreciates this concern but believes that the indicator in this rule represents a fair differentiation. In addition, the grade "D" PHA used in the comment's example could be required, and the grade "F" PHA would be required, to develop an Improvement Plan to address all deficiencies to achieve a grade "C" level of performance.

One comment suggested that the following types of vacant units need not be inspected for this indicator: (1) Units in an approved modernization program; (2) units not available for occupancy awaiting modernization; and (3) units in an approved demolition/disposition program. The Department has not exempted units not available for occupancy awaiting modernization because units should be occupied until the modernization begins, and has included exemptions for units in on-schedule CIAP and units in approved demolition or disposition.

One comment stated that if a specific part is required but unavailable and if work requires bidding or Wage Rates to be ordered, the work cannot be completed in time to permit receipt of a good grade. The Department disagrees that the unavailability of a spare part merits consideration, although it may under exceptional circumstances, but has included language referencing a specific standard or a PHA's maintenance plan for completing a specific item. This includes the time necessary for bidding or wage rates.

One comment questioned how work orders which are generated from inspections that are not cyclical are to be addressed. As noted above, the Department has included language which permits corrections according to a PHA's maintenance plan for specific items that are not generated from cyclical inspections.

One comment stated that while emergency conditions must be repaired immediately, other non-emergency conditions should be dealt with taking into account their urgency and the remaining workload. Accordingly, more flexibility should be incorporated into this factor and the time frame should be expanded. The Department has included language which permits the PHA to correct deficiencies based on a PHA's maintenance plan for specific deficiencies.

One comment suggested adding "all non-dwelling space" to items requiring annual inspections. The Department intended for all non-dwelling space to be inspected, as indicated in the proposed rule. Such language will be included in handbook guidance that will be issued for this interim rule. The Department expects that all areas will be inspected annually.

One comment stated the measure should include provisions for differentiating for some types of work. The Department does differentiate between units and major systems. Further, the Department recognized the need for this differentiation and included language permitting the use of the PHA's maintenance plan for completing specific items.

One comment stated this item is a poor measure of how well PHAs manage maintenance activities. It provides an undue emphasis on quickly completing non-emergency work orders, rather than encouraging PHAs to concentrate on emergency work, vacant unit preparation, preventive and routine maintenance—precisely the activities that will ensure safety and long term viability of housing stock. The Department recognizes the importance of effective maintenance management. This indicator has been revised to rate four components separately. The Department does believe that both emergency and non-emergency work

must be completed in a timely fashion and has retained similar completion standards for each.

Comments regarding the inspection and condition of systems are as follows: Three comments stated small PHAs cannot do major systems repairs and have to contract out this work. Also, these are the type of repairs that usually require CIAP funding, and this factor adds to the length of time for repairs to be made. The Department believes that both small and large PHAs can have problems in doing major systems. The Department has included language permitting corrections according to a PHA's maintenance plan for the specific items. Where items have deteriorated to a point where they are eligible for CIAP, they are no longer considered to be routine maintenance. To the extent repairs require CIAP funding, they should be tracked separately from repairs under this indicator.

Two comments stated the number of days permitted in the inspection of systems standard in which to identify required maintenance and take action should be 30 days after the inspection, based on the availability or non-availability of parts and getting in touch with outside contractors. The comments also requested further clarification to determine what "takes action" means. The Department has included language which permits correction according to a PHA's maintenance plan for specific items. In addition, a definition of "action taken" has been added to the rule which defines the term as the issuance of a work order to correct the problem where systems are involved.

Two comments stated the concept of preventive maintenance inspections is crucial to competent management. The phrase "takes action to correct" in the inspection of systems indicator might be construed to mean that corrective action be completed within the stated time frames. A major system renovation planned as a result of maintenance could require public bidding and a time frame in excess of those mentioned in the indicator. The Department agrees and has included language permitting the correction according to a PHA's maintenance plan for completing the item in lieu of the stated time frame.

One comment stated the rule should clarify that "takes action" in the inspection of systems standard includes beginning the planning and budgeting process, as long as the process is carried through until the work is completed. The Department has included language permitting a PHA to correct deficiencies or defects based on a PHA's maintenance plan for correcting specific items. The Department disagrees that "takes action" should include planning and budgeting and has included a definition of "takes action" resulting from inspection of systems are being the issuance of a work order to correct the problem.

One comment stated the phrase, "takes action to correct identified maintenance deficiencies * * *" should be modified to allow a PHA to take action to stabilize major items needing correction and show proof of budgeting for permanent correction in the coming fiscal year's budget. The Department agrees, and further recognize that a PHA may not have sufficient funds to permanently correct the item by the coming fiscal year.

One comment requested a technical correction to the inspection of systems standard which should say "The PHA annually inspects all major systems * * * to identify required maintenance and takes action to correct identified maintenance deficiencies * * *" instead of "or does not take action." The Department agrees and has included such language in the revised indicator.

One comment stated HUD should employ the same grading procedures and allow the same number of calendar days to inspect major systems as it does with inspecting individual units. The Department agrees; a PHA must annually inspect all units and all systems, and the same number of calendar days has been allocated for the repair of units and the repair of systems.

One comment questioned who pays for additions to the annual operating budget needed to deal with corrections for deficiencies during annual systems inspections. The comment further questioned who the poor performer is, the PHA for discovering the need for corrections and not having the funds to make the corrections, or HUD for failing to provide sufficient funds to the PHA to maintain properly its public housing stock. The Department believes that PHAs are responsible for maintaining their units from funds available for such purposes. A PHA can repair such system defects by budgeting for extraordinary maintenance or capital improvements, or addressing such deficiencies in its CIAP/Comprehensive Grants Program.

One comment stated that systems to be included in the inspection should be better defined. The Department will issue handbook guidance for this interim rule that will provide further details, as stated earlier in this preamble.

A PHA shall certify to this indicator within 90 calendar days after the beginning of its fiscal year, as of the end of its immediate past fiscal year. Documentation verifying this indicator shall be maintained by the PHA for HUD post-review. The Department considers this indicator to be one of four major areas of PHA accountability, and accordingly, this indicator shall have a scoring weight of three.

Tenants Accounts Receivable (TARs) (Indicator #13c in the Proposed Rule)

Seventeen comments stated that TARs alone is not a true indicator of management. The Department disagrees and believes that a PHA's ability to collect money due to it is indeed a true indicator of management. Any money owed to a PHA that is not collected will eventually be written off by the PHA after the resident vacates the unit. The consideration of TARs in the operating reserve indicator presents a more accurate picture of the available resources.

Fourteen comments stated that a PHA which has all resident-paid utilities has an unfair advantage over a PHA which has all PHA-paid utilities. The Department believes that a PHA should make every effort to collect monies owed to it, whether the amount owed is for excess utilities or for maintenance charges or any other reason.

Seven comments stated that in certain States, PHAs are subject to lengthy court procedures that increase the amount of time required to evict residents and thereby increases TARs; in these situations, the amount of monies owed to the PHA should not be included in TARs. The Department disagrees that the amount of monies owed to a PHA in these situations should not be included in TARs. However, Handbook guidance will be provided to clarify that the PHA may consider in the category of "formal repayment agreements" amounts that must be charged to a tenant in occupancy for which collection cannot be accepted for legal reasons.

Six comments stated that this indicator should be deleted from the PHMAP assessment since indicator #3 addresses rents collected, and assessing TARs becomes either redundant or misleading. The Department disagrees because indicator #3 pertains only to dwelling rent and dwelling rent is only one component of TARs. This indicator takes into account all of the monies owed to a PHA.

Five comments stated that since a PHA's fiscal year will have an impact on this indicator, an annual average of TARs should be assessed rather than a snapshot picture. The Department agrees, and Field Offices will average the semi-annual and annual TARs report when completing the PHMAP assessment. In order for an actual

annual average of TARs to be used, PHAs would have to report on TARs on a monthly basis. The Department will not impose the additional reporting burden that would be necessary to compute an actual annual average. PHA's, however, will be given an option of electing to use either annual TARs report data, or an average of both the semi-annual and annual TARs report data for the PHMAP assessment.

Three comments stated that the Department may be proposing unrealistic TARs standards that will induce PHAs to create unsound accounting procedures. The Department disagrees because a PHA would only fail this indicator if TARs are greater than 10%, which is the current financial management standard for TARs.

One comment stated that no consideration is given to retroactive rent charges that inflate TARs. The Department disagrees since retroactive rent charges are commonly covered by formal up-to-date repayment agreements that are excluded from this indicator. The term "formal up-to-date repayment agreement" means a signed agreement between a PHA and a resident stating the terms and amounts that a resident is repaying money owed to a PHA (which may include back rent, maintenance charges, damage charges, excess utilities, or any other charges), and the resident is in compliance and current with the terms of the repayment agreement; i.e., the resident is remitting a specified amount on specific dates with no lapse in remittance.

One comment stated that the current procedures for TARs should continue to be used. The Department agrees and has retained this indicator in the PHMAP assessment.

This indicator has a scoring weight of one.

Operating Reserves (Indicator #13b in the Proposed Rule)

Forty-one comments stated that the operating reserve percentages to attain a grade "A" or "B" were too high; the overall range preferred was 40% for grade "A", to below 20% as the minimum. The Department agrees, and this indicator has been revised to reflect the comments.

Sixteen comments stated that PHAs that have high AELs have an advantage with this reserve level indicator. The Department agrees that this may be possible, and is in the process of preparing a system of AEL appeals that will provide adjustments for PHAs that claim their initial AEL was too low.

Fourteen comments stated that 40% reserves should be established as a threshold, and above that level, a PHA should be allowed to make management decisions on how best to use reserves and serve residents. The Department disagrees and does not wish to encourage the support of routine expenditures through the use of operating reserves.

Thirteen comments stated that in private business, the rule of thumb is having enough funds for two months operations. The Department believes that although this may be true in the private sector, PHAs have different operating needs from most private landlords and cannot be rated by the same requirements.

Five comments stated that the proration of operating subsidy by the Department lowers the PHA's operating reserve level. The Department will issue handbook guidance for this rule that will include a sample work sheet for calculating operating reserves. The sample work sheet will take into account proration and year end adjustments.

Three comments pointed out typographical errors in grades "A" and "F". Those errors have been corrected.

Two comments stated that PHAs may have emergencies or disasters that deplete reserves. The Department agrees. If the PHA receives Comp Grant funding, it may reprogram funds to address the emergency. If the PHA is not a Comp Grant agency, it may submit a request for emergency modernization funding. The Field Office will consider the nature of expenditures when the reserve level is reduced below 40% and depleted awaiting reimbursement from modernization.

One comment suggested that a PHA should be able to utilize operating reserve to offset the impact of complying with Federal preference rules. The Department disagrees because the Performance Funding System provides additional subsidy to PHAs if the amount charged to residents decreases because of Federal preference rules. The PHA's total operating income and subsidy would not change and would not impact on operating reserves.

One comment stated that the ratio of Section 8 units should be considered since PHAs can supplement public housing operating reserves with Section 8 administrative fees. The Department disagrees. Although PHAs can contribute Section 8 administrative fees towards the operation of public housing through the other income account, it is not a requirement and, therefore, not part of this indicator.

One comment stated that a provision should be made for small PHAs that draw down funds for capital improvements. The Department disagrees. Small PHAs are permitted to use reserves for capital improvements; however, they still must maintain designated levels.

One comment stated that the level of operating reserves a PHA elects to maintain as a minimum should be a local decision. The Department disagrees and believes that a PHA should maintain an acceptable standard of between 20% and 40% of maximum operating reserves.

One comment stated that this indicator is an inadequate management tool. The Department disagrees because a PHA should maintain adequate operating reserves to provide for financial considerations such as cash flow, prepaid inventory, and insurance, and to cover emergencies that may arise that cannot be funded from annual income and subsidy.

One comment stated that there is no necessary relationship between level of reserves and operating a sound, responsive management program. The Department disagrees and believes that maintaining adequate reserves is one of the cornerstones of good financial management.

The term "year end adjustments" in this indicator means the adjustments are usually made after the end of a PHA's fiscal year based upon actual experience during the year and may result in additional operating subsidy eligibility owed to the PHA or a reduction in eligibility and an amount owed to the Department.

This indicator has a scoring weight of one.

Routine Operating Expenses (Indicator #13a in the Proposed Rule)

Five comments criticized this indicator since operating subsidy has not been fully funded in some past years. The Department is cognizant that PHAs would be penalized if this indicator did not take into account the proration of subsidy. The proposed rule stated that operating expenses will be adjusted to avoid penalizing PHAs in years that operating subsidy was funded (prorated) at less than 100%. Handbook guidance will be issued for this rule that will include a sample work sheet for calculating routine operating expenses. The sample work sheet will include adjustments in years where a proration occurred.

Four comments stated that investment income performance should be measured in the indicator. The Performance Funding System has a reward/penalty for investment performance build into the year end adjustment process. The Department

believes that including investment income performance in this indicator would be duplicative.

Four comments stated that the term "continuous positive trend" is too subjective. The Department agrees and has deleted this language from the interim rule.

Three comments stated that this indicator should be incorporated into the independent audit. The Department cannot mandate that additional or specific items be included in a PHA's audit due to the Single Audit Act.

Three comments stated that local contributions should be added to operating income when considering this indicator. The Department disagrees because PHAs report local contributions to the program on the source document (Form HUD-52599, account 3690) being used for this indicator. Therefore, local contributions and the corresponding expenses are already being counted. The Department encourages local contribution of funds toward public housing operations.

Two comments stated that this indicator should be combined with other suggested financial indicators. The Department opposes combining this indicator with procurement, operating reserves or other suggested indicators because this indicator alone measures an important PHA capability. Specifically, a PHA is encouraged by this indicator to maintain a consistent level of routine expenditures, such as administrative overhead, employee benefits, routine maintenance and supplies. However, a PHA is not penalized if funds are needed for capital improvements through extraordinary maintenance, equipment addition/replacement or if a casualty loss or emergency occurs.

Two comments stated that income and expenses should only be evaluated when reserves are below 40%. The Department disagrees. While it is acknowledged that PHAs that have reserves above 40% are viewed as financially healthy, they must still ensure that routine expenses are within the income and subsidy levels provided. These PHAs would not be penalized if they expended funds on non-routine expenditures such as extraordinary maintenance, in which funds are invested in the developments for long term improvements.

Two comments stated that this indicator would prohibit PHAs' spending on initiatives. The Department disagrees. Since there are limited resources, PHAs always have to weigh the benefits of one expense against the other. Implementing an initiative in one area may require initiating efficiencies in other areas.

Two comments stated that it is difficult to pass this indicator over three years given the Federal preference rules The Department disagrees because the Performance Funding System (PFS) provides additional subsidy to PHAs if the amount charged to residents decreases because of Federal preference rules. The PHA's total operating income and subsidy would not change.

Two comments stated that the amount expended by PHAs is a local decision and should not be a measurement. The Department disagrees because although PHAs are autonomous organizations, Federal funds are provided to develop, operate and modernize the buildings, and a PHA's use of the funds is of significant concern to the Department.

One comment state that this indicator should be expanded to include the section 8 program financial performance. The Department agrees and requests suggestions for possible section 8 indicators and incentives under section 8.

One comment stated that this indicator should be expanded to consider what the PHA has done with the funds considering the limited resources. The Department agrees that a PHA's use of funds is important; however, it is not possible at this time to measure the use of funds objectively.

One comment suggested that if residual receipts exits, the PHA should be permitted to spend down the budget for one or two years. The Department will ensure that the work sheet for this indicator will take into account PHAs that have been allowed to retain residual receipts. The Department requires that residual receipts are remitted to the Department with the year end financial statements. Recently, the Department has increased the maximum reserve levels to at least $100,000, significantly reducing the number of small PHAs repaying residual receipts.

One comment suggested to revise this indicator so that operating subsidy is adjusted to reflect adjustments for utilities. The Department will ensure that a large utility adjustment that complicates a PHA's income-expense ratio will be addressed in the work sheet for this indicator.

This indicator has a scoring weight of one.

Resident Initiatives (Indicator #14 in the Proposed Rule)

There were numerous public comments as to why Resident Initiatives, previously called Quality of Life, were included in PHMAP. Several indicated that resident initiatives were not related to property management. Some indicated these initiatives, especially homeownership, were not specified in the law and ACC. Many of these comments felt some resident initiatives were desirable even though they did not necessarily agree that PHMAP should contain these resident initiatives standards. There were other comments that felt that resident initiatives were vital to PHMAP and that the resident standards should receive more weight.

The National Affordable Housing Act of 1990 (NAHA) added self-sufficiency to the mission statement of the U.S. Housing Act of 1937 and included numerous new provisions to implement resident initiatives programs, including the new homeownership program, Homeownership and Opportunity for People Everywhere (HOPE). This is in addition to the numerous other pre-1990 statutory and regulatory authorities for resident initiatives programs, including resident management, drug free public housing, child care and resident employment. Further, the Department believes there is a nexus between good property management and resident initiatives. As discussed in the Joint Declaration on Resident Initiatives, signed by the Council on Large Public Housing Authorities (CLPHA), Public Housing Authorities Directors Association (PHADA), National Association of Housing and Redevelopment Officers (NAHRO), National American Indian Housing Council (NAIHC), National Association of Resident Management Corporations (NARMC) and the Department, resident initiatives are likely to have a positive impact on resident behavior which can help to keep units in decent, safe, and sanitary condition and reduce needs for modernization and maintenance funding.

Since resident initiatives programs are integral to meeting the self-sufficiency requirements of the U.S. Housing Act of 1937 and have been determined to have a positive impact on pubic housing management, the Department will retain resident initiatives in the PHMAP regulation. However, the approach to the resident standard has been modified to reflect public comments as discussed below.

Many comments were concerned that the resident initiatives standards proposed are only for large authorities. Several felt that the standards focused exclusively on written policies and procedures and little on results, such as drug-related crime reduction.

In response to these comments, the Department has consolidated all resident initiatives standards into one measure. Further, the new standard has been written to give PHAs greater flexibility to determine which types of initiatives will be implemented at which developments. The PHAs will be rated by the implementation of resident initiatives and the results achieved, rather than by written resident initiatives policies. Additional measures of successful results will be contained in the program handbook after further discussion with PHAs and PHA associations.

Finally, some comments felt that since the resident initiatives area was recently developed, HUD should consider awarding a higher grade for this indicator. In response to this concern, the Department will give PHAs at least an average (at least a "C") rating for the first year. PHAs performing above this presumptive level will receive a higher rating.

A PHA shall certify to this indicator within 90 calendar days after the beginning of its fiscal year, as of the end of its immediate past fiscal year. Documentation verifying this indicator shall be maintained by the PHA for HUD post-review. This indicator will have a scoring weight of three.

Development (Indicator #16 in the Proposed Rule)

Four comments stated that PHAs should not be judged for delays, some of which are beyond their control and should be given allowances for time paperwork is at HUD, HUD-granted extensions, local opposition, lawsuits, inadequate budgets, etc. The Department agrees, in part, and an appropriate change was made to consider factors beyond the control of the PHA, with the exception of inadequate budgets. A PHA should be able to plan a development program to ensure adequate budgets.

Three comments stated this indicator would be especially vulnerable to subjective judgments and one of the comments suggested that as a potential solution, perhaps HUD could use the term "material findings," to determine the overall quality of physical work. The Department maintains that subjective judgments are unavoidable in most rating systems; there appears to be no real difference between "material findings" and "significant monitoring findings." The Department defines significant finding for development to mean statutory, regulatory or health/safety violations.

Three comments stated that indicator should measure the product, not the process. Quality of design, construction materials, and systems are more important to measure here. The Department disagrees and believes that it is measuring the product. However, the product is more than bricks and mortar. It is also the use of appropriate procurement procedures, the timeliness of actions taken, and the attention paid to fiscal matters. The quality of design, construction materials and systems are approved prior to the commencement of the development. This indicator measures a PHA's ability to ensure such quality through the process of development.

One comment stated that if HUD would choose to go to a "one-step" review process, the 21-month target might be reasonable. Otherwise, HUD's normal review process of the designs, etc., frequently delays this process. The Department has designated the 21-month target as a grade "A" which would apply to exceptional PHAs; the Department does not think that every PHA with a development program in progress will achieve a grade "A". As stated above, HUD delays will not impact on a PHA's score on this indicator.

One comment indicated it is difficult to understand what contract administration would measure that the extremely broad "Quality of Physical Work" did not already assess. The Department maintains that there is a very significant difference between "quality of physical work" and how effectively a PHA administers development contracts, e.g., the award of contracts competitively. This component specifically states what is being assessed.

One comment stated contract administration has no delineation between grade "A" and grade "C" designations. Some benchmarks should be developed for grade "C" similar to the quality of physical work that credits the PHA with identifying and taking independent corrective actions. The Department agrees, and this component in the interim rule has a greater delineation between grades "A" and "C".

One comment stated it is unclear to which contracts this component applies. There can be a variety of contractual obligations on a project in addition to that with a general contractor—architects, attorneys, construction managers, etc. The Department intends that this component should relate to the major contracts involved in the development of projects. This component specifically states what is being assessed.

One comment stated the time should start running for construction/rehabilitation start, or date of funds availability, when the ACC is signed and the funds are available to the PHA, rather than when the funds are initially reserved. Rehabilitation projects may take longer if outside funding and "community partnerships" are involved. The Department disagrees since the basic ACC is executed after HUD approval of a PHA's proposal, which is essentially in the middle of the development process, and a procedure exists for early ACC execution.

One comment stated HUD should employ a single standard in determining a PHA's success in promptly commencing construction as measured by the period of time between the date of fund reservation and the Date of Full Availability (DOFA). The comment states such a standard should be based on whether a PHA has succeeded in reaching DOFA within the requisite 30 month time frame; for such a limited scoring to be equitable, however, a PHA should have the right to receive the full score to be assigned to the extent to which it can demonstrate that any amount of time to DOFA in excess of 30 months which HUD may ultimately permit is attributable to failures on the part of HUD Field Offices to meet Standard Processing Times established by regulation. The Department disagrees since the standard mirrors a statutory time frame and allowances are made for events beyond a PHA's control.

One comment stated that generally the 21-month benchmark of completion of acquisition from DOFA is considered to be equitable. However, some caveats should be developed in the grade "A" designation which allow for an extension of DOFA or reprogramming of funds because of circumstances beyond the control of the PHA, i.e., circumstances such as market conditions, availability of housing, identified lead-based paint abatement needs, and purchasing restrictions imposed by the local unit of government. The Department agrees, and several circumstances have been exempted in this indicator; other unique circumstances should be submitted to the Field Office for consideration.

One comment stated construction/rehabilitation start, or DOFA, makes no allowance for large projects completed in phases, nor does this standard allow for waivers that extend the process. The Department will not penalize a PHA in this indicator if the PHA has a HUD waiver which extends the process or has reformulated the project to eliminate "phasing."

This indicator has a scoring weight of one.

PHMAP at present represents an initial formulation, subject to continued development and modification as may be warranted by experience and consultation between HUD, PHAs, residents and public housing industry and other interested parties. Given current resources, HUD believes the indicators in the interim rule are reasonable and practical, and because of the flexibility build into the system, capable of achieving optimal efficiency.

The Department deems it appropriate to hold this material out for an additional period for public review and comment and is particularly interested in receiving further comments from PHAs, residents, resident and public housing industry groups and other interested parties.

The rulemaking procedure will give PHAs and any other interested party nationwide the opportunity to comment on the PHMAP in accordance with 24 CFR part 10.

Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Economic Impact

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule established management assessment criteria for PHAs. HUD does not anticipate a significant economic impact on a substantial number of small entities, since the rule establishes management assessment criteria which will be utilized by Field Offices for monitoring purposes and the provision of technical assistance to PHAs.

This rule was listed as Item No. 1510 in the Department's Semiannual Agenda of Regulations published on October 21, 1991 (56 FR 53380, 53429), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule is intended to promote good management practices by including, in HUD's relationship with PHAs, continuing review of PHAs' compliance with already existing requirements. In addition, the rule carries out, as unobtrusively as possible, a Federal statutory mandate. The rule does not create any new significant requirements of its own. As a result, the rule is not subject to review under the Order.

Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule involves requirements for management assessment of public housing agencies. Any effect on the family would likely be indirect, and insignificant. To the extent families in public housing will be affected, the impact of the rule's requirements is expected to be a positive one.

List of Subjects in 24 CFR Part 901

Public housing, reporting and recordkeeping requirements.

Appendix 1

Public Housing Management Assessment Program (PHMAP) Certification

DATE: _____

PHA: _____

We hereby certify that, as of the above date, the _____ Housing Authority reports the following indicators under the Public Housing Management Assessment Program (PHMAP) to be true and accurate for its fiscal year ending _____:

Indicator #1: Vacancy Number and Percentage

Actual vacancy percent for the reporting month or a snapshot picture of the actual vacancy percent at the end of the reporting month_____%

Total vacant units_____

Adjusted vacancy percent for the reporting month or a snapshot picture of the adjusted vacancy percent at the end of the reporting month_____%

Percent reduction of actual vacancies over prior 3 years_____%

Indicator #3: Rents Uncollected

Balance of rents uncollected as a percentage of total rents to be collected_____%

Indicator #5: Unit Turnaround

Average number of calendar days for vacant unit to be prepared for re-rental_____%

System has been established to track unit turnaround N/A____ Y____ N____

Indicator #6: Outstanding Work Orders

Percent of emergency items corrected/abated within 24 hours_____%

Percent of outstanding work orders_____%

Progress has been demonstrated over the most recent 3 year period at reducing the time required to complete maintenance work orders N/A____ Y____ N____

Indicator #7: Annual Inspection and Condition of Units and Systems

System has been established to track inspection and repair of units and systems N/A____ Y____ N____

Percent of units inspected annually using standards that were at least equivalent to the Housing Quality Standards (HQS) N/A____ Y____ N____

Percent of units meeting HQS_____%

Percent of emergency items corrected/abated within 24 hours_____%

Average number of days to bring non-emergency maintenance items to HQS_____

PHA is on schedule, according to its maintenance plan, to correct unit deficiencies N/A____ Y____ N____

Major systems are inspected annually N/A____ Y____ N____

Average number of days to correct identified systems deficiencies_____

PHA is on schedule, according to its maintenance plan, to correct systems defects N/A____ Y____ N____

Indicator #11. Resident Initiatives

Policies have been adopted and procedures implemented for:

- Anti-drug strategy/security N/A____ Y____ N____
- Resident participation/management N/A____ Y____ N____

- Homeownership opportunities N/A____ Y____ N____
- Economic development/self-sufficiency N/A____ Y____ N____

Number of areas at which PHA has been successful in significantly improving conditions/activities_____

Number of areas at which PHA shows minimal activity in_____

The PHA elects to use either the annual average or annual TAR percent (choose one and enter at right_____

The undersigned further certify that, to their present knowledge, there is no evidence to indicate seriously deficient performance that casts doubt on the PHA's capacity to preserve and protect its public housing developments and operate them in accordance with Federal law and regulations. Appropriate sanctions for intentional false certification will be imposed, including suspension or debarment of the signatories.

Signed by:

Chairperson, Board of Commissioners

Date

Attested to by:

Executive Director

Date

A Board Resolution approving this certification is required and shall be attached to the executed certification.

Form HUD-50072

Accordingly, subtitle B of title 24 of the Code of Federal Regulations is amended by adding a new part 901, to read as follows:

PART 901—PUBLIC HOUSING MANAGEMENT ASSESSMENT PROGRAM

Subpart A—General Provisions

Sec.
901.01 Purpose.
901.05 Definitions.
901.10 Indicators.

Subpart B—Program Operation

901.100 Data collection.
901.105 Computing assessment score.
901.110 PHA request for exclusion or modification of an indicator or component.
901.115 PHA score and status.
901.120 Field Office functions.
901.125 Regional Administrator functions.
901.130 PHA right of appeal.
901.135 Incentives.
901.140 Memorandum of Agreement.
901.142 Removal from troubled status and troubled with respect to the program under section 14 status.
901.145 Improvement Plan.
901.150 PHAs troubled with respect to the program under section 14.
901.155 PHMAP public record.

Subpart C—Substantial Default

901.200 Substantial default by a PHA.
901.205 Events or conditions that constitute substantial default.
901.210 Notice and response.
901.215 Interventions.
901.220 Contraction and funding.
901.225 Receivership.

Authority: Sec. 6(j), United States Housing Act of 1937 (42 U.S.C. 1437d(j)); sec. 502, National Affordable Housing Act (approved November 28, 1990, Pub. L. 101-625); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General Provisions

§ 901.01 Purpose.

(a) This part establishes the Public Housing Management Assessment Program (PHMAP) that provides policies and procedures for the Department to identify public housing agency (PHA) management capabilities and deficiencies, recognize high-performing PHAs, designate criteria for defining troubled PHAs and PHAs that are troubled with respect to the program under section 14 (Public Housing Modernization Program), and improve the management practices of troubled PHAs and PHAs that are troubled with respect to the program under section 14.

(b) PHMAP will allow HUD to make more effective use of available staff for monitoring overall public housing operations. Appropriately, limited monitoring of PHAs with good performance records will enable the Department, particularly at the Field Office level, to focus on those PHAs that have significant operational problems.

(c) PHMAP provides an objective system for measuring PHA performance using standard criteria for all PHAs that will enable the Department and PHAs to compare performance of PHAs. At the same time, PHMAP provides sufficient flexibility in evaluating PHAs to ensure that they are not penalized as a result of circumstances beyond their control.

(d) With PHMAP, the Department will be able to identify deficiencies in a PHA's management areas and take corrective actions, such as providing advice and guidance in specific areas of concern, or entering into a Memorandum of Agreement with a troubled PHA and/or a PHA troubled with respect to the program under section 14, to focus its improvement efforts.

(e) PHMAP will be used by the Department to provide incentives to high-performing PHAs and encourage all PHAs to achieve high performer designation. High-performing PHAs are afforded greater flexibility in the operation of their public housing programs, with increased responsibility and authority for their own management decisions. In addition, high-performing PHAs will receive national recognition by the Department.

(f) PHAs can utilize this assessment to conduct internal audits of their operations and correct identified deficiencies. The results of the assessment can be utilized by a PHA's Board of Commissioners and Executive Director, resident organizations, and the community to understand more comprehensively the PHA's operations.

§ 901.05 Definitions.

(a) *Action taken* means the issuance of a work order to correct the problem where systems are involved.

(b) *Actual vacancy rate* means the percent of vacancies after excluding the permitted exemptions.

(c) *Adjusted vacancy rate* means the percent of vacancies after deducting units included in a funded on-schedule modernization program.

(d) *Annual average* means an average computation of a PHA's immediate past fiscal year for applicable indicators.

(e) *Annual vacancy rate* means the percent or number of vacancies, after deducting:

(1) Vacant units that HUD has approved for demolition or dispostion;

(2) Vacant units in which resident property has been abandoned, but only if State law requires the property to be left in the unit for some period of time, and only for the period stated in the law;

(3) Vacant units that have sustained casualty damage and are being held off the market to allow adjustment of the insurance claim; and,

(4) Units that are occupied by employees of the PHA and non-dwelling units that are utilized for resident services or are under lease to a non-dwelling tenant in the normal course of project operation.

(f) *Assistant Secretary* means the Assistant Secretary for Public and Indian Housing of the Department.

(g) *Confirmatory review* means an on-site review for the purposes of Field Office verification of the performance level of a PHA and the accuracy of the data derived from Field Office files.

(h) *Correct* means to improve performance in an indicator to a level of grade "C" or better.

(i) *Current dwelling rent charged* refers to the resident dwelling rent charges reflected in the monthly rent roll(s), and excludes retroactive rent charges, maintenance charges, excess utility charges, late charges, and any other charges not specifically identified as dwelling rent.

(j) *Cyclical work orders* refers to work orders that are performed on a seasonal basis, or in accordance with warranty requirements, or as part of a preventive maintenance program.

(k) *Deficiency* means any grade below "C" in an indicator.

(l) *Demonstrates progress* means that the time required to complete all work orders has been reduced during the most recent three year period.

(m) *Department* or *HUD* means the U.S. Department of Housing and Urban Development.

(n) *Emergency* means physical work items that pose an immediate threat to the life, health and safety of residents, or that are related to fire safety.

(o) *Emergency status abated* means the emergency situation was abated within 24 hours with completion of needed repairs and/or replacements made at a later time.

(p) *Formal up-to-date repayment agreement* means a signed agreement between a PHA and a resident stating the terms and amounts that a resident is repaying monies owed to a PHA, and the resident is in compliance and current with the terms of the repayment agreement, i.e., the resident is remitting a specified amount on specific dates with no lapse in remittance.

(q) *HQS* means Housing Quality Standards as set forth at 24 CFR 882.109 and amended by the Lead Based Paint regulation at 24 CFR part 35.

(r) *Indicators* means the major categories of PHA management functions that are examined under this program for assessment purposes. The list of individual indicators and the way they are graded is provided in § 901.10.

(s) *Monitoring findings* mean findings that were determined as a result of an on-site physical inspection and transmitted in writing by HUD to the PHA.

(t) *PHA* means a public housing agency.

(u) *Rents uncollected* means unpaid resident dwelling rent for residents in possession.

(v) *Significant finding* in indicator (12), development, means statutory, regulatory or health/safety violations.

(w) *Significant monitoring finding in indicator (2), modernization, component #3, contract administration,* means written findings based on the monitoring reviews as recorded by the Monitoring Checklist, set forth in Appendix 18 of the CIAP Handbook 7485.1, as revised, or other equivalent review. Significant findings relate to any question under Sections II, III, and IV which received a "no" answer, excluding the following: Section II, exclude the items related to the use of Form HUD-51915 and changing the current threshold; Section III, exclude item related to changing the current threshold; and Section IV, exclude items related to changing the current threshold, notifying Field Office of scheduled final inspection, and submitting required settlement documents to the Field Office.

(x) *Significant monitoring finding in indicator (2), modernization, component #4, quality of physical work,* means written findings based on the monitoring reviews as recorded by the Monitoring Checklist, set forth in Appendix 18 of the CIAP Handbook 7485.1, as revised, or other equivalent review. Significant findings relate to any question under Section I which received a "no" answer, excluding the item relating to keeping the premises free from accumulated waste materials caused by the contractor.

(y) *Substantial default* means a PHA is determined by the Department to be in violation of statutory, regulatory or contractual provisions or requirements, whether or not these violations would constitute a substantial default or a substantial breach under explicit provisions of the relevant Annual Contributions Contract or a Memorandum of Agreement.

§ 901.10 Indicators.

(a) Indicators (1)-(7) listed in this section are required by statute to be used to evaluate the management performance of PHAs. Indicators (8)-(12) listed in this section are deemed to be appropriate by the Department to evaluate the management performance of PHAs.

(b) The indicators are as follows:

(1) *Indicator 1, Vacancy Number and Percentage.* The number and percentage of vacancies within an agency's inventory, including the progress that an agency has made within the previous three years to reduce such vacancies. It will be acceptable for the PHA to use the vacancy rate or number of vacant units using data reported on the Form HUD-51234, Report on Occupancy. At its option, a PHA may construct and use an actual average vacancy rate or average number of vacant units using Rent Roll records for the month ending six months before the start of its budget year. This indicator is given a weight of x3. Units in the following categories shall not be included in this calculation:

(i) Vacant units in an approved demolition or disposition program;

(ii) Vacant units in which resident property has been abandoned, but only if State law requires the property to be left in the unit for some period of time, and only for the period stated in the law;

(iii) Vacant units that have sustained casualty damage, but only until the insurance claim is adjusted; and

(iv) Units that are occupied by employees of the PHA and units that are utilized for resident services.

(v) Grade A: An actual vacancy percentage of 1% or less.

(vi) Grade B: A vacancy percentage of greater than 1% and less than or equal to 2%, or the PHA has an equivalent of three or fewer vacant units.

(vii) Grade C: The PHA is in one of the following categories:

(A) A vacancy percentage of greater than 2% and less than or equal to 3%, or the PHA has an equivalent of four or five vacant units; or

(B) An adjusted vacancy percentage of 3% or less after permitted adjusting for funded on-schedule modernization; or

(C) The PHA has reduced actual vacancies over the past three years by at least 30%.

(viii) Grade D: The PHA is in one of the following categories:

(A) A vacancy percentage of greater than 3% and less than or equal to 6%; or

(B) An adjusted vacancy percentage of greater than 3% and less than or equal to 5% after permitted adjusting for funded on-schedule modernization; or

(C) The PHA has reduced actual vacancies over the past three years by at least 10%.

(ix) Grade E: The PHA is in one of the following categories:

(A) A vacancy percentage of greater than 6% and less than or equal to 8%; or

(B) An adjusted vacancy percentage of less than or equal to 7% after permitted adjusting for funded on-schedule modernization; or

(C) The PHA has reduced actual vacancies over the past three years.

(x) Grade F: The PHA is in one of the following categories:

(A) An actual vacancy percentage of greater than 8%; or

(B) An adjusted vacancy percentage of greater than 7% after permitted adjusting for funded on-schedule modernization and the PHA has not reduced actual vacancies over the past three years.

(2) *Indicator 2, Modernization.* The amount and percentage of funds obligated to public housing agencies under section 14 which remain unexpended after three years; and the management of the program under section 14 for the modernization and rehabilitation of public housing units and developments. This indicator has a weight of x2.

(i) Component #1—Unexpended Funds Over Three Years Old. This component has a weight of x2.

(A) Grade A: The PHA has no unexpended funds over three years old or if the PHA has unexpended funds over three years old, the PHA can demonstrate that the approved original

or revised project implementation schedule(s) gives the PHA longer than three years, or there are valid reasons outside of the PHA's control for the unexpended funds, such as litigation, HUD or other institutional delay, extended labor strikes, or extended material shortages.

(B) Grade F: The PHA has unexpended funds over three years old, but cannot demonstrate that the approved original or revised project implementation schedule(s) gives the PHA longer than three years or that there are valid reasons outside of the PHA's control for the unexpended funds.

(ii) Component #2—Timeliness of Fund Obligation. This component has a weight of x1.

(A) Grade A: For any obligation deadline dates occurring in the preceding Federal Fiscal Year, the PHA has obligated 100% of its funds by the obligation dates in its approved original project implementation schedules or approved revised schedule(s) where time extensions were granted for valid reasons outside of the PHA's control, such as litigation, HUD or other institutional delay, extended labor strikes, extended material shortages, or need to use leftover funds.

(B) Grade F: For any obligation deadline dates occurring in the preceding Federal Fiscal Year, the PHA has obligated less than 100% of its approved funds by the obligation dates in its approved project implementation schedules or approved revised schedules, or received approval for time extensions due to reasons within the PHA's control, or has continued to obligate funds after the latest approved obligation deadline date.

(iii) Component #3—Contract Administration. This component has a weight of x1.

(A) Grade A: Based on HUD's on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, there are no significant monitoring findings related to contract administration.

(B) Grade B: Based on HUD's on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, there are no more than two significant monitoring findings related to contract administration and the PHA has corrected or is in the process of correcting those monitoring findings related to contract administration.

(C) Grade C: Based on HUD's on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, there are no more than four significant monitoring findings related to contract administration and the PHA has corrected or is in the process of correcting those significant monitoring findings related to contract administration.

(D) Grade D: Based on HUD's on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, there are no more than six significant monitoring findings related to contract administration and the PHA has corrected or is in the process of correcting those significant monitoring findings related to contract administration.

(E) Grade E: Based on HUD's on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, there are more than six significant monitoring findings related to contract administration and the PHA has corrected or in the process of correcting those significant monitoring findings related to contract administration.

(F) Grade F: Based on HUD's on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, and actions to correct significant monitoring findings related to contract administration have not resulted in progress toward correction.

(iv) Component #4—Quality of Physical Work. This component has a weight of x3.

(A) Grade A: Based on HUD's latest on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, the PHA is carrying out the physical work in accordance with the HUD-approved plans and specifications or within the limits of the HUD-established threshold for contract modifications, and there are no significant monitoring findings related to the quality of physical work or inspections.

(B) Grade B: Based on HUD's latest on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, the PHA is carrying out the physical work in accordance with the HUD-approved plans and specifications or within the limits of the HUD-established threshold for contract modifications, and there are no more than two significant monitoring findings related to the quality of physical work or inspections, and the PHA has corrected or is in the process of correcting those significant monitoring findings related to the quality of physical work or inspections.

(C) Grade C: Based on HUD's latest on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, the PHA is carrying out the physical work in accordance with the HUD-approved plans and specifications or within the limits of the HUD-established threshold for contract modifications, and there are no more than four significant monitoring findings related to the quality of physical work or inspections, and the PHA has corrected or is in the process of correcting those significant monitoring findings related to the quality of physical work or inspections.

(D) Grade D: Based on HUD's latest on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, the PHA is carrying out the physical work in accordance with the HUD-approved plans and specifications or within the limits of the HUD-established threshold for contract modifications, and there are no more than six significant monitoring findings related to the quality of physical work or inspections, and the PHA has corrected or is in the process of correcting those significant monitoring findings related to the quality of physical work or inspections.

(E) Grade E: Based on HUD's latest on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, the PHA is carrying out the physical work in accordance with the HUD-approved plans and specifications or within the limits of the HUD-established threshold for contract

modifications, and there are more than six significant monitoring findings related to the quality of physical work or inspections, and the PHA has corrected or is in the process of correcting those significant monitoring findings related to the quality of physical work or inspections.

(F) Grade F: Based on HUD's latest on-site physical inspection(s) performed within the preceding 12 months or, where no on-site physical inspections were performed within the preceding 12 months, based on HUD's latest on-site physical inspection, the PHA is not carrying out the physical work in accordance with the HUD-approved plans and specifications or within the limits of the HUD-established threshold for contract modifications, or any actions to correct significant monitoring findings related to the quality of physical work or inspections have not resulted in progress toward correction.

(v) Component #5—Budget Controls. This component has a weight of x1.

(A) Grade A: The PHA has expended modernization funds only on work items in the latest HUD-approved budgets or within the limits of the HUD-established threshold for budget revision *or* where the PHA has expended modernization funds on work items other than those in the latest HUD-approved budgets or above the limits of the HUD-established threshold for budget revisions, the PHA obtained prior HUD approval.

(B) Grade F: The PHA has expended modernization funds on work items other than those in the latest HUD-approved budgets, or above the limits of the HUD-established threshold for budget revision, or without getting prior HUD approval.

(3) *Indicator 3, Rents Uncollected.* The balance of rents uncollected as a percentage of total rents to be collected. This indicator has a weight of x3.

(i) Grade A: The balance of rents uncollected in the immediate past fiscal year is less than or equal to 2% of total rents to be collected.

(ii) Grade B: The balance of rents uncollected in the immediate past fiscal year is greater than 2% and less than or equal to 4% of the total rents to be collected.

(iii) Grade C: The balance of rents uncollected in the immediate past fiscal year is greater than 4% and less than or equal to 6% of the total rents to be collected.

(iv) Grade D: The balance of rents uncollected in the immediate past fiscal year is greater than 6% and less than or equal to 8% of the total rents to be collected.

(v) Grade E: The balance of rents uncollected in the immediate past fiscal year is greater than 8% and less than or equal to 10% of the total rents to be collected.

(vi) Grade F: The balance of rents uncollected in the immediate past fiscal year is greater than 10% of the total rents to be collected.

(4) *Indicator 4, Energy Consumption.* The annual energy consumption. This indicator has a weight of x1.

(i) Grade A: Annual energy consumption, as compared to the average of the three years' rolling base consumption, that has been adjusted for variances in heating degree days (HDD) has not increased.

(ii) Grade B: Annual energy consumption, as compared to the average of the three years' rolling base consumption, that has been adjusted for variance in heating degree days (HDD) has not increased by more than 3%.

(iii) Grade C: Annual energy consumption, as compared to the average of the three years' rolling base consumption, that has been adjusted for variance in heating degree days (HDD) has increased by greater than 3% and less than or equal to 5%.

(iv) Grade D: Annual energy consumption, as compared to the average of the three years' rolling base consumption, that has been adjusted for variance in heating degree days (HDD) has increased by greater than 5% and less than or equal to 7%.

(v) Grade E: Annual energy consumption, as compared to the average of the three years' rolling base consumption, that has been adjusted for variance in heating degree days (HDD) has increased by greater than 7% and less than or equal to 9%.

(vi) Grade F: Annual energy consumption, as compared to the average of the three years' rolling base consumption, that has been adjusted for variances in heating degree days (HDD) has increased by more than 9%.

(5) *Indicator 5, Unit Turnaround.* The average period of time that an agency requires to repair and turnaround vacant units. This indicator has a weight of x2. Vacant units in the following categories should not be included in this calculation:

(i) Units in on-schedule CIAP (only) programs;

(ii) Units that HUD has approved for demolition or disposition;

(iii) Units in which resident property has been abandoned, but only if State law requires the property to be left in the unit for some period of time, and only for the period stated in the law; and

(iv) Units that have sustained casualty damage, but only until the insurance claim is adjusted.

(v) Grade A: The PHA has established a system to track the duration of vacancies; and the average number of calendar days for vacant units to be prepared for re-rental and for a new lease to take effect, during the PHA's immediate past fiscal year, is less than or equal to 20 calendar days.

(vi) Grade B: The PHA has established a system to track the duration of vacancies; and the average number of calendar days for vacant units to be prepared for re-rental and for a new lease to take effect, during the PHA's immediate past fiscal year, is greater than 20 calendar days and less than or equal to 25 calendar days.

(vii) Grade C: The PHA has established a system to track the duration of vacancies; and the average number of calendar days for vacant units to be prepared for re-rental and for a new lease to take effect, during the PHA's immediate past fiscal year, is greater than 25 calendar days and less than or equal to 30 calendar days.

(viii) Grade D: The PHA has established a system to track the duration of vacancies; and the average number of calendar days for vacant units to be prepared for re-rental and for a new lease to take effect, during the PHA's immediate past fiscal year, is greater than 30 calendar days and less than or equal to 40 calendar days.

(ix) Grade E: The PHA has established a system to track the duration of vacancies; and the average number of calendar days for vacant units to be prepared for re-rental and for a new lease to take effect, during the PHA's immediate past fiscal year, is greater than 40 calendar days and less than or equal to 50 calendar days.

(x) Grade F: The PHA has not established a system to track the duration of vacancies; or the average number of calendar days for vacant units to be prepared for re-rental and for a new lease to take effect, during the PHA's immediate past fiscal year, is more than 50 calendar days.

(6) *Indicator 6, Outstanding Work Orders.* The proportion of maintenance work orders outstanding, including any progress that an agency has made during the preceding 3 years to reduce the period of time required to complete maintenance work orders. This indicator has a weight of x1.

(i) Grade A: At least 99% of emergency items were corrected within 24 hours or emergency status was abated, and the number of non-emergency work orders outstanding at the end of the PHA's immediate past fiscal year does not exceed 4% of the total number of work orders received

during the immediate past fiscal year, excluding cyclical work orders.

(ii) Grade B: At least 97% of emergency items were corrected within 24 hours or emergency status was abated, and the number of non-emergency work orders outstanding at the end of the PHA's immediate past fiscal year is greater than 4% and less than or equal to 6% of the total number of work orders received during the immediate past fiscal year, excluding cyclical work orders.

(iii) Grade C: The PHA is in one of the following categories:

(A) At least 95% of emergency items were corrected within 24 hours or emergency status was abated, and the number of non-emergency work orders outstanding at the end of the PHA's immediate past fiscal year is greater than 6% and less than or equal to 8% of the total number of work orders received during the immediate past fiscal year, excluding cyclical work orders; or

(B) At least 95% of emergency items were corrected within 24 hours or emergency status was abated, and the number of non-emergency work orders outstanding at the end of the PHA's immediate past fiscal year is greater than 8% and less than or equal to 10% of the total number of work orders received during the immediate past fiscal year, excluding cyclical work orders, and the PHA demonstrates progress over the most recent three year period in which the time required to complete maintenance work orders has been reduced.

(iv) Grade D: The PHA is in one of the following categories:

(A) At least 95% of emergency items were corrected within 24 hours or emergency status was abated, and the number of non-emergency work orders outstanding at the end of the PHA's immediate past fiscal year is greater than 8% and less than or equal to 10% of the total number of work orders received during the immediate past fiscal year, excluding cyclical work orders; or

(B) At least 95% of emergency items were corrected within 24 hours or emergency status was abated, and the number of non-emergency work orders outstanding at the end of the PHA's immediate past fiscal year is greater than 10% and less than or equal to 12% of the total number of work orders received during the immediate past fiscal year, excluding cyclical work orders, and the PHA demonstrates progress over the most recent three years period in which the time required to complete maintenance work orders has been reduced.

(v) Grade E: The PHA is in one of the following categories:

(A) At least 95% of emergency items were corrected within 24 hours or emergency status was abated, and the number of non-emergency work orders outstanding at the end of the PHA's immediate past fiscal year is greater than 10% and less than or equal to 12% of the total number of work orders received during the immediate past fiscal year, excluding cyclical work orders; or

(B) At least 95% of emergency items were corrected within 24 hours or emergency status was abated, and the number of non-emergency work orders outstanding at the end of the PHA's immediate past fiscal year exceeds 12% of the total number of work orders received during the immediate past fiscal year, excluding cyclical work orders, and the PHA has demonstrated progress over the most recent three year period in which the time required to complete maintenance work orders has been reduced.

(vi) Grade F: Less than 95% of emergency items were corrected within 24 hours of emergency status was not abated, or the number of non-emergency work orders outstanding at the end of the PHA's immediate past fiscal year exceeds 12% of the total number of work orders received during the immediate past fiscal year, excluding cyclical work orders, or the PHA has not demonstrated progress over the most recent three year period in which the time required to complete maintenance work orders has been reduced.

(7) *Indicator 7, Annual Inspection and Condition of Units and Systems.* The percentage of units that an agency fails to inspect to ascertain maintenance or modernization needs within such period of time as the Department deems appropriate and the percentage of systems, for the purposes of preventive maintenance, that an agency fails to inspect on an annual basis. This indicator has a weight of x3. Units in funded on-schedule section 14 modernization programs and units that HUD has approved for demolition or disposition are not included in this calculation.

(i) Component #1—System to track inspection and repair of units and systems. This component has a weight of x1.

(A) Grade A: The PHA has established a system to track inspection and repair of units and systems.

(B) Grade F: The PHA has not established a system to track inspection and repair of units and systems.

(ii) Component #2—Annual inspection of units. This component has a weight of x1.

(A) Grade A: The PHA inspected 100% of units in the immediate past fiscal year, using standards that were at least equivalent to the Housing Quality Standards (HQS).

(B) Grade B: The PHA inspected at least 97% and less than 100% of units in the immediate past fiscal year, using standards that were at least equivalent to HQS.

(C) Grade C: The PHA inspected at least 95% and less than 97% of units in the immediate past fiscal year, using standards that were at least equivalent to HQS.

(D) Grade D: The PHA inspected at least 93% and less than 95% of units in the immediate past fiscal year, using standards that were at least equivalent to HQS.

(E) Grade E: The PHA inspected at least 90% and less than 93% of units in the immediate past fiscal year, using standards that were at least equivalent to HQS.

(F) Grade F: The PHA inspected fewer than 90% of units in the immediate past fiscal year, using standards that were at least equivalent to HQS.

(iii) Component #3—Correction of unit deficiencies. This component has a weight of x3.

(A) Grade A: All units met the HQS standards at the time of inspection, or of those units not meeting HQS or its equivalent at the time of inspection, at least 99% of emergency items were corrected within 24 hours or the emergency status was abated, and all other unit deficiencies were corrected within an average of, at most, 25 calendar days to meet inspection standards that were at least equivalent to HQS, and the PHA is on schedule at the end of its immediate past fiscal year, according to its maintenance plan, in correcting specific unit deficiencies.

(B) Grade B: Of those units not meeting HQS or its equivalent at the time of the inspection, at least 97% and less than 99% of emergency items were corrected within 24 hours or the emergency status was abated, and all other unit deficiencies were corrected within an average of greater than 25 calendar days and less than or equal to 30 calendar days to meet inspection standards that were at least equivalent to HQS, and the PHA is on schedule at the end of its immediate past fiscal year, according to its maintenance plan, in correcting specific until deficiencies.

(C) Grade C: Of those units not meeting HQS or its equivalent at the time of the inspection, at least 95% and

less than 97% of emergency items were corrected within 24 hours or the emergency status was abated, and all other unit deficiencies were corrected within an average of greater than 30 calendar days and less than or equal to 40 calendar days to meet inspection standards that were at least equivalent to HQS, and the PHA is on schedule at the end of its immediate past fiscal year, according to its maintenance plan, in correcting specific unit deficiencies.

(D) Grade D: Of those units not meeting HQS or its equivalent at the time of the inspection, at least 95% and less than 97% of emergency items were corrected within 24 hours or the emergency status was abated, and all other unit deficiencies were corrected within an average of greater than 40 calendar days and less than or equal to 50 calendar days to meet inspection standards that were at least equivalent to HQS, and the PHA is on schedule at the end of its immediate past fiscal year, according to its maintenance plan, in correcting specific unit deficiencies.

(E) Grade E: Of those units not meeting HQS or its equivalent at the time of the inspection, at least 95% and less than 97% of emergency items were corrected within 24 hours or the emergency status was abated, and all maintenance deficiencies were corrected within an average of greater than 50 calendar days and less than or equal to 60 calendar days to meet inspection standards that were at least equivalent to HQS, and the PHA is on schedule at the end of its immediate past fiscal year, according to its maintenance plan, to correct unit deficiencies.

(F) Grade F: Of those units not meeting HQS or its equivalent at the time of inspection, fewer than 95% of emergency items were corrected within 24 hours, or emergency status was not abated, or all maintenance deficiencies were corrected within an average of greater than 60 calendar days to meet inspection standards that were at least equivalent to HQS, or the PHA is not on schedule at the end of its immediate past fiscal year, according to its maintenance plan, to correct unit defects, or the PHA inspected fewer than 90% of units in the immediate past fiscal year, using standards that were at least equivalent to HQS.

(iv) Component #4—inspection and repair of systems. This component has a weight of x3.

(A) Grade A: The PHA annually inspected major systems to identify required maintenance and action was taken to correct identified system defects within an average of less than or equal to 25 calendar days and the PHA is on schedule at the end of the immediate past fiscal year, according to its maintenance plan, to correct systems defects.

(B) Grade B: The PHA annually inspected major systems to identify required maintenance and action was taken to correct identified system defects within an average of greater than 25 calendar days and less than or equal to 30 calendar days, and the PHA is on schedule at the end of the immediate past fiscal year, according to its maintenance plan, to correct systems defects.

(C) Grade C: The PHA annually inspected major systems to identify required maintenance and action was taken to correct identified system defects within an average of greater than 30 calendar days and less than or equal to 40 calendar days, and the PHA is on schedule at the end of the immediate past fiscal year, according to its maintenance plan, to correct systems defects.

(D) Grade D: The PHA annually inspected major systems to identify required maintenance and action was taken to correct identified system defects within an average of greater than 40 calendar days and less than or equal to 50 calendar days, and the PHA is on schedule at the end of the immediate past fiscal year, according to its maintenance plan, to correct systems defects.

(E) Grade E: The PHA annually inspected major systems to identify required maintenance and action was taken to correct identified system defects within an average of greater than 50 calendar days and less than or equal to 60 calendar days, and the PHA is on schedule at the end of the immediate past fiscal year, according to its maintenance plan, to correct systems defects.

(F) Grade F: The PHA did not annually inspect major systems, or system defects were corrected within an average of greater than 60 calendar days, or the PHA is not on schedule at the end of the immediate past fiscal year, according to its maintenance plan, to correct systems defects.

(8) *Indicator 8, Tenants Accounts Receivable.* The percentage of monies owed to a PHA by residents in possession. This indicator has a weight of x1.

(i) Grade A: Tenants accounts receivable for tenants in possession, excluding amounts covered by formal up-to-date repayment agreements, is 5% or less of total tenant charges for the reporting period.

(ii) Grade C: Tenants accounts receivable for tenants in possession, excluding amounts covered by formal up-to-date repayment agreements, is greater than 5% and less than or equal to 10% of total tenant charges for the reporting period.

(iii) Grade F: Tenants accounts receivable for tenants in possession, excluding amounts covered by formal up-to-date repayment agreements, is greater than 10% of total tenant charges for the reporting period.

(9) *Indicator 9, Operating Reserves.* The percentage of operating reserve maintained by any PHA. This indicator has a weight of x1.

(i) Grade A: Operating reserves, excluding TARs and modified for year-end adjustments, are 40% or greater of maximum operating reserves.

(ii) Grade C: Operating reserves, including TARs and modified for year-end adjustments, are less than 40% and greater than or equal to 20% of maximum operating reserves.

(iii) Grade F: Operating reserves, excluding TARs and modified for year-end adjustments, are less than 20% of maximum operating reserves.

(10) *Indicator 10, Routine Operating Expenses.* An agency's level of operating expenses as compared to operating income and subsidy. This indicator has a weight of x1.

(i) Grade A: Over the most recent three year period total routine operating expenses are less than or equal to operating income and subsidy.

(ii) Grade C: For two out of the past three years, total routine operating expenses are less than, or equal to, operating income and subsidy.

(iii) Grade F: For two out of the past three years, total routine operating expenses exceed operating income and subsidy.

(11) *Indicator 11, Resident Initiatives.* A partnership between residents and PHAs to develop and implement a resident initiatives agenda to create self-sufficiency opportunities and maintain viable, safe, and drug-free public housing developments. This indicator has a weight of x3.

(i) Grade A: The PHA Board has adopted policies and implemented procedures to support and encourage activities in the areas of anti-drug strategy/security; resident participation/management; homeownership opportunities; and economic development/self-sufficiency. There is evidence of significant activity in three areas at one or more developments (e.g., reduced drug-related crime, established newly organized resident groups/increased resident participation on the PHA Board; provided technical assistance/training

to resident groups; assisted first-time resident homebuyers; provided supportive services to enhance self-sufficiency for families; has contracted in the past year with a resident-owned business or utilized Comprehensive Grant Program/CIAP activities to promote resident job creation pursuant to section 3) during a PHA's immediate past fiscal year.

(ii) Grade B: The PHA Board has adopted policies and implemented procedures to support and encourage activities in the areas of anti-drug strategy/security; resident participation/management; homeownership opportunities; and economic development/self-sufficiency. There is evidence of significant activity in two areas at one or more developments (refer to examples in Grade A above) during a PHA's immediate past fiscal year.

(iii) Grade C: The PHA Board has adopted policies and implemented procedures to support and encourage activities in the areas of anti-drug strategy/security; resident participation/management; homeownership opportunities; and economic development/self-sufficiency. There is evidence of significant activity in one area at one or more developments (refer to examples in Grade A above) during a PHA's immediate past fiscal year.

(iv) Grade D: The PHA Board has adopted policies and implemented procedures to support and encourage activities in the areas of anti-drug strategy/security; resident participation/management; homeownership opportunities; and economic development/self-sufficiency. There is evidence of minimal activity in one area at one or more developments (refer to examples in Grade A above) during a PHA's immediate past fiscal year.

(v) Grade E: The PHA Board has adopted policies in the areas of anti-drug strategy/security; resident participation/management; homeownership opportunities; and economic development/self-sufficiency. There is no evidence of activity in any area (refer to examples in Grade A above) during a PHA's immediate past fiscal year.

(vi) Grade F: The PHA Board has not adopted policies and implemented procedures, or has not initiated any activities in the areas of anti-drug strategy/security; resident participation/management; homeownership opportunities; and economic development/self-sufficiency during a PHA's immediate past fiscal year.

(12) *Indicator 12, Development.* An agency's ability to develop additional units for occupancy by public housing residents. This indicator applies for projects that have started construction or have an ACC for acquisition projects. This indicator has a weight of x1.

(i) Component #1—Quality of contract administration. This component has a weight of x1.

(A) Grade A: Based on HUD's in-office reviews of the PHA's submissions, development contracting for design and/or inspecting architects, engineering services, site options and purchase agreements, general contractors or turnkey developers, etc., conform to HUD requirements concerning method of selection (procurement), contracting, and contract administration; there are no significant findings (e.g., statutory, regulatory or health/safety violations) regarding a PHA's contracting and contracting administration.

(B) Grade C: Based on HUD's in-office reviews of the PHA's submissions, development contracting and contract administration do not always conform to HUD requirements concerning method of selection (procurement), contracting, and contract administration; there were no more that four significant findings relating to contract administration and the PHA has corrected or is in the process of correcting those monitoring findings related to contract administration.

(C) Grade F: Based on HUD's follow-up monitoring of a PHA's development contracting and contract administration, the PHA's development contracting requirements do not conform to HUD requirements, or there were more than four significant findings relating to contract administration, or the PHA either did not correct its inappropriate practices or it is continuing to engage in improper contracting practices.

(ii) Component #2—Timeliness of development, which shall not include valid delays resulting from legal action affecting a development, or resulting from HUD actions or inaction. This component has a weight of x2.

(A) Grade A: Construction/rehabilitation started (or Date of Full Availability (DOFA) achieved for acquisition) in no more than 21 months from the date of fund reservation, excluding valid delays as described in section (ii), above, and contract for construction/ rehabilitation was completed in accordance with the contract time.

(B) Grade C: Construction/rehabilitation started (or DOFA achieved for acquisition) in more than 21 months, but less than or equal to 30 months from fund reservation, excluding valid delays as described in section (ii), above, and contract for construction/rehabilitation was completed in no more than 30 days past the date specified in the contract and for which liquidated damages were assessed (e.g., the delay was not the responsibility of the PHA).

(C) Grade F: Construction/rehabilitation started (or DOFA achieved for acquisition) more than 30 months from fund reservation, excluding valid delays as described in section (ii), above, or contract for construction/rehabilitation was completed in excess of 30 days past the date specified in the contract or liquidated damages were not assessed.

(iii) Component #3—Quality of physical work. This component has a weight of x3.

(A) Grade A: Based on HUD's on-site inspection(s), the physical work is being carried out in accordance with the HUD-approved budget, plans and specifications; the work is being inspected by the PHA in accordance with requirements and there are no significant monitoring findings (e.g., statutory, regulatory, or health/ safety violation) relating to the quality of physical work or inspections, including items of delayed completion; and all design/ construction deficiencies were corrected within two years of DOFA, or are in the process of being corrected if DOFA was less than two years ago.

(B) Grade C: Based on HUD's on-site inspection(s), the physical work is being carried out in accordance with the HUD-approved budget, plans and specifications; the work is being inspected by the PHA in accordance with requirements; there are no more than four significant monitoring findings; the PHA has or is in the process of correcting those significant findings; and all design/construction deficiencies corrected within three years of DOFA, or are in the process of being corrected if DOFA was less than three years ago.

(C) Grade F: Based on HUD's on-site inspections, the physical work is not being carried out in accordance with the HUD-approved budget, plans and specifications; the work is not inspected by the PHA in accordance with HUD requirements; there are more than four significant monitoring findings; the PHA has not resolved the significant monitoring findings related to the quality of physical work or inspections; or design/ construction deficiencies were not identified within three years of DOFA.

(iv) Component #4—Budget controls.

This component has a weight of x1.

(A) Grade A: Costs do not exceed approved budgets; shifts of funds between major accounts are fully justified and submitted in a timely fashion; financial records are properly maintained in a condition able to be audited; the Actual Development Cost Certificate (ADCC) was submitted within 24 months of DOFA unless prior written approval was granted by HUD for an extension; excess funds were remitted within 30 days of ADCC approval, if applicable.

(B) Grade C: Cost do not exceed the total development cost approved by HUD; overruns in major accounts are in the process of being justified and a revised budget is being submitted; errors in financial record keeping associated with the development brought to the PHA's attention during processing are being corrected by the PHA; the ADCC was submitted for approval more than 24 months after DOFA without prior written approval from HUD for an extension; excess funds were remitted in more than 30 days but less than or equal to 90 days of ADCC approval, if applicable.

(C) Grade F: Costs have exceeded the total development cost approved by HUD; or overruns in major accounts were not properly justified; or the PHA failed to maintain project financial records in a condition able to be audited; or the ADCC was not submitted for approval, if applicable; or excess funds were not returned to HUD as required, if applicable.

Subpart B—Program Operation

§ 901.100 Data collection.

(a) Information on some of the indicators will be derived by the Field Office from existing reporting and data forms.

(b) A PHA shall provide certification as to data on indicators not collected according to paragraph (a) of this section, by submitting a certified questionnaire within 90 calendar days after the beginning of its fiscal year, except that, in the initial year of PHMAP implementation and for the purpose of the public housing Comprehensive Grant Program under section 14, PHAs shall submit their certification in accordance with the following schedule, where FYB means "Fiscal Year Begins" and FO means "Field Office":

PHA size	PHA FYB	Submission	Date source	FO assessment
500+ units	01-01-92	[Insert date 45 days after Federal Register Publication].	12-31-91	[Insert date 90 days after Federal Register Publication].
500+ units	04-01-92	do	03-31-91	Do.
500+ units	07-01-92	do	06-30-91	Do.
500+ units	10-01-92	do	09-30-91	Do.
1-499 units	01-01-92	04-01-92	12-31-91	07-01-92
250-499 units	04-01-92	06-01-92	03-31-91	07-15-92
250-499 units	07-01-92	06-01-92	06-30-91	07-15-92
250-499 units	10-01-92	06-01-92	09-31-91	07-15-93
1-249 units, and 500+ units	04-01-92	07-01-92	03-31-92	10-01-92
1-249 units, 250-499 units, and 500+ units	07-01-92	10-01-92	06-30-92	01-01-93
1-249 units, 250-499 units, and 500+ units	10-01-92	12-31-92	09-30-92	04-01-93

(1) The certification shall be approved by PHA Board resolution, signed by the Chairman of the Board and attested to by the Executive Director.

(2) PHAs shall maintain documentation for three years verifying all certified indicators for HUD on-site review.

(c) If a PHA does not submit its certification, or submits its certification late, appropriate sanctions may be imposed, including a presumptive rating of failure in all of the PHMAP indicators, which may result in troubled or mod-troubled designations.

(d) A PHA's certification will be post-reviewed by HUD during the next on-site review, but is subject to verification at any time. Appropriate sanctions for intentional false certification will be imposed, including suspension or debarment of the signatories, the loss of high performer designation, a lower grade for individual indicators and a lower PHMAP total weighted score.

§ 901.105 Computing assessment score.

(a) Grades within indicators and components have the following point values:

(1) Grade A=10.0 points;
(2) Grade B=8.5 points;
(3) Grade C=7.0 points;
(4) Grade D=5.0 points;
(5) Grade E=3.0 point; and
(6) Grade F=0.0 points.

(b) Where indicators or components are designated as having additional weight (x2 or x3), the points in each grade shall be multiplied times the additional weight.

(c) Indicators will be graded individually. Components within an indicator will be graded individually, and then will be used to determine a single grade for the indicator, by dividing the total number of component points by the total number of component weights and rounding off to one decimal place. The total number of component weights for this purpose is to include a one for components that are unweighed (i.e., they are weighted x1, rather than x2 or x3).

§ 901.110 PHA request for exclusion or modification of an indicator or component.

(a) A PHA shall have the right to request the exclusion or modification of any indicators or components in its management assessment, thereby excluding or modifying the impact of those indicators' or components' grades in its PHMAP total weighted score.

(b) Exclusion and modification requests shall be submitted by a PHA at the time of its PHMAP certification submission to the Field Office along with supporting documentary justification, rather than during the appeal process, unless highly unusual circumstances are discovered after a PHA submits its certification.

(c) Requests for exclusions and modifications that do not include supporting documentary justification will not be considered.

§ 901.115 PHA score and status.

(a) PHAs that achieve a total weighted score of no less than 90% on all applicable indicators may be designated high performers. High performers will be afforded incentives that include substantial relief from reporting and other requirements, as described in § 901.135.

(b) PHAs that achieve a total weighted score of less than 90% but not

less than 60% on all applicable indicators may be designated standard and be subject to standard review and monitoring requirements.

(c) PHAs that achieve a total weighted score of less than 60% on all applicable indicators may be designated as troubled.

(d) PHAs that achieve a total weighted score of less than 60% on indicator (2), modernization, may be designated as troubled with respect to the program under section 14.

(e) Even though PHA has satisfied all of the indicators for high performer designation, the Regional Administrator may reinstate any review as necessary to address the particular deficiencies, deny incentives or deny high performer status, as described in paragraph (a) of this section in the case of the PHA that:

(1) Is operating under a special agreement with HUD;

(2) Is involved in litigation that bears directly upon the management of a PHA;

(3) Is operating under a court order;

(4) Demonstrates substantial evidence of fraud or misconduct resulting from such sources as an Office of Inspector General investigation/audit, or an investigation by any appropriate legal authority; or

(5) Demonstrates substantial noncompliance in one or more areas.

(f) When a Regional Administrator acts for any of the reasons stated in paragraph (e) of this section, the Regional Administrator shall explain, in writing, the reasons for the action of the PHA.

(g) A PHA may appeal denial of high performer status in accordance with § 910.130.

§ 901.120 Field Office functions.

(a) The Field Office will assess each PHA within 180 days after the beginning of a PHA's fiscal year, except that, in the initial PHMAP implementation year and for the purpose of the public housing Comprehensive Grant Program under section 14, it will assess PHAs in accordance with the schedule at § 901.100(b) of this subpart.

(1) The Field Office will make determinations for high-performing, standard, troubled PHAs, and troubled PHAs with respect to the program under section 14 (mod-troubled) in accordance with a PHA's PHMAP weighted score.

(2) The Field Office will also make determinations for exclusion and modification requests.

(b) Each Field Office will notify, within 180 days after the beginning of a PHA's fiscal year, each PHA of the PHA's grade in each indicator, its management assessment total weighted score and status, any determination concerning exclusion and modification requests, and any deadline date by which appeals must be received.

(1) PHA notification could include, at a minimum, offers of pertinent technical assistance in problem areas, suggestions for means of improving problem areas, and areas of relief and incentives as a result of high performer status.

(2) In the initial year of PHMAP implementation and for purposes of the public housing Comprehensive Grant Program under section 14, each Field Office shall notify each PHA by the Field Office (FO) assessment date listed in the schedule at § 901.100(b) of this subpart of the PHA's grade in each indicator and standard, and its management total weighted score and status.

(c) An on-site confirmatory review may be conducted of a PHA by the Field Office. The purpose of the on-site confirmatory review is to verify those indicators for which a PHA provides certification, as well as the accuracy of the information received in the Field Office pertaining to the remaining indicators.

(d) Recommendations on appeals and on petitions to remove troubled or mod-troubled status will be made by the Field Office to the Regional Administrator.

(e) Determinations of intentional false certifications will be made by the Field Office.

(f) The Field Office shall maintain PHMAP files for public inspection in accordance with § 901.155 of this subpart.

§ 901.125 Regional Administrator functions.

(a) The Regional Administrator may review a PHA's score and modification and exclusion requests prior to the transmission of the notification letter to the PHA, except as specified in paragraph (b) of this section. In the initial year of PHMAP implementation and for the purpose of the public housing Comprehensive Grant Program under section 14, these reviews, if undertaken, will be done in sufficient time to permit Field Office notifications to be made in accordance with § 901.120(b)(2) of this subpart.

(b) The Regional Administrator shall review all cases in which a PHA's score falls within ten points below the point value required for designations in accordance with § 901.115 (a), (c) and (d). In these cases, the Regional Administrator shall take into consideration the differences in the difficulty of managing projects that result from their physical condition and/or neighborhood environment. If the Regional Administrator determines that a PHA's performance difficulties result from physical condition and/or neighborhood environment rather than from poor management practices, the Regional Administrator shall withhold troubled or mod-troubled designation or award high performer designation, except as specified in paragraph (c) of this section.

(c) The Regional Administrator may deny or rescind a PHA's status as a high performer, based on substantial noncompliance by a PHA in one or more areas, so that it will not be entitled to any of the areas of relief and incentives. Areas of substantial noncompliance include, but are not limited to, noncompliance with statutes (e.g., Fair Housing and Equal Opportunity statutes); regulations (e.g., 24 CFR part 85); or the Annual Contributions Contract (ACC) (e.g., the ACC, part II, section 201, Use of Projects). Substantial noncompliance would cast doubt on the PHA's capacity to preserve and protect its public housing developments and operate them consistent with Federal law and regulations.

(d) If high performer designation is rescinded, the Regional Administrator will send written notification to the PHA, within 15 days of the decision, with a specific explanation of the reasons. An information copy will be forwarded to the Assistant Secretary for Public and Indian Housing.

(e) The Regional Administrator will decide the initial appeals of PHAs and rulings on petitions to remove troubled or mod-troubled status, and may review Field Office determinations of intentional false certifications.

(f) If the Regional Administrator reverses or rejects a determination or recommendation made by the Field Office, the reason for the reversal or rejection shall be included in the notification to the PHA and shall be a part of the PHMAP public record.

§ 901.130 PHA right of appeal.

(a) A PHA has the right to appeal a troubled designation or designation as troubled with respect to the program under section 14. A PHA may appeal its management assessment rating on the basis of data errors, or highly unusual circumstances that occurred after a PHA submitted its certification and request for modifications and exclusions, or the Regional Administrator's failure to consider physical condition and neighborhood environment in the designation of the PHA's score, or the denial of exclusion or modification requests when their denial affects a PHA's total weighted score.

(1) A PHA may appeal its management assessment rating only for the reasons stated in paragraph (a) of this section and only if the PHA can produce new documentation not previously submitted at the time it submitted its certification and request for modifications and exclusions.

(2) Where applicable, a PHA must demonstrate that a successful appeal will have a significant impact on its score (e.g., at least five percentage points increase), or its performance standing (e.g., remove a PHA from troubled designation, or more a PHA into high-performing status).

(3) The appeal shall be submitted to the Field Office and shall include supporting documentary justification of the reasons for the appeal.

(4) The Field Office will review the issues presented in an appeal and forward its recommendation for their resolution to the Regional Administrator. The Regional Administrator will transmit the determination of the appeal to the PHA in a notification letter that will also include the date and place for submitting any further appeal.

(5) The Regional Administrator will make determinations of all initial appeals, including those based on a failure to consider physical condition and neighborhood environment in the designation of the PHA's status.

(6) Appeals of recission of high performer designation shall be made directly to the Assistant Secretary.

(7) Appeals submitted without appropriate documentation will not be considered and will be returned to the PHA.

(b) A PHA may appeal a determination of intentional false certification.

(c) A PHA may appeal the denial of an initial appeal by the Regional Administrator, which includes initial appeals denying high performer designation, its designation as troubled or designation as troubled with respect to the program under section 14, and the denial of an appeal of a determination of intentional false certification. A PHA may also appeal a recission of high performer designation.

(1) The appeal of a Regional Administrator's denial of an initial appeal and appeals of recission of high performer designation shall be submitted to the Assistant Secretary for Public and Indian Housing with new supporting documentary justification not previously submitted to the Field Office of the PHA's reason(s) for appeal.

(2) Appeals submitted without appropriate documentation will not be considered and will be returned to the PHA.

(d) A PHA has the right to appeal any refusal of a petition in accordance with § 901.142 of this subpar to remove designation of troubled or troubled with respect to the program under section 14 to the Assistant Secretary for Public and Indian Housing.

(e) The date and place by which any appeal must be submitted will be specified in the letter from the Field Office notifying the PHA of any determination or action. For example, the Field Office management assessment score notification letter or denial of initial appeal letter will specify the date and place by which appeals must be received. The date specified will be the 15th calendar day after the letter is mailed, not counting the day the letter is mailed. If the 15th day falls on a weekend or holiday, the date specified will be the next day that is not on a weekend or a holiday. Any appeal not received by the specified time and place will not be considered.

(f) Appeals will be determined by the Department within 30 days.

§ 901.135 Incentives.

(a) A PHA that is designated a high performer will be afforded incentives in several program areas as well as be relieved of specific HUD requirements, effective upon notification of high performer designation.

(b) PHAs must have completed (all funds expended) a modernization program within the last two fiscal years and achieve a total weighted score of no less than 90% on indicator (2), modernization, in order to qualify for incentives in the program area of modernization.

(c) PHAs must achieve a total weighted score of no less than 90% on indicator (12), development, and have a project under development which has not reached Date of Full Availability (DOFA), or projects which reached DOFA within the last five years, in order to qualify for incentives in the program area of development.

(d) Incentives for high-performing PHAs are as follows:

(1) General. (i) The Department shall annually publish a listing of public housing agencies that have been designated as high-performing.

(ii) High-performing PHAs will receive a Certificate of Commendation from the Department as well as special public recognition.

(iii) Requisitions for leased housing annual contributions (Form HUD–52977, Request for Partial Payment of Fixed Annual Contribution, Leased Projects) will be submitted annually rather than quarterly (as presently provided by the Low-Income Leased Housing Handbook 7430.1, as revised) by high-performing PHAs.

(iv) High-performing PHAs will be deemed to be a lower risk and, therefore, will be monitored less frequently.

(v) Representatives of high-performing PHAs will be requested to serve on Departmental Working Groups that will advise the Department in such areas as troubled PHAs, performance standards for all PHAs, incentives for high-performing PHAs, etc.

(2) Financial Management. (i) High-performing PHAs will submit Form HUD–52599, Statement of Operating Receipts and Expenditures, annually instead of semiannually.

(ii) High-performing PHAs will be allowed to make line item (not bottom line) changes to routine expenditures as long as the total level of routine expenses is not changed.

(iii) High-performing PHAs will submit Form HUD–52295, Report of Tenants Accounts Receivable, annually instead of semiannually. The end of the PHA's fiscal year is the annual reporting date, as required in the Financial Management Handbook 7475.1, as revised.

(3) Occupancy. (i) High-performing PHAs will not be required to receive prior HUD approval for occupancy of dwelling units by PHA employees, provided the PHA charges market rents for such units. (This eliminates the requirement for HUD approval under both the Public Housing Occupancy Handbook 7465.1, as revised, and the conversion provisions of the Demolition, Disposition and Conversion Handbook 7486.1, as revised.) The requirement for prior HUD approval will, however, continue to apply if the employee-occupant is charged less than market rent. PHAs should not automatically use Section 8 Fair Market Rents (FMR) as a basis for "market rents." Market rents are rents for comparable standard non-luxury, rental units in the neighborhood or community. Often the market rent and the section 8 FMR will be the same or nearly the same, but specific characteristics of the project, such as location, may dictate a lower or higher rent. Such units, however, shall be removed from the Unit Month Available (UMA) count in the Performance Funding System calculations.

(ii) An internal occupancy audit may be conducted by a high-performing PHA in place of an audit by the Field Office, at the option of the PHA, when the previous audit was conducted by the

Field Office, provided that the PHA meets all of the following conditions:

(A) The PHA has no open occupancy audit findings;

(B) The PHA has sufficient knowledgeable staff to allow the internal audit to be conducted by staff other than those responsible for day-to-day determinations of resident eligibility and resident payments. A small PHA can contract with a high performing PHA or agency to perform an internal occupancy audit, since PHAs can contract for administrative functions generally. Also, a PHA can trade this function with another PHA at no cost, if it so chooses;

(C) The PHA is not in priority category one or two as defined in the Occupancy Audit Handbook 7465.2, as revised, and

(D) The internal audit shall be conducted in accordance with Handbook 7465.2, as revised,.

(4) Comprehensive Improvement Assistance Program (CIAP). (i) High-performing PHAs are relieved of the need for prior HUD review of architects'/engineers' contracts.

(ii) High-performing PHAs are relieved of the need for HUD review for construction and bid documents.

(iii) High-performing PHAs are relieved of the need for HUD review of contract modifications (including change orders).

(iv) High-performing PHAs are relieved of the need for HUD review of Request for Proposals (RFPs) and contract modifications for management improvement contracts.

(v) High-performing PHAs are relieved of the need for HUD review of budget revisions that delete or substantially revise approved work items, add new work items or incur costs in excess of the approved budget amount for any work item, but not budget revisions that incur costs in excess of the approved budget amount for any project or change the method of accomplishment from contract to force account labor.

(5) Development. (i) High-performing PHAs may submit applications in response to a Notice of Fund Availability (NOFA) with no further evidence of their capability to develop additional public housing units; full points in the rating criteria for development experience will be awarded, if experience is a NOFA criterion.

(ii) High-performing PHAs may approve construction modifications (change orders) that do not increase the contract amount and which are consistent with the original approved plans.

(iii) High-performing PHAs will not be required to obtain prior HUD approval under the Development Handbook for contracts for professional and technical services.

(iv) High-performing PHAs are relieved of the need for prior HUD approval of contracts for legal, architectural, engineering, or inspection services in connection with development, including the PHAs methodology for selection.

(e) Relief from any standard procedural requirements does not mean that a PHA is relieved from compliance with the provisions of Federal law and regulations or other handbook requirements. For example, although a high performer may be relieved of requirements for prior HUD approval for certain types of contracts for services, it must still comply with all other Federal and State requirements that remain in effect, such as those for competitive bidding or competitive negotiation (see 24 CFR 85.36).

(1) PHAs will still be subject to regular Independent Auditor (IA) audits.

(2) Office of Inspector General (OIG) audits or investigations will continue to be conducted as circumstances may warrant.

(f) The Regional Administrator will have discretion to subject a PHA to any requirement that would otherwise be omitted under the specified relief. The discretion may be exercised in cases where there is evidence indicating seriously deficient performance that casts doubt on the PHA's capacity to preserve and protect its public housing developments and operate them in a manner consistent with Federal law and regulations. Examples of this evidence include, but are not limited to, substantial allegations or findings of fraud, abuse, or mismanagement; noncompliance with law, such as Fair Housing and Equal Opportunity (FHEO) statutes, based on such sources as FHEO compliance investigations or reviews, OIG audits or investigations, IA audits, and routine reports and reviews; or evidence that the PHA's certification of indicators is not supported by the facts.

§ 901.140 Memorandum of agreement.

(a) A Memorandum of Agreement (MOA), a binding contractual agreement between HUD and a PHA, shall be required for each PHA designated as troubled and troubled with respect to the program under section 14. The scope of the MOA may vary depending upon the extent of the problems present in the PHA, but shall include:

(1) Baseline data, which may be the PHA's score in each of the indicators identified as a problem;

(2) Annual and quarterly performance targets, which may be the attainment of a higher grade within an indicator that is a problem, or the description of a goal to be achieved, for example, the reduction of rents uncollected to 6% or less by the end of the MOA annual period;

(3) Strategies to be used by the PHA in achieving the performance targets within the time period of the MOA;

(4) Technical assistance to the PHA provided or facilitated by the Department, for example, the training of PHA employees in specific management areas or assistance in the resolution of outstanding HUD monitoring findings;

(5) The PHA's commitment to take all actions within its control to achieve the targets;

(6) Incentives for meeting such targets, such as the removal of troubled designation or the designation as troubled with respect to the program under section 14, fewer conditions placed on grants, and Departmental recognition for the most improved PHAs;

(7) The consequences of failing to meet the targets, including such sanctions as the imposition of budgetary limitations, declaration of substantial default and subsequent action under § 901.200, limited denial of participation, suspension, debarment, or the imposition of operating funding and modernization thresholds; and

(8) A description of the involvement of local public and private entities, including PHA resident leaders, in carrying out the agreement and rectifying the PHA's problems.

(b) A PHA shall have primary responsibility for obtaining active local public and private entity participation, including the involvement of public housing resident leaders, in assisting PHA improvement efforts. Local public and private entity participation should be premised upon the participant's knowledge of the PHA, ability to contribute technical expertise with regard to the PHA's specific problem areas and authority to make preliminary/tentative commitments of support, financial or otherwise.

(c) A MOA shall be executed by:

(1) The PHA Board Chairperson and accompanied by a Board resolution;

(2) The PHA Executive Director;

(3) The Regional Administrator and/or Field Office manager; and

(4) The appointing authorities of the Board of Commissioners, unless exempted by the Regional Administrator.

(d) A PHA will monitor MOA implementation to ensure that performance targets are met in terms of quantity, timeliness and quality.

(e) A PHA will be removed from troubled status upon a determination by the Regional Administrator that the PHA's assessment reflects an improvement to a level sufficient to remove the PHA from troubled status, or troubled with respect to the program under section 14, i.e., a total weighted management assessment score of 60% or more. The Regional Administrator may redelegate to the Field Office Manager the authority to remove PHAs under 1250 units from troubled status or troubled with respect to the program under section 14.

§ 901.142 Removal from troubled status and troubled with respect to the program under section 14 status.

(a) A PHA has the right to petition the Field Office manager for the removal of a designation as troubled or troubled with respect to the program under section 14. The Regional Administrator shall review a Field Office's decision regarding a PHA's petition for the removal of a designation as troubled or troubled with respect to the program under section 14, except where authority has been redelegated to the Field Office.

(b) A PHA may appeal any refusal to remove troubled and troubled with respect to the program under section 14 designation to the Assistant Secretary for Public and Indian Housing in accordance with § 901.130.

§ 901.145 Improvement plan.

(a) After receipt of the Field Office notification letter in accordance with § 901.120(b) or receipt of a final resolution of an appeal in accordance with § 901.130, a PHA shall correct any deficiency indicated in its management assessment within 90 calendar days.

(b) A PHA shall notify the Field Office of its action to correct a deficiency.

(c) If the Field Office determines that a PHA has not corrected a deficiency as required, the Field Office may require a PHA to prepare and submit to the Field Office an Improvement Plan after receipt of the Field Office notification letter in accordance with or receipt of a final resolution of an appeal.

(1) The Field Office shall require a PHA to submit an Improvement Plan, which includes the information stated in (d), below, for each indicator that a PHA scored a grade "F".

(2) The Field Office may require, on a risk management basis, a PHA to submit an Improvement Plan, which includes the information stated in (d), below, for each indicator that a PHA scored a grade "D" or "E".

(d) An Improvement Plan shall:

(1) Identify each uncorrected deficiency indicated in a PHA's management assessment;

(2) Describe the procedures that will be followed to correct each deficiency; and

(3) Provide a timetable for the correction of each deficiency.

(e) The Field Office will approve or deny an Improvement Plan, and notify the PHA of its decision within 30 calendar days of receipt of the Improvement Plan.

(f) An Improvement Plan that is not approved will be returned to the PHA with recommendations from the Field Office for revising the Improvement Plan to obtain approval. A revised Improvement Plan shall be resubmitted by the PHA within 30 calendar days of its receipt of the Field Office recommendations.

(g) If a PHA fails to submit an acceptable Improvement Plan, or to correct deficiencies within the time specified in an Improvement Plan or such extensions as may be granted by HUD, the Field Office will notify the PHA of its noncompliance. The PHA will provide HUD its reasons for lack of progress in submitting or carrying out the Improvement Plan within 30 calendar days of its receipt of the noncompliance notification. HUD will advise the PHA as to the acceptability of its reasons for lack of progress and, if unacceptable, will notify the PHA that it will be subject to sanctions provided for in the Annual Contributions Contract and HUD regulations.

§ 901.150 PHAs troubled with respect to the program under section 14.

(a) PHAs that achieve a total weighted score of 59% or less on indicator (2), modernization, may be designated as troubled with respect to the program under section 14.

(b) PHAs designated troubled with respect to the program under section 14 may be subject, under the CGP to a reduction of its formula allocation or other sanctions (24 CFR part 968, subpart C) or under the CIAP to disapproval of new funding or other sanctions (24 CFR part 968, Subpart B).

§ 901.155 PHMAP public record.

The Field Office will maintain PHMAP files, including certifications, the records of exclusion and modification requests, appeals, and designations of status based on physical condition and neighborhood environment, as open records, available for public inspection for three years in accordance with any procedures established by the Field Office to minimize disruption of normal office operations.

Subpart C—Substantial Default

§ 901.200 Substantial default by a PHA.

Notwithstanding any other provision of law or any contract for annual contributions, upon the occurrence of events or conditions that constitute a substantial default by a PHA with respect to the covenants or conditions to which the PHA is subject or an agreement entered into in accordance with § 901.140 or § 901.145 of this part, HUD may:

(a) Solicit competitive proposals from other PHAs and/or private housing management agents in the eventuality that these agents may be needed for managing all or part of the housing administered by the PHA; and/or

(b) Petition for the appointment of a receiver (which may be another PHA or a private management corporation) of the PHA to any District Court of the United States or to any Court of the State in which the real property of the PHA is situated, that is authorized to appoint a receiver for the purposes and having the powers to administer the housing of the defaulting PHA; and/or

(c) Require the PHA to make any other or additional arrangements acceptable to the Department and in the best interests of the public housing residents for managing all or part of the PHA's housing.

§ 901.205 Events or conditions that constitute substantial default.

(a) The Department may determine that events have occurred or that conditions exist that constitute a substantial default where a PHA is determined to be in violation of Federal statutes, including but not limited to, the U.S. Housing Act of 1937, or in violation of regulations implementing such statutory requirements, whether or not such violations would constitute a substantial breach or default under provisions of the relevant Annual Contributions Contract (ACC).

(b) The Department may determine that a PHA's failure to satisfy the terms of a Memorandum of Agreement entered into in accordance with § 901.140 of this part, or to make reasonable progress to meet time frames included in a Memorandum of Agreement, are events or conditions that constitute a substantial default.

(c) The Department may declare a substantial breach or default under the

ACC, in accordance with its terms and conditions.

§ 901.210 Notice and response.

(a) If information from an annual assessment, as described in § 901.100 of this part, a management review or audit, or any other credible source indicates that there may exist events or conditions constituting a substantial breach or default, the Department shall advise a PHA of such information. The Department is authorized to protect the confidentiality of the source(s) of such information in appropriate cases. Before taking further action, except in cases of apparent fraud or criminality, and/or in cases where emergency conditions exist posing an imminent threat to the life, health, or safety of residents, the Department shall afford the PHA a timely opportunity to initiate corrective action, including the remedies and procedures available to PHAs designated as "troubled PHAs" pursuant to § 901.115, or to demonstrate that the information is incorrect.

(b) In any situation determined to be an emergency, or in any case where the events or conditions precipitating the intervention are determined to be the result of criminal or fraudulent activity, the Assistant Secretary is authorized to intercede to protect the residents' and the Department's interests by causing the proposed interventions to be implemented without further appeals or delays.

(c) Upon a determination or finding that events have occurred or that conditions exist that constitute a substantial default, the Assistant Secretary shall provide written notification of such determination or finding to the affected PHA. Written notification shall include, but need not necessarily be limited to:

(1) Identification of the specific covenants, conditions, and/or agreements under which the PHA is determined to be in non-compliance;

(2) Identification of the specific events, occurrences, or conditions that constitute the determined noncompliance;

(3) Citation of the communications and opportunities to effect remedies afforded pursuant to (a), above;

(4) Notification to the PHA of a specific time period, to be not less than 10 calendar days, except in cases of apparent fraud or other criminal behavior, and/or under emergency conditions as described in paragraph (a) of this section, nor more than 30 calendar days, during which the PHA shall be required to demonstrate that the determination or finding is not substantively accurate, or to develop and submit for HUD review of plan to remedy the events, occurrences, or conditions that constitute the non-compliance; and

(5) Notification to the PHA that, absent a satisfactory response in accordance with paragraph (c)(4) of this section, the Department will take appropriate action, using any or all of the interventions specified in § 901.210, and determined to be appropriate to remedy the noncompliance, citing § 910.210, and the authority for such action.

(d) Upon receipt of the notification described in paragraph (c), of this section, the burden of proof falls on the PHA to demonstrate factual error in the Department's description of events, occurrences, or conditions, or to show that the events, occurrences, or conditions do not constitute noncompliance with the statute, regulation, or covenants or conditions to which the PHA is subject cited in the notification.

§ 901.215 Interventions.

(a) The Department may determine that the events or conditions constituting a substantial default are limited to a portion of a PHA's public housing operations, designated either by program, by operational area, or by development(s). Interventions under this subpart (including an assumption of operating responsibilities) may be limited to one or more of a PHA's specific operational areas (e.g., maintenance, modernization, occupancy, or financial management or to a single development or a group of developments. Under this limited intervention procedure, the Department could select, or participate in the selection of, an alternate entity to assume management responsibility for a specific development, a group of developments in a geographical area, or a specific operational area, while permitting the PHA to retain responsibility for all programs, of operational areas and developments not so designated.

(b) Upon determining that a substantial default exists under § 901.200, the Department may initiate any interventions deemed necessary to maintain decent, safe, and sanitary dwellings for residents. Such intervention may include:

(1) Providing technical assistance for existing PHA management staff;

(2) Selecting or participating in the selection of an alternate entity to provide technical assistance or other services up to and including contract management of all or for any part of the public housing developments administered by a PHA; or

(3) Assuming possession and operational responsibility for all or for any part of the public housing administered by a PHA.

(c) HUD may take the actions described in § 901.200 (a) through (c), above, sequentially or simultaneously in any combination.

§ 901.220 Contracting and funding.

(a) Upon a declaration of substantial default or breach, and subsequent assumption of possession and operational responsibility, the Department may enter into agreements, arrangements, and/or contracts for or on behalf of a PHA, or to act as the PHA, and to expend or authorize expenditure of PHA funds, irrespective of the source of such funds, to remedy the events or conditions constituting the substantial default.

(b) In entering into contracts or other agreements for or on behalf or a PHA, the Department shall comply with requirements for competitive procurement consistent with 24 CFR 85.36, except that, upon determination of public exigency or emergency that will not permit a delay, the Department can enter into contracts or agreements on a non-competitive basis, consistent with the standards of 24 CFR 85.36(d)(4).

§ 901.225 Receivership.

(a) In any proceeding pursuant to § 901.200(b), above, upon a determination that a substantial default has occurred and without regard to the availability of alternate remedies, the Department may petition the court for the appointment of a receiver to conduct the affairs of the PHA in a manner consistent with statutory, regulatory, and contractual obligations of the PHA and in accordance with such additional terms and conditions that the court may provide. The court shall have authority to grant appropriate temporary or preliminary relief pending final disposition of any petition by HUD.

(b) The appointment of a receiver pursuant to this section may be

terminated upon the petition of the PHA, the receiver, or the Department, or upon a finding by the court that the circumstances or conditions that constituted substantial default by the PHA no longer exist and that the operations of the PHA will thereafter be conducted in accordance with applicable statutes and regulations, and contractual covenants and conditions to which the PHA and its public housing programs are subject.

Dated: December 24, 1991.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 92-1213 Filed 1-16-92; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-92-3375]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB are published in this notice and may also be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). It is also requested that OMB complete its review within seven days.

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 6, 1992.

Kay Weaver,

Acting Director, Information Resources Management Policy and Management Division.

Proposal: Public Housing Management Assessment Program (PHMAP) Indicators (FR-2897).

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: Indicators and Standards will be used to assess the management performance of Public Housing Agencies (PHAs), designate troubled PHAs and mod-troubled PHAs, address deficiencies through a Memorandum of Agreement for each troubled and mod-troubled PHA, and annually submit to Congress a report on the status of troubled and mod-troubled PHAs.

Form Number: None.

Respondents: State or local governments and non-profit institutions.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
1-99 Unit PHAs	1,608		1		1.9		3,055
100-499 Unit PHAs	1,274		1		2.1		2,675
500-1,249 Unit PHAs	244		1		3.1		756
1,250-3,999 Unit PHAs	102		1		3.7		377
4,000+ Unit PHAs	40		1		4.5		180
Recordkeeping	3,268		1		.1		327

Total Estimated Burden Hours: 7,371.

Status: New.

Contact: Wanda Funk, HUD, (202) 708-0860, Jennifer Main, OMB, (202) 395-6880.

Supporting Statement for Information Collection—Public Housing Management Reform

A. Justification

1. Section 502 of the National Affordable Housing Act of 1990 (the 1990 Act) establishes seven specific indicators and directs the Secretary to develop any other factors (indicators) deemed appropriate to assess the management performance of public housing agencies (PHAs) in all major areas of management operations. The 1990 Act further states that such indicators shall be used to designate troubled PHAs and PHAs that are troubled with respect to the program under section 14 (mod-troubled). HUD shall enter into a memorandum of agreement, which will address the failed indicators, with each troubled and mod-troubled PHA. In addition, the Secretary is required by the 1990 Act to annually submit to Congress a report on the status of troubled and mod-troubled PHAs.

These indicators will be used by Field Offices to annually update the automated PHA Performance Profile (Form HUD-52413) module of the System for Management Information Retrieval Public Housing (SMIRPH) for all PHAs at the beginning of the PHA fiscal year to allow the Department to fulfill this mandate of the 1990 Act in a fair and efficient manner. The SMIRPH system is an internal automated system used by only the Department and not by PHAs. PHAs are not required to complete the automated PHA Performance Profile module; that module is completed by the Field Office. PHAs are required to complete and submit a certification form, as described below.

The program developed by the Department is the Public Housing Management Assessment Program (PHMAP) and includes a total of 12 indicators, rather than 39 indicators and standards as published in the proposed rule. Of these, a PHA shall be required to certify to six indicators because information regarding these indicators is not presently reported to HUD by PHAs on any form, rather than 14 indicators and standards as published in the proposed rule. The use of a certification procedure, rather than the preparation and submission of a full data report, was judged to be the least intrusive

method of gathering the information necessary to carry out section 502.

The first five indicators that will be certified to are indicators required by the 1990 Act: vacancies; rents uncollected; unit turnaround; outstanding work orders; and annual inspection and condition of units and systems. All of these indicators must be used to designate troubled PHAs. Information regarding troubled PHAs and these five indicators will be included in the Secretary's annual report to Congress. Since the 1990 Act requires HUD to assess PHAs on these indicators and this information is not currently reported to HUD, PHAs will have to certify to these indicators to satisfy the statutory requirement. The remaining indicator which will require certification, addresses President Bush's and Secretary Kemp's HUD priorities and relate to important management concerns: Homeownership and affordable housing opportunities; economic development and self-sufficiency; resident participation; and anti-drug strategy/security. This indicator will be used to designate troubled PHAs. Information regarding troubled PHAs and this indicator will be included in the Secretary's annual report to Congress. Since this indicator addresses HUD priorities, is essential to assess management performance, and information on it is not currently reported to HUD, PHAs will have to certify to this indicator.

PHAs will certify compliance with the above listed indicators so HUD can assess PHAs in all major areas of management operations as required by the 1990 Act.

Pursuant to 5 CFR 1320.4(b)(1), the Department has ensured that the collection of information associated with the following nonstatutory requirements is the least burdensome necessary by removing the burden of these requirements for the PHMAP: Board approved policies and procedures; work order response time; Comprehensive Occupancy Plan; and timeliness of management improvements.

There were no comments received regarding the "utility of information collection." However, the reporting associated with the regulation has been reduced due to the elimination of compliance indicators and the combination of others in response to comments received on the proposed rule. There are now 12 indicators.

2. The information provided by PHAs will be used by HUD to assess all major areas of PHAs' management operations, designate PHAs as troubled and mod-troubled, enter into a memorandum of agreement with troubled and mod-troubled PHAs, and report annually to Congress on the status of troubled and mod-troubled PHAs. In addition, HUD will use this information to practice accountability monitoring and risk management as well as to determine the type, scope and frequency of HUD reviews of PHAs and subsequent areas of required technical assistance to PHAs. If the information were not required to be collected, HUD would not be able to fulfill the statutory requirements of the 1990 Act.

3. We have not considered the use of improved technology since all PHA's do not have computer systems and there is no other way to get the information except directly from PHAs.

4. There will be no duplication of information.

5. There is no similar information already available which could be used or modified for use for the purpose described in paragraph 2.

6. We attempted to minimize the burden on PHAs by providing the exact form to be used to provide the required information to HUD. The certification form will include the OMB approval number.

7. The information cannot be collected less frequently than annually due to the statutory requirement for the Secretary to annually report to Congress on the status of troubled and mod-troubled PHAs.

8. There are no special circumstances that require the collection to be conducted in a manner which is inconsistent with the guidelines in 5 CFR 1320.6.

9. There has been consultation outside of HUD Headquarters and Regional and Field Offices on this information collection with the PHMAP Working Group. In addition to HUD Regional and Field Office participation, the Working Group included representatives from PHAs, resident organizations and industry groups. The consultations began December 1989 and are ongoing. The PHMAP Working Group includes the following representation:

Ms. Dorothy Biehle, Executive Director, Maryville Housing Authority, Davidson Square, Maryville, MO 64468.

Ms. Sandra Brown-Abernathy, Executive Director, Sutter County Housing Authority, Post Office Box 631, Uba City, CA 95992.

Mr. Jon Gutzman, Executive Director, St. Paul Housing Authority, 413 Wacouta Street, 350 Gilbert Building, St. Paul, MN 55101.

Mr. Raymond D. Hensen, Director of Research & Policy Division, New York City Housing Authority, 250 Broadway, New York, NY 10007.

Mr. Peter Howe, Executive Director, Portland Housing Authority, 14 Baxter Boulevard, Portland, ME 04101-1822.

Mr. Alphonso Jackson, Executive Director, Dallas Housing Authority, 2525 Lucas Drive, Dallas, TX 75219.

Ms. Patty Rayburn, Executive Director, Owensboro Housing Authority, 2161 E. 19th Street, Owensboro, KY 42301.

Ms. Karen Thoreson, Executive Director, Boulder Housing Authority, 3120 Broadway, Boulder, CO 80302.

Ms. Georgia Stone, Funding Development Director, Ada County/Boise City Housing Authority, 680 Cunningham Place, Boise, Idaho 83702.

Mr. Brown Nicholson, Executive Director, Columbus Housing Authority, Post Office Box 630, Columbus, GA 31993.

Mr. Jack Womack, Oklahoma City Housing Authority, 1700 Northeast Fourth Street, Oklahoma City, OK 73117.

Mr. Charles St. Lawrence, Chairman, Board of Commissioners, Anne Arundel County Housing Authority, 401 Old County Road, Severna Park, MD 21146.

Mr. Mitch Dasher, Executive Director, National Association of Resident Management Corporations, 4510 Quarles Street, NE., Washington, DC 20019.

Ms. Sandra McClellan, Legislative Assistant, Public Housing Authorities Directors Association, 511 Capitol Court, NE., Washington, DC 20002-4937.

Ms. Marcia Sigal, Housing Programs Officer, National Association of Housing and Redevelopment Officials, 1320 18th Street, NW. (5th Floor), Washington, DC 20036.

Ms. Mary Ann Russ, Director, Council of Large Public Housing Authorities, 122 C Street, NW. (suite 865), Washington, DC 20001.

10. The information collection is public information; therefore, there is no assurance of confidentiality provided to PHAs.

11. There are no questions of a sensitive nature included in the information to be collected.

12. We do not estimate that there will be any additional cost to the Federal Government. The information collected from PHAs will be reviewed in accordance with the statutory requirements of the 1990 Act and with HUD's existing review and monitoring procedures (HUD Handbook 7460.7 REV-1). Annual cost to PHAs is estimated to be minimal since PHAs are

normally expected to provide this information to their Boards of Commissioners at monthly meetings.

13. Prior to the passage of the 1990 Act, HUD tested four of the six PHMAP indicators included in this information collection request. The two indicators not included in the test are statutorily required. PHAs were requested to report the amount of time it took to answer each indicator. Based on that information, we estimate that information requirements for these four indicators will have the following reporting burdens per PHA, in hours:

Indicator	1-99 units (1608 PHAs)	100-499 units (1274 PHAs)	500-1249 units (244 PHAs)	1250-3999 units (102 PHAs)	4000+ units (40 PHAs)
Rents Uncollected	.2	.2	.5	.8	.5
Unit Turnaround	.4	.5	.5	.5	.9
Inspection & Condition of Units & Systems	.5	.5	.6	.8	1.3
Resident Initiatives	.4	.4	.5	.5	.5
Subtotal	1.5	1.6	2.1	2.6	3.2

The two indicators that were not field tested were required by the 1990 Act, and we estimate that the information requirement for these indicators will have the following reporting burden per PHA, in hours:

Indicator	1-99 units (1608 PHAs)	100-499 units (1274 PHAs)	500-1249 units (244 PHAs)	1250-3999 units (102 PHAs)	4000+ units (40 PHAs)
Vacancies	.2	.2	.5	.5	.5
Outstanding Work Orders	.2	.3	.5	.6	.8
Total Hours	1.9	2.1	3.1	3.7	4.5

We estimate that the information requirements for the interim rule will have the following reporting burdens:

Reference	Number of respondents	Freq. of response	Est. avg. response time (hours)	Est. annual burden (hrs.)
1-99 Unit PHAs	1608	1	1.9	3055.2
100-499 Unit PHAs	1274	1	2.1	2675.4
500-1249 Unit PHAs	244	1	3.1	756.4
1250-3999 Unit PHAs	102	1	3.7	377.4
4000+ Unit PHAs	40	1	4.5	180.0
Total Reporting Burden				7,044.4

We estimate that the information requirements for the interim rule will have the following recordkeeping burden:

Recordkeepers	Hours per recordkeeper	Total annual responses
3,268	1	327
Total Burden		7,371

The proposed collection of information was not included in this agency's Information Collection Budget.

14. This is a new information collection.

15. The collection of this information will not be published for statistical use, but will be used to comply with the statutory requirements in the 1990 Act that the Secretary designate troubled and mod-troubled PHAs and annually report to Congress their status.

BILLING CODE 4210-01-M

Public Housing Management Assessment Program (PHMAP) Certification

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB No. 2577-0138 (exp. mm/dd/yy)

Public reporting burden for this collection of information is estimated to average X.X hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-xxxx), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

PHA: | Date:

PROOF

We hereby certify that, as of the above date, the (name) _____ Housing Authority reports the following indicators under the Public Housing Management Assessment Program (PHMAP) to be true and accurate for its fiscal year ending _____:

Indicator 1: Vacancy Number & Percentage	
Actual vacancy percent	%
Total vacant units	
Adjusted vacancy percent	%
Percent reduction of actual vacancies over prior three years	%
Indicator 3: Rents Uncollected	
Percent of average annual rents uncollected	%
Indicator 5: Unit Turnaround	
Annual average number of calendar days for vacant unit to be prepared for re-rental	
System has been established to track unit turnaround (eneter Yes, No or N/A)	
Indicator 6: Outstanding Work Orders	
Percent of emergency items corrected/abated within 24 hours	%
Percent of outstanding work orders	%
Progress has been demonstrated over the most recent three year period at reducing the time required to complete maintenance work orders (enter Yes, No or N/A)	
Indicator 7: Annual Inspection and Condition of Units and Systems	
System has been established to track inspection and repair of units and systems (enter Yes, No or N/A)	
PHA used standards that were at least equivalent to the Housing Quality Standards (HQS) (enter Yes, No or N/A)	
Percent of units inspected annually	%
Percent of units meeting HQS	%
Percent of emergency items corrected/abated within 24 hours	%
Average number of days to bring non-emergency maintenance items to HQS	
Percent of Non-emergency maintenance items that were corrected according to PHA's maintenance plan	%
Major systems are inspected annually (enter Yes, No or N/A)	
Average number of days to correct identified systems deficiencies	
Percent of systems deficiencies that were corrected according to PHA's maintenance plan	%
Maintenance plans for units and systems have been established and are followed (enter Yes, No or N/A)	
Indicator 8: Tenants Accounts Receivable (TARs)	
The PHA elects to use: (mark one)	
The Annual Average	☐
Annual TAR Percent	☐
Indicator 11: Resident Initiatives	
Policies have have been adopted and procedures implemented for: (enter Yes, No or N/A)	
Anti-drug strategy/security	
Resident participation/management	
Homeownership opportunities	
Economic development/self-sufficiency	
Number of areas at which PHA has been successful in significantly improving conditions/activities	

The undersigned further certify that, to their present knowledge, there is no evidence to indicate seriously deficient performance that casts doubt on the PHA's capacity to preserve and protect its public housing developments and operate them in accordance with Federal law and regulations. Appropriate sanctions for intentional false certification will be imposed, including suspension or debarment of the signatories.

Chairperson, Board of Commissioner : (signature & date)	Attested to by: Executive Director . (signature & date)
X	X

A Board Resolution approving this certification is required and shall be attached to the executed certification.

Form HUD-50072 (12/17/91)
ref. Handbook 7460.5

[FR Doc. 92-1214 Filed 1-16-92; 8:45 am]

BILLING CODE 4210-01-C

federal register

Friday
January 17, 1992

Part IV

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

January 1, 1992.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status, as of January 1, 1992, of 10 deferrals contained in the two special messages for FY 1992. These messages were transmitted to Congress on September 30, and December 19, 1991.

Rescissions

As of the date of this report, no rescission proposals are pending before the Congress.

Deferrals (Table A and Attachment A)

As of January 1, 1992, $2,906.4 million in budget authority was being deferred from obligation. Attachment A shows the history and status of each deferral reported during FY 1992.

Information From Special Messages

The special messages containing information on deferrals that are covered by this cumulative report are printed in the **Federal Registers** cited below:

56 FR 50620, Monday, October 7, 1991,

56 FR 67402, Monday, December 30, 1991.

Richard Darman,

Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF FY 1992 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President.....	5,487.1
Routine Executive releases through January 1, 1992.	-2,580.7
Overturned by the Congress.....	---
Currently before the Congress.....	2,906.4

Attachments

ATTACHMENT A
Status of FY 1992 Deferrals – As of January 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 1-1-92
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D92-1	244,777		09-30-91					
	D92-1A		1,623,312	12-19-91	650,621				1,217,468
Foreign military financing	D92-8	1,908,000		12-19-91	777,300				1,130,700
Agency for International Development									
International disaster assistance, Executive	D92-2	40,704		09-30-91					40,704
Demobilization and transition fund	D92-9	13,000		12-19-91					13,000
DEPARTMENT OF AGRICULTURE									
Forest Service									
Cooperative work	D92-3	482,378		09-30-91	135,434				346,944
Expenses, brush disposal	D92-10	101,006		12-19-91					101,006
DEPARTMENT OF DEFENSE – CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D92-4	1,416		09-30-91					1,416

ATTACHMENT A

Status of FY 1992 Deferrals – As of January 1, 1992

(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 1-1-92
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses	D92-5	7,317		09-30-91					7,317
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive	D92-6	30,053		09-30-91					47,803
	D92-6A		24,750	12-19-91	7,000				
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund)	D92-7	1,010,375		09-30-91	1,010,375				0
TOTAL, DEFERRALS		3,839,026	1,648,062		2,580,730	0		0	2,906,358

[FR Doc. 92-1234 Filed 1-16-92; 8:45 am]

BILLING CODE 3110-01-C

Reader Aids

Federal Register

Vol. 57, No. 12

Friday, January 17, 1992

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

1-172 2
173-328 3
329-516 6
517-600 7
601-754 8
755-1068 9
1068-1210 10
1211-1364 13
1365-1634 14
1635-1856 15
1857-2006 16
2007-2212 17

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.

3 CFR

Administrative Orders:

Memorandums:

December 27, 1991 1069

Presidential Determinations:

No. 92-9 of December 16, 1991 329

No. 92-10 of December 30, 1991 1071

Executive Orders:

12514 (Revoked by EO 12787) 517

12787 517

Proclamations:

6399 1635

5 CFR

591 1367
930 1367
2636 601

Proposed Rules:

831 118
838 118
841 118
842 118
843 118

7 CFR

51 ..... 1211, 1635
301 519
319 331
321 331
354 755
458 173
401 2007
905 334
906 1857
907 ..... 336, 1215
920 1217
981 1858
982 1073
989 1859
1001 173
1004 173
1032 1636
1124 173
1425 1369
1530 175
1710 1044
1866 774
1951 ..... 774, 1313
1955 1370
1965 774
1980 1637

Proposed Rules:

319 ..... 217, 846
401 1116
729 1879
925 219
932 1663
1007 220
1001 ..... 15, 383
1002 383
1004 ..... 15, 383
1005 383
1007 383
1011 383
1012 383
1013 383
1030 383
1032 383
1033 383
1036 383
1040 383
1044 383
1046 383
1049 383
1050 383
1064 383
1065 ..... 1664, 1665
1068 383
1075 383
1076 383
1079 383
1093 383
1096 383
1097 383
1098 383
1099 383
1106 ..... 221, 383
1108 383
1124 ..... 15, 383
1126 383
1131 383
1134 383
1135 383
1137 383
1138 383
1139 383
1209 1666
1446 1879
1944 1678

8 CFR

103 1860
204 1860
214 749

Proposed Rules:

103 ..... 1404, 2057
208 1404
209 1404
274a 1404

9 CFR

82 776
92 2009
130 755

10 CFR

1 1638
600 1

Proposed Rules:

11 222

19....222
20....222
21....222
25....222
26....222
30....222
31....222
32....222
33....222
34....222
35....222
39....222
40....222
50....222, 537, 2059
52....222, 537
53....222
54....222
55....222
60....222
61....222
70....222
71....222
72....222
73....222
74....222
75....222
95....222
110....222
140....222, 2059
150....222
170....847
171....847
440....2060
455....432
820....855, 1519
830....855
835....855

11 CFR

100....1640
110....1640
114....1640

12 CFR

5....1641
201....176
208....6, 2010
225....6, 2010
226....81, 749
747....522
900....749
932....81
Proposed Rules:
202....1405
563b....2061
613....1882

13 CFR

101....524
Proposed Rules:
108....1688
121....541

14 CFR

21....6, 338, 602, 1220
23....1220
25....6, 338, 602
39....177-182, 605, 606, 779-792, 1075, 1076, 2013, 2014
71....166, 340
75....341
91....328
97....1077, 1080, 1222, 1223
Proposed Rules:
Ch. I....236, 383
39....18-21, 237, 649-656, 855-857, 1120, 1126, 1229, 1230, 1690-1697

15 CFR

770....8
778....8
785....8
Proposed Rules:
303....384
1150....2065

17 CFR

1....1372
5....1372
30....1374
31....1372
240....1082, 1096, 1375
270....1096
Proposed Rules:
240....1128

18 CFR

Ch. I....1861
2....794
37....802
154....794
157....794
250....9
284....794
375....794
380....794

19 CFR

10....2016
24....607
101....609
Proposed Rules:
353....1131
355....1131

20 CFR

335....806
340....1378
401....956
404....1379, 1382
416....1383
655....182, 1316

21 CFR

177....183
178....2019
310....2136
358....2136
558....524, 1641
620....2135
Proposed Rules:
5....239
20....239
100....239
101....239
102....239
105....239
130....239
211....2136
314....2136
333....858
369....858
514....2136
1240....1407
1308....1406

22 CFR

41....341
89....1384
Proposed Rules:
121....1886, 1888
514....859

23 CFR

655....1134

24 CFR

12....1942
Subtitle A....1522-1558-1592
50....1385
201....610
901....2160
Proposed Rules:
570....322
577....466
578....466
3282....241

26 CFR

1....343, 1868
301....12
602....12
Proposed Rules:
1....658, 859, 860, 1232, 1243, 1408, 1409
301....658

27 CFR

178....1205

28 CFR

0....1642
Proposed Rules:
50....862
65....1439
80....862

29 CFR

506....182
507....1313
510....611, 1102
1926....387
2610....1643
2619....1644
2622....1643
2644....1645
2676....1646
Proposed Rules:
1910....387
1915....387
1952....1889

30 CFR

920....1104
934....807
Proposed Rules:
58....500
72....500
206....865
700....2065
785....2065
827....2065
914....543
935....2066
943....1136
944....2067
950....1137

31 CFR

500....1386, 1872
515....1386
520....1386
530....1386
535....1386
550....525, 1386
560....1386
575....1386

32 CFR

583....525

33 CFR

100....2020
117....1391
165....347, 1106, 1108, 2020
Proposed Rules:
117....1138
155....1139, 1890
157....1243, 1854
165....1141

34 CFR

298....1207
690....2021
Proposed Rules:
81....506

36 CFR

242....349
1191....1393

37 CFR

1....2021
10....2021

38 CFR

36....827
Proposed Rules:
1....1440
3....1442, 1699
21....865

39 CFR

111....1519

40 CFR

52....351, 354
60....1226
61....1226
141....1850
146....1109
180....646, 1647, 1648
228....2036
261....12
281....186
300....355, 1872
Proposed Rules:
Ch. I....1443
52....23, 24, 1700, 1705
80....2068
81....1700, 1705
82....1984, 1992
148....958
180....1244
260....958
261....958
262....958
264....958
265....958
268....958
270....958
271....958
704....2138
799....2138

41 CFR

60-250....498
302-11....1112

43 CFR

3160....2039, 2136

Proposed Rules:
37 1344

44 CFR
64 ..... 356, 358
65 ..... 360, 361
67 525

45 CFR
3 1873
96 1960
235 1204
400 1114

46 CFR
28 363
Proposed Rules:
31 1243
32 1243
35 ..... 514, 1243
586 2070

47 CFR
1 186
22 ..... 829, 830
25 1226
43 646
63 646
73 ..... 188, 189, 831, 1650, 1652
76 189
Proposed Rules:
73 ..... 242, 866-868
76 868

48 CFR
249 533
525 648
1801 831
1806 831
1807 831
1812 831
1815 831
1816 831
1823 831
1825 831
1830 831
1831 831
1832 831
1842 831
1844 831
1852 831
1853 831
Proposed Rules:
Ch. 53 App. B 1710

49 CFR
171 1874
172 1874
173 1874
107 364
180 364
571 ..... 1710, 1716, 2039
591 2043
Proposed Rules:
175 1891
571 ..... 242, 252, 870, 1652
591 2071

50 CFR
17 ..... 212, 588, 1398, 1796, 2048
100 349
285 365
Ch. VI 375
371 2054
601 375
605 375
611 ..... 534, 1654
642 1662
652 844
655 534
672 381
663 1654
675 381
Proposed Rules:
17 ..... 35, 544-548, 596, 658, 659, 1246, 1443, 2075
23 262
301 390
611 1250
625 213
649 214
650 1721
675 215
678 1250

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 102d Congress has been completed and will be resumed when bills are enacted into public law during the second session of the 102d Congress, which convenes on January 3, 1992. A cumulative list of Public Laws for the first session was published in Part II of the **Federal Register** on January 2, 1992.

Public Laws

102d Congress, 1st Session, 1991

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 102d Congress, 1st Session, 1991.

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